

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

CIRCUIT CIVIL NO. 97-688CI-07

CHURCH OF SCIENTOLOGY  
FLAG SERVICE ORG., INC.,

Plaintiff,

vs.

JOAN E. WOOD, M.D.,  
MEDICAL EXAMINER DISTRICT SIX,  
PINELLAS/PASCO COUNTY  
MEDICAL EXAMINER'S OFFICE,

Defendant.

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**ORDER REGARDING PRODUCTION OF PUBLIC RECORDS**

THIS CAUSE came before the Court on February 13, 1997, upon the Plaintiff's Complaint to compel the production of public records pursuant to Chapter 119, Florida Statutes. Present before the Court were the attorneys for the Plaintiff, Morris (Sandy) Weinberg, Jr., Esq., Laura L. Vaughan, Esq., and Lee Fugate, Esq.; the attorneys for the Defendant, Patricia Fields Anderson, Esq. and George K. Rahdert, Esq.; and the Defendant, Joan E. Wood, M.D.. Also present from the Office of the Medical Examiner was Larry Bedore. The Plaintiff has submitted a memorandum of law in support of its position, the Defendant has submitted a memorandum of law in support of her position, and the Plaintiff has submitted a reply. The Court has considered the parties'

respective Memoranda of law, has heard and considered argument of counsel, has reviewed the applicable statutory and case law, and has otherwise been fully advised in the premises.

## **I. THE FACTS**

On November 18, 1995, Lisa McPherson was involved in a minor automobile accident on South Fort Harrison Avenue near Belleview Boulevard in Clearwater. At the scene she removed all her clothing and began walking down the street. Paramedics observed her to appear "wild eyed". She stated that she "needed help" and was taken to Morton Plant Hospital by the paramedics. While at Morton Plant she was examined in the emergency room and found to be without physical injury but possibly mentally unstable. Instead of meeting with a psychiatric nurse at Morton Plant, she signed herself out against medical advice and went to the Church of Scientology-Fort Harrison Hotel in the company of several other Scientologists for "rest and relaxation" (which has subsequently been described by a Scientology spokesman as "voluntary isolation"). She remained there for seventeen days. On December 5, 1995, Lisa McPherson was transported by fellow church members, in a church van, to New Port Richey to be treated by David I. Minkoff, a Scientologist physician on staff at HCA New Port Richey Medical Center. Lisa McPherson died en route to the HCA New Port Richey Medical Center.

The autopsy was performed by Robert D. Davis, M.D., Associate Medical Examiner, on December 6, 1995. The body was identified by Jeff Schaffner and David Slaughter on December 7, 1995. On December 15, 1995, the Toxicology Findings were signed by Ronald R. Bell, B.S., Chief Toxicologist. The autopsy report was written in October, 1996 and disseminated on October 30, 1996 to those who had made public records requests. The immediate cause of death indicated in the Report of Autopsy is a thrombo-embolism left pulmonary artery due to thrombosis of the left popliteal vein due to bed rest and severe dehydration. The Final Anatomic Diagnoses include thromboembolus-left main pulmonary artery, thrombosis of left popliteal vein, severe dehydration, multiple old and recent hematomas-extremities and abrasion of nose.

Dr. Wood maintains that the dissemination of the autopsy report on October 30, 1996 was a "mistake" as a result of a miscommunication with Sergeant Wayne Andrews of the Clearwater Police Department as to the meaning of the terminology "sign the case out". The Clearwater Police Department had been conducting an investigation into the death of Lisa McPherson. The Clearwater Police Department had corresponded with Brian Anderson of the Church of Scientology Office of Special Affairs in an effort to contact three church members who may have information regarding the events which transpired at the Fort Harrison Hotel between November 18 and December 5, 1995 related to the death of Lisa McPherson. In an effort to find these three individuals, who are identified as Suzanne Schnuremberger (now

possibly Green), Ildiko Cannovas, and Laura Arrunada, the Clearwater Police Department has even used the Internet. On December 15 and 17, 1996, the Tampa Tribune and the St. Petersburg Times published articles about the Clearwater Police Department's investigation and the suspicious circumstances surrounding Lisa McPherson's death. These articles contained quotes attributed to Wayne Shelor and Sergeant Andrews of the Clearwater Police Department, Dr. Minkoff, Larry Bedore of the Medical Examiner's office, family and friends of Lisa McPherson, former Scientologist Dennis Erlich, Church of Scientology spokesman Brian Anderson, and Robert Johnson and Elliot Abelson, attorneys for the Church of Scientology. The articles also contained information gleaned from the autopsy report.

When Sergeant Andrews became aware that the autopsy report had been released to the media by the Medical Examiner's office prior to the publication of the December 15th and 17th Times and Tribune articles, he immediately called the Medical Examiner's Office and spoke to Larry Bedore, making an official request that the file be closed due to an ongoing criminal investigation by the Clearwater Police Department and the State Attorney's Office. The file was immediately sealed at Sergeant Andrews' request. During the initial round of media attention, no member of the Medical Examiner's office commented publicly on the autopsy report, save for Larry Bedore indicating to the St. Petersburg Times that he was not aware of any blood tests being done nor was he aware of any staph infection. Larry Bedore is not an assistant medical

examiner nor is he part of the medical staff at the Office of the Medical Examiner. On December 16 and 17, 1996, Wayne Shelor of the Clearwater Police Department and Robert Johnson, attorney for the Church of Scientology, also appeared on various television news programs and Wayne Shelor appeared as a guest on a radio program as well.

On several occasions, Dr. Wood made public statements regarding the autopsy and the circumstances surrounding the death of Lisa McPherson, including an appearance on the television program *Inside Edition*. The *Inside Edition* interview took place at FDLE headquarters in Tallahassee and was aired on January 21, 1997. A transcript of that program appears in the Court file. On January 23, 1997, the Times and Tribune again published articles regarding this case. The articles contained the Church of Scientology's version of events leading up to Lisa McPherson's death and Dr. Wood's response. Elliot Abelson was quoted as calling Dr. Wood a "Liar....a hateful liar." Dr. Wood claims that she disseminated facts relating to the case in response to the "misinformation" campaign of the Scientologists, because she had a duty to "speak for the deceased" and a desire to make the information public in "the hope that what had happened over the last days of her life might be better explained". The Church of Scientology claims that Dr. Wood is attacking them and attempting to try this case in the media, even though no criminal charges have ensued.

On various occasions, the Clearwater Police Department through its spokesman, Wayne Shelor, has likewise made statements regarding this case to

the media.

On January 9, 1997, the Church of Scientology, through its attorneys, Zuckerman, Spaeder, Taylor & Evans, LLP, requested documents pursuant to the Public Records Act seeking disclosure of information in the possession of the Medical Examiner concerning the death of Lisa McPherson. This request is contained within the Court file. On January 10, 1997, Dr. Wood responded in writing to this request, immediately authorizing the release of the personnel file and related documentation regarding Robert D. Davis, M.D., the associate medical examiner who actually performed the autopsy on the body of Lisa McPherson, but claiming that the autopsy information would not be immediately released due to the "active criminal investigation" exemption to the Public Records Act, Florida Statutes, §119.07(3)(b). After a second public records request by the Plaintiff made on January 22, 1997, the instant action was filed. The Plaintiff has since been provided a copy of the autopsy report pursuant to their request, and the Defendant admits that her refusal to initially release the report from the subsequently sealed file was an error on her part.

## **II. THE PUBLIC INFORMATION REQUESTED**

The Plaintiff's Public Records Request directed to the Medical Examiner, dated January 9, 1997 requests a broad class of purported "public records" in the files of the medical examiner. Specifically, the written request sought

disclosure of the: 1.) Personnel file and all other reports, records and documents regarding the hiring, employment and discharge of Robert D. Davis, M.D., Associate Medical Examiner; 2.) All documents, notes, reports, draft reports, drafts, photographs, slides, recordings, production notes, schematics, samples, growths, tissue bottles, parafin (sic) blocks, organs, interviews, summaries of witness interviews, testimony or papers or objects of any kind relating to the death, autopsy, and report of autopsy of Lisa McPherson (Case No. 1951474); 3.) All documents relating to any communications with the media, newspapers, reporters, (sic) by the Medical Examiner and/or her agents regarding the death of Lisa McPherson; and 4.) All documents relating to any reports of investigation, analyses, or other reviews by the Clearwater Police Department, Florida Department of Law Enforcement, the State Attorney's Office and/or any other law enforcement agency regarding the death of Lisa McPherson.

The Plaintiff's Complaint, filed with this Court on January 28, 1997, reiterates in full the contents of the January 9, 1997 letter. However, at the hearing in this matter on February 13, 1997 and in the Memorandum submitted by the Plaintiff to the Court immediately before the hearing, the Plaintiff recedes from the request as contained in the letter of January 9, 1997. The Court will limit its consideration of the Plaintiff's request to that set forth in the Plaintiff's Memorandum of February 13, 1997 pursuant to the verbal representations of counsel at the hearing.

The Plaintiff is requesting that the Medical Examiner's records be released and have categorized the various types of records as follows:

1. Administrative Documents Regarding the Processing of the Body and the Handling of Evidence

A. Drafts of the autopsy report and/or notes taken during the autopsy.

B. Disposition sheets regarding the receipt of the body and disposition of the body to the funeral home following the autopsy.

C. "Tracking" records regarding samples, lab results, and other administrative aspects of the autopsy.

2. Documentary Evidence Regarding the Autopsy

A. The autopsy report (which has been released).

B. Reports received from Largo Medical Center and Wuesthoff Laboratories.

C. Thirty-five (35) photographs of Lisa McPherson's body.

D. Photocopies of the histologic slides.

3. Physical Specimens from the Autopsy

A. Gross tissue cup.

B. Paraffin blocks.

C. Slides and sections.

D. Blood.

E. Urine (which has apparently been exhausted through routine testing by the Medical Examiner's office).

F. Vitreous fluids.

4. Medical Records

Hospital records from Morton Plant Hospital and New Port Richey Hospital, including a laboratory test provided by Dr. Minkoff to the Medical Examiner.

### **III. ARGUMENT/THE RESPECTIVE POSITIONS OF THE PARTIES**

#### **A. The Plaintiff's Position**

The release of the autopsy report and the public comments made by the Clearwater Police Department and Dr. Wood constitute a complete waiver of the "active criminal investigation" exemption to the Public Records Act. Dr. Wood and the Clearwater Police Department are engaging in a campaign in the press to "create the false public perception that the Church of Scientology was somehow responsible for the death of Lisa McPherson". Dr. Wood has conceded by her January 10, 1997 response to the Plaintiff's public records request that all her records, including physical specimens, are public record and would be available under a public records act request if an exemption did not apply or has been waived. Dr. Wood's *Inside Edition* interview was based on a review of the report and "all files within her office", including lab results, photos, stains, and hospital records. The Clearwater Police Department and Florida Department of Law Enforcement's failure to object to Dr. Wood's appearance on television is relevant to the purported waiver of the criminal investigation exemption to the Public Records Act. Dr. Wood's reliance on laboratory tests, the appearance of the body, the autopsy protocol, the cause of death, microscopic sections, an examination of the major organs of the body,

and all the information available to the Medical Examiner's office waives the exemption to the public records act, notwithstanding the ongoing criminal investigation. The State Attorney's failure to direct the Medical Examiner to release documents or claim an exemption is pertinent to the issues surrounding this case.

**B. The Defendant's Position**

The disclosure of the autopsy report does not waive the active criminal investigation exemption under §119.07(3)(b) Fla. Stat. (1995). Because an investigation is currently ongoing and "continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future", the integrity of the State's work product compels protection by this Court. The report was "mistakenly" released in October, 1996, but the Medical Examiner concedes that the disclosure indeed waives the exemption as to the report itself, but such a waiver is limited to the four corners of the report. The Medical Examiner's public comments do not go beyond the four corners of the report itself and thus do not open the confidential files to further public scrutiny until the active criminal investigation is resolved. The Medical Examiner cites Wells v. Sarasota Herald-Tribune Co., Inc., 546 So. 2d 1105 (Fla. 2d DCA 1989) for the proposition that the criminal investigative exemption to the Public Records Act cannot be overcome unless and until an arrest is made or a defendant charged. Further, criminal investigative agencies can occasionally choose to voluntarily partially waive the exemption as to

some information while keeping other information confidential. As to the specific categories of documents requested by the Plaintiff, the physical evidence from the autopsy does not constitute public records, "any more than a weapon used in the commission of a homicide", because public records, by definition, are that which can be copied; physical evidence is not a public record. As to the hospital records of Lisa McPherson, the Medical Examiner cites Florida Statutes, §395.3025(4) (1995), which prohibits the recipient, "if other than the patient or the patient's representative" from disclosing the information to any other person or entity. Thus, the Medical Examiner is prohibited by law from disclosing these records to anyone, regardless of whether she relied on those records in preparing the autopsy or otherwise commenting on the death of Lisa McPherson. As to administrative documents and documentary evidence, the release of the documents would compromise the criminal investigation. The underlying investigatory documents may seem innocuous, but "could well prove to be a rich source of information that would help [these individuals] obstruct the ongoing investigation." If and when a criminal defendant is identified and charged, any information becomes public record under the statute. Unless and until that occurs, the public's right to know does not include the "right to mount a defense to charges not yet filed".

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW BY THE COURT**

Is Scientology the spiritual salvation for thousands of people worldwide?

Or is Scientology a nefarious cult leading robotic, proverbial “sheep” to psychological and financial slaughter? That is not for this Court to decide or even opine, as the Florida Public Records Act makes no distinction between good and evil. In fact, as counsel for the Plaintiff has argued, the law provides any member of the public access to public records, whether he or she be the most outstanding civic citizen or the most heinous criminal. Also, a person’s motivation in seeking public records is irrelevant. The law guarantees anyone the right of access, without requiring justification or demonstrating good cause. The Public Records Act affords the public’s right to public documents sacrosanct status.

This is apparently a case of first impression in Florida as to data underlying a released autopsy report when a criminal defendant has yet to be charged. It is not unusual for law enforcement personnel to publicly comment on various aspects of a case which is under active criminal investigation in an effort to enlist the public’s assistance in gathering information and solving the crime. It is likewise not unusual for portions of an investigative file to be released at the custodian’s discretion or pursuant to Court order, due to its lack of impact on an ongoing criminal investigation, without compelling the further release of information to which the exemption still applies. Bludworth v. Palm Beach Newspaper, 476 So. 2d 775 (Fla. 4th DCA 1985). However, what is unusual about the instant case is that not only was the autopsy report itself released, but the Medical Examiner has made public statements regarding the

result of her investigation, which necessarily is bolstered by her knowledge of the autopsy report and underlying investigatory findings and procedures. The Court must resolve the facts of this case in accordance with the public's right to information balanced by the public's right to an effective inquiry and investigation into possible criminal wrongdoing.

It is well settled that certain documents in the possession of the Medical Examiner are official records, including findings, laboratory reports, photographs, and autopsy reports. F.A.C. §11G-2.005. "Public Records" are defined at Florida Statutes, §119.011(1) as:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

It is likewise well settled that an active criminal investigation is being conducted by the Clearwater Police Department which would constitute an exemption to the Florida Public Records Act pursuant to Florida Statutes, §119.011(3)(b), (3)(d)2. and §119.07(3)(b), which provide:

§119.011(3)(b)--"Criminal investigative information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

§119.011(3)(d)2.--The word "active" shall have the following meaning:

Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

§119.07(3)(b)--Active criminal intelligence information and active criminal investigative information are exempt from the provisions of subsection (1) and s.24(a), Art. I of the State Constitution.

Further, the custodian of the records who is claiming a valid exemption may partially release information while claiming the exemption as to other portions of the public record. Florida Statutes, §119.07(2)(a), which provides:

A person who has custody of a public record and who asserts that an exemption provided in subsection (3)...applies to a particular public record or part of such record shall delete or excise from the record only that portion of the record with respect to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and examination...

Specifically, a Medical Examiner may choose to release only portions of an autopsy report, withholding "those portions of the report which, if publicized, would significantly impair the ability of law enforcement officers to apprehend those suspected of committing the crime". AGO 078-23 (February 21, 1978)

It is not unusual for law enforcement and criminal investigatory agencies to selectively release information relating to an ongoing criminal investigation in an effort to enlist public participation in solving a crime. Even the release of the autopsy report may be useful to law enforcement and criminal investigatory agencies in solving crime. To accept the Plaintiff's

position that the release of the autopsy report, in and of itself, opened the door to further scrutiny of the underlying documentation would be to open every medical examiner's file to public scrutiny upon public comment on a criminal case by an investigating authority.

In the instant case, the autopsy report has been released to the public, whether through inadvertence or design. The Medical Examiner has made further public commentary on the contents of the report. The release of the autopsy report, if released with no further comment, would not waive the criminal investigation exemption as to the underlying data unless and until the information has been released to a criminal defendant, or the law enforcement authorities complete their investigation without charges being filed. The Plaintiff has not persuaded the Court to find otherwise. In fact, a review of the pertinent case law indicates the contrary: one portion of the files subject to the Public Records Act but protected by the "active criminal investigation" exemption has been released to the public while another portion has remained out of the public purview. Florida Statutes, §119.011(3); Bludworth v. Palm Beach Newspapers, 476 So. 2d 775 (Fla. 4th DCA 1985); Tribune Co. v. Public Records, P.C.S.O. #79-35506 Miller/Jent, 493 So. 2d 480 (2d DCA 1986) (remanded with instructions to the Circuit Court to order the Sheriff of Pasco County to release the Miller and Jent files to appellants save the material, if any which is cloaked by a specific exemption under the Act--emphasis provided--). Thus, the Court finds that the release of the autopsy

report, without further comment, on October 30, 1997 did not open the Medical Examiner's files to public scrutiny, due to the existence of an ongoing criminal investigation.

The issue then becomes, what actions or public comment by Dr. Wood, if any, subsequent to the release of the autopsy report resulted in a waiver of the "active criminal investigation" exemption to the Public Records Act, and if a waiver is found, which aspects of Dr. Woods file then become available to the public?

After the release of the autopsy report, no further documentation was ever released. Thus, the Court is not faced with ordering that the release of information such as discovery given to a criminal defendant also be disclosed to the public as required by Satz v. Blankenship, 407 So. 2d 396 (Fla. 4th DCA 1981) review denied, 413 So. 2d 877 (Fla. 1982). Instead, the Court must examine the public statements of Dr. Wood to determine which aspects of her file that may be construed as a public record have been "released to the public", thus compelling their removal from the "active criminal investigation" exemption to the Public Records Act.

The Court is mindful of the limited purpose of the "active criminal investigation" exemption and the liberal application of the Public Records Act in general. "Section 110.01(1), Florida Statutes, (1993), expressly declares that: 'It is the policy of this state that all state, county, and municipal records shall at all times be open for inspection by any person.' In light of this

underlying policy, the Act is to be construed liberally in favor of openness, and all exemptions from disclosure construed narrowly and limited to their designated purpose". Barfield v. City of Ft. Lauderdale Police Dept., 639 So. 2d 1012, (Fla. 4th DCA 1994) However, "that duty [to construe the exemptions narrowly], does not mandate a construction so narrow that the very purpose of the exemption, no matter how limited, is effectively defeated." Barfield, *id* at 1017.

Dr. Wood's public commentary, in relevant part, follows:

Inside Edition Television Interview 1/21/97

"This is the most severe case of dehydration I've ever seen."

[Lisa McPherson] went without liquids for at least "5-10 days...may have been 17"

"Possibilities...she refused to eat or drink. Perhaps she was deprived of, of (sic) food and, and (sic) water. Because if you've ever been thirsty you know how powerful that thirst drive is."

In response to the question--"you don't deteriorate the way Lisa McPherson did in a day or two, do you?" Answer: "No. Absolutely not".

"From the time that Lisa McPherson died, backward 24 to 48 hours, she was unconscious"

In response to the follow up question--"Comatose unconscious?" Answer: "Yes."

In response to the question--"She didn't sit around that day and decide whether or not she was going to the doctor?" Answer: "Absolutely not".

"She did not die of an overwhelming staph

infection.”

In response to the question--"Did a staph infection cause the blood clot?" Answer: "No, no. “.

“No, they’re not mosquito bites. They appear to be cockroach bites.”

“If she’s comatose it can happen and she doesn’t know it and doesn’t react to it.”

St. Petersburg Times January 23, 1997 “Dispute over Scientist’s death”

Laboratory tests indicate that a 36-year old member of the Church of Scientology went without fluids for five to 10 days and was unconscious for up to two days before her unexplained death in 1995.

McPherson’s health declined slowly over several days and was far from sudden. She said it’s “impossible” that a staph infection led to McPherson’s death.

The lab results “are consistent with a chronic process and inconsistent with an event such as a bloodstream infection that occurred within a period of hours...She wasn’t fine one day and dead the next.”

McPherson had been bitten by ants or roaches.

“Mr. Abelson’s entitled to his opinion.”

A private investigator for Scientology showed up recently at Davis’ Volusia County home wanting to question him.

She said Davis left her department under circumstances that had nothing to do with his abilities or the McPherson case.

She reached her conclusions about McPherson after seeing test results on McPherson’s eye fluids, which can accurately reflect a body’s condition before

death. The readings on one test are “so high she had to be unconscious” for 24 to 48 hours. And, in terms of eye fluid results, it is “the worst case of dehydration I have ever seen,” said Wood, who has been Pinellas-Pasco medical examiner for nearly 15 years.

Wood noted the [autopsy] report states she was dehydrated.

Wood said she did not know if constricted bowels were an indication of dehydration.

Tampa Tribune January 23, 1997 “Doctor details Scientologist’s death”

It’s possible McPherson, who died in December 1995, had nothing to drink throughout her 17-day stay at the Fort Harrison Hotel.

The insect bites found on McPherson’s body after her death were most likely from cockroaches...McPherson was comatose for the last 24 to 48 hours of her life.

The infection “absolutely did not” cause the bruising and was not responsible for McPherson’s death.

McPherson could not have carried on a conversation with anyone that day.

Channel 8 News at 6:00 p.m. January 23, 1997

“This is the most severe case of dehydration I’ve ever seen.”

“From the time that Lisa McPherson died, backward 24 to 48 hours, she was unconscious”.

The Court finds that statements made by Dr. Wood waived the “active criminal investigation” exemption, at least to some extent. As the Plaintiff argues, “the horse is out of the barn”, but the issue is, how far “out”? Some statements made by Dr. Wood were based on her own experience as District Medical Examiner for fifteen years, rather than reference to “records” in this case. No waiver of any of Dr. Wood’s files occurred through public comment by any member of the Clearwater Police Department or any other investigatory officer. The Court will consider the records requested in light of any waiver which may have occurred due to Dr. Wood’s public comment.

1. **The Plaintiff’s request for “Administrative Documents Regarding the Processing of the Body and the Handling of Evidence”**

A. **Drafts of the autopsy report and/or notes taken during the autopsy.**

The Court finds that the release of these items would not compromise any ongoing criminal investigation, due to the release of the report in which this information culminated. Therefore, this information is deemed a public record not exempted by the “active criminal investigation” exemption to the Public Records Act.

B. **Disposition sheets regarding the receipt of the body and disposition of the body to the funeral home following the autopsy.**

The Court finds that these items are public records and would be available to the public if no exemption applied. Due to

the active criminal investigation, the Court finds that these items are properly within the exemption to the Public Records Act and need not be disclosed. Further, the Court finds that Dr. Wood has not made any public comment or taken any public action which would specifically waive the “active criminal investigation” exemption as to these items.

**C. “Tracking” records regarding samples, lab results, and other administrative aspects of the autopsy.**

The Court finds that these items are “public records” and would be available to the public if no exemption applied. Due to the active criminal investigation, the Court finds that these items are properly within the exemption to the Public Records Act and need not be disclosed. Further, the Court finds that Dr. Wood has not made any public comment or taken any public action which would specifically waive the “active criminal investigation” exemption to the Public Records Act as to these items. Further, documentation of the administration of the autopsy will be relevant to a criminal case as it pertains to the chain of custody of evidence, and therefore are covered by the “active criminal investigation” exemption to the Public Records Act.

2. **Documentary Evidence Regarding the Autopsy**

A. **The autopsy report (which has been released).**

The Plaintiff's public records request as to this portion of the Medical Examiner's file has been previously granted and thus the Plaintiff's request is moot.

B. **Reports received from Largo Medical Center and Wuesthoff Laboratories.**

Dr. Wood's public comments regarding her findings that Lisa McPherson was dehydrated; that she "went without liquids for at least 5-10 days...may have been 17"; that Lisa McPherson was unconscious for 24 to 48 hours; that Lisa McPherson "did not die of an overwhelming staph infection"; that a staph infection did not cause the blood clot; that the insect bites on Lisa McPherson's body were ant or cockroach bites; the lab results are "consistent with a chronic process and inconsistent with an event such as a bloodstream infection that occurred within a period of hours..." have waived the "active criminal investigation" exemption as to the portions of the laboratory results underlying the conclusions on which Dr. Wood's public comments were based. Specifically, any laboratory findings reporting Lisa McPherson's hydration state, period of unconsciousness prior to death, the cause of death, the cause of blood clotting, the appearance of insect bites and cause of

the bites, and lab results which indicate consistency or inconsistency with a chronic process, if any, are to be released.

**C. Thirty-five (35) photographs of Lisa McPherson's body.**

The photographs of the body are documentation of the condition of the body and may be used in the context of a criminal prosecution. Thus, they are covered under the "active criminal investigation" exemption umbrella. The autopsy report itself is based on the observations of the assistant medical examiner during the course of the preparation of the report. Dr. Wood's public comments on the autopsy findings which may be memorialized in photographs are limited to the appearance of what Dr. Wood termed "ant or cockroach bites". These comments were based on her own observations of the body during the autopsy, her experience and her expertise. To the extent that any photograph memorializes the insect bites on Lisa McPherson's body, the exemption has been waived by Dr. Wood's public comments.

**D. Photocopies of the histologic slides.**

The Court finds that any photocopies of histologic slides in the possession of the medical examiner are public records. However, the Court finds that they are subject to the "active

criminal investigation” exemption to the Public Records Act. Dr. Wood’s public comments that Lisa McPherson was dehydrated; that she “went without liquids for at least 5-10 days...may have been 17”; that Lisa McPherson was unconscious for 24 to 48 hours; that Lisa McPherson “did not die of an overwhelming staph infection”; that a staph infection did not cause the blood clot; that the insect bites on Lisa McPherson’s body were ant or cockroach bites; the lab results are “consistent with a chronic process and inconsistent with an event such as a bloodstream infection that occurred within a period of hours...” may rely on her examination of histologic slides and thus have waived the exemption as to those slides. Therefore, any photocopies of histologic slides relating to the above referenced comments are public records subject to the “active criminal investigation” umbrella.

3. **Physical Specimens from the Autopsy**

- A. **Gross tissue cup.**
- B. **Paraffin blocks.**
- C. **Slides and sections.**
- D. **Blood.**
- E. **Urine** (which has apparently been exhausted through routine testing by the Medical Examiner’s office).
- F. **Vitreous fluids.**

The physical specimens, although an essential underlying

aspect of the released autopsy report and the basis for many of Dr. Wood's public comments, are not public records as contemplated by the Florida Public Records Act. The Court has considered the following pertinent provisions of the Act.

"Public Records" are defined at Florida Statutes, §119.011(1)

as:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The procedure for inspection, examination, and duplication of records is set forth at Florida Statutes, §119.01(1)(a) and (b)

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. The custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law or, if a fee is not prescribed by law, for duplicated copies of not more than 14 inches by 8 1/2 inches, upon payment of not more than 15 cents per one-sided copy, and for all other copies, upon payment of the actual cost of duplication of the record. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. For purposes of this section, duplicated copies shall mean new copies produced by duplicating, as defined in s. 283.30. The phrase "actual cost of duplication" means the cost of the material and supplies used to duplicate the record, but it does not include the labor cost or overhead cost associated with such duplication. However, the charge

for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication. Unless otherwise provided by law, the fees to be charged for duplication of public records shall be collected, deposited, and accounted for in the manner prescribed for other operating funds of the agency. An agency may charge up to \$1 per copy for a certified copy of a public record.

(b) If the nature or volume of public records requested to be inspected, examined, or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both. "Information technology resources" shall have the same meaning as in s. 282.303(13).

It is this Court's opinion that the records defined in §119.011, Florida Statutes, must be available to be copied as well as inspected. The law certainly does not impose an obligation upon the public to copy a record, but the record itself must be susceptible of some form of copying, if so desired, to be a "record" as defined in this Act. The Legislature goes to great lengths to detail specificity as to the size of the copies procured and whether a copy would be one-sided or two-sided, to set specific prices and

to authorize specific service charges.

It is impossible to copy the physical specimens that the plaintiff requests. The Court has considered the breadth of the public records law. As an example apart from this case, consider whether the public is entitled to inspect (and copy) every lubrication maintenance record of every state owned motor vehicle? Yes. Is the public entitled to drain, inspect and replace the oil from one or one thousand state owned motor vehicles? No. The Court can think of limitless examples whereby, no matter how burdensome, a public document is subject to inspection and copying but a physical item to which a record pertains is not.

Further, even the statutory provisions for photographing public records do not contemplate that physical specimens may be photographed. The law gives the public the right to utilize a camera device to capture images of “documents, paper, books, receipts, paper photographs and other similar media”. Florida Statutes, §119.08. If the Legislature intended that a “public record” include physical specimens, not capable of being copied, but capable of being photographed, why would the Legislature omit physical specimens or other such items from “documents, paper, books, receipts, paper photographs and other similar media”? It is not this Court’s prerogative to include them.

It is interesting to note that the Florida Administrative Code Provisions relating to the medical examiner's commission separates "physical evidence" defined as "an item or items taken during an investigation which is believed to be pertinent to the determination of the cause and manner of death or to subsequent questions arising in subsequent litigation" §11G-2.004(1) F.A.C. and "specimens", defined as "physical evidence taken from the body during an investigation and may include gross tissue, embedded tissue, stained and unstained sections, swabs, smears, blood, urine, bile, liver, gastric and ocular fluid" §11G-2004(2) F.A.C; from "official records", defined in pertinent part as "records of all investigations performed, including findings, laboratory reports, photographs, and autopsy reports; copies (typed) of all Death Certificates signed by a DME or AME in his capacity as a medical examiner; and all other notes or documentation forming a record of an investigation" §11G-2.005(d)-(f) F.A.C.

The Court has alternatively considered that if this Court has erroneously excluded the physical specimens requested from the definition of "record", public policy and due process still prohibit their release. Any criminal prosecution/defense arising out of the death of Lisa McPherson could hinge on the integrity of the physical evidence. A criminal defendant will have the right to

inspect this evidence, and expect that the evidence will be free of intentional or unintentional contamination through inspection by any and all members of the public. The State of Florida has a right to maintain the custodial chain as to this evidence without such being subject to successful attack by a criminal defendant. It is also conceivable, and becomes more probable with each inspection of the physical specimens, that evidence could be damaged or destroyed, regardless of the precautions taken. Although it would seem that the risk of examination by one or two persons would be minimal, there is no way to guarantee security of the evidence and custodial continuity. The medical examiner's ability to maintain a proper custodial chain of evidence obviously decreases with each inspection, which could reach nightmarish proportions. This Court determines that a criminal defendant's fundamental right to a fair trial and the public's right to an effective criminal prosecution are superior to the public's right to inspect the physical specimens at this time.

However, since these specimens form an essential underlying aspect of the released autopsy report and the basis of Dr. Wood's public comments that Lisa McPherson was dehydrated; that she "went without liquids for at least 5-10 days...may have been 17"; that Lisa McPherson was unconscious for 24 to 48 hours; that

Lisa McPherson “did not die of an overwhelming staph infection”; that a staph infection did not cause the blood clot; that the insect bites on Lisa McPherson’s body were ant or cockroach bites; the lab results are “consistent with a chronic process and inconsistent with an event such as a bloodstream infection that occurred within a period of hours...”, the records detailing the laboratory analysis relating to the above referenced comments are public records and must be released as the exemption has been waived.

**4. Hospital records from Morton Plant Hospital and New Port Richey Hospital, including a laboratory test provided by Dr. Minkoff to the Medical Examiner.**

Section 395.3025(4), Florida Statutes (1995) deems patient records confidential and provides that “the recipient, if other than the patient or the patient’s representative, may use such information only for the purpose provided and may not disclose any information to any other person or entity, unless expressly permitted by the written consent of the patient...The content of such patient treatment record is confidential and exempt from the provisions of §119.07(1) and §24(a), Art. I of the State Constitution.” Thus, the Court finds that Lisa McPherson’s pre-death medical records in the possession of the Medical Examiner do not constitute a public record. Regardless of the present extent of the distribution to the public of these records, this Court is

without authority to direct further dissemination.

## **V. RULING**

Based on the foregoing, it is therefore

**ORDERED AND ADJUDGED** that the release of the autopsy report on October 30, 1996, in and of itself, did not waive the “active criminal investigation” exemption to the Public Records Act as to all aspects of the Medical Examiner’s file. It is further

**ORDERED AND ADJUDGED** that, with regard to the specific documentation contained within the Medical Examiner’s file relating to the autopsy of Lisa McPherson, the following documents are public records not subject to any valid exemption and thus should be released to the Plaintiff:

a. Drafts and notes taken during the autopsy which culminated in the final version of the Report of Autopsy released to the public on October 30, 1996.

b. The Report of Autopsy of Lisa McPherson.

c. Any reports received by the Medical Examiner from Largo Medical Center and Wuesthoff Laboratories which were used in the preparation of the October 30, 1996 Report of Autopsy of Lisa McPherson which specifically document the:

- i. The hydration state of Lisa McPherson;
- ii. The period of unconsciousness prior to death;
- iii. The cause of death;
- iv. The cause of blood clotting;
- v. The appearance of insect bites and the cause of bites;

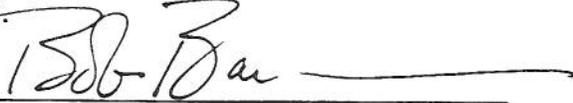
vi. Any lab results which indicate consistency or inconsistency with a chronic process;

d. Photographs documenting insect bites on the body of Lisa McPherson; and

e. Photocopies of the histologic slides to the extent set forth in categories c. i-vi.

f. Laboratory reports regarding the physical specimens taken from the body of Lisa McPherson to the extent set forth in categories c. i-vi.

**DONE AND ORDERED** in Chambers, at Clearwater, Pinellas County, Florida this 27th day of February, 1997.

  
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BOB BARKER  
CIRCUIT JUDGE

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