

KILLERS AMONG US

ARE THERE MURDERERS IN OUR RANKS? IN TWO UNSOLVED UNDERWATER DEATHS THIS QUESTION REMAINS. MURDER IS ALLEGED IN BOTH CASES, AND CHARGED IN ONE, BUT YEARS LATER DOUBT STILL WEIGHS HEAVILY OVER THE DIVING DEATHS OF TWO WOMEN AND THE GUILT OR INNOCENCE OF THEIR HUSBANDS.

BY PETER MEYER

Imagine if you can, reaching a point of such marital disaffection or just plain mental or emotional dysfunction that you decide to murder your spouse. If you were such a person and a diver, would a scuba diving 'accident' make for the perfect crime? Would it be as simple as it might seem to just swim up behind your victim and pull off his or her mask and regulator and then hold them down until the end? It's a cheaper solution than divorce and you might even collect some life insurance. But ultimately, would you get away with it?

Even as fiction these musings are unsettling but, sadly, it appears there are those among us who concluded that killing a spouse underwater made some sort of sense. Currently, there are at least two officially documented cases of alleged scuba murder. We're left to ponder guilt or innocence of the suspects involved in these cases and whether they – and others, perhaps – will get away with the crimes they may have perpetrated. While we can't say for certain on the basis of these two cases alone – notwithstanding the media's penchant for provocative headlines as shown – they do provide food for thought.

Did Scuba Diving Honeymoon Turn To Murder?

Inquest: Police Reenact "Scuba Death Hug"

**Wife's Scuba Diving Death "Homicidal Drowning"
Says Medical Examiner**

**Dive Shop Owner Got Away With Murder
In The British Virgin Islands Says Attorney**

**Verdict: Dive Shop Owner Murdered Wife
While Scuba Diving In British Virgin Islands**

These headlines deal with the two cases in question, which have attracted international media attention. Before continuing it should be underscored that neither suspect in these cases has yet been convicted, or even tried, for murder. Investigations are ongoing and

regardless of outcomes, my comments are conjecture only. I have changed the names of those involved to protect the (potentially) innocent, and out of respect for the families who have lost their loved ones. I'd also like to avoid lawsuits but that said, both of these cases have been widely reported in the print and broadcast media in recent years.

ACCIDENT OR 'ACCIDENT'

So how does a seemingly typical dive accident become a murder investigation? Well, if the surviving diver was O.J. Simpson police scrutiny might be more intense but we're not dealing with celebrities here. Is murder underwater unusual? Professionally, I've reviewed more than 1,600 diving accident reports over the years, involving 100 plus fatalities, and it's never occurred to me that any were murders. Many involved circumstances where the deceased diver actually contributed to his or her own death by various means – using faulty or old equipment, pushing depth and time limits, diving alone, diving in difficult environments, exploring beyond their ability, entering caves or wrecks without proper back-up equipment etc. – or simply by being careless or stupid. Such is normal human behaviour.

There are also cases where the negligence of others – dive operators, instructors, buddies, etc. – has contributed to another's death. Typically this results in legal action of some type and, regrettably, I've a great deal of experience with these, as well as suicides. The latter involve individuals with mental issues and those suffering terminal illness. Some leave notes to clarify intent, helpful to the investigators and loved ones, too, perhaps. However, none of these cases have led us to suspect murder.

Wikipedia says, "Murder is the unlawful killing of a human person with malice aforethought. Murder is generally distinguished from other forms of homicide by the elements of malice aforethought

Wednesday, March 26, 2008

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Here's how The Sun newspaper presented one of the (alleged) murder stories to its online readers. The photo showing the stricken diver on the bottom was taken by another tourist diver on the trip who did not realize what the image captured until the film was developed some time later. The Sun says "bride Tina Watson appears in (this) chilling photo of her underwater death and the finger of suspicion has been pointed at the former model's husband (Gabe) of just 11 days. Both cases discussed in this story have received wide coverage in the print and broadcast media.

and the lack of lawful justification. All jurisdictions, ancient and modern, consider it a most serious crime. Most jurisdictions impose a severe penalty for its commission."

On initial review malice aforethought appears to be a necessary component, as well as a complicated legal concept with multiple variations. Basically, it means you thought about or planned the deed in advance. Even the worst dive negligence cases we have examined in the past, such as leaving divers behind in the water to be eaten by sharks, for example, have not been accompanied by obvious malice aforethought. This negligence may have been stupid, and preventable, but it wasn't planned, which then categorizes it as negligence, not murder. Interesting to note, however, that gross negligence leading to death can also be considered homicide at law and could result in prison time for those responsible.

Of homicide, Wikipedia says, (Latin, *homicidium*, homo human being + *caedere* to cut, kill) it's the act of killing another human being. It appears there is no apparent requirement for malice aforethought when you commit homicide so gross negligence that results in a fatality could be classified as criminal negligence leading to homicide, and, again, may qualify the unwary dive operator for criminal charges and possibly a prison term.

Basically, gross negligence is when you 'know', or should have known, that the dive activity should be cancelled, that is, the conditions are poor, beyond the capabilities of the participant divers, equipment is inadequate etc., but you push on anyway. Thankfully, not much of that actually happens in the recreational dive industry. So, now that we have (sort of) defined the differences

between negligence, gross negligence, criminal negligence, murder and homicide, let's take a look at the nuances of murder itself. Again, Wikipedia informs us that murder comes in three flavours. In summary, planned or first degree murder is committed with intent to take life by a sane person who's planned the act. Intentional or second degree murder is also committed with intent but without advance planning. Murder as a result of neglect or manslaughter is where someone has been killed as a result of the offender's neglect; for example, a car driver may be convicted of murder if his or her careless driving results in a person's death.

DEATH ON THE YONGALA

This involves Mr. and Mrs. Jones on their honeymoon in Australia. According to all reports he's a healthy, fit male and a certified Rescue Diver. She's 26, healthy, fit and although a certified diver, documents also describe her as inexperienced. Seemingly, they're a typical young American couple on an idyllic honeymoon. So, what compelled the authorities to look at this diving accident in a different light?

Witness reports say Mr. Jones raised the alarm when he surfaced, claiming his wife "had got into difficulty in strong currents and panicked". They'd been diving on the wreck of the *Yongala* off Townsville, Queensland, where tides and currents can make a dive difficult, even dangerous, if not timed correctly. His wife's body was recovered subsequently by one of the charter boat instructors. Police investigators later presented what they considered "contradictory" evidence regarding Mr. Jones's behaviour during

the dive; in particular his lack of effort to assist his wife. He had explained that "she got into difficulty during strong currents and panicked, knocking his face mask off and the regulator out of his mouth and he was unable to bring her to the surface."

A QUESTION OF TRAINING

Police contend that as a Rescue Diver he should have been able to save her anyway. A November 29, 2007, news report said, "Mr. Jones's failure to save his new bride's life, despite his considerable rescue diving training, was at the heart of yesterday's coronial inquest into the death of Mrs. Jones." Evidently, the police think a Rescue Diver possesses some extraordinary diving ability? I recently reviewed Rescue Diver standards for a particular training agency and found the prerequisites to be basic: open water certification, 16 or older and 12 hours logged underwater. To complete the program entails some theory and two training dives, each of about 20 to 30 minutes duration. Frankly, I wouldn't consider myself experienced as a basic diver at that point; much less an effective rescue diver – and I sincerely hope others agree. Sure, the additional experience would better prepare me for a rescue but simply passing a course is a far cry from being an experienced rescue diver, which case investigators and the expert witnesses giving evidence appear to have assumed.

There were no witnesses to the fatal events Mr. Jones described so it's possible that he never did lose his mask or regulator. If his story is true, however, there's no doubt in my mind his rescue attempts would have been seriously hindered and it's difficult to understand the police expectation of rescue by anyone deprived of their air supply and the ability to see underwater.

Viewed objectively, any diver at depth, with mask and regulator abruptly removed can be in serious trouble and themselves a candidate for rescue, quite possibly. And let's not forget the close proximity of a panicked diver. Whether right or wrong about the murder, it appears in this case the police have failed to comprehend the real world of sport diving and its training standards. We think we're (much) better trained than we really are, and they (the authorities and other non-diving constituents) believe us. This means they expect we'll live up to our own advertising and that would account for the official train of thought that if Mr. Jones failed to exercise the skills he possessed then he must have willfully and maliciously killed his wife. That he was unable to effect a rescue appears to have been discounted in their theory. I am hard pressed to believe that the authorities interpreting evidence in this case really understand the relatively low expectations we have of the divers we train. Maybe the best test in this scenario is for each reader to ask: Could I rescue someone in these circumstances?

The police also called into question Mr. Jones's "pedestrian" rate of ascent, for someone in a "hurry". Apparently he took two minutes to surface from about 80 feet (24m), whereas the instructor took just "a minute-and-a-half to travel twice the distance carrying Mrs. Jones's body." This information is based on witness accounts and, I'd expect, computer downloads from the two divers. Again, this strikes me as speculative and based on very questionable math. Rates of ascent and diver reaction times will vary from one person to the next in normal circumstances and can be dramatically altered by factors that include currents, visibility, dealing with mask and regulator issues, and how these may stimulate adrenaline in the body.

THE 'BEAR HUG' CONTROVERSY

In addition to these questions there is also a "controversial witness statement" describing a "bear hug" that Mr. Jones gave Mrs. Jones at some point in the dive. One investigative theory suggests the "hug was to hold the diver close to prevent (her) getting to her air, and then that person (Mr. Jones) saw other divers start descending, so he has turned the air back on to cover up what he has done, and headed for the surface." Sounds bad, but then how many of us have seen a diver attempting to rescue another in distress? What exactly does it look like? Could it look like a bear hug? During a two-week inquiry this bear hug was re-enacted in court by police divers. The videotape of an underwater re-enactment was also screened at the hearing.

If I wanted to turn off someone's air I'd do it from behind so they couldn't grab me and also because it's very unlikely a novice diver would be able to turn it back on again, particularly if I was holding on to them from the back. So, to me it's illogical for these investigators to conclude that a "bear hug" from the front was the murderous act of an "experienced" diver.

And what has all this conjecture proved? Four years after the event took place no formal charge has been laid against Mr. Jones, although he is repeatedly referred to as a suspect in his wife's death. Is he a murderer or the victim of an overly enthusiastic, and uninformed (with respect to diving) legal system? Is he a victim of dive industry hype? Have we intentionally, or inadvertently, misrepresented his ability as a Rescue Diver to the point where he has become a murder suspect rather than another poorly trained diver? Is our industry providing the quality training it advertises or are we issuing, too hastily, multiple certification cards to candidates whose abilities fall short of the qualifications they claim?

Hopefully, authorities will get to the bottom of this interesting case as the inquest reconvenes.

EVIDENCE SUGGESTS FOUL PLAY

Our second case also involves a couple, Mr. and Mrs. Smith, who had been married for five and a half years prior to the 1999 holiday fatality in the British Virgin Islands. They were aboard a chartered sailboat with another couple, off Cooper Island, where they planned to dive a couple of tugboat wrecks. According to their shipmates the Smiths were both advanced divers (Mrs. Smith had logged close to 400 dives) and entered the water only to separate almost immediately. This was not unusual according to the attorney representing Mrs. Smith's parents in subsequent civil litigation against Mr. Smith. Apparently, he enjoyed photography while Mrs. Smith went off to "count fish" and study the nearby reef. Mr. Smith returned alone to the boat some 35 minutes later and one of the other divers entered the water (also alone) to make his dive. Evidently, all aboard were comfortable with solo diving. Soon, the second diver came across "the first sign of trouble," a swim fin stuck in the sand toe-first. Expecting to be thanked for his diligence he picked up the fin and continued looking for Mrs. Smith only to find her motionless body lying back to the seabed and with mask and regulator removed.

Tortola police conducted a full investigation and ruled the death an accident.

O.J. IN REVERSE

Almost seven years later Mrs. Smith's parents appeared in a courtroom in Providence, Rhode Island, accusing their dead daughter's husband of killing her but Mr. Smith was not in attendance. Witness after witness went unchallenged by any defense counsel, to make a case that Mr. Smith had killed his wife for monetary gain. As one online news wire said, even "to the most casual viewer of TV's *Law & Order*, the proceedings would have appeared skewed." The plaintiff's lawyer conceded

Mr. Smith's absence had lent a strange twist to the case. You see, Mr. Smith hadn't been charged with anything and was not legally obliged to appear. When asked why he was not participating, Mr. Smith replied that he was "not defending himself because the trial was about money and nothing else." He added, "If there truly was a case, we would be in criminal court. There is no case."

It was a reverse O.J. Simpson scenario: after being acquitted of his wife's murder in a criminal trial the football star was sued by her parents in civil court (with its lower standard for 'reasonable doubt' than the criminal court), and found guilty. Simpson was required to pay a monetary award to the parents but having been previously acquitted of criminal conduct he remained a free man. In the Smith case, there were no charges, arrest or criminal trial, just a civil case that did award several million dollars to the parents; a sum Mr. Smith is unable pay.

As a result of the civil case and award, the Tortola police have reopened the case and, apparently, laid formal murder charges against Mr. Smith. I guess he should have showed up at the civil trial! Currently, he's awaiting extradition to the BVI's and maintaining he's innocent.

BUILDING THE CASE

So what evidence prompted the jury in this case to convict Mr. Smith? Firstly, Mrs. Smith's parents were convinced their daughter's husband killed her and they were willing to pay experts to help them prove their allegation. They contracted a very experienced Florida-based forensic dive investigator whom I know well, and a pre-eminent diving physician, with whom I have also worked, in California. The plaintiffs developed the following scenario:

Mr. Smith had been pursuing another romance and had killed Mrs. Smith to retain her financial support; divorce was not an option according to terms of a prenuptial agreement. Mr. Smith (and his 'break even' dive shop - what else is new!) was apparently dependent upon his wife's income. A local dive 'expert' swam over the site a day after the death "looking for problems that might explain the diving death" and apparently found nothing out of the ordinary. That expert was the first to suggest to the Tortola police that Mrs. Smith had drowned "after being attacked from behind." I have to ask myself what "out of the ordinary" problems would he be looking for at the dive

IS IT MURDER?

If this incident report came across my desk I'd have suspected anything more than a simple diving accident. On the face of it two experienced divers headed off in different directions (with little concern for each other's safety) and one of them ran

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officially conclude the matter. Extradition to the BVI's, a trial, and a conviction or acquittal to Mr. Smith remains innocent of criminal conduct. It will take his all. Remember, this was a civil trial and at least for the present proceeding. As 'evidence' much of it might not be admissible at evidence and would not carry the same weight in a criminal Sounds damning but all this testimony is 'circumstantial' feet (24m) of water.

concluded that Mrs. Smith's husband had attacked her in 80 party or parties involved in the homicide. The dive investigator Florida's Miami-Dade County called the death a "homicidal drowning" but could not offer any comment on the identity of the account of his wife's death. The chief medical examiner of Mr. Smith had apparently amassed \$570,000 in cash on Maybe he was simply drinking away the stress?

mood, carrying drinks in each hand, the day after the incident. Other testimony suggested that Mr. Smith was seen in a jovial condition suggested the application of some "external force." equipment was suspicious. Other experts agreed the gear's doctor, testified the condition of Mrs. Smith's recovered scuba, the offer of help, but this evidence looks bad for Mr. Smith. A details regarding time lapse between the incident, the call, and rebuffed by a male who advised it was too late. There were no had approached the chartered sailboat to offer help that was testified via videotape that he'd heard the radio mayday call and the fin or mask actually came off. Another local dive operator the judge would not allow him to speculate on how he believed could have pulled free if it had been yanked from behind. But am not exactly sure? He also said the strap of Mrs. Smith's mask this fin did not simply settle on the bottom. What that tells us I trust his judgment implicitly. There's no doubt in my mind that another case at present. He's extremely competent and I would circumstances. I know this person and am working with him on would not have settled that way under normal that the fin found jammed into the sand dive industry, presented video footage showing engineer, who has worked for decades in the here, aren't we? A mechanical bunch of water, fish, sand and rocks site? We are talking about a

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into something unexpected (an aggressive shark?), panicked and drowned alone. It's true that their respective levels of experience raise some questions, but over the years there have been many, many (too many) equally experienced divers who've gotten into trouble and paid with their lives. For example, I've been involved with a case for over four years in which two divers (one with 200 plus dives and the other with 400) just simply didn't return from a dive that others completed without issue. We have absolutely no idea what happened to this pair. Initially, there was some dive boat crew conjecture that the two may have been taken aboard, or killed by, someone from a strange boat spotted earlier in the vicinity. This was fueled by the fact both men were of Jewish descent and one of them was from Brazil. I'm not kidding. The rumors were dismissed but it does underscore the temptation to dramatize when tragedy strikes.

So, if all we had was the information presented on a typical dive accident form, like those submitted to dive training agencies, both of these cases would appear to be just two more unexplained dive accidents. It's the foregoing list of 'circumstantial' evidence, likely inadmissible in a criminal trial, which has Mr. Smith in deep water at present. And we'll learn the truth only after Mr. Smith has been arraigned and tried in the BVI.

CONCLUSIONS ANYONE?

If the authorities haven't arrived at any after four years investigating the Jones case and eight years on the Smith case, how can we? Add to this the arguably lenient definition we assign to 'experience' in sport diving and it becomes further complicated.

As the basic information gathered from both of these cases closely resembles information presented in many other dive 'accidents' we really haven't learned much. Can we assume these are the only two dive murders out there, or are there others? Is it possible that Mr. Jones and/or Mr. Smith are innocent and living the same nightmare as other wrongly accused (if not incarcerated) murderers (David Milgaard, for example)? Is O.J. really innocent? We may never know.

Let's consider for a moment...if you're convinced murder is necessary, does a dive 'accident' make sense? If Smith and Jones were the only two murderers to have made the attempt so far, well, it's a pretty poor track record. Then again, maybe they're just not very good at killing people.

VERY DIFFERENT CASES

In the case of Mr. Jones's the alleged act took place in clear tropical water with plenty of witnesses around. There's even a photo, illustrating this article, taken by another tourist diver, showing his wife's body lying on the bottom – important evidence that did not immediately come to light. To me it's just an implausible scenario. Of course, it could have been spur of the moment (second degree murder) where clear thinking was compromised by a spontaneous fit of subsurface rage. Either way, if this was murder it was very poorly conceived and executed.

Mr. Smith's alleged murder is more elegant; at least he was in the water alone with the victim. Allowing someone else to find the body suggests a plan (first degree murder). But why leave so much 'evidence' at the scene? Smith's bottom time was 35 minutes and only eight minutes of air was gone from

his wife's tank. So, he had 27 minutes to tidy things up after what investigators assumed was a struggle between them, considering the state of her gear. Wouldn't her appearance be an obvious red flag? Wouldn't he take a few moments to put her mask and fins back on? Or maybe he just figured that without conclusive DNA evidence he was untouchable.

For my money I can see Mr. Smith panicking and rushing to the surface immediately after their struggle, but I can't imagine him looking at his wife's dead body, instantly seeing the need to straighten things out a bit, and then just swimming away – for almost another half hour – thinking, one assumes, there would be no repercussions arising from her disheveled condition.

Another difference between the Jones and Smith cases is that Mr. Jones was the more experienced of the couple while the deceased Mrs. Smith was more experienced than her accused murderer. Mr. Jones's 'experience' was much overrated, in my view. With 400 dives logged Mrs. Smith was an old hand, I concede, so her demise is harder for me to grasp, although relative strength and the element of surprise would have favoured her attacker.

At the end of the day neither of these cases is easy to fathom and, to me, much of the testimony appears almost nonsensical. Reviewing the case notes was like circling a conclusion that could never be reached. I can understand the experts' concluding both deaths were murder even though both rely on circumstantial evidence. Still, I am tempted to suspect there may be other, unknown, but more logical, explanations.

MANY ACCIDENTS UNEXPLAINED

It's a matter of record that a considerable number of dive accidents are never completely explained – remember my two divers that never surfaced. In fact, many researchers freely admit that a high percentage of dive accidents are never explained. The following is an excerpt from a 2004 study published in a 2004 issue of the *Journal of Sport and Exercise Theory*: "Scuba diving, which has been promoted as a safe activity, is not free of risks. From 1980 to 1990 the average number of scuba diving fatalities in the U.S. alone each year was 91. Despite improvements in training and equipment design, this figure remained essentially unchanged, averaging 88 from 1991 to 2000 (Divers Alert Network, 2002). Depending on the estimate of active recreational divers, the relative risk of death may be as high as 3.84 per 100,000 divers. Although most of these deaths can be ascribed to injury or equipment failure, the factors leading to fatalities in some 40 per cent of the cases remain unknown."

Forty per cent with "unknown" causes. That's a big number! For a guy with limited math skills I figure that to mean almost half of all dive accidents are never explained to a reasonable degree. Sadly, my own claims handling experience supports this number. While most dive accidents do have similar characteristics – running out of breathing gas, buoyancy problems, panic etc. – we rarely discover the exact cause of an accident, or, more precisely, what precipitated the panic. So, in the final analysis there are no easy solutions and we should not despair if airtight conclusions elude us in our dive 'murder' cases.

BETTER TRAINING MIGHT HELP

I do believe that more consistent and rigid training standards, along with an honest and open acceptance of the inherent risks in sport diving might lead to more timely and accurate identification of the underlying causes of diving accidents. Who knows if the cases described here are accidents or the deadly work of two vile individuals? Given all the variables inherent in killing underwater, planning a dive 'accident' seems a long shot to me. Then again, maybe Smith and Jones considered this reality. I'll be following these cases with great interest.

Regardless of outcomes, it's safe to say life for all those close to the victims will never be the same. Similarly, the lives of the suspects and their families have been categorically ruined, and neither of them will have two cents to rub together by the time this is all over.

What we can conclude from this review is that murder is never a solution so if the going gets rough, call a lawyer not a travel agent. And when you are out there participating in our sport, be careful, treat the water world with respect, and it won't hurt to look over your shoulder occasionally! ♦

Author's Note: I mean no disrespect to any of the individuals involved in these cases and do believe that the authorities have done their best in the face of voluminous and seemingly contradictory evidence. What really bothers me is the very consistent assertion within, and outside, our industry that sport diving is 'safe'. Recreational scuba diving simply is not, has never been, and never will be 'safe'. It is an amazing adventure in a strange world that has obvious and dangerous repercussions for human beings when things go wrong. Ignoring that simple reality is extremely shortsighted and, frankly, dishonest. If there were no inherent risk, many of us 'adventurers' would probably be doing something else.

“ To me, it seems unique, it seems like something that is done for the profit of the diver. It's done so that we can dive and feel good when we dive ... and so that we're protected ... ”

José Negroni
Attorney, Ft Lauderdale, Fla.
New diver & aspiring underwater photographer
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