

MOTIONS

Walsh, Adam

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR BROWARD
COUNTY, FLORIDA

CASE NO. 95-06324 CACE (13)

THE MOBILE PRESS REGISTER, INC.)
and JAY GRELEN,)
)
Plaintiffs,)
)
vs.)
)
RICHARD WITT, as chief of police of the)
City of Hollywood, Florida,)
)
Defendant.)
_____)

Order Opening the "Adam Walsh" Records to the Public

This cause came before the Court on Thursday, February 15, 1996, on the emergency motions of the Broward County State Attorney's Office and John Walsh, host of the national television program "America's Most Wanted," to intervene in this action and to vacate the order entered by this Court on October 24, 1995, requiring the defendant, to produce by 12 noon on Friday, February 16, 1996, for public inspection and copying the City of Hollywood Police Department file regarding the abduction and killing of John Walsh's son, Adam Walsh.

Before addressing these motions, a discussion of the background of this case is essential. The original plaintiffs, The Mobile Press Register, Inc. and Jay Grelen, a reporter for The Mobile Press-Register, commenced this action on May 18, 1995, asking the Court to enter an order allowing them to have immediate access to the Hollywood Police Department's extensive file regarding its investigation of the murder of Adam Walsh in 1981. The Sun-Sentinel Co. and WFTV, Inc. d/b/a Palm Beach Newspapers, Inc. joined the lawsuit as plaintiffs at the first hearing in the case on June

12, 1995. At that hearing, the Court heard the testimony of Hollywood Police Department Detective Mark Smith. Smith testified that he was a "cold case" specialist who had been assigned to reinvestigate the Walsh murder in August, 1994; that he was looking at the same leads that had been investigated previously by other officers; and that he had "two or three" suspects, including one person who had been a suspect for twelve years and another who had been a suspect for six months. Smith said he knew the location of the more recent suspect and planned to interview him or her in the near future. Smith testified that he did not know when his re-investigation would conclude, but that he expected to conduct several interviews "within the next few weeks." Smith did not know how long he would be assigned to the case.

Smith admitted, however, that the Department had issued no arrest warrants, that no grand jury was investigating the matter, that the police department had not turned over its case over to the State Attorney's Office, and that the Department had no plans to do so in the foreseeable future.

Plaintiff Jay Grelen testified at the June 12, 1995, hearing that he had interviewed Chief Witt about the status of the investigation for a series of stories about the Adam Walsh case published in early May, 1995, in the Mobile Press Register. According to Grelen's testimony, Chief Witt said he had assigned Smith to the Walsh murder at a time when the case already had been considered "cold." Grelen also testified that Chief Witt told him that it would be "strictly speculation" as to whether an arrest was imminent. Chief Witt did not contradict any of this testimony.

At the close of the hearing, the Court concluded that the investigation was in fact a "cold case," but that the case had been reopened through its assignment to Detective Smith and that the reopening of the case permitted the investigation to be considered "active" under Florida's Public

Records Law, Fla.Stat. § 119, et. seq.. The Court cautioned the Department, however, that it would not allow the reactivation of a "cold case" indefinitely to deny the public access to materials that otherwise would fall in the public domain. The Court held that Detective Smith would be allowed a "legitimate opportunity" to pursue the leads he was then pursuing before the file would be released to the public. The Court then denied plaintiffs' motion for immediate access to the records, without prejudice to its renewal.

The plaintiffs did renew their motion on September 26, 1995, arguing that Chief Witt and Detective Smith had been allowed more than ample opportunity to complete their reinvestigation of the Walsh case and that their work apparently had not brought them any closer to making an arrest or initiating a prosecution. At the same time, Chief Witt filed a "status advisory" with the Court stating that the investigation was continuing and that an arrest or prosecution "may result." The Miami Herald Publishing Company also joined with the plaintiffs at this time.

At an October 18, 1995, hearing on the renewed motion, counsel for Chief Witt represented that the Hollywood Police Department was continuing to pursue promising leads in the investigation, and requested an extension of time through February 16, 1996, to make a determination of whether to make an arrest or initiate a prosecution. Counsel for Chief Witt argued that his client continued to believe that the Walsh murder might be solved and that release of the records of the investigation would diminish that possibility. Counsel for the plaintiffs countered that Chief Witt's continued belief that the case "might be solved" could not support a finding that the records of this investigation were at that time protected by the Public Records Law exemption for active criminal investigative records.

In Florida, a criminal investigation is considered "active" and information related to it may be withheld from the public only so long as the investigation is "is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future." § 119.07(3)(d)(2), Fla. Stat. (1993). Generally, a defendant cannot have a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future once a substantial amount of time has elapsed from the date of the crime. Section 119.07(3)(d) is not a broad exemption for all police investigative records regarding unsolved crimes. Rather, it provides a narrow exemption that exists only where the law enforcement agency that has possession of the records can show that the information in the records is related to an ongoing investigation that is continuing, the investigation is being conducted with a reasonable, good faith anticipation of securing an arrest or prosecution, and the anticipated arrest or prosecution will take place in the foreseeable future. The burden of proof with respect to each of these factors rests squarely on the defendant. Barfield v. Fort Lauderdale Police Department, 639 So. 2d 1012, 1015 (Fla. 4th DCA 1994).

As of the date of the October 18, 1995, hearing, more than 14 years had elapsed from the date of the crime, the investigation had been dormant for many years before it was re-activated, and no arrest or prosecution had been initiated despite reinvestigation of the case by a crack detective and his cold case squad. Accordingly, the Court concluded that Chief Witt could not reasonably anticipate beyond February 16, 1996, that he could secure an arrest or prosecution in the foreseeable future and ordered Chief Witt to produce the records by that date.

Although this may be the first order by a Florida court requiring a law enforcement agency to open its files to the public concerning an unsolved murder, the order was necessitated by the fundamental proposition that the Public Records Law is to be construed in favor of "open

government to the extent possible in order to preserve our basic freedom, without undermining significant governmental functions.” Bludworth v. Palm Beach Newspapers, Inc., 476 So. 2d 775, 779 (Fla. 4th DCA 1985), review denied, 488 So. 2d 67 (Fla. 1986). The act “is to be construed liberally in favor of openness, and all exemptions from disclosure construed narrowly and limited to their designated purposes.” Barfield, 639 So. 2d at 1014. Courts, in fact, have a “duty to construe exemptions narrowly.” Id. at 1017. “[W]hen in doubt the courts should find in favor of disclosure rather than secrecy.” Bludworth, 476 So. 2d at 780 n. 1.

The Fourth District’s decision in Barfield specifically anticipated a case such as this. In affirming an order that certain police records could be kept confidential because an ongoing investigation was continuing, the court observed: “A different situation would be presented if an affirmative decision is made to drop the investigation or put it on indefinite hold.” 639 So. 2d at 1017. That different situation is this case, notwithstanding Chief Witt’s assertion that he had neither decided to drop the case nor to place the case on hold. The continuing reinvestigation could not reasonably anticipate the securing of an arrest or prosecution in the foreseeable future.

The statute cannot be read to mean that police records are exempt from public disclosure as long as any police officer is assigned to a case or as long as any police officer can imagine new steps to take in the investigation or can envision new leads to track down. The Department must have a real anticipation that either an arrest or prosecution will go forward in the foreseeable future. Even at the initial hearing in this case, Detective Smith could not provide the Court with any indication that he anticipated providing information to the State Attorney’s office that would result in an arrest or prosecution. And, there was nothing offered at the October 18, 1995, hearing to indicate that Detective Smith had come any closer to securing an arrest or prosecution, even though

television program. The Fourth District Court of Appeal court specifically observed in Barfield that the public and the press have a legitimate and important interest in reviewing police files.

In those cases where the courts have held that a criminal investigation remained "active," either prosecutorial action was imminent or the time from the date of the incident to the date of the request for access had been very brief. For example, in Barfield, at the time that request for access to the records was made the initial police investigation of the police shooting at issue was still underway and findings were scheduled to be forwarded to the state attorney's office for review and subsequent investigation by the grand jury within a matter of three weeks. In Florida Freedom Newspapers, Inc. v. Dempsey, 478 So. 2d 1128 (Fla. 1st DCA 1985), the First District held that access to investigative records could be denied where the investigation had been "in progress only four and a half months." In News-Press Publishing Co. v. Sapp, 464 So. 2d 1335 (Fla. 2d DCA 1985), access to investigative information was denied because the grand jury was scheduled to consider the incident just four days after the hearing on the public records complaint.

By contrast, in the instant case, at the time that the Court's disclosure order was entered in October there was no imminent consideration of this case by a grand jury, the state attorney, or any other law enforcement entity that could make an arrest or commence a prosecution.

Then, from the date of the October order, until the date that the State Attorney's Office and John Walsh sought to intervene to vacate the disclosure order, just days before the records were to be released, no apparent progress had been made on the investigation. The intervenors' motions stated that the Hollywood Police Department had turned over its files to the State Attorney's office for its review on January 26, 1996; that the review itself had not been completed by the date of the hearing on the intervenors' motions; and that the State Attorney had been unable to determine an

imminent arrest or prosecution in the foreseeable future was reasonably anticipated. The State represented that if the Court would stay its disclosure order, it would present the matter to the grand jury in the spring. Such an offer does not, however, show a good faith anticipation that a prosecution will be commenced in the foreseeable future. Rather, it simply reflects a desire to maintain the confidentiality of investigative records.

Mr. Walsh's interest in ensuring that the efforts of law enforcement officials are not impaired by a premature release of investigative files is certainly understandable, but his concerns do not supply the evidence that the Court requires to conclude that the records at issue are part of an active criminal investigation.

The motions to intervene in this case are granted, but the intervenors' requests that the order requiring the release of the Hollywood Police Department's records of its investigation of the murder of Adam Walsh are denied. The records shall be released to the public and the press on February 16, 1996, as previously ordered. Done and ordered in chambers at Fort Lauderdale, Broward County, Florida, this 21 day of May, 1996, nunc pro tunc

LERROY H. MOE

A TRUE COPY

Leroy H. Moe
Circuit Judge

Copies furnished to
all counsel of record.

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

THE MOBILE PRESS REGISTER, INC.,
and JAY GRELEN,

CASE NO: 95-06324 CACE (13)

Plaintiffs,

vs.

ORDER

RICHARD WITT, as Chief of Police of the
City of Hollywood, Florida,

Defendant.

THIS CAUSE having come before the Court for hearing on February 15, 1996, on the Motion of Michael J. Satz, State Attorney, Seventeenth Judicial Circuit, Broward County, Florida to Intervene and for Temporary and Permanent Stay of Order Requiring Production of Public Records and the Court having heard the proffer of same Movant Intervenor and having accepted same as testimony and having heard argument of counsel for all of the parties hereto and being otherwise fully advised in the premises,

It is thereupon ORDERED and ADJUDGED as follows:

The Motion of Movant Intervenor Satz for leave to intervene in this cause is hereby GRANTED, and the request of the Intervenor for the entry of a Temporary and Permanent Stay of Order Requiring Production of Public Records is hereby DENIED.

DONE AND ORDERED at the Broward County Courthouse, Fort Lauderdale, Florida, this ____ day of February, A.D. 1996.

LEROY H. MOE FEB 15 1996
TRUE COPY

HONORABLE LEROY H. MOE
JUDGE, CIRCUIT COURT

Copies Furnished:

*Thomas R. Julin, Esquire
Joel D. Cantor, Esquire
Kathleen Pellegrino, Esquire
Jerold I. Budney, Esquire
Ralph J. Ray, Jr., CASA*



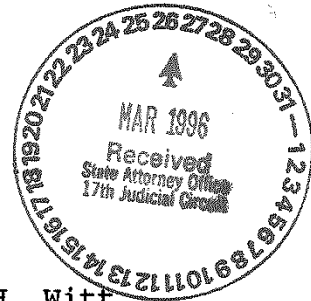
CITY of HOLLYWOOD, FLORIDA

POLICE DEPARTMENT • 3250 HOLLYWOOD BOULEVARD • ZIP 33021-6967

RICHARD H. WITT
Police Chief

March 25, 1996

Honorable Leroy H. Moe
Broward County Circuit Court
Broward County Courthouse
201 S.E. 6th Street
Room 930
Fort Lauderdale, FL 33301



In re: Mobile Press Register Inc. v. Richard H. Witt

Dear Judge Moe:

I am in receipt of the proposed order submitted by counsel for the Plaintiff in the above-referenced matter, and I am in disagreement as to counsel's interpretation of the facts and evidence as presented. For instance, Plaintiff's counsel suggests throughout the entire proposed order that it was the Court's ruling on October 18, 1995 to disclose the contents of the Adam Walsh investigative file on February 16, 1996. As you recall, this date was proposed by me on behalf of my client, thereby relieving the Court of the obligation to set a deadline for which the investigative records would have to be disclosed. Additionally, the proposed order seeks to embellish the Court's ruling as precedent. I do not believe that this Court ever suggested, as Plaintiff's counsel intimates, that if a substantial amount of time has elapsed since the date of the commission of a capital crime, that a defendant/police agency could not have a reasonable, good-faith anticipation of securing an arrest or prosecution in the foreseeable future. Regardless of the age of the case, investigative agencies routinely have a reasonable and good-faith anticipation of securing an arrest or prosecution in the foreseeable future with capital cases, as represented by the prosecution of Vincent Soddu, a 15 year-old homicide case which was tried before this Court in 1994.

There are several incorrect statements and inferences in the proposed order submitted by Plaintiff's counsel, and I hope that I will have the opportunity to review and agree upon the Order eventually submitted to the Court. The Order executed by this

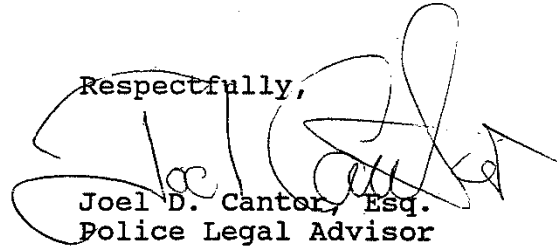


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Honorable Leroy H. Moe
March 25, 1996
Page 2

Court should embrace the actual events rather than incorrect statements and innuendos in the attempt to establish a premise for future public records litigation.

Respectfully,

A handwritten signature in black ink, appearing to read "Joel D. Cantor". The signature is written in a cursive style with a large, looping initial "J".

Joel D. Cantor, Esq.
Police Legal Advisor

JDC:ap

cc: Ralph J. Ray, Jr., Esq., Chief Assistant State Attorney
Tom Julin, Esq.

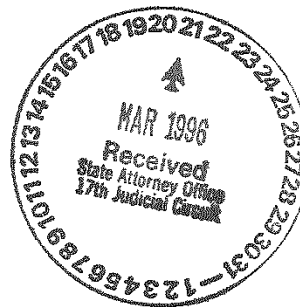
002077

Steel Hector & Davis
Miami, Florida

Thomas R. Julin
(305) 577-2810

March 20, 1996

The Hon. Leroy H. Moe
Broward County Circuit Court
Broward County Courthouse
201 Southeast 6th Street
Fort Lauderdale, FL 33301



Hand-Delivery

Mobile Press Register Inc. v. Witt
(Access to Adam Walsh Murder Investigation Records)

Dear Judge Moe:

Your order requiring the Hollywood Police Department to release the Adam Walsh files sets an important precedent under the Florida Public Records Law that could provide guidance in future cases.

Accordingly, I am submitting the enclosed proposed order. It sets forth a history of the case, the arguments made by the parties, the evidence offered by the parties in support of their respective positions, and the applicable legal authorities that support the conclusion that the files were required to be opened to the public in February.

Respectfully,

Attorney for The Mobile Press Register
and Jay Grelen

Enclosure

- cc: Joel Cantor, Esq. (w/enc.)
Jerry Budney, Esq. (w/enc.)
Kathleen Pellegrino, Esq. (w/enc.)
L. Martin Reeder, Esq. (w/enc.)
Michael Eric Christiansen, Esq. (w/enc.)
George J. Terwilliger, III, Esq. (w/enc.)
Ralph J. Ray, Jr., Esq. (w/enc.)

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In Florida, a criminal investigation is considered "active" and information related to it may be withheld from the public only so long as the investigation is "is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future." § 119.07(3)(d)(2), Fla. Stat. (1993). Generally, a defendant cannot have a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future once a substantial amount of time has elapsed from the date of the crime. Section 119.07(3)(d) is not a broad exemption for all police investigative records regarding unsolved crimes. Rather, it provides a narrow exemption that exists only where the law enforcement agency that has possession of the records can show that the information in the records is related to an ongoing investigation that is continuing, the investigation is being conducted with a reasonable, good faith anticipation of securing an arrest or prosecution, and the anticipated arrest or prosecution will take place in the foreseeable future. The burden of proof with respect to each of these factors rests squarely on the defendant. Barfield v. Fort Lauderdale Police Department, 639 So. 2d 1012, 1015 (Fla. 4th DCA 1994).

As of the date of the October 18, 1995, hearing, more than 14 years had elapsed from the date of the crime, the investigation had been dormant for many years before it was re-activated, and no arrest or prosecution had been initiated despite reinvestigation of the case by a crack detective and his cold case squad. Accordingly, the Court concluded that Chief Witt could not reasonably anticipate beyond February 16, 1996, that he could secure an arrest or prosecution in the foreseeable future and ordered Chief Witt to produce the records by that date.

Although this may be the first order by a Florida court requiring a law enforcement agency to open its files to the public concerning an unsolved murder, the order was necessitated by the fundamental proposition that the Public Records Law is to be construed in favor of "open

government to the extent possible in order to preserve our basic freedom, without undermining significant governmental functions.” Bludworth v. Palm Beach Newspapers, Inc., 476 So. 2d 775, 779 (Fla. 4th DCA 1985), review denied, 488 So. 2d 67 (Fla. 1986). The act “is to be construed liberally in favor of openness, and all exemptions from disclosure construed narrowly and limited to their designated purposes.” Barfield, 639 So. 2d at 1014. Courts, in fact, have a “duty to construe exemptions narrowly.” Id. at 1017. “[W]hen in doubt the courts should find in favor of disclosure rather than secrecy.” Bludworth, 476 So. 2d at 780 n. 1.

The Fourth District’s decision in Barfield specifically anticipated a case such as this. In affirming an order that certain police records could be kept confidential because an ongoing investigation was continuing, the court observed: “A different situation would be presented if an affirmative decision is made to drop the investigation or put it on indefinite hold.” 639 So. 2d at 1017. That different situation is this case, notwithstanding Chief Witt’s assertion that he had neither decided to drop the case nor to place the case on hold. The continuing reinvestigation could not reasonably anticipate the securing of an arrest or prosecution in the foreseeable future.

The statute cannot be read to mean that police records are exempt from public disclosure as long as any police officer is assigned to a case or as long as any police officer can imagine new steps to take in the investigation or can envision new leads to track down. The Department must have a real anticipation that either an arrest or prosecution will go forward in the foreseeable future. Even at the initial hearing in this case, Detective Smith could not provide the Court with any indication that he anticipated providing information to the State Attorney’s office that would result in an arrest or prosecution. And, there was nothing offered at the October 18, 1995, hearing to indicate that Detective Smith had come any closer to securing an arrest or prosecution, even though

he had been afforded more than an additional four months to reinvestigate the case. But, in an excess of caution recognizing that the Department had devoted extraordinary resources to launch and pursue an elaborate reinvestigation of this "cold case," the Court allowed the Department until 12 noon on Friday, February 16, 1996, to make all of the records sought by the plaintiffs available for public inspection and copying.

In ordering the release of the records, the Court did not question the propriety of the actions of the Hollywood Police Department in devoting its resources to attempting to solve a murder that remains unsolved. Indeed, Chief Witt perhaps should be applauded for asking one of his detectives to devote more than a year of valuable police time to reexamining this important case. But the fact that a detective is continuing to look at and reevaluate a case on an indefinite basis cannot create a reasonable anticipation of securing an arrest nor prosecution in the foreseeable future. The longer an investigation goes on, the less likely it seems that the investigation ever could result in an arrest or prosecution. Witnesses lose their memories. Suspects die. Evidence decays or disappears. As the investigation goes on and on, it becomes less, not more, likely that even if the case were "solved" in some abstract sense, there would be adequate evidence upon which the state attorney could be persuaded that he should file charges and devote resources to a prosecution in which he would be required to show that the person charged was guilty beyond a reasonable doubt.

The time clearly had come to allow the public and the press to review this file. Public access to an investigative file holds out the hope that widespread dissemination of information about the case will turn up new leads that could not be found in any other manner. Indeed, John Walsh himself has made a career of solving crimes through dissemination of information on a national

television program. The Fourth District Court of Appeal court specifically observed in Barfield that the public and the press have a legitimate and important interest in reviewing police files.

In those cases where the courts have held that a criminal investigation remained "active," either prosecutorial action was imminent or the time from the date of the incident to the date of the request for access had been very brief. For example, in Barfield, at the time that request for access to the records was made the initial police investigation of the police shooting at issue was still underway and findings were scheduled to be forwarded to the state attorney's office for review and subsequent investigation by the grand jury within a matter of three weeks. In Florida Freedom Newspapers, Inc. v. Dempsey, 478 So. 2d 1128 (Fla. 1st DCA 1985), the First District held that access to investigative records could be denied where the investigation had been "in progress only four and a half months." In News-Press Publishing Co. v. Sapp, 464 So. 2d 1335 (Fla. 2d DCA 1985), access to investigative information was denied because the grand jury was scheduled to consider the incident just four days after the hearing on the public records complaint.

By contrast, in the instant case, at the time that the Court's disclosure order was entered in October there was no imminent consideration of this case by a grand jury, the state attorney, or any other law enforcement entity that could make an arrest or commence a prosecution.

Then, from the date of the October order, until the date that the State Attorney's Office and John Walsh sought to intervene to vacate the disclosure order, just days before the records were to be released, no apparent progress had been made on the investigation. The intervenors' motions stated that the Hollywood Police Department had turned over its files to the State Attorney's office for its review on January 26, 1996; that the review itself had not been completed by the date of the hearing on the intervenors' motions; and that the State Attorney had been unable to determine an

imminent arrest or prosecution in the foreseeable future was reasonably anticipated. The State represented that if the Court would stay its disclosure order, it would present the matter to the grand jury in the spring. Such an offer does not, however, show a good faith anticipation that a prosecution will be commenced in the foreseeable future. Rather, it simply reflects a desire to maintain the confidentiality of investigative records.

Mr. Walsh's interest in ensuring that the efforts of law enforcement officials are not impaired by a premature release of investigative files is certainly understandable, but his concerns do not supply the evidence that the Court requires to conclude that the records at issue are part of an active criminal investigation.

The motions to intervene in this case are granted, but the intervenors' requests that the order requiring the release of the Hollywood Police Department's records of its investigation of the murder of Adam Walsh are denied. The records shall be released to the public and the press on February 16, 1996, as previously ordered. Done and ordered in chambers at Fort Lauderdale, Broward County, Florida, this ____ day of _____, 1996, nunc pro tunc.

Leroy H. Moe
Circuit Judge

Copies furnished to
all counsel of record.



MICHAEL J. SATZ
STATE ATTORNEY
SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA
BROWARD COUNTY COURTHOUSE
201 S.E. SIXTH STREET
FORT LAUDERDALE, FLORIDA 33301-3360

PHONE (954) 831-6955

February 21, 1996

Honorable Leroy H. Moe
Circuit Court Judge
930 Broward County Courthouse
201 S.E. Sixth Street
Fort Lauderdale, Fl 33301

Dear Judge Moe:

Please find enclosed a copy of a proposed Order concerning the result of the hearing heard by your Honor on Thursday, February 15, 1996, regarding *The Mobile Press Register, Inc and Jay Grelen vs. Richard Witt*, reflecting the Courts ruling in this matter.

By copy of this letter to the attorney's for the all of the parties stated herein below, I am sending them a copy of this proposed Order for their consideration.

Sincerely,

A handwritten signature in cursive script that reads "Ralph J. Ray, Jr.".

RALPH J. RAY, JR.
Chief Assistant State Attorney

RJR,Jr:pa

cc: Thomas R. Julin, Esquire
cc: Joel D. Cantor, Esquire
cc: Kathleen Pellegrino, Esquire
cc: Jerold I. Budney, Esquire

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND
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ORDER

RICHARD WITT, as Chief of Police of the
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It is thereupon ORDERED and ADJUDGED as follows:

The Motion of Movant Intervenor Satz for leave to intervene in this cause is hereby GRANTED, and the request of the Intervenor for the entry of a Temporary and Permanent Stay of Order Requiring Production of Public Records is hereby DENIED.

DONE AND ORDERED at the Broward County Courthouse, Fort Lauderdale, Florida, this _____ day of February, A.D. 1996.

HONORABLE LEROY H. MOE
JUDGE, CIRCUIT COURT

Copies Furnished:

Thomas R. Julin, Esquire
Joel D. Cantor, Esquire
Kathleen Pellegrino, Esquire
Jerold I. Budney, Esquire
Ralph J. Ray, Jr., CASA

IN THE CIRCUIT COURT FOR THE 17TH
JUDICIAL CIRCUIT OF FLORIDA, IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: 95-06324 CACE (13)

THE MOBILE PRESS REGISTER, INC.,
And JAY GRELEN,

Plaintiffs,

vs.

RICHARD WITT, as chief of police of the
City of Hollywood, Florida,

Defendants.

NOTICE OF HEARING

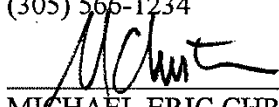
TO: See attached mailing list

YOU ARE HEREBY NOTIFIED that George Terwilliger's *Verified Motion for Admission Pro Hac Vice* and John and Reve Walsh's *Motion to Intervene* will be called for hearing before the HONORABLE LEROY H. MOE, Judge of the above-styled Court, at 201 Southeast Sixth Street, Room 960, Fort Lauderdale, Florida 33301 on Thursday, February 15, 1996 at 11:00 A.M., or as soon thereafter as same may be heard.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the attached mailing list either by fax or hand delivery, this 14 day of February, 1996.

MASTRIANA & CHRISTIANSEN, P.A.
Attorneys for John and Reve Walsh
2750 North Federal Highway
Fort Lauderdale, FL 33306
(305) 566-1234

BY:



MICHAEL ERIC CHRISTIANSEN
Florida Bar No. 217794

SERVICE LIST

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Edward M. Mullins, Esquire
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Miami, Florida 33132-1693
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Ralph J. Ray, Jr., Esquire
Chief Assistant State Attorney for
Michael J. Satz, State Attorney
201 Southeast Sixth Street
Fort Lauderdale, Florida 33301
By Hand Delivery

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

THE MOBILE PRESS REGISTER, INC.
and JAY GRELEN, et al.,

Plaintiff,

v.

RICHARD WITT, as Chief of Police of
City of Hollywood, Florida,

Defendant.

Case No. 95-06324 CACE

Division 13

A TRUE COPY
ROBERT E. LOCKWOOD
FEB 13 1996

**MEMORANDUM OF LAW IN SUPPORT OF
EMERGENCY MOTION TO INTERVENE AND FOR
TEMPORARY AND PERMANENT STAY OF ORDER REQUIRING PRODUCTION
OF PUBLIC RECORDS**

COMES NOW Movant, Michael J. Satz, as State Attorney of the Seventeenth Judicial Circuit, Broward County, Florida, by and through undersigned counsel, and files this Memorandum of Law in Support of Emergency Motion to Intervene and for Temporary and Permanent Stay of Order Requiring Production of Public Records filed in the above-styled cause yesterday, February 12, 1996. In support thereof, Movant states:

1. The State Attorney, as a constitutional and statutory officer, has the responsibility to investigate and prosecute violations of the criminal laws of this State. Doe v. State, 634 So.2d 613, 615 (Fla. 1994). The State Attorney's discretion in deciding whether or not to prosecute is absolute. State v. Johns, 651 So. 2d 1227-1228 (Fla. 2d DCA 1995); State v. Cain, 381 So. 2d 1361, 1367 (Fla. 1980).

2. As the release of the Hollywood Police Department's Adam Walsh investigative

file, pursuant to this lawsuit, would seriously impede valid investigative leads still being pursued and the State Attorney's review of the file for possible prosecution, the State Attorney should be allowed full participation in this case as an intervenor. Askew v. Green, Simmons, Green and Hightower, 348 So. 2d 1245, 1247 (Fla. 1st DCA 1977).


3. The State of Florida stands to lose valuable rights to an effective and untainted potential prosecution if the Hollywood Police Department's file is made public record and intervention by the State Attorney should therefore be allowed in the interests of justice. Schiller v. Schiller, 625 So. 2d 856, 860 (Fla. 1st DCA 1993). Based on the Emergency Motion, this Court is entitled to conclude that the State Attorney has demonstrated "...sufficient equities or other special reasons to justify (his) participation in the proceedings". Cole v. Glynn, 397 So. 2d 996, 997 (Fla. 4th DCA 1981).

4. The Fourth District Court of Appeal, in affirming this Honorable Court's denial of disclosure in a case very similar to that sub judice, stated that "...so long as the investigation is proceeding in good faith, and the State Attorney or grand jury will reach a determination in the foreseeable future, the requested information is not subject to disclosure". Barfield v. City of Fort Lauderdale Police Department, 639 So. 2d 1012, 1017 (Fla. 4th DCA 1994), emphasis added. "Put differently, we construe the phrase 'anticipation of an arrest or prosecution' to mean that an arrest or prosecution may result, not that it must". Id.


WHEREFORE, Movant, Michael J. Satz, as State Attorney of the Seventeenth Judicial Circuit, Broward County, Florida, by and through undersigned counsel, files this Memorandum of Law in Support of Emergency Motion to Intervene and for Temporary and Permanent Stay of Order Requiring Production of Public Records filed in the above-styled cause yesterday, February 12, 1996.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by FAX this 13th day of February, A.D. 1996, to be followed by U.S. Mail Delivery, to: Thomas R. Julin, Esquire and Edward M. Mullins, Esquire, Counsellors for Plaintiffs at: 200 W. Biscayne Boulevard, 40th Floor, Miami, Florida 33131-2395; Joel D. Cantor, Esquire, Counsel for Defendant at: 3250 Hollywood Boulevard, Hollywood, Florida 33021 and to: Kathleen Pellegrino, Esquire, Counsel for Sun-Sentinel Company, at: 200 E. Las Olas Boulevard, Suite C10, Fort Lauderdale, Fl 33301 and to: Jerold I. Budney, Esquire, Counsel for The Miami Herald Publishing Company at: One Herald Plaza, Miami, Florida 33132-1963.

Michael J. Satz
State Attorney



RALPH J. RAY, JR.,
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Telephone: (305) 831-7913

IN THE CIRCUIT COURT FOR THE 17TH
JUDICIAL CIRCUIT OF FLORIDA, IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: 95-06324 CACE (13)

THE MOBILE PRESS REGISTER, INC.
And JAY GREEN,

Plaintiffs,

vs.

RICHARD WITT, as chief of police of the
City of Hollywood, Florida,

Defendants

VERIFIED MOTION FOR ADMISSION PRO HAC VICE


Pursuant to Rule 2.060(b) of the Florida Rules of Judicial Administration, George Terwilliger moves this Court for admission for the purpose of practicing before it in the above-captioned case. As grounds for this motion, movant states the following:

1. George Terwilliger is an active member in good standing of the Bars of the District of Columbia and Vermont, as well as the U. S. Supreme Court and several lower federal courts. Within the preceding three years, Mr. Terwilliger has not made any motions for admission to appear in Florida.

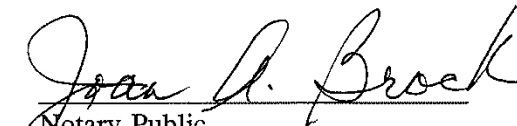
2. Your Intervenor, John Walsh, has requested that movant assist in his representation of this case.

3. Michael Eric Christiansen will act as one of the attorneys of record for the Plaintiff and will serve as local counsel in this case. Mr. Christiansen's Florida Bar Number is 217794.

I hereby verify that the above is true and correct this 13th day of February, 1996.


George J. Terwilliger, III
McGuire, Woods, Battle and Booth, L.L.P.
1627 Eye Street, NW
Washington, DC 20006
(202) 857-1704
(202) 857-1737 Fax

Subscribed to and sworn before me this 13th day of February, 1996


Notary Public


Joan A. Brock
Notary Public, District of Columbia
My Commission Expires Sept. 30, 1999

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Verified Motion for Admission Pro Hac Vice has been furnished to the attached service list either by fax or hand delivery, this 14 day of February, 1996.

MASTRIANA & CHRISTIANSEN, P.A.
Attorney's for John and Reve Walsh
2750 North Federal Highway
Fort Lauderdale, Florida 33306
(305) 566-1234

BY:



MICHAEL ERIC CHRISTIANSEN
Florida Bar No. 217794

SERVICE LIST

Thomas R. Julin, Esquire and
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Michael J. Satz, State Attorney
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By Hand Delivery

IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL COURT OF FLORIDA, IN
AND FOR BROWARD COUNTY, FLORIDA

Case 95-06324 CACE (13)

THE MOBILE PRESS REGISTER, INC.,)
et al.)
)
Plaintiffs,)
)
v.)
)
RICHARD WITT, Chief of Police)
of the City of Hollywood, Florida,)
)
Defendant.)
_____)

MOTION TO INTERVENE

John and Reve Walsh ("Movants"), by and through counsel, hereby move to intervene in this matter pursuant to Rules 1.210 and 1.230 of the Florida Rules of Civil Procedure. As the parents of Adam Walsh, Movants have a right to be heard in this matter under Article 1, § 16(b) of the Florida Constitution. Movants seek an opportunity to be heard in this proceeding in order to urge the court to ensure that investigation of their son's death is not compromised through disclosure of the investigative file to the media. Movants are aware of both the current status of the investigation and the consideration of the matter by the Broward County State Attorney's Office and of the fact that there is an active, ongoing investigation in the Adam Walsh case.

FACTS

1. Movants are the next of kin to the deceased Adam Walsh, who was their son. See Affidavit of John Walsh attached as Exhibit A (hereinafter "Walsh Affidavit"). The Walshes have maintained knowledge concerning the status of the investigation into the murder of their son through contact with the appropriate authorities. Id. at ¶ 6. The Walshes have also assisted that investigation by providing to the police information that has been volunteered to them on a regular basis over a period of time.

2. In January of this year, the Walshes learned that after it had initially opposed the release of the Adam Walsh investigative file pursuant to this lawsuit, the Hollywood Police Department had agreed, in October 1995, to make this file available in February 1996. The Walshes also learned that the police department through its chief, Richard Witt, planned to publicly identify the person they believed responsible for the Adam Walsh homicide at the time the file was to be released. See Walsh Affidavit at ¶ 7. Upon learning that the police department had not consulted with the Broward County State Attorney's Office, the Walshes asked for an opportunity to meet and discuss this development with that office. Id. at ¶ 9. The Broward County State Attorney's Office, of course, is jurisdictionally responsible for any prosecution of the Adam Walsh homicide. See FLA. STAT. ANN. § 27.02 (West 1996).

3. The Movants met with the State Attorney's Office on January 29, 1996. See Walsh Affidavit, at ¶ 9. At that meeting, the Walshes learned that many of the facts which had been developed in the case over the last several months were not known to the State Attorney's Office. Moreover, the Walshes also learned that the prosecutor's office had not been consulted regarding the decision to release the file or to name a suspect in the case. Since that meeting, the Walshes also learned that the prosecutor's office has since requested and received the investigative case file, and is actively involved in pursuit of the investigation. Id. at ¶ 10. The State Attorney's Office has told Movants that there are valid investigative leads being pursued or yet to be pursued, and that at the conclusion of a thorough investigation, the State Attorney's Office will consider bringing the matter before the grand jury for prosecution of the responsible individual or individuals. Id.

ARGUMENT

4. Because the unsealing of the Adam Walsh investigative file could adversely affect further investigation and/or prosecution, Movants respectfully submit that they have a substantial interest regarding the unsealing of the file, as well as a constitutional right to be heard as the parents of Adam Walsh. An interest which would entitle a party to intervene must be of a direct and immediate character such that the intervenor will either gain or lose by direct legal operation and effect of a judgment. Castro Convertible Corp. v. Castro, 596

F.2d 123, 125 (5th Cir. 1979). Although permission to intervene is a matter for the court's discretion, the aim of the rules of civil procedure is to allow liberal joinder of parties.

Miracle House Corp. v. Haige, 96 So.2d 417, 418 (Fla. 1957); National Wildlife Fed'n, Inc. v. J.T. Glisson, 531 So.2d 996, 998 (Fla. 1st DCA 1988). The decision to release this file constitutes a crucial stage in the case and as such the Movants have a right to assert their objections to the disclosure. The release of the investigative file would have irreparable consequences on the potential for apprehending the perpetrator in the murder of the Movants' son. The Movants have a clear interest in preventing this injustice and should be allowed to intervene in this matter.

5. In addition, the release of the investigative file will have important repercussions on the State Attorney's ability to initiate prosecution in the Adam Walsh homicide. Therefore, the Movants further submit that the Broward County State Attorney's Office was, and is, a necessary party in interest in this matter where its lawful, jurisdictional responsibilities are clearly implicated by any decision to permit the disclosure of the file to the news media. See Blue Dolphin Fiberglass Pools of Florida, Inc. v. Swim Industries Corp., 597 So.2d 808, 809 (Fla. 2d DCA 1992) ("A person whose rights and interests are to be affected by a decree and whose actions with reference to the subject matter of litigation are to be controlled by a decree is a necessary party to the action and the trial court cannot proceed without that person.")

6. The fact that the plaintiffs chose to name only the Hollywood Police Department as a defendant in this suit does not determine whether the interests of all parties necessary to resolve the matter at issue are represented in the case. See In re Adoption of a Minor Child, 593 So.2d 185, 189 (Fla. 1991) (noting that intervention allows persons not originally named in a lawsuit to protect their interests in subject matter). The State Attorney's Office has a lawful and well recognized function to determine whether or not to initiate a prosecution, whether before or after an arrest by a law enforcement official or agency. See FLA. STAT. ANN. § 27.02 (West 1996); see also State v. Johns, 651 So.2d 1227, 1227-28 (Fla. 2d DCA 1995); State v. Cain, 381 So.2d 1361, 1367 (Fla. 1980) ("the discretion of a prosecutor in deciding whether and how to prosecute is absolute"). Thus, resolution of its interests is necessary to the just resolution of the matters put in issue by plaintiffs' complaint. In addition, as the next of kin to the victim in this homicide, and pursuant to Florida's constitutional and statutory victim's rights provisions cited above, the Movants have a right to be heard as to this matter. The Movants support the prosecutor's motion to intervene and its position that disclosure of the file is subject to the criminal investigative information exemption from the disclosure requirements of the Act.

7. It is clear from the language of the statute in question, and the court decisions interpreting and applying that statute, that the fundamental purpose of the criminal investigative information exemption from disclosure is to avoid the very situation that has been created here: that is, a contest between the responsible investigative authorities and the media over access to investigative information. FLA. STAT. ANN. § 119.07(3)(d) (West

1996). The exemption authorizes the authorities to withhold investigative information so long as they are pursuing a case that may result in an arrest or prosecution. The role of the court when confronted with a criminal information exemption issue is to determine if the facts support a showing that the authorities' representations that the case is "active", as that statutory term is used and applied, are made in good faith. See Barfield v. The City of Fort Lauderdale Police Dept., 639 So.2d 1012 (Fla. 4th DCA 1994); Florida Freedom Newspapers, Inc. v. Dempsey, 478 So. 2d 1128 (Fla. 1st DCA 1985); News-Press Publishing Co. v. Sapp, 464 So. 2d 1335 (Fla. 2d DCA 1985).

8. The compelling similarity of the circumstances in Barfield to the instant case is instructive. In Barfield, the respondent police agency opposed disclosure and asserted that a criminal investigation was underway and, when that investigation was completed, the findings would be forwarded to the State Attorney's Office for review and subsequent investigation by the grand jury. Barfield, 639 So.2d at 1014. The responsible investigator for the police agency in Barfield stated that he did not know whether he had a reasonable good faith anticipation of securing an arrest or prosecution in the investigative matter in that case. Id. In the instant case, the investigative file has been forwarded to the State Attorney's Office, the State Attorney's Office is actively investigating and giving consideration to prosecution of the matter, and it believes that disclosure of the file could compromise its efforts. As in Barfield, the authorities cannot say with certainty that they anticipate securing an arrest or prosecution of a culpable individual at this time. However, as the Barfield court makes abundantly clear, the phrase "anticipation of an arrest or

prosecution" means only that an arrest or prosecution may result, not that it is a certainty.

Id. at 1017. As the Barfield court succinctly stated:

[A]s can be seen from the historical discussion [in that decision], the purpose of the "active criminal investigative information" exception is to prevent premature disclosure of information during an ongoing investigation being conducted in good faith by criminal justice authorities.

Id. at 1017.

It is precisely such a premature disclosure that Movants oppose in this case.

9. As the Barfield court recognized, "we do not believe the Legislature intended that confidentiality be limited to investigations where the outcome, and an arrest or prosecution, was a certainty, or even a probability." Barfield, 639 So.2d at 1016-17 (emphasis added). The reason for that construction is, of course, obvious. The very purpose of an investigation is to determine if there are sufficient facts of record to support an arrest and/or a prosecution. A requirement that there be a prospective characterization of the results of an investigation would be an illogical and unsound basis for the exemption. Whether or not there is a prime suspect or suspects, or even identifiable suspect is not determinative of the issue of whether an investigation is "active." See Dempsey, 478 So.2d at 1131. As the Barfield court stated after reviewing the Dempsey decision:

This decision indicates the police, so long as they are acting in good faith, should be given substantial leeway in conducting an ongoing investigation even where there may be no immediate prospect of an arrest or prosecution.

Barfield, 639 So.2d at 1016.

Thus, the determinative issue in applying the exemption is not whether the police or prosecutors can state that a suspect will be arrested or prosecuted, but rather whether these authorities can represent in good faith that they are continuing to conduct an active investigation.¹

¹ In Plaintiffs' motion for an order requiring production of public records in this case, they assert that they "do not believe that the essential facts of this case are in dispute" (Plaintiffs' Motion, at 2.) Movants dispute the facts as presented by the plaintiffs. For example, Plaintiffs assert that the investigation "has been dormant for an extended period." (*Id.* at 2). If the court were to inquire of the police department and the prosecutor, it would learn that far from being dormant, the case has been frenetically pursued during the last several months, largely in response to the artificial deadline created by the February 16 presumptive release date agreed to by police department officials. Plaintiffs also assert that "six months of investigation by the cold case squad has not resulted in sufficient evidence to make an arrest or to commence an investigation." The internal inconsistency of that very statement, *i.e.* that an investigation has not resulted in sufficient evidence to commence an investigation, could certainly give the court significant pause in considering the accuracy of Plaintiffs' factual averments.

Unsupported by any citation to authority, Plaintiffs in their motion argue: "Once the case was so classified [as a cold case], the investigation ceased to be active and the records became public." This conclusion of law strains credulity even when considered under the license granted by zealous advocacy.

Finally, Plaintiffs posit in their motion that there is no imminent consideration of this case by the grand jury, "the State Attorney, or any other law enforcement entity that could make an arrest or commence a prosecution." Whatever the merits of that argument, it is now clear that the factual circumstances are changed and that the case is, in fact, under the current consideration of the State Attorney.

10. Several public policy considerations support the construction and application of the criminal investigative information exemption to prevent disclosure. The exemption recognizes that the public interest in the apprehension and conviction of criminals, especially violent criminals, is a matter of paramount importance to the public. Clearly, there is not an even balance between this consideration and the media's statutory right to review public records. The statute should not be read to permit the media to second guess the judgment of the police and prosecutors as to whether an investigation, no matter what its age as long as it is within the statute of limitations, deserves the devotion of resources to continue to be investigated and/or prosecuted. This factor is especially important in regard to capital crimes. A fugitive from a capital crime should be offered no quarter because he or she has successfully evaded capture for a period of time or for some period stymied the police investigation. While the court need not decide the issue in this case, public policy considerations do beg the question as to whether any unsolved capital crime should be construed as inactive for purposes of disclosure.

11. In addition, public policy should militate against creating artificial deadlines for the closure of the investigation of a crime. The public, the prosecutorial authorities, and a putative defendant all have a vested interest in a thorough and complete investigation. Such an investigation is one that is concluded in a time frame dictated by the needs of the investigation, not by the demands of a third party arising from a Sunshine Act lawsuit.

From common experience, we know that an unnecessary rush to judgment can produce injustice.


12. Finally, public policy considerations as applied to this particular case should militate against premature disclosure of the investigative file. The death of Adam Walsh is one of the most notorious homicides that have occurred in Florida, and indeed, in the country. Public confidence in the criminal justice system, an important societal interest standing alone, will not be enhanced by any premature investigative disclosure of the file that may compromise bringing closure to the case through an arrest and/or prosecution. To the extent that the Plaintiffs assert the need for the file information to fulfill a purported public interest in making judgments regarding the police investigation, it can easily be recognized that that judgment will, at some time, be had - based on the results of a complete investigation. Preserving the integrity of the investigative file at this point only postpones, but does not defeat, that event. In any case, the public interest in closing the case with an arrest or prosecution is clearly paramount to such a claim.

13. As the parents of the victim in this case, Mr. and Mrs. Walsh assiduously seek justice for their son. Other victims of crime similarly situated will look to the outcome of this matter for comfort that they might find justice in their own cases. The public and such victims share a compelling interest in the successful closure of the investigations of the offenses wherein they were victimized. In this case and in these circumstances, the statute in question does not compel disclosure. Rather, the law


recognizes a legitimate basis for exemption from disclosure. The facts, if fully known to the court, render this an easy case to decide in favor of maintaining the exemption. The fact that the Hollywood Police Department, as only one of several parties in interest here, opted not to contest disclosure should not override the compelling interests of the prosecutor, the victim, and the public in maintaining the integrity of this investigative file further.

WHEREFORE, for the reasons stated herein, Movants respectfully request that they be heard in this matter and that the court enter an ORDER denying access to the file presently and for such other relief as the court deems necessary and appropriate.

Respectfully submitted,



George J. Terwilliger, III
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Washington, D.C. 20006



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Florida Bar #217794

THE CIRCUIT COURT FOR THE
17TH JUDICIAL COURT OF FLORIDA,
IN AND FOR BROWARD COUNTY, FLORIDA

Case 95-06324 CACE (13)

The Mobile Press Register, Inc., et al.

Plaintiff

v.

Richard Witt, Chief of Police
of the City of Hollywood, Florida

Defendant

AFFIDAVIT OF JOHN WALSH

I, John Walsh, being duly sworn to state as follows:

1. I am submitting this affidavit on behalf of myself and my spouse, Reve Walsh, in connection with our motion to intervene in the captioned case. Our motion seeks to have the Court's order releasing the investigative file of the Hollywood Police Department concerning the investigation of the death of Adam Walsh to the media stayed in the interests of justice.
2. Mrs. Walsh and I are the next of kin to the deceased Adam Walsh. Adam Walsh was our son. Adam was kidnapped in the Hollywood, Florida in 1981 and subsequently killed. As the next of kin I have endeavored to remain apprised and aware of the progress of the investigation and any potential prosecution of any individual responsible for my son's death.
3. Up to this time, I have not spoken publicly in any detail concerning the position of Mrs. Walsh and me regarding the handling of the investigation of Adam's death, the details arising from that investigation as known to us or to the issue of whether the file containing the results of the investigation should be released to the plaintiff newspapers.
4. We have remained silent despite some newspaper articles containing slanderous innuendo which invade our privacy and maliciously attack our personal character.
5. Our privacy interests are important to us for reasons of personal security and the health and well-being of ourselves and our children. Mrs. Walsh and I have been married for 24 years and have had three children subsequent to Adam's death. I have chosen to dedicate both my professional and personal endeavors to aiding lawful authorities in

EX "A"

002109


finding and apprehending dangerous fugitives and to aiding victims and potential victims of violent crime. The high degree of visibility I have had in this work has resulted in numerous and, according to the appropriate authorities, credible death threats against me, my wife and my children. This has necessitated that I take appropriate security precautions for both myself and my family. One of the plaintiff newspapers in this case invaded our privacy and jeopardized our security by publishing both photographic and written information concerning our home and the physical security of our property.

6. Approximately two years ago we were informed that the investigation into our son's death was being assigned to a new detective at the Hollywood Police Department who was going to review the entire case file and reinvigorate the investigative effort. Since that time we have been provided with information by the police department which includes new information from existing witnesses, new information from new witnesses, further information about existing suspects and new information about new suspects. Because we seek to preserve the integrity of the investigative information so as not to jeopardize further investigation and/or prosecution, we will refrain from disclosing in any detail the information that has been provided to us by the police.
7. I requested and had a meeting with the Hollywood Police Department on January 16, 1996. At that meeting, Hollywood Police Chief Richard Witt, the defendant in this action, informed us that his department had agreed in October of 1995 to settle this Sunshine Act lawsuit by releasing the investigative file on February 16, 1996. At the January 16 meeting, the police chief told us he intended to release the file and at the same time to publicly identify the person he believed responsible for Adam's murder. Counsel with me at that meeting thereupon asked the Chief of Police if he had consulted with the responsible prosecutor regarding the release of the file and the public identification of a suspect. Chief Witt said he had not.
8. At that same January 16 meeting we were provided by the detective responsible for the case a summary of his recent investigative activity and an outline of many significant investigative leads to be pursued.
9. Following that meeting I requested and received an opportunity to meet with Broward County States Attorney Michael Satz, and Chief Deputy States Attorney Ralph Ray, which meeting occurred on January 29, 1996. At that meeting, I provided to Mr. Satz and Mr. Ray the information related above concerning our meeting with Chief Witt. As the next of kin to the victim in the Adam Walsh case, I asked the Broward County States Attorney to review the investigative file as the responsible prosecutor in the case before the case was for all intents and purposes closed by Chief Witt by the unsealing of the file. In discussions with the prosecutors, it was apparent that there were recent investigative results known to the police department that had not been made available to the prosecutor's office as of January 29.
10. I have thereafter been informed by the prosecutor's office that the prosecutor's office has received the case file and that they have concluded that there is additional investigatory work to be done in Adam's case. They have also informed us that they would consider

prosecution of the case based on the results of further investigation. In addition, they have informed us that the State's Attorney's office believes that release of the file could compromise further investigation and/or prosecution in this capital criminal case.

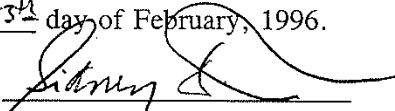
11. I have asked only one thing of the prosecutor and ask only one thing of this Court, to do whatever the law allows to permit the opportunity that there might be justice done for the murder of my son.

Dated at New Orleans city in the State of Louisiana, this 13th
day of February, 1996.



John Walsh

Subscribed to and sworn before me this 13th day of February, 1996.




Notary Public

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Intervene has been furnished to the attached service list either by fax or hand delivery, this 14 day of February, 1996.

MASTRIANA & CHRISTIANSEN, P.A.
Attorney's for John and Reve Walsh
2750 North Federal Highway
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(305) 566-1234

BY:



MICHAEL ERIC CHRISTIANSEN
Florida Bar No. 217794

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Chief Assistant State Attorney for
Michael J. Satz, State Attorney
201 Southeast Sixth Street
Fort Lauderdale, Florida 33301
By Hand Delivery

***** -COMM. JOURNAL- ***** DATE FEB-14-1996 ***** TIME 14:26 *** P.01

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***** (FAX-900 V1.35) ** -STATE ATTY

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

THE MOBILE PRESS REGISTER, INC. :
and JAY GRELEN, et al.,

CASE NO: 95-06324 CACE

Plaintiffs, :

DIVISION: 13

vs.

RICHARD WITT, as Chief of Police of
City of Hollywood, Florida :

Defendant, :

A TRUE COPY
ROBERT E. LOCKWOOD
FEB 12 1996

**Emergency Motion To Intervene and for
Temporary and Permanent Stay of Order Requiring Production of Public Records**

Michael J. Satz, State Attorney, Seventeenth Judicial Circuit, Broward County, Florida, by and through the undersigned Assistant State Attorney, moves this Court pursuant to Rule 1.230 of the Florida Rules of Civil Procedure to intervene in this cause as a party defendant and be heard as to the issues herein prior to the implementation of this Court's Order Requiring Production of Public Records dated October 24, 1995, and as grounds says:

1. Intervenor Movant is, and at all times material hereto was, the duly elected State Attorney, Seventeenth Judicial Circuit, Broward County, Florida;
2. Intervenor Movant is charged with the constitutional and statutory duties of prosecuting all misdemeanor and felony crimes before the courts of this circuit and acting as legal advisor to the Grand Jury, whenever required, and preparing bills of indictment; (Fla. Const. Art V. & 17, Ch. 27, FSA)
3. Murder in the first degree is a capital offense and must be charged by

presentment and indictment by grand jury; (Const. Art. I, 115).

4. The kidnaping of Adam Walsh in Broward County, Florida and the subsequent homicide of said Adam Walsh could constitute murder in the first degree, a capital offense, prosecutable in Broward County, Florida;
5. Intervenor Movant should have been joined in this cause as an indispensable party and given an opportunity to be heard concerning the issues herein.
6. On or about January 26, 1996, the Intervenor Movant was delivered the Hollywood Police Department investigatory file concerning the kidnaping and homicide of Adam Walsh which occurred on or about July 27, 1981, for purposes of review and to provide assistance to said police department in the investigation.
7. Intervenor Movant and/or his assistants had previously assisted in this investigation from time to time in the past but had never completely reviewed the entire investigative file nor arrived at any prosecution opinion as said investigation had not been concluded nor is said investigation concluded as of this date.
8. A review of said file by Intervenor Movant leads to the conclusion that further immediate investigative actions need to occur prior to Intervenor Movant being responsibly able to render an opinion as to whether an imminent arrest or prosecution in the foreseeable future is reasonably anticipated.
9. The release and dissemination of the contents of this investigative file to the public and/or to the media at this time would be premature and may negatively

affect and prejudice the on-going criminal investigation and any successful prosecution of any suspect or suspects in the foreseeable future.

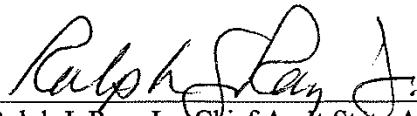
10. Intervenor Movant adopts and herein incorporates by reference the Defendant's Answer and Affirmative Defenses to Verified Complaint and Memorandum of Law, all testimony addressed on behalf of the Defendant and all legal argument made on behalf of Defendant in this cause.
11. This Motion To Intervene is made in good faith and not for purposes of delay.

WHEREFORE, Intervenor Movant respectfully requests this Court to enter its Order permitting Intervention by said Michael J. Satz, State Attorney and allow hearing on the issues herein prior to the implementation of said Order Requiring Production of Public Records and/or enter an Order to stay said Order until this Motion can be heard by the Court and such other relief as this Court deems proper.

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail/ Hand Delivery this 12th day of February, A.D. 1996, to: Thomas R. Julin, Esquire and Edward M. Mullins, Esquire, Counsellors for Plaintiffs at: 200 W. Biscayne Boulevard, 40th Floor, Miami, Fl 33131-2395; Joel D. Cantor, Esquire, Counsel for Defendant at: 3250 Hollywood Boulevard, Hollywood, Fl 33021 and to: Kathleen Pellegrino, Esquire, Counsel for Sun-Sentinel Company, at: 200 E. Las Olas Boulevard, Suite C10, Fort Lauderdale, Fl 33301 and

to: Jerold I. Budney, Esquire, Counsel for The Miami Herald Publishing Company at: One
Herald Plaza, Miami, Fl 33132-1693.

MICHAEL J. SATZ
State Attorney

By: 
Ralph J. Ray, Jr., Chief Ass't State Atty
Florida Bar #108894
201 Southeast Sixth Street
Fort Lauderdale, Fl 33301
Telephone No: (954) 831-7911

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

THE MOBILE PRESS REGISTER, INC.
and JAY GRELEN, et al.,

CASE NO: 95-06324 CACE

Plaintiffs,

DIVISION: 13

vs.

RICHARD WITT, as Chief of Police of
City of Hollywood, Florida

AMENDED NOTICE OF HEARING

Defendant,

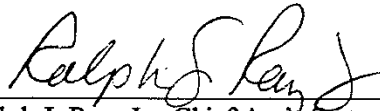
A TRUE COPY
ROBERT E. LOCKWOOD

Please take Notice that the Emergency Motion to Intervene and for Temporary and Permanent Stay of Order Requiring Production of Public Records will be heard by the Honorable Leroy H. Moe on Thursday, the 15th day of February, 1996, at 11:00 a.m., at the Broward County Courthouse, Courtroom 960, at 201 S.E. 6th Street, Fort Lauderdale, Fl 33301.

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail/Hand Delivery/Facsimile Transmission this 5th day of February, A.D. 1996, to: Thomas R. Julin, Esquire and Edward M. Mullins, Esquire, Counselors for Plaintiffs at: 200 W. Biscayne Boulevard, 40th Floor, Miami, Fl 33131-2395; Joel D. Cantor, Esquire, Counsel for Defendant at: 3250 Hollywood Boulevard, Hollywood, Fl 33021 and to: Kathleen Pellegrino, Esquire, Counsel for Sun-Sentinel Company, at: 200 E. Las Olas Boulevard, Suite C10, Fort Lauderdale, Fl 33301 and to: Jerold I. Budney, Esquire, Counsel for The Miami Herald Publishing Company at: One Herald Plaza, Miami, Fl 33132-1693.

MICHAEL J. SATZ
State Attorney

By:



Ralph J. Ray, Jr., Chief Ass't State Atty
Florida Bar #108894
201 Southeast Sixth Street
Fort Lauderdale, Fl 33301
Telephone No: (954) 831-7911

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

THE MOBILE PRESS REGISTER, INC. :
and JAY GRELEN, et al.,

CASE NO: 95-06324 CACE

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RICHARD WITT, as Chief of Police of
City of Hollywood, Florida :

NOTICE OF HEARING

Defendant,
...../

FEB 12 1996

A TRUE COPY
ROBERT E. LOCKWOOD

Please take Notice that the Emergency Motion to Intervene and for Temporary and Permanent Stay of Order Requiring Production of Public Records will be heard by the Honorable Leroy H. Moe on Thursday, the 15th day of February, 1996, at 10:00 a.m., at the Broward County Courthouse, in open court, courtroom 960, at 201 S.E. 6th Street, Fort Lauderdale, Fl 33301.

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail/Hand Delivery this 12th day of February, A.D. 1996, to: Thomas R. Julin, Esquire and Edward M. Mullins, Esquire, Counsellors for Plaintiffs at: 200 W. Biscayne Boulevard, 40th Floor, Miami, Fl 33131-2395; Joel D. Cantor, Esquire, Counsel for Defendant at: 3250 Hollywood Boulevard, Hollywood, Fl 33021 and to: Kathleen Pellegrino, Esquire, Counsel for Sun-Sentinel Company, at: 200 E. Las Olas Boulevard, Suite C10, Fort Lauderdale, Fl 33301 and to: Jerold I. Budney, Esquire, Counsel for The Miami Herald Publishing Company at: One Herald Plaza, Miami, Fl 33132-1693.

MICHAEL J. SATZ
State Attorney

By: Ralph J. Kay, Jr.
Ralph J. Kay, Jr., Chief Ass't State Atty
Florida Bar #108894
201 Southeast Sixth Street
Fort Lauderdale, Fl 33301
Telephone No: (954) 831-7911

McGUIRE WOODS BATTLE & BOOTHE LLP

No. of Pages (including Fax cover sheet): 7 DATE: February 9, 1996
If all pages are not received, please call the Fax Operator indicated below.

TO: Ralph J. Ray, Jr., Chief Assistant State Attorney

OFFICE/COMPANY/FIRM: Broward County States Attorney's Office

LOCATION: 201 SE 6th St, Ft. Lauderdale, FL

PHONE NUMBER: (305) 831-7911 FAX NUMBER: (305) 831-8047

FROM: George J. Terwilliger, III

OFFICE: Washington, DC
(See list below)

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Employee No.: _____ Total Charge: _____

**McGUIRE WOODS
BATTLE & BOOTHE LLP**

The Army and Navy Club Building
1627 Eye Street, N.W.
Washington, DC 20006-4007
Telephone/TDD (202)857-1700 • Fax (202)857-1737

February 9, 1996

VIA FACSIMILE

Ralph J. Ray, Jr.
Chief Assistant States Attorney
Broward County States Attorney's Office
201 SE 6th Street
Ft. Lauderdale, Florida 33301

RE: Adam Walsh matter

Dear Mr. Ralph:

Pursuant to John Walsh's conversation with you today, enclosed for your information is a draft affidavit which might be utilized in connection with the Sunshine Act proceedings regarding the Adam Walsh investigative file.

This affidavit could easily be reformulated to be in support of your office's contemplated motion to intervene.

Sincerely yours,


George J. Terwilliger, III

cc: John Walsh

DRAFT

THE CIRCUIT COURT FOR THE
17TH JUDICIAL COURT OF FLORIDA,
IN AND FOR BROWARD COUNTY, FLORIDA

Case 95-06324 CACE (13)

The Mobile Press Register, Inc., et al.
Plaintiff

v.

Richard Witt, Chief of Police
of the City of Hollywood, Florida
Defendant

AFFIDAVIT OF JOHN WALSH

I, John Walsh, being duly sworn to state as follows:

1. I am submitting this affidavit on behalf of myself and my spouse, Reve Walsh, in connection with our motion to intervene in the captioned case. Our motion seeks to have the Court's order releasing the investigative file of the Hollywood Police Department concerning the investigation of the death of Adam Walsh to the media stayed in the interests of justice.
2. Mrs. Walsh and I are the next of kin to the deceased Adam Walsh. Adam Walsh was our son. Adam was kidnapped in the Hollywood, Florida in 1981 and subsequently killed. As the next of kin I have endeavored to remain apprised and aware of the progress of the investigation and any potential prosecution of any individual responsible for my son's death.
3. Up to this time, I have not spoken publicly in any detail concerning the position of Mrs. Walsh and me regarding the handling of the investigation of Adam's death, the details

DRAFT

arising from that investigation as known to us or to the issue of whether the file containing the results of the investigation should be released to the plaintiff newspapers.

4. We have remained silent despite some newspaper articles containing slanderous innuendo which invade our privacy and maliciously attack our personal character.

5. Our privacy interests are important to us for reasons of personal security and the health and well-being of ourselves and our children. Mrs. Walsh and I have been married for 24 years and have had three children subsequent to Adam's death. I have chosen to dedicate both my professional and personal endeavors to aiding lawful authorities in finding and apprehending dangerous fugitives and to aiding victims and potential victims of violent crime. The high degree of visibility I have had in this work has resulted in numerous and, according to the appropriate authorities, credible death threats against me, my wife and my children. This has necessitated that I take appropriate security precautions for both myself and my family. One of the plaintiff newspapers in this case invaded our privacy and jeopardized our security by publishing both photographic and written information concerning our home and the physical security of our property.

6. Approximately two years ago we were informed that the investigation into our son's death was being assigned to a new detective at the Hollywood Police Department who was going to review the entire case file and reinvigorate the investigative effort. Since that time we have been provided with information by the police department which includes new information from existing witnesses, new information from new witnesses,

DRAFT

further information about existing suspects and new information about new suspects.

Because we seek to preserve the integrity of the investigative information so as not to jeopardize further investigation and/or prosecution, we will refrain from disclosing in any detail the information that has been provided to us by the police.

7. I requested and had a meeting with the Hollywood Police Department on January 16, 1996. At that meeting, Hollywood Police Chief Richard Witt, the defendant in this action, informed us that his department had agreed in October of 1995 to settle this Sunshine Act lawsuit by releasing the investigative file on February 16, 1996. At the January 16 meeting, the police chief told us he intended to release the file and at the same time to publicly identify the person he believed responsible for Adam's murder. Counsel with me at that meeting thereupon asked the Chief of Police if he had consulted with the responsible prosecutor regarding the release of the file and the public identification of a suspect. Chief Witt said he had not.
8. At that same January 16 meeting we were provided by the detective responsible for the case a summary of his recent investigative activity and an outline of many significant investigative leads to be pursued.
9. Following that meeting I requested and received an opportunity to meet with Broward County States Attorney Michael Satz, and Chief Deputy States Attorney Ralph Ray, which meeting occurred on January 29, 1996. At that meeting, I provided to Mr. Satz and Mr. Ray the information related above concerning our meeting with Chief Witt. As

DRAFT

the next of kin to the victim in the Adam Walsh case, I asked the Broward County States Attorney to review the investigative file as the responsible prosecutor in the case before the case was for all intents and purposes closed by Chief Witt by the unsealing of the file. In discussions with the prosecutors, it was apparent that there were recent investigative results known to the police department that had not been made available to the prosecutor's office as of January 29.

10. I have thereafter been informed by the prosecutor's office that the prosecutor's office has received the case file and that they have concluded that there is additional investigatory work to be done in Adam's case. They have also informed us that they would consider prosecution of the case based on the results of further investigation. In addition, they have informed us that the State's Attorney's office believes that release of the file could compromise further investigation and/or prosecution in this capital criminal case.
11. I have asked only one thing of the prosecutor and ask only one thing of this Court, to do whatever the law allows to permit the opportunity that there might be justice done for the murder of my son.

Dated at _____ city in the State of _____, this _____

day of February, 1996.

DRAFT

John Walsh

Subscribed to and sworn before me this ____ day of February, 1996.

Notary Public

To: Mark Heimowitz
Fax #: 577-7001
Re: Motion/Intervene
Date: February 14, 1996
Pages: Twenty-one (21), including this cover sheet.

FACSIMILE

From the desk of...

Ralph J. Ray, Jr.
Chief Assistant State Attorney
Broward County State Attorney's Office

Fax:

McGUIRE WOODS BATTLE & BOOTHE LLP

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TO: Ralph J. Ray, Jr., Chief Assistant State Attorney

OFFICE/COMPANY/FIRM: Broward County States Attorney's Office

LOCATION: 201 SE 6th St, Ft. Lauderdale, FL

PHONE NUMBER: (305) 831-7911

FAX NUMBER: (305) 831-8047

FROM: George J. Terwilliger, III

OFFICE: Washington, DC
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D R A F T (2/12/96)

IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL COURT OF FLORIDA, IN
AND FOR BROWARD COUNTY, FLORIDA

Case 95-06324 CACE (13)

THE MOBILE PRESS REGISTER, INC.,)
et al.)
)
Plaintiffs,)
)
v.)
)
RICHARD WITT, Chief of Police)
of the City of Hollywood, Florida,)
)
Defendant.)
_____)

MOTION TO INTERVENE

John and Reve Walsh ("Movants"), by and through counsel, hereby move to intervene in this matter pursuant to Rules 1.210 and 1.230 of the Florida Rules of Civil Procedure. As the parents of Adam Walsh, Movants have a right to be heard in this matter under Article 1, § 16(b) of the Florida Constitution. Movants seek an opportunity to be heard in this proceeding in order to urge the court to ensure that investigation of their son's death is not compromised through disclosure of the investigative file to the media. Movants are aware of both the current status of the investigation and the consideration of the matter by the Broward County State Attorney's Office and of the fact that there is an active, ongoing investigation in the Adam Walsh case.

D R A F T (2/12/96)

FACTS

1. Movants are the next of kin to the deceased Adam Walsh, who was their son. See Affidavit of John Walsh attached as Exhibit A (hereinafter "Walsh Affidavit"). The Walshes have maintained knowledge concerning the status of the investigation into the murder of their son through contact with the appropriate authorities. Id. at ¶ 6. The Walshes have also assisted that investigation by providing to the police information that has been volunteered to them on a regular basis over a period of time.

2. In January of this year, the Walshes learned that after it had initially opposed the release of the Adam Walsh investigative file pursuant to this lawsuit, the Hollywood Police Department had agreed, in October 1995, to make this file available in February 1996. The Walshes also learned that the police department through its chief, Richard Witt, planned to publicly identify the person they believed responsible for the Adam Walsh homicide at the time the file was to be released. See Walsh Affidavit at ¶ 7. Upon learning that the police department had not consulted with the Broward County State Attorney's Office, the Walshes asked for an opportunity to meet and discuss this development with that office. Id. at ¶ 9. The Broward County State's Attorney's Office, of course, is jurisdictionally responsible for any prosecution of the Adam Walsh homicide. See FLA. STAT. ANN. § 27.02 (West 1996).

3. The Movants met with the State's Attorney's Office on January 29, 1996. See Walsh Affidavit, at ¶ 9. At that meeting, the Walshes learned that many of the facts which had been developed in the case over the last several months were not known to the

D R A F T (2/12/96)

State Attorney's Office. Moreover, the Walshes also learned that the prosecutor's office had not been consulted regarding the decision to release the file or to name a suspect in the case. Since that meeting, the Walshes also learned that the prosecutor's office has since requested and received the investigative case file, and is actively involved in pursuit of the investigation. Id. at ¶ 10. The State Attorney's Office has told Movants that there are valid investigative leads being pursued or yet to be pursued, and that at the conclusion of a thorough investigation, the State Attorney's Office will consider bringing the matter before the grand jury for prosecution of the responsible individual or individuals. Id.

ARGUMENT

4. Because the unsealing of the Adam Walsh investigative file could adversely affect further investigation and/or prosecution, Movants respectfully submit that they have a substantial interest regarding the unsealing of the file, as well as a constitutional right to be heard as the parents of Adam Walsh. An interest which would entitle a party to intervene must be of a direct and immediate character such that the intervenor will either gain or lose by direct legal operation and effect of a judgment. Castro Convertible Corp. v. Castro, 596 F.2d 123, 125 (5th Cir. 1979). Although permission to intervene is a matter for the court's discretion, the aim of the rules of civil procedure is to allow liberal joinder of parties. Miracle House Corp. v. Haige, 96 So.2d 417, 418 (Fla. 1957); National Wildlife Fed'n, Inc. v. J.T. Glisson, 531 So.2d 996, 998 (Fla. 1st DCA 1988). The decision to release this file constitutes a crucial stage in the case and as such the Movants have a right to assert their

D R A F T (2/12/96)

objections to the disclosure. The release of the investigative file would have irreparable consequences on the potential for apprehending the perpetrator in the murder of the Movants' son. The Movants have a clear interest in preventing this injustice and should be allowed to intervene in this matter.

5. In addition, the release of the investigative file will have important repercussions on the State Attorney's ability to initiate prosecution in the Adam Walsh homicide. Therefore, the Movants further submit that the Broward County State Attorney's Office was, and is, a necessary party in interest in this matter where its lawful, jurisdictional responsibilities are clearly implicated by any decision to permit the disclosure of the file to the news media. See Blue Dolphin Fiberglass Pools of Florida, Inc. v. Swim Industries Corp., 597 So.2d 808, 809 (Fla. 2d DCA 1992) ("A person whose rights and interests are to be affected by a decree and whose actions with reference to the subject matter of litigation are to be controlled by a decree is a necessary party to the action and the trial court cannot proceed without that person.")

6. The fact that the plaintiffs chose to name only the Hollywood Police Department as a defendant in this suit does not determine whether the interests of all parties necessary to resolve the matter at issue are represented in the case. See In re Adoption of a Minor Child, 593 So.2d 185, 189 (Fla. 1991) (noting that intervention allows persons not originally named in a lawsuit to protect their interests in subject matter). The State Attorney's Office has a lawful and well recognized function to determine whether or not to initiate a prosecution, whether before or after an arrest by a law enforcement official or

D R A F T (2/12/96)

agency. See FLA. STAT. ANN. § 27.02 (West 1996); see also State v. Johns, 651 So.2d 1227, 1227-28 (Fla. 2d DCA 1995); State v. Cain, 381 So.2d 1361, 1367 (Fla. 1980) ("the discretion of a prosecutor in deciding whether and how to prosecute is absolute"). Thus, resolution of its interests is necessary to the just resolution of the matters put in issue by plaintiff's complaint. In addition, as the next of kin to the victim in this homicide, and pursuant to Florida's constitutional and statutory victim's rights provisions cited above, the Movants have a right to be heard as to this matter. The Movants support the prosecutor's motion to intervene and its position that disclosure of the file is subject to the criminal investigative information exemption from the disclosure requirements of the Act.

7. It is clear from the language of the statute in question, and the court decisions interpreting and applying that statute, that the fundamental purpose of the criminal investigative information exemption from disclosure is to avoid the very situation that has been created here: that is, a contest between the responsible investigative authorities and the media over access to investigative information. FLA. STAT. ANN. § 119.07(3)(d) (West 1996). The exemption authorizes the authorities to withhold investigative information so long as they are pursuing a case that may result in an arrest or prosecution. The role of the court when confronted with a criminal information exemption issue is to determine if the facts support a showing that the authorities' representations that the case is "active", as that statutory term is used and applied, are made in good faith. See Barfield v. The City of Fort Lauderdale Police Department, 639 So.2d 1012 (Fla. 4th DCA 1994); Florida Freedom

D R A F T (2/12/96)

Newspapers, Inc. v. Dempsey, 478 So. 2d 1128 (Fla. 1st DCA 1985); News-Press Publishing Company v. Sapp, 464 So. 2d 1335 (Fla. 2d DCA 1985).

8. The compelling similarity of the circumstances in Barfield to the instant case is instructive. In Barfield, the respondent police agency opposed disclosure and asserted that a criminal investigation was underway and, when that investigation was completed, the findings would be forwarded to the State Attorney's Office for review and subsequent investigation by the grand jury. Barfield, 639 So.2d at 1014. The responsible investigator for the police agency in Barfield stated that he did not know whether he had a reasonable good faith anticipation of securing an arrest or prosecution in the investigative matter in that case. Id. In the instant case, the investigative file has been forwarded to the State Attorney's Office, the State Attorney's Office is actively investigating and giving consideration to prosecution of the matter, and it believes that disclosure of the file could compromise its efforts. As in Barfield, the authorities cannot say with certainty that they anticipate securing an arrest or prosecution of an culpable individual at this time. However, as the Barfield court makes abundantly clear, the phrase "anticipation of an arrest or prosecution" means only that an arrest or prosecution may result, not that it is a certainty. Id. at 1017. As the Barfield court succinctly stated:

[A]s can be seen from the historical discussion [in that decision], the purpose of the "active criminal investigative information" exception is to prevent premature disclosure of information during an ongoing investigation being conducted in good faith by criminal justice authorities.

Id. at 1017.

It is precisely such a premature disclosure that Movants oppose in this case.

D R A F T (2/12/96)

9. As the Barfield court recognized, "we do not believe the Legislature intended that confidentiality be limited to investigations where the outcome, and an arrest or prosecution, was a certainty, or even a probability." Barfield, 639 So.2d at 1016-17 (emphasis added). The reason for that construction is, of course, obvious. The very purpose of an investigation is to determine if there are sufficient facts of record to support an arrest and/or a prosecution. A requirement that there be a prospective characterization of the results of an investigation would be an illogical and unsound basis for the exemption. Even whether or not there is a prime suspect or suspects, or even identifiable suspect is not determinative of the issue of whether an investigation is "active." See Dempsey, 478 So.2d at 1131. As the Barfield court stated after reviewing the Dempsey decision:

This decision indicates the police, so long as they are acting in good faith, should be given substantial leeway in conducting an ongoing investigation even where there may be no immediate prospect of an arrest or prosecution.

Barfield, 639 So.2d at 1016.

Thus, the determinative issue in applying the exemption is not whether the police or prosecutors can state that a suspect will be arrested or prosecuted, but rather whether these authorities can represent in good faith that they are continuing to conduct an active investigation.¹

¹ In Plaintiffs' motion for an order requiring production of public records in this cause, they assert that they "do not believe that the essential facts of this case are in dispute" (Plaintiffs' Motion, at 2.) Movants dispute the facts as presented by the plaintiffs. For example, Plaintiffs' assert that the investigation "has been dormant for an extended period." (*Id.* at 2). If the court were to inquire of the police department and the prosecutor, it would learn that far from being dormant, the case has been frenetically pursued during the last several months, largely in response to the artificial deadline created by the February 16

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10. Several public policy considerations support the construction and application of the criminal investigative information exemption to prevent disclosure. The exemption recognizes that the public interest in the apprehension and conviction of criminals, especially violent criminals, is a matter of paramount importance to the public. Clearly, there is not an even balance between this consideration and the media's statutory right to review public records. The statute should not be read to permit the media to second guess the judgment of the police and prosecutors as to whether an investigation, no matter what its age as long as it is within the statute of limitations, deserves the devotion of resources to continue to be investigated and/or prosecuted. This factor is especially important in regard to capital crimes. A fugitive from a capital crime should be offered no quarter because he or she has successfully evaded capture for a period of time or for some period stymied the police investigation. While the court need not decide the issue in this case, public policy

presumptive release date agreed to by police department officials. Plaintiffs also assert that "six months of investigation by the cold case squad has not resulted in sufficient evidence to make an arrest or to commence an investigation". The internal inconsistency of that very statement, *i.e.* that an investigation has not resulted in sufficient evidence to commence an investigation, could certainly give the court significant pause in considering the accuracy of Plaintiffs' factual averments.

Unsupported by any citation to authority, Plaintiffs in their motion argue: "Once the case was so classified [as a cold case], the investigation ceased to be active and the records became public." This conclusion of law strains credulity even when considered under the license granted by zealous advocacy.

Finally, Plaintiffs posit in their motion that there is no imminent consideration of this case by the grand jury, "the State Attorney, or any other law enforcement entity that could make an arrest or commence a prosecution." Whatever the merits of that argument, it is now clear that the factual circumstances are changed and that the case is, in fact, under the current consideration of the State Attorney.

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considerations do beg the question as to whether any unsolved capital crime should be construed as inactive for purposes of disclosure.

11. In addition, public policy should militate against creating artificial deadlines for the closure of the investigation of a crime. The public, the prosecutorial authorities, and a putative defendant all have a vested interest in a thorough and complete investigation. Such an investigation is one that is concluded in a time frame dictated by the needs of the investigation, not by the demands of a third party arising from a Sunshine Act lawsuit. From common experience, we know that an unnecessary rush to judgment can produce injustice.

12. Finally, public policy considerations as applied to this particular case should militate against premature disclosure of the investigative file. The death of Adam Walsh is one of the most notorious homicides that have occurred in Florida, and indeed, in the country. Public confidence in the criminal justice system, an important societal interest standing alone, will not be enhanced by any premature investigative disclosure of the file that may compromise bringing closure to the case through an arrest and/or prosecution. To the extent that the Plaintiffs assert the need for the file information to fulfill a purported public interest in making judgments regarding the police investigation, it can easily be recognized that that judgment will, at some time, be had - based on the results of a complete investigation. Preserving the integrity of the investigative file at this point only postpones, but does not defeat, that event. In any case, the public interest in closing the case with an arrest or prosecution is clearly paramount to such a claim.

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13. As the parents of the victim in this case, Mr. and Mrs. Walsh assiduously seek justice for their son. Other victims of crime similarly situated will look to the outcome of this matter for comfort that they might find justice in their own cases. The public and such victims share a compelling interest in the successful closure of the investigations of the offenses wherein they were victimized. In this case and in these circumstances, the statute in question does not compel disclosure. Rather, the law recognizes a legitimate basis for exemption from disclosure. The facts, if fully known to the court, render this an easy case to decide in favor of maintaining the exemption. The fact that the Hollywood Police Department, as only one of several parties in interest here, opted not to contest disclosure should not override the compelling interests of the prosecutor, the victim, and the public in maintaining the integrity of this investigative file further.

WHEREFORE, for the reasons stated herein, Movants respectfully request that they be heard in this matter and that the court enter an ORDER denying access to the file presently and for such other relief as the court deems necessary and appropriate.

Respectfully submitted,

George J. Terwilliger, III
McGuire, Woods, Battle & Boothe, L.L.P.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this _____ day of February, 1996, copies of this
MOTION TO INTERVENE was sent by facsimile with original to follow by first class
mail to the following:

Thomas R. Julin
Steel Hector & Davis
200 South Biscayne Blvd.
Miami, Florida 33131

Joel A. Cantor, Legal Advisor
Hollywood Police Department
3250 Hollywood Blvd.
Hollywood, Fl 33021

Michael A. Satz
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201 SE 6th Street
Ft. Lauderdale, FL 33301

George J. Terwilliger, III

Michael E. Christiansen

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THE CIRCUIT COURT FOR THE
17TH JUDICIAL COURT OF FLORIDA,
IN AND FOR BROWARD COUNTY, FLORIDA

Case 95-06324 CACE (13)

The Mobile Press Register, Inc., et al.

Plaintiff

v.

Richard Witt, Chief of Police
of the City of Hollywood, Florida

Defendant

AFFIDAVIT OF JOHN WALSH

I, John Walsh, being duly sworn to state as follows:

1. I am submitting this affidavit on behalf of myself and my spouse, Reve Walsh, in connection with our motion to intervene in the captioned case. Our motion seeks to have the Court's order releasing the investigative file of the Hollywood Police Department concerning the investigation of the death of Adam Walsh to the media stayed in the interests of justice.
2. Mrs. Walsh and I are the next of kin to the deceased Adam Walsh. Adam Walsh was our son. Adam was kidnapped in the Hollywood, Florida in 1981 and subsequently killed. As the next of kin I have endeavored to remain apprised and aware of the progress of the investigation and any potential prosecution of any individual responsible for my son's death.

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3. Up to this time, I have not spoken publicly in any detail concerning the position of Mrs. Walsh and me regarding the handling of the investigation of Adam's death, the details arising from that investigation as known to us or to the issue of whether the file containing the results of the investigation should be released to the plaintiff newspapers.
4. We have remained silent despite some newspaper articles containing slanderous innuendo which invade our privacy and maliciously attack our personal character.
5. Our privacy interests are important to us for reasons of personal security and the health and well-being of ourselves and our children. Mrs. Walsh and I have been married for 24 years and have had three children subsequent to Adam's death. I have chosen to dedicate both my professional and personal endeavors to aiding lawful authorities in finding and apprehending dangerous fugitives and to aiding victims and potential victims of violent crime. The high degree of visibility I have had in this work has resulted in numerous and, according to the appropriate authorities, credible death threats against me, my wife and my children. This has necessitated that I take appropriate security precautions for both myself and my family. One of the plaintiff newspapers in this case invaded our privacy and jeopardized our security by publishing both photographic and written information concerning our home and the physical security of our property.
6. Approximately two years ago we were informed that the investigation into our son's death was being assigned to a new detective at the Hollywood Police Department who

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was going to review the entire case file and reinvigorate the investigative effort. Since that time we have been provided with information by the police department which includes new information from existing witnesses, new information from new witnesses, further information about existing suspects and new information about new suspects. Because we seek to preserve the integrity of the investigative information so as not to jeopardize further investigation and/or prosecution, we will refrain from disclosing in any detail the information that has been provided to us by the police.

7. I requested and had a meeting with the Hollywood Police Department on January 16, 1996. At that meeting, Hollywood Police Chief Richard Witt, the defendant in this action, informed us that his department had agreed in October of 1995 to settle this Sunshine Act lawsuit by releasing the investigative file on February 16, 1996. At the January 16 meeting, the police chief told us he intended to release the file and at the same time to publicly identify the person he believed responsible for Adam's murder. Counsel with me at that meeting thereupon asked the Chief of Police if he had consulted with the responsible prosecutor regarding the release of the file and the public identification of a suspect. Chief Witt said he had not.

8. At that same January 16 meeting we were provided by the detective responsible for the case a summary of his recent investigative activity and an outline of many significant investigative leads to be pursued.

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9. Following that meeting I requested and received an opportunity to meet with Broward County States Attorney Michael Satz, and Chief Deputy States Attorney Ralph Ray, which meeting occurred on January 29, 1996. At that meeting, I provided to Mr. Satz and Mr. Ray the information related above concerning our meeting with Chief Witt. As the next of kin to the victim in the Adam Walsh case, I asked the Broward County States Attorney to review the investigative file as the responsible prosecutor in the case before the case was for all intents and purposes closed by Chief Witt by the unsealing of the file. In discussions with the prosecutors, it was apparent that there were recent investigative results known to the police department that had not been made available to the prosecutor's office as of January 29.

10. I have thereafter been informed by the prosecutor's office that the prosecutor's office has received the case file and that they have concluded that there is additional investigatory work to be done in Adam's case. They have also informed us that they would consider prosecution of the case based on the results of further investigation. In addition, they have informed us that the State's Attorney's office believes that release of the file could compromise further investigation and/or prosecution in this capital criminal case.

11. I have asked only one thing of the prosecutor and ask only one thing of this Court, to do whatever the law allows to permit the opportunity that there might be justice done for the murder of my son.

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Dated at _____ city in the State of _____, this _____
day of February, 1996.

John Waish

Subscribed to and sworn before me this _____ day of February, 1996.

Notary Public