

FALL 2014



VOL. 39, ISSUE 3

the legal investigator

The Official Journal of the National Association of Legal Investigators

The Legal Investigator and the News Media

Rich Robertson, CLI | p.4

CRIMINAL FOCUS | p.8

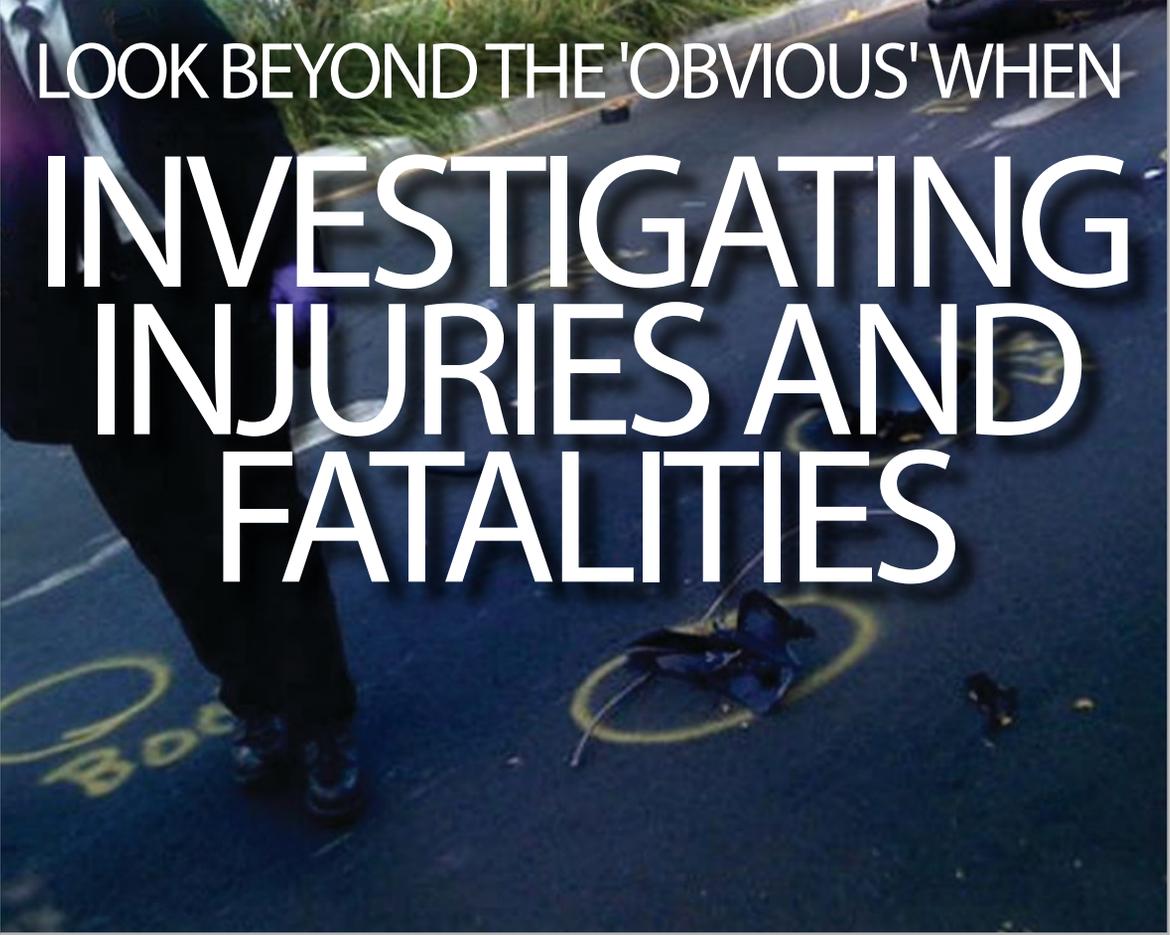
Changes in events and different evidence may change not only the Cause and Manner of Death, but also the type of litigation and investigation. See how investigative findings may support or refute all or part of the official findings.

OPINION | p.16

"Doing the right thing when no one is looking" has been the standard, but what do investigators do when they begin to question the motives of clients, particularly when those clients are politicians or political organizations?

SAVE THE DATE | p.15

Start making your preparations for the National Association of Legal Investigators 48th Annual Conference which will be held May 28 - 30, 2015 at the beautiful and historic Menger Hotel in San Antonio, Texas.



LOOK BEYOND THE 'OBVIOUS' WHEN INVESTIGATING INJURIES AND FATALITIES



Changes in events and different evidence may change not only the Cause and Manner of Death, but also the type of litigation and investigation."

The professional investigator has to look at the totality of evidence and circumstances. That influences how they investigate civil and criminal cases involving injury, causation and death.

That seems obvious but, too often, investigations begin with a premise and, as a result, miss, ignore or misinterpret important evidence.

So, how should you, as a private investigator, approach investigations when the crime or wrong involves a series of events resulting in fatal or serious injuries? Cases include incidents of violence, sudden or unexplained death, unattended death or in-custody death.

This is serious because the investigation may result in serious criminal charges or be a cause of action in a civil or administrative action. Any component of death investigation can be

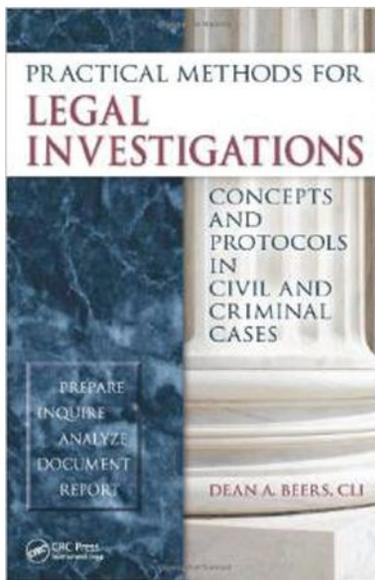
applied to serious bodily injury investigation — from the chain of events leading to the injury and/or death, to the mechanisms of injury or death.

Sometimes, the only difference between a serious bodily injury and death, is a fraction of an inch, or slight variation in an event, or series of events.

The majority of deaths are natural deaths with a diagnosed medical condition (i.e., cancer, congenital defect) or cause of death determined by medical history (i.e., diabetes, cardiac history). These will not typically be autopsied forensically. However, autopsies are often neglected because the cause of death is 'obvious.' This is frequent in motor vehicle collisions and even some 'suicides' that are 'obvious.' One common type of case that investigators are tasked with investigating is

the motor vehicle collision. This may involve a fatality or serious bodily injury, or both; and may involve criminal, civil or probate litigation — or all of the above, and even worker compensation cases.

The complexities of fatal and non-fatal incidents are founded on the same principles as all other fact-finding investigations. The five-step investigative process described in 'Practical Methods for Legal Investigations' includes: 1) Prepare by collecting all available information; 2) inquire through an effective investigative process; 3) Analyze the information provided and determined in the course of the investigation; 4) document the evidence in the series of events and consequences; and 5) report your findings to the client via a verbal or written communication as appropriate.



The value of the complete and competent investigation is realized through the evidence and determination of an appropriate cause of action or defense. From simple assault to homicide and wrongful death or other negligence, the investigative process may involve criminal, civil or probate litigation, and even workers' compensation cases. Investigative findings may support or refute all or part of the official findings, as well as answer questions and begin the process of closure for the families.

Here are some examples of how changes in events and different evidence may change not only the Cause and Manner of Death, but also the type of litigation and investigation you may find yourself involved in.

Example: An Uncomplicated Motor Vehicle Collision



Joe Citizen, an 82 year-old male, is driving home from a wedding reception when he fails to obey a stop sign at a t-intersection and continues into an irrigation ditch.

He is pronounced dead at the scene. The coroner responds to the scene and after assessment and multi-agency investigation determines that he died of multiple blunt force injuries due to impact with the opposing ditch bank at high speed, due to the loss of control of the vehicle.

For our purposes, acknowledge that law enforcement will investigate the incident and blood is drawn (most state laws require ethyl alcohol testing of all deceased persons of motor vehicle collisions), and it will be reported that he was not intoxicated. What considerations are there for Cause and Manner of Death?

Natural, Accident or Suicide (homicide could happen, but this is an uncomplicated example)?

- Medical (Natural) may include cardiac event, diabetic reaction, or stroke prior to and causing the loss of control; or, even death then causing loss of control. The latter would be Natural, the former still Accident – but now there is a known cause of loss of control.
- Suicide may include previous suicidal ideation exacerbated by an event at the wedding reception and knowing the intersection could cause the collision and his own death.

Mechanical issues with the vehicle? Although not determined at autopsy, perhaps the vehicle had a malfunction causing the incident, or a malfunction that

could have prevented his death (i.e., airbag deployment). This may not change the death certificate, but it may impact both the family emotionally and insurance benefits. This may also be cause for legal action and the autopsy findings may demonstrate that the driver, by way of actions or medical history, did not contribute to the incident.

Example: A Double Fatality Complicates the Incident



To the above scenario, let's add that Joe's wife was with him and also died as a result of the collision. They each had two children of previous marriages, both were preceded in death by their spouses and they married late in life.

In addition to the above, of importance is who died first — due to hereditary and insurance concerns. Scene investigation is important, and an autopsy may — or may not — answer the question. As an example, Mr. Citizen had a cardiac event and died, causing the collision that consequently killed his wife.

Mr. Citizen died first, of a cardiac event — his surviving wife (excluding any provisions of a will) inherits from him. Further, his double indemnity insurance clause does not apply due to the natural death.

Mrs. Citizen died second, due to injuries from the collision caused by her now deceased husband. Her inheritance — preceded by Mr. Citizen's — (again, excluding any provisions of a will) transfers to her biological children. Further, her double indemnity insurance clause does apply due to her death by accident.

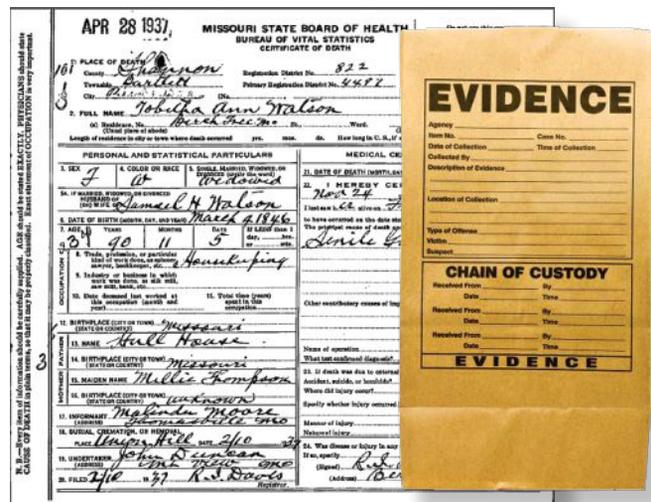
As can be seen, death — and motor vehicle collisions — can be complicated by what is seemingly unimportant. The above scenarios could likely have been answered only by autopsy — although plausible, it cannot be conclusive that Mr. Citizen did/did not have a cardiac event due only to his medical history.

What about criminal cases? If Mr. Citizen were intoxicated, negligent with his health, etc.?

Let's take another look at our scenarios involving Mr. and Mrs. Citizen. They have survived the collision and were hospitalized with well documented treatment and injuries. After 3-4 days one or both are deceased. This would still be a coroner's case. An autopsy would not be necessary as the incident and subsequent treatment, care and demise are documented in the medical records.

If either survived the collision and were discharged from the hospital to a rehabilitation center, and then died of pneumonia (not uncommon) — an autopsy would also be unnecessary. If they are released from the rehabilitation center to home with an expected death (also not uncommon), again an autopsy would be unnecessary.

Example: Civil, Criminal and Probate Litigation



The above scenarios are simplified and not uncommon. In reality, these may be complex and to those traumatized, are more than just trivial information that can define an event — they define an outcome and can define their future. These types of incidents should be investigated the same — for accuracy in Cause and Manner of Death.

From the point of this determination, and all factors involved, the tasks will then be specific to the nature of the assignment: 1) civil plaintiff or defense; 2) criminal prosecution and defense; 3) probate and hereditary issues; 4) work related benefits; and 5) insurance benefits. There are a variety of common and uncommon examples and an exponential number of incomes that are dependent on the evidence — and interpretation of it.

Facts and evidence may have similar effects to be considered in other types of injuries and death. These may also include a fatality or serious bodily injury, or both; and may involve criminal, civil or probate litigation — or all of the above, and even worker compensation cases. Let's take a look at some additional scenarios to see how important the investigative fact finding process is. These changes in events and different evidence may also change not only the Cause and Manner of Death, but also the type of litigation and investigation professional investigators find ourselves involved in.

Example: Wrongful Death – Homicide or Justifiable Self-Defense?



The decedent was found outside his residence, deceased, with two gunshot wounds. Responding family members found two neighbors near the decedent. By report, the neighbors were returning to their home and the decedent became aggressive towards them. One neighbor retrieved his firearm, and fired three times, striking the decedent twice. The first shot, the neighbor said, was a warning shot.

Responding law enforcement personnel initially investigated the incident as self-defense. However, independent review noted discrepancies in facts and reported information: 1) altered vehicle positions; 2) inexplicable trajectory of the ejected shell casings relative; and 3) positions of neighbors.

The empirical evidence with the series of events, as described by the neighbors, was inconsistent with the evidence of the official investigation. This includes the position of the decedent at the time of firearm discharge, position of the shooter at the time of discharging the firearm, position of the second neighbor at the time of the discharges of the firearm, and the position of the vehicle at the time of the discharges of the firearm and its final resting position. Of primary concern, due to being unsupported by the reviewed evidence, was the position of the shooter.

- Inconsistent statements of the neighbors, together and individually, as to the actions of the decedent, location of the decedent at firearm discharge, and number of shots fired;
- Wound trajectories were inconsistent with the statements of the neighbors, together and individually, as to the actions and location of the shooter at the time of firearm discharge;
- Location of the spent shell casings was inconsistent with the statements of the neighbors, together and individually, as to the actions and position of shooter at the time of firearm discharge;
- Wound trajectories were inconsistent with the statements of the neighbors, together and individually, as to the actions and position of the decedent at the time of firearm discharge; and
- Location of the spent shell casings was inconsistent with the statements of the neighbors, together and individually, as to the actions and position of the decedent at the time of firearm discharge.



Example: Wrongful Death – Nursing Home Elder Death



The funeral home notified the county coroner's office of this death with suspicious evidence of injury. Although the death had been reported as required to the coroner's office, the injuries and consequential circumstances were not. Investigation revealed that the coroner's office was given false information by the decedent's nurse. Upon notification by the funeral home, an autopsy and thorough investigation were completed.

The records reflected that the underlying incident was the result of another unsupervised patient forcibly shoving the decedent backwards, causing her to fall and hit her head after landing supine. Her complaints of severe pain continued in the days following, including comfort care pain protocol — Vicodin was ordered, as was an increase in dosage and frequency of morphine. There was some noted concern of oxygen saturation levels below 'Adequate' and nearing 'Inadequate'.

This death was clearly exacerbated by the incident and the consequential required comfort care protocol. There were also found issues of improper incident documentation, corrective follow-up, family and health board notifications, resident monitoring and enhanced staff training for handling these situations and residents.

Specific to the circumstances of death, the increased narcotic analgesics due to the incident and severe pain lead to the inability of the decedent to maintain adequate oxygen saturation levels. This exacerbated the inability to metabolize the administered morphine, resulting in the elevated morphine levels found in postmortem toxicology. Investigation also determined

that there was inadequate supervision, including staff-to-resident ratio, in the activity room at the time of the incident. There was no previous reported history of intra-resident physical altercations or deaths with unusual or suspicious circumstances. However, there were similar past occurrence reports that included issues of oxygen therapy, bowel movement checks and care, intra-resident abuse, etc.

Independent investigation concurred with the official ruling of Accident due to morphine toxicity as a result of a fall. Had the injuries not been observed and reported by the funeral home, this death would have been ruled Natural due to dementia, as the medical records prior to the incident supported.

Example: Suspicious Death – Homicide or Suicide?



The decedent, a law enforcement officer, was found by officers of an overlapping jurisdiction. The official investigation was conducted by the decedent's employing agency, which had jurisdiction. No independent official agencies were involved.

Review of the provided photographs, records and reports provided several concerns, beginning with the perfect and symmetrical position in which the decedent was found (supine) with his shotgun. The decedent had one injury, which was immediately fatal, as a result of a contact penetrating shotgun slug wound entering under the chin and traversing to exit the top of the head. There were multiple discernible wounds unanswered by the conclusion of suicide. Specifically, in the act of a self-inflicted gunshot wound, there is no plausible explanation for the injuries and pressure patterns to the respective dorsal and palmar surfaces of both hands. Moreover, the decedent's uniform and gear had indications of being involved in a physical altercation and on the ground prior to death.

Personal effects and items from his utility belt were strewn about the decedent, almost circular and at varying distances. His duty weapon was found several yards from him, over a chain-link fence topped with barbed wire. His backup weapon, on an ankle, was also removed.

Investigation determined that the shotgun was not in a final resting position consistent with having been discharged by the decedent, in any conceivable position of the decedent, and then coming to rest as found. The angle of the entrance wound, and wound path, are inconsistent with the decedent lying on the ground and his head also resting on the ground, and particularly without any consequential projectile defect to the underlying pavement.

The possibility that the decedent staged his own death as a suicide to appear as a homicide was considered. However, the physical evidence did not support this.

The expert reconstruction, conducted by a former employee of the investigating agency, only concentrated on the final resting position of the decedent. This was deficient and inconclusive based upon the physical evidence. Factors that were not considered in the whole included the position of the decedent at discharge, angle of the shotgun at discharge, and angle of the decedent's head at discharge. Each possibility presented in this reconstruction was unfounded upon further study and evaluation.

It was determined that the official investigation was deficient concerning the circumstances of the cause and manner of death. It was further concluded that the scene, specifically placement of the shotgun on the decedent, was staged. It was also concluded that the decedent was in a manner of an upright position, with the muzzle of the shotgun pressed against the underside of his chin, the shotgun being held by another unknown person, and discharged by the unknown person. The finding of suicide by self-inflicted extra-oral gunshot wound is inconsistent and not plausible based upon the documented information, facts and evidence reviewed. Investigation reveals that this incident presents concern of homicide concurrent with a physical confrontation.

Example: Suspicious Death – Accident or Negligence in Circumstances



The decedent, a male in his early 20s, was transported by ambulance to the emergency room, presenting with an apparent illicit multi-drug overdose. After autopsy, and negative toxicology, his death was ruled Natural due to specified heart disease.

Prior to calling 911, friends reported that he had taken multiple illicit drugs, including ecstasy and psilocybin mushrooms — both of which are not in routine autopsy toxicology and have accelerated metabolic properties in blood specimens. Moreover, persons involved in the incident and reporting did not relate pertinent information to law enforcement, and the investigation was limited until after the autopsy, with subsequent findings not reported to the forensic pathologist. Of importance, was that two friends bound the decedent by his hands and feet, and then together, lying him prone on the floor. This was done in an attempt to calm him down and keep him restrained. After being observed in respiratory arrest, 911 was called.

Investigation determined that the official investigation was deficient due to appropriate follow-up and incomplete statements by the decedent's friends. An independent medical opinion was not pursued by the family to review the official cause of death related to heart disease. However, in the absence of the incident circumstances in this otherwise unexplained death, this medical diagnosis would remain plausible. Circumstances of the death include the consideration of the Cause of Death as 'positional asphyxia due to an

immobilizing restraint and multi-drug toxicity'; and the Manner of Death as 'Accident.' To be further investigated is the peri-mortem 'hog tying' restraining of the hands to the ankles following a 'sleeper hold' to incapacitate the decedent and cease an episode of drug induced hyper-erratic behavior and possible excited delirium.

Forensic Investigation of Injury Pattern Analysis, 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. See his website at www.deathcasereview.com.

—
Dean A. Beers, CLI, CCDI is a Certified Legal Investigator and Certified Criminal Defense Investigator, and expert in criminal defense homicide and civil equivocal death investigations. He is certified in Medicolegal Death Investigations and is a POST certified instructor, and has served as a forensic autopsy assistant. He has lectured extensively and authored multiple articles, peer-reviewed white papers, and provided expert testimony on Protocols of Private Investigation, and

Dean has authored Practical Methods for Legal Investigations: Concepts and Protocols in Civil and Criminal Cases, released by CRC Press in February 2011, and previously Professional Investigations: Individual Locates, Backgrounds and Assets & Liabilities.

He founded his agency in 1987 and operates it with his wife Karen S. Beers, BSW, CCDI, with whom he co-developed Death Investigation for Private Investigators online continuing education for 14 states.



The poster features a background image of a stone-lined water feature at night, with lights reflecting in the water. In the top left corner is the NALI logo, a circular emblem with a scale of justice and the text 'NALI FOUNDED 1967'. The main text is centered and reads: 'National Association of Legal Investigators 48th Annual Conference San Antonio, TX'. Below this, in large, bold, white letters with a black outline, is 'SAVE THE DATE' followed by 'May 28-30, 2015'. At the bottom, the location and contact information are listed: 'Menger Hotel 204 Alamo Plaza, San Antonio, TX 800-345-9285'.

 **National Association of Legal Investigators**
48th Annual Conference
San Antonio, TX

SAVE THE DATE
May 28-30, 2015

Menger Hotel
204 Alamo Plaza, San Antonio, TX
800-345-9285