

## DEADLY CONFLICTS: CONFLICTS OF INTEREST IN DEATH INVESTIGATION SYSTEMS

Funeral Ethics Organization

<http://www.funeralethics.org/coroners.htm>

Over the past ten years, research was undertaken after reviewing several graduate student and faculty research papers conducted on the death investigation systems in Georgia and Florida during the period 1987-1994. In several instances, this research pointed to several recurring and disturbing themes concerning conflicts of interest in questioned death investigation systems. The two most alarming studies involved south Georgia counties where, in one county a twenty year study was made of all coroner case reports. The purpose of the study was merely to review the reports to determine if, in the opinion of the researcher and her faculty advisor, investigations were being conducted in a professional manner. In this study, a clear pattern emerged where it became apparent that obvious suicide cases (e.g., contact gunshot wounds to the head) were routinely being classified as accidental deaths for white decedents (but not for blacks). In another study, which involved interviews of former Georgia coroners, complaints were raised by one former coroner that the present coroner, a mortician, used to badger the former coroner to find out how much money a decedent had so that an appropriately-priced funeral could be arranged. In a more recent study of the Georgia coroner system, significant resistance was met in even *disclosing* the primary occupations of Georgia coroners. The Georgia Coroner's Association would not respond to requests for this information, and individual coroners who were licensed morticians would frequently respond with "Why do you want to know?" or "What business is it of yours?" Over half refused to provide the information. For those counties where the information was refused, the occupation of the county coroner was determined through other sources, such as police or sheriff's offices.

In broadening the scope of potential conflicts of interest in the matter of questioned death investigation, three themes emerged as suitable for inquiry, as follows:

- a. Coroners or medical examiners engaged in these public positions as part-time practitioners that steer business into their full time occupation for profit. Examples include medical examiners that are pathologists operating pathology laboratories that contract tests to their own laboratories and coroners that are morticians steering mortuary service business to their firms.
- b. Coroners that may agree to present "findings" of a certain manner of death (accident rather than suicide) if the family of the decedent uses the coroner's funeral home for services or, in the case of one study that included inquiries in three states (Georgia, Alabama, and Kentucky) opts for a more costly casket and funeral in appreciation for collecting accidental death insurance benefits (versus no money in a suicide finding).
- c. Coroners that may mask the cause and manner of death to serve to the advantage of their full-time practice or organization. Examples include the sheriff-coroner investigating a county jail inmate death, the emergency department nurse-coroner investigating an emergency department death or a paramedic-coroner investigating a death in an ambulance.

In beginning a wider set of inquiries, interviews were conducted in several states between 1993 and 1999 concerning these issues. In many states, the types of questions generated by this research could be summarily answered at the state level, but in others, decentralization of policy is so complete that a detailed county-by-county and even city-by-city inquiry was required.

This study concentrated only upon coroner systems in the United States. Twenty eight states use coroner systems in the U.S.A., while all others and the District of Columbia use the medical examiner system. Eleven states use a form of coroner system exclusively, while 17 have a combination of coroner and medical examiner systems.

Generally, during the research, the potential conflict of interest generated by a death in an emergency department or ambulance where the coroner is an emergency department nurse or paramedic was largely dismissed by those interviewed because of the nature of the job, which is to preserve and save life. Respondents unanimously stated that if a questioned death situation arose at the facility where the coroner was employed as a nurse or paramedic, it would be ethical and logical to bring an a disinterested coroner (e.g. from another jurisdiction) to investigate. In fact, this procedure is policy in several states.

The conflict concerning morticians serving as coroners, however, generated considerable controversy. Most state representatives interviewed acknowledged that the role of coroner and mortician is clearly an ethical conflict. In addition to the above cited reasons, an additional conflict of interest issue also emerged from the national interviews: Mortician-coroners will tend to avoid having an autopsy performed because of pressure from the survivor-customer of the mortician and/or because an autopsy makes embalming difficult.

### *Morticians as Coroners*

When focusing upon the potential for conflicts of interest of morticians as coroners, first in Georgia and then throughout the United States and Canada, it was interesting to note that about half of the Georgia elected coroners were morticians. Georgia has the highest number of counties among all US states except Texas (Texas has 254 counties, Georgia 159). Further research disclosed that of the just over 3,100 counties in the USA, some 2,076 counties (more often than not rural) use elected coroners and among those, about 500 (24%) are also licensed morticians.

My contention was and is that being a practicing mortician AND a government officiator of death is a conflict of interest. As one coroner put it, "It's like being the only mechanic in town with a wrecker." This conflict of interest takes several forms. First is the issue of competition. If a coroner is at a death scene as the official public investigator, s/he is also "handy" as a private business operator in the event the survivors do not have a mortician in mind. California apparently recognized this when its Attorney General issued an opinion that a mortician could not be a coroner unless s/he was the sole funeral home in the county. This seemed to address the "competition" angle. A Federal lawsuit was filed by a mortician in Worland, Wyoming against the other county funeral home (which employed the county deputy coroner) in a civil rights action claiming that the competitor funeral home/coroner was steering more wealthy clients to his funeral home, among other things.

Other conflict of interest issues also emerge where survivors may enter into a conspiracy of silence with a mortician/coroner. For example, in a suicide by handgun, the coroner may declare the death an accident on the death certificate (the revolver accidentally discharged as the decedent was cleaning it). This may have important survivor's insurance outcomes, as well as emotional, public reputation and religious issues. In gratitude, the survivors may opt for the deluxe funeral package, etc. A few states simply forbid morticians from serving as coroners, such as Washington State. Wisconsin does not preclude morticians from serving as elected coroners, but does prohibit anyone serving as a coroner from entering into any contractual arrangement with the family of a decedent where the coroner is involved as an officiator of death. Needless to say, there are no mortician coroners in Wisconsin. There are other issues as well, such as the coroner having access to the financial records of a decedent in the furtherance of a death investigation.

When the findings of this research on one occasion before the American Academy of Forensic Sciences, I was approached by a coroner who was also a mortician and an amazing exchange took place between us. He cited a case where a man committed suicide with a handgun. The man was an abusive batterer and an alcoholic, regularly beating his wife and children. His wife bravely put up with this behavior for almost 20 years "for the sake of the family and the children." Now that this creep killed himself, the wife gets no life insurance due to a suicide clause and being a stay-at-home Mom with four children, has few job skills outside the home. She will become a ward of the state and will lose her home to foreclosure. However, if he died of an accident, she would get a double indemnity insurance payment of \$200,000, which is enough to pay off the mortgage and other bills. This means she can be self-sufficient and not get evicted. The coroner told me that after putting up with all that abuse for twenty years, she deserved some relief. He told me that "that big ol' insurance company can afford it." He called the ruling of an accidental death "contextual justice" and that the sheriff agreed with him, as did other community members that knew of this woman's situation. Now, this exchange does not speak directly to the coroner being a mortician, but does raise some fascinating ethical issues concerning the role of the coroner.

Although a few states (four) using coroner systems acknowledge in their policies (statutes or Attorney General opinions) that it is a conflict of interest for a practicing mortician to also serve as a coroner, the vast majority do not. However, both intuitively and as a result of research, it appears clearly the dual role of practicing mortician and public officiator of the cause and manner of death are conflicting roles to the detriment of the public good.

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# Coroners Don't Need Degrees To Determine Death

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When someone dies unexpectedly or in suspicious circumstances it is the job of a coroner or medical examiner to investigate what caused the death. We rely on these death investigators to provide the autopsy report and a death certificate to settle estates, insurance claims and bring murderers to justice.

In the United States there isn't just one system. Coroners can be elected or appointed. Some are also sheriffs or funeral home directors. But many coroners aren't doctors.

There are also medical examiners, who usually are medical doctors but may not be forensic pathologists trained in death investigation.

But no matter what form it takes, the death investigation system in the U.S. is in trouble. A yearlong investigation by NPR, PBS *Frontline* and ProPublica has found a dysfunctional system short of qualified people, squeezed for resources and lacking in oversight.

Two years ago a blue ribbon panel created by the National Academy of Sciences pointed out the lack of mandatory standards for autopsies and the absence of oversight into the performance of coroners and medical examiners. It recommended that the goal of every state should be to move away from a coroner system, which is not based on medicine, and instead hire board certified forensic pathologists and put them to work as medical examiners.

## The Coroner System

The coroner system was imported from Britain where it was originally a method for the king to be informed of deaths so he could extract one last round of taxes. Now, most of the states in the U.S. rely on this system.

During the recent midterm election campaign some of the political candidates knocking on doors asking for votes were the people responsible for signing death certificates.

In an affluent Denver suburb, Mike Dobersen's first task while campaigning was to get past people's surprise that coroners are elected.

"The first thing they say is, 'What do you mean I have to vote for the coroner?' The second thing they usually come out [and say] is, 'You mean you don't have to be a doctor?' " says Dobersen, who has been the coroner in Arapahoe County, Colo., for 17 years.

He is a rarity among coroners not only because he is a medical doctor but also because he's a board certified forensic pathologist, which means he's formally trained to perform autopsies after many years of schooling.

Each election, he is in danger of losing his job to someone with no medical training. In many states, the only requirement to get the job is to be of legal age and have no felony convictions.

"A lot of people don't really understand what the coroner does and tend to vote their political affiliation," Dobersen says.

When Election Day arrived, Dobersen, who ran as a Democrat, barely managed to keep his job in the Republican surge, winning 51 percent of the vote.

## A Need For Trained Practitioners

Marcella Fierro, who retired as chief medical examiner in Virginia in 2008, says the autopsy is the cornerstone of death investigation. It was her job to decide which cases to autopsy.



Dr. Marcella Fierro, the former chief medical examiner in Virginia, is a member of the National Academies of Science panel that issued a report recommending an overhaul of the country's death investigation systems.

*John W. Poole/NPR*

"Most errors are buried," she says. "If a death isn't recognized as being suspicious or is suspicious, say, for violence and it's released as natural death, [then] it's buried or cremated, whatever the family wishes, never to rise again."

Fierro sat on the blue ribbon panel when the National Academy of Sciences took a look at the death investigation system. The panel described coroners as the weak link.

"On their best day, if they do not have the training, the skills, the infrastructure, the facility, the access to forensic science, they can't do a good job. It's a question of competency. How can you train someone who is not a physician?"

#### **The Medical Examiner System**

Medical examiner systems are operating in 16 states and the District of Columbia. Medical examiners are appointed to their position and almost always are physicians.

Ross E. Zumwalt, a medical examiner in Albuquerque, is proud of his new state-of-the-art office, which serves all of New Mexico.



Ross E. Zumwalt, a forensic pathologist, is the chief medical examiner in New Mexico.

*John W. Poole/NPR*

"This is such a pleasure to work in this spacious operating room type atmosphere," he says.

Zumwalt is a medical doctor with a specialty in forensic pathology. Like other medical specialties it takes about a dozen years of education and training.

He has been performing autopsies for 35 years, and his Albuquerque facility is one of the best in the country, not just because of the new building and its modern equipment, but also because he has enough staff to investigate and autopsy all sudden or violent deaths. The office currently has 12 forensic pathologists, seven who are board certified.

Around the country Zumwalt's colleagues see New Mexico as the gold standard that all medical examiner offices should meet, but only about a quarter of the offices reach a bar that high.

An investigation by NPR, PBS *Frontline* and ProPublica analyzed more than 60 of the nation's largest medical examiner and coroner offices. We found at least 100 doctors who are not board certified forensic pathologists. Our investigation uncovered dozens of autopsies with serious mistakes in more than a dozen states. We read thousands of pages of records documenting how pathologists missed crucial evidence — such as a bullet hole in the neck, mucus in the lungs and signs of strangulation.

Zumwalt says where you die makes a difference especially when your death is unexpected or suspect.

"It's certainly incredible to think that just the space of a few yards may mean the difference between competent death investigation and incompetent death investigation," he says. "But it may be the difference between what side of a state [or] border you're on. On one side of the border you have a statewide medical examiner and competent death investigation; the other side of the border may be a small county coroner with few resources and little training."

The investigation across the country also found that it is not necessarily the poorest states or those states with smaller populations that fail to provide adequate death investigations.

Boston is home to some of the best medical facilities in the country. Like New Mexico, it is a state-run system. It was the first in the country to appoint a doctor to act as the medical examiner, back in 1877.

In 2000, an audit by the National Association of Medical Examiners found the agency was \$10 million short of what it needed to do the job. The average salary for a forensic pathologist back then was \$200,000 a year, but salaries in Boston were \$95,000. That led to a chronic shortage of pathologists, most of them not board certified forensic pathologists. Those who are board certified have trained in what to look for in performing autopsies. But the state had a series of serious mistakes that piled up over the years.

Even when funding began to improve in 2004, problems continued. The most recent audit in April of 2007 describes the office as being on the verge of collapse.

Henry Nields, the acting chief medical examiner, says he's doing his best to improve the office, but he highlights the budget shortfalls.

"Well, the place has already been fixed to some extent. I hate to come back to the money thing but we certainly need more funding to be at the level where I would like to be and I think it's a better place today than it was yesterday," he says.

Nields' budget in 2010 was still more than \$3 million short of what the office needed to operate 10 years ago.

# Coroner or medical examiner; who should tend the dead?

Cara Hetland · Sioux Falls, S.D. · MPRnews Jan 17, 2008

<http://www.mprnews.org/story/2008/01/11/coronervsmedexam>

Television shows like CSI make it seem so high tech and glamorous. Murder cases are solved with microscopic clues, or tests that still seem like science fiction. Brad Randall says it's not quite that exciting. "It smells bad. The environment is wet and dirty and messy. The hours are often frustrating," he says.

Randall, 57, is medical examiner in Sioux Falls. He'll retire in three years, and that'll leave counties in eastern South Dakota with a problem. Randall is the one who does all the autopsies for the region.

Twenty-eight states still primarily use coroners to determine the cause of death. That's often done without an autopsy by a forensic pathologist. In South Dakota, there's an elected coroner in each county, except the most populated counties where the law requires a medical examiner.

Most coroners are either funeral home directors or emergency medical technicians. Brad Randall says the system lacks quality and consistency.

Randall wants South Dakota to create a state level office of Medical Examiner, with local death investigators.

"The state medical examiner, in return, would have the responsibility for training that individual to do their job," Randall says. "There would be requirements for so many training hours per year. There would be requirements for a baseline of training to be a death investigator."

Randall says New Mexico has a similar system and so does Hennepin County in Minnesota. Hennepin County Medical Examiner Andy Baker says it's important to have a trained death investigator at every death scene.

"Somebody who understands the combination of the forensic issues, the medical issues, the evidentiary issues," Baker explains. "Somebody who can address things like the rigor mortis of the body, the position of the body, who can then give those clues back to the forensic pathologist in a way that would be meaningful to him or her."

Baker has about a dozen death investigators for Hennepin County.

Randy Hanzlick, a medical examiner in Georgia who teaches forensic pathology, has researched the coroner system. Hanzlick says death investigation should be a locally controlled issue. But he says there is a need for a more consistently professional approach to the process.

That's a challenge because despite its popularity on television, there aren't many people entering the forensic pathology profession. In the last 50, years only 1,300 people have been licensed as medical examiners.

"A lot of those people who are certified are no longer working or have died, and we're only putting out maybe 30 a year," Hanzlick says. "So there's a short supply of forensic pathologists, really. There's not enough out there. As far as we know there are only about 400 or 500 that are actually practicing full time in the country."

Hanzlick says across the country, there should be 1,000 medical examiners, but only half of that are practicing now. That's why Sioux Falls' medical examiner is so sure there isn't anyone interested in replacing him.

"We are a very obscure part of government, and until there is a perceived need within the public and the politicians respond to it, we will always be an under-funded part of government services," Randall says.

Brad Randall says it's up to South Dakota lawmakers to determine whether the state should change how it investigates deaths. If lawmakers do nothing, Randall says deaths needing an investigation will likely be sent out of state for an autopsy.