

Analyzing the Death and Investigation of US Supreme Court Justice Antonin Scalia

With the recent death of US Supreme Court Justice Antonin Scalia (02/13/2016), and the questions surrounding it, a real-world understanding of death investigations is needed. Death investigation is not limited to homicide investigations, and is best conducted by trained medicolegal death investigators overseen by a forensic pathologist. What makes us qualified to evaluate the death and investigation, as reported, of Justice Antonin Scalia? Below is a summary of our experience, with a detailed experience following this article.

Dean A. Beers, CLI, CCDI and Karen S. Beers, BSW, CCDI are both Certified in Medicolegal Death Investigations to include as forensic autopsy assistants, and Certified Criminal Defense Investigators. Together we co-developed 'Death Investigation for Private Investigators' distance learning and continuing education. Dean formed our agency in 1987 with focus on general investigations, as well as individual locates, backgrounds and assets & liabilities. Karen began in 1996, gaining knowledge and experience in the same areas. Since 2008 we have primarily focused on Equivocal Death Investigations in providing legal investigations and expert consultations in personal injury, negligence and death in civil, criminal and probate litigation.

Our agency, Associates in Forensic Investigations, provides Expert Consultations and Legal Investigations of Death and Injury Causation in Civil, Criminal and Probate litigation. We specialize in assisting other professional investigators and attorneys help families with answers and closures in their own equivocal deaths of loved ones.

In the following analysis, please keep in mind that information is based solely on available media reports. At this time there are no official reports - only reported official statements.

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DEATH INVESTIGATIONS IN TEXAS

It is important to first have a very basic and general understanding of death investigations in the US, and specifically in Texas. Systems are generally coroner, medical examiner or a hybrid. The coroner system is an elected system that is most often a lay person. The medical examiner system is based on the election or appointment of a forensic pathologist. The hybrid system is most often based on a coroner system, but with an elected or appointed forensic pathologist. Our experience is in Colorado, which is a coroner based system. Our jurisdiction has an elected forensic pathologist; Dean also worked in an appointed forensic pathologist jurisdiction. Our jurisdiction had the only training program in Colorado - which became the basis for the mandatory 40-hour training requirement that was passed in Colorado for all elected or appointed coroners and medical examiners.

Texas is a bit different from Colorado, but also very similar. In Texas a Justice of the Peace makes the determination of an autopsy and also certifies the death. The Justice of the Peace is not required to have any training or experience in the areas of law, medicine or death investigations. They are most likely lay persons, and like Colorado, this is most often seen in rural counties. Consultations and autopsies are contracted to forensic pathology groups. To further complicate this, the two JOPs in Presidio county, at the time of the Scalia's death, were gone and the duties were left to the county judge.

###

CERTIFYING DEATH

The conclusion of the official death investigation, and possibly the EDI, are the Cause and Manner of Death, including the Mechanism of Death.

1. Cause of Death [COD] is the medical reason for death, the underlying disease or injury that is the specific and immediate medical reason for death.
 - The cause of death is determined from the investigative and forensic evidence – both direct and circumstantial.
 - This includes a review of the medical records, investigation and, if warranted, an autopsy. This area of the death certificate has two components:
 - Part One: Beginning with the immediate cause of death (e.g., Cirrhosis), followed by conditions resulting in the immediate cause of death (e.g., chronic ethanol abuse).
 - Part Two: Significant, but non-contributing medical conditions (e.g., chronic tobacco smoker).
2. Manner of Death [MOD] is the classification of death based on how the cause of death was brought into play. Commonly referred to as the “Type” of death; there are five possible choices:
 - A. Natural (i.e. disease, cardiac, etc.)
 - Death caused solely by disease, like heart disease, cancer, etc.
 - If natural death is hastened by injury or any other non-natural event, the manner of death will not be considered natural.
 - If the disease process is caused by a non-natural event (ex: pneumonia due to long-term bed confinement as a result of a motor vehicle accident) the manner of death will not be considered natural.
 - B. Accident (fall, automobile, industrial, etc.)
 - Deaths other than natural, where there is no evidence of intent: an unintentional event or category of chain of events.
 - Many forms of apparent ‘Accident’ deaths may instead be Suicide or Homicide, or possibly Undetermined. These deaths should be particularly closely investigated due to possibly accidental death insurance double indemnity clauses.
 - C. Homicide (death is caused by another person)
 - Death resulting from intentional harm (explicit or implicit) of one person by another, or by grossly reckless behavior.
 - In death investigation, homicide is the medical determination.
 - This is a medical determination of Homicide, not the legal determination. A motor vehicle collision resulting in the death of a person is ruled an Accident, but a person may be legally charged under vehicular homicide statutes.
 - D. Suicide (death is caused by the decedent)
 - Death as a purposeful action set in motion (explicit or implicit) to end one’s life.
 - Do not try determining the person’s “final thoughts” - only their final actions.
 - Suicide is a ruling that is to the exclusion of all other MODs and is presumptive to the decedent having not committed suicide. This manner is not used as a fallback when the other manners are inconclusive. For example, if not Accident or Homicide, it must be Suicide. This is the most common EDI and such lack of conclusive evidence is best ruled Undetermined.
 - There are four elements to Suicide:

1. Intent to commit the act knowing that it may result in their death;
 2. Knowledge of the instrument used and that it may cause death;
 3. History of attempts, ideation or documentation of evidence supporting Suicide;
 4. Evidence of contributing factors to the act.
- E. Undetermined (facts and investigation are inconclusive).
- Manner assigned when there is insufficient evidence or information, especially about intent, to assign another manner. May be seen in:
 - “SIDS” – now referred to as SUIDS
 - Advanced stages of decomposition
 - Skeletal remains
 - Unknown identification and/or history

The following deaths usually require notification to the coroner, as well as an investigation. The investigation may be via medical records or a scene response and possibly an autopsy. This will be dependent on the jurisdictional statute, scene and death circumstances, and protocol of the coroner’s office. Any one of the following constitutes a “coroner’s” case:

- Any sudden, unexpected death;
- All suspected homicides;
- All suspected suicides;
- All suspected accidents;
- Any death occurring ‘in custody’;
- Skeletal remains;
- Any child death;
- Any person who dies within 24 hours of hospital or nursing home admission.

Note – death penalty executions are considered both homicides and in-custody deaths, an autopsy is often required by statute.

The cases that fall within the coroner’s jurisdiction, but do not require a scene response or autopsy, are often referred to as ‘Reportable’ cases.

Cases involving investigation and/or autopsy are not classified as ‘Reportable’; they are ‘long’ cases. Examples of common ‘long’ cases include:

- From external violence, unexplained cause, or under suspicious circumstances;
- Where no physician is in attendance or where, though in attendance, the physician is unable to certify the cause of death;
- From thermal, chemical, or radiation injury;
- From criminal abortion, including any situation where such abortion may have been self-induced;
- From a disease which may be hazardous or contagious or which may constitute a threat to the health of the general public;
- While in the custody of law enforcement officials or while incarcerated in a public institution;
- When the death was sudden and happened to a person who was in good health;
- From an industrial accident.

In all such cases there should be a scene response and accompanying investigation. The investigation, as well as statute and/or policy of the coroner’s office, will determine if an autopsy is warranted.

###

IN PERFECT HEALTH

Antonin Scalia was 79 years old and physically overweight – there are no persons 79 years old in perfect health and heart disease is common - including atherosclerotic cardiovascular disease (ASCVD).

In later reports, the certifying county judge appropriately consulted with Rear Admiral Brian P. Monahan MD, the attending physician for members of Congress and the US Supreme Court. In addition to an examination the day before leaving for the resort, reported health included a history of heart trouble and high blood pressure; he was considered too weak to undergo surgery for a recent left shoulder injury. This injury is unspecified; however, it should be noted that left shoulder pain is often associated with heart disease.

It is highly suspect that a person with this history was in perfect health. Physically strong, mentally alert - yes; but onset heart disease should not be unexpected.

###

INCIDENT BACKGROUND

Media reports are the only source information available at this time. By report, Scalia was found by the ranch owner alone in his bedroom, door closed, lying peacefully and undisturbed. There is no mention of his body position – prone, supine, left or right side, etc. A later report quoted how the ranch owner described finding Scalia, *“We discovered the judge in bed, a pillow over his head. His bedclothes were unwrinkled. It looked like he had not quite awakened from a nap.”* and *“His hands were sort of almost folded on top of the sheets. The sheets weren’t ruffled up at all.”* We will discuss the most controversial ‘pillow’ issue separately.

- Lying peacefully and undisturbed - this is important, as it essentially described that the witness saw nothing to cause him alarm.
- Bedclothes were unwrinkled - at first this seems like a red flag - posed. However, this could be more to describe as not finding torn clothes, or unusually wrinkled.

Specifically, the ranch owner that found Scalia is reported as stating ‘peaceful and undisturbed’. Not ‘clenched fists’ or ‘scratches on his face’ or ‘torn or bunched pajamas’ or other words of concern or alarm such as ‘something didn’t look right’.

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PILLOW OVER HIS HEAD

Like other professional investigators, our agency conducts statement analysis - and we know there are nuances to what a person sees, how they describe it, and how it is later translated by others in their own reporting. Specifically, the ranch owner that found Scalia stated ‘a pillow over his head’ - over and head being the two key words. Not ‘on his face’ or ‘over his face’ or ‘covering his face’ and no other words of concern or alarm such as ‘it looked like he was suffocated’. Our first impression was exactly as described – perhaps the pillow really was ‘over his head’ and possibly against the headboard or wall. This is a position we have frequently observed personally and professionally.

As medicolegal death investigators, we would look for - and hope responding law enforcement did - signs of injury or foul play. When we took initial phone calls notifying us of a death, the routine questions were: any falls, injuries, altercations, unusual behavior, alcohol or other drug use, stab wounds, bullet holes, weapons or other unusual circumstances? We would hope for an informed and honest answer - it usually happened, but not always.

In our jurisdiction the medical examiner's office we trained, interned and worked with also gave training to local funeral homes and law enforcement to be able to answer the myriad of questions for themselves, families and the ME office. One specific time the charge nurse at a nursing home answered those unusual circumstances question as 'no'. But, the trained funeral home staff noticed bruising and immediately contacted the on-call ME investigator. An autopsy was conducted and a full investigation, which later turned into a civil wrongful death suit that our office independently handled. The system is not infallible, but it does work with the correct protocols and training.

Update - at the time of drafting this article, the ranch owner was interviewed on 02/17/2016 for a morning news program, and was quoted as saying, "[Scalia] had a pillow over his head, not over his face as some have been saying. The pillow was against the headboard."

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NO INVESTIGATION CONDUCTED

This is simply false. An investigation is *'the action of investigating something or someone; formal or systematic examination or research.'* and *'a formal inquiry or systematic study.'* Like all investigations, death investigations have protocols, as well as statutes - and they differ state to state; generally, there are common minimal protocols. These minimum protocols do not include any requirement of a scene response or autopsy. An investigation, if at a minimum includes law enforcement response only, should always include photographs of the scene and decedent. It is not known if photographs were taken.

Moreover, by report there was a law enforcement response and US Supreme Court Justices do have their own security (US Supreme Court Police) or other federal agencies (usually the US Marshall's Service). As this private ranch, situated on 30,000 acres, was rural - the security detail would not be expected to be the same as within Washington DC or other densely populated areas. The end of this article includes Google Earth aerial views of the ranch and surrounding area. Moreover, all persons were known and can be accounted for, and contacted, at any time.

###

NO AUTOPSY

The 'CSI Effect' has influenced the perceived value of an autopsy. Autopsies are valuable and are a component of a complete investigation, if one is performed. All violent, suspicious, unnatural and unattended deaths are investigated, which account for a small percentage of reported deaths. A preliminary investigation, statute and protocol will dictate if an autopsy is performed. The authorization of the autopsy depends on the circumstances of the death and the protocol of the medical examiner's office.

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In Texas an autopsy into Scalia's death was not required by statute. In most states, the role or stature of a person does not dictate if an autopsy is required or should be performed. In North Carolina, the guidelines include, "*Should there be reported to you as a medical examiner the death of any person likely to generate widespread public interest or arousal, please inform the OCME promptly by telephone.*" and "*deaths of travelers, vacationers, convention attendees, workers, students, and other strangers from afar should be carefully evaluated before a decision NOT to autopsy is made.*" This does not recommend or require an in-person investigation at the scene or an autopsy - only that the ME office be notified by phone. What this does describe is circumstantial judgment. In the jurisdictions of our training and employment, we were to notify the on-call forensic pathologist of any death within these descriptions, and in some cases all deaths to which we responded to the scene. If the death would raise any public concern of health or safety, or in which it was better to answer questions at autopsy instead of after, an autopsy was considered, based on the circumstances, for those that would not have otherwise been conducted. At the very least, an external examination by the forensic pathologist, together with photographs, medical records and toxicology.

Toxicology, absent autopsy, can be collected and retained for extended periods. In the case of diseases afflicting elderly persons, indications and confirmations of diabetes, heart disease, hypertension, high cholesterol and other diseases would be documented. In the case of an acute cardiac event - such as a myocardial infarction - specific toxicology tests may confirm (it should be noted, the absence of markers in the toxicology is not an indication of no cardiac event).

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PHONE PRONOUNCEMENT

In most jurisdictions the legal pronouncement of death must be by a Medical Doctor (MD) or Doctor of Osteopathy (DO), or by an appointed deputy coroner / medical examiner. In Texas, using a JOP, it is permitted to pronounce death by phone. This is unusual in our experience, but not in Texas. It does not change any component of the investigation or certifying of the death.

###

EMBALMED AND CREMATED TO PREVENT AUTOPSY

The only thing that prevents an autopsy is cremation; however, Scalia was not immediately cremated. He was embalmed and then transported by private plane from Texas to Virginia, where he will lie in repose until cremation or burial. Reports are that he requested cremation in his will.

An autopsy can be performed on an embalmed body, including exhumed weeks to years - even decades - later. Fluids are evacuated from the body and disposed of. Embalming does complicate the process of reliable toxicology from the tissues. In addition to their education, training and experience, the forensic pathologist may request the consultation of a forensic toxicologist for guidance in the tests and results.

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CAUSE OF DEATH CHANGED FROM HEART FAILURE TO NATURAL CAUSES

This perplexed many of us involved in death investigations, and caused a stir for the lay public. Deaths are certified as to Cause and Manner - Natural is a manner and 'natural causes' alone is insufficient for a

Cause. We generally dismiss this as either a misquote or the judge not having the medicolegal knowledge necessary.

True to media reporting, the judge corrected being previously misquoted as saying that Scalia had not died of “myocardial infarction”, stating she meant only that his heart had stopped, “It wasn’t a heart attack, he died of natural causes.” This did not do much to clear up any ambiguity - except perhaps that the heart attack was not caused by other than natural causes. A person can have a ‘heart attack’ (fatal and non-fatal) due to fright, drug overdose or other medical issue. All persons die of heart failure - it is the events causing the heart failure that become the Cause and the circumstances of that Cause becoming the Manner.

We will know what the certified Cause and Manner of death are when details are released. This will be Natural and likely attributed to a history of heart disease and related complications. An example might be - acute myocardial infarction due to chronic ischemic heart disease due to hypertension with other significant health being obesity. This is not a conclusion reached by random decision. The process of certifying a death is based on investigation.

###

PRIVATE PLANE TRANSPORT

We are not sure what to make of claims of suspicious circumstances being masked by transporting the body from Texas to Virginia by private plane. From the family perspective, it was a choice that was likely better for them. Using commercial flights would have involved dealing with the media and relinquishing any privacy.

###

DEMOGRAPHICS

The private ranch and resort is located about three miles from Shafter in Presidio county, TX; Shafter is a ghost town with a census population of 11 [probably all at the ranch]. The largest city in Presidio county is Presidio, with a census population of 4,426. The county is situated on the far west of TX at the border with Mexico, and has a census population of 7,713. The county is so rural, it is not considered part of any metropolitan or micropolitan area. Nearly 20 miles separates Shafter from Presidio. The distance from Presidio county to San Antonio is approximately 450 miles – more distant than the size of many states.

###

EXAMPLES IN OUR EXPERIENCE

-- MIDDLE-AGED MALE WITH MEDICAL FOUND DECEASED BY RELATIVES

It is not unusual for a person to be found deceased in bed, having passed in their sleep. In the time of writing this article, Dean had a conversation with a gentleman who related his cousin, in his sixties and in good health, recently passed way after complaining of not feeling well while at a baseball game and going to a relative’s to lay down. No one expected him to not get up; however, he was found in bed having passed away. His attending physician determined he had a heart attack. This was a conversation between persons that did not know each other over a transaction. Not only did they not know each other, but the other person was not aware of our profession - it was just a conversation - and it was from Dean he learned

of Justice Scalia's death when Dean commented it was very similar.

-- BODY FOUND IN REMOTE FIELD RULED SUICIDE

We were asked to consult on a case for the family in which the decedent was found in a remote field with a single gunshot wound to the head. Information related was the coroner, a pediatric medical doctor, was consulted by phone with law enforcement. He ruled the death as suicide. Known circumstances included that no firearm was found, and no vehicle was found – the decedent's vehicle was in a parking area several miles away. The body was cremated without examination, autopsy or toxicology.

-- LAW ENFORCEMENT OFFICER FOUND AT HOME

We consulted on a case in which a law enforcement officer was found by family at their home with a single gunshot wound to the head. The medical examiner's office was called to respond; however, declined. A private contracted company provided the transport to the morgue for autopsy and the law enforcement agency conducted a detailed investigation. We concurred with the finding of suicide.

-- BODY FOUND AT RELATIVE'S HOME

We consulted on a case in which a male was found by the absent homeowners, related by marriage, with a single gunshot wound to the head. The coroner's office responded and a joint detailed investigation was conducted. An autopsy was declined. The records, reports and photographs from the coroner's office and investigating law enforcement agency were denied the family.

These are just three key examples of the variations that may be found in official death investigations, circumstances, protocol and findings, and the release of records. This should provide some additional perspective into the investigation and protocols in Scalia's death in Presidio county TX.

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IN CONCLUSION

People don't always accurately describe what they see, or see what they describe...or have what they say accurately reported. This includes witnesses, victims, law enforcement and the media. In the case of a public official, and one of such national notoriety and perhaps controversy, we have to expect inaccuracies and further controversial narratives.

Removing his public stature, Justice Scalia was an elderly male with expected declining health for his age. This included being overweight and hypertension, with complaints of not feeling well when going to bed after perhaps an extended day of physical activity. He was a tourist that was found at a resort with no unusual circumstances.

The process of investigation was consistent with Texas law, perhaps not consistent with the protocols some involved in medicolegal death investigations would expect. The comments from lay persons, politicians and the media certainly indicate that their expectations were not met. These narratives are fueled by ideological suspicion and CSI expectations. Death investigations involve an investigator and forensic pathologist analyzing the investigative data of scene and medical history, and perhaps autopsy and toxicology as warranted.

In our experience with a case absent any notoriety and based on the reported information as being

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reasonably accurate, it is not likely we would have responded to the scene. Similarly, an autopsy would not have been recommended by ourselves and would not have been granted by any of our supervising forensic pathologists.

However, given the public stature and implications in this death, we would have first responded to the scene to make the appropriate assessment and documentation. At that time an autopsy would likely have been recommended and perhaps our supervising forensic pathologists would have granted. As an independent agency, the coroner / ME offices have that responsibility separate from law enforcement. If the scene - by phone or in person - would have presented any questions or concerns, a phone consultation with a supervising forensic pathologist would have been made to determine the next and appropriate course of actions based on the findings and circumstances.

Finally, the family deserves both respect and answers. In doing the best to accommodate their wishes, providing answers is important to bringing closure. In a sense, the public is an extended family when the decedent has been a public servant. Ultimately, as Francois Marie Arouet (pen name Voltaire) said '*To the living we owe respect, but to the dead we owe only the truth*'.

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Dean A. Beers, CLI, CCDI is also a Certified Legal Investigator, and expert consultant / witness in criminal defense homicide and civil equivocal death investigations. He is also a Wyoming POST certified instructor in death investigations.

As a Medicolegal Death Investigator (MDI) for two medical examiner's offices, he was involved in the investigations in all manners of deaths and incidents. From 2003-2008 he investigated over 150 scenes, assisted with approximately 400 autopsies, and investigated nearly 600 additional non-autopsied cases. This does not include over 1,100 additional cases that were not taken for jurisdiction, while in training, or in which Dean was a co-investigator (homicides and child deaths frequently required multiple investigators).

Dean's background includes over 5,000 hours of experience specific to death investigation and related injuries, negligence, and causation. His education and training from 2002-2008 includes over 600 hours

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in the Law Enforcement Academy and 1200 hours of general and forensic investigative specific training in multiple disciplines.

He has lectured extensively and authored multiple books and articles, peer-reviewed white papers, and provided expert testimony on Protocols of Private Investigation, and Forensic Investigations of Injury Pattern Analysis (including Blood Pattern Analysis) and Death Investigations (including Protocols and Standards), as well as consulted as a subject matter expert in Equivocal Death Analysis, Injury Causation, Time of Death, Crime Scene Analysis, Investigative Protocol, Evidence Protocol, and Forensic Photography.

Karen S. Beers, BSW, CCDI earned her Bachelor's in Social Work from Colorado State University (Magna Cum Laude). In addition to being an author of an investigative book and multiple articles, she is a subject matter expert in death investigations. Her background, education and experience with victim advocacy and counseling are valuable assets in working with families and victims of traumatic events.

As a death investigator Karen was involved in the investigations of all manners of deaths and incidents, training under three Forensic Pathologists. From 2004-2006 she investigated and assisted with numerous death cases and scenes, and assisted with forensic autopsies.