

**SUBPOENAS**  
**Walsh, Adam**

GRAND JURY SUBPOENA  
 STATE ATTORNEY WITNESS SUBPOENA

STATE OF FLORIDA }  
COUNTY OF BROWARD } ss: IN THE NAME OF THE STATE OF FLORIDA

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA, AND/OR TO ALL AND SINGULAR THE INVESTIGATORS OF THE STATE ATTORNEY OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

(Pursuant to Chapters 27 and 48, Florida Statutes, as amended)

**YOU ARE HEREBY REQUIRED TO SUMMON**

**LT. TONY FANTIGRASSI**  
**Broward Sheriff's Office**

personally to be and appear at the Broward County Courthouse, 201 S.E. 6th Street, Fort Lauderdale, Florida, as indicated:

- before the Grand Jury at Room 902, on \_\_\_\_\_ day of \_\_\_\_\_, A.D. 1996, at \_\_\_\_\_ M. to testify and the truth to speak in behalf of the State of Florida, in a certain matter before the Grand Jury, empaneled and sworn to inquire in and for the Body of Broward County.
- before the State Attorney at Room 665, on Thursday, the 15th day of February, A.D. 1996, at 11:00 AM, to testify and the truth to speak in behalf of the State of Florida,

**AND THIS YOU SHALL IN NO WISE OMIT.**

**WITNESS, ROBERT E. LOCKWOOD**, Clerk of our said Court, and the seal of said Court, at the Courthouse at Fort Lauderdale, Broward County, Florida, this 15th day of February, A.D. 1996.



**ROBERT E. LOCKWOOD**, Clerk of the Circuit Court  
Seventeenth Judicial Circuit, Broward County, Florida

BY: *Lisa P. Grand*  
Deputy Clerk

*Ralph J. Ray, Jr.*  
Ralph J. Ray, Jr. Florida Bar #108894  
State Attorney  
Phone: 831-7911

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding should advise the Witness Liaison Coordinator (see telephone number above) or 1-800-955-8770 via Florida Relay Service or 1-800-955-8771 (for Deaf/Hard of Hearing Services) not later than five business days prior to the proceeding.

SERVED  NOT SERVED TIME: \_\_\_\_\_ M. DATE: \_\_\_\_\_ 19\_\_

COMMENT:  
\_\_\_\_\_

State Attorney Investigator/Deputy Sheriff

GRAND JURY SUBPOENA  
 STATE ATTORNEY WITNESS SUBPOENA

STATE OF FLORIDA }  
COUNTY OF BROWARD } ss: IN THE NAME OF THE STATE OF FLORIDA

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA, AND/OR TO ALL AND SINGULAR THE INVESTIGATORS OF THE STATE ATTORNEY OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

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- before the **Grand Jury** at Room 902, on \_\_\_\_\_ day of \_\_\_\_\_, A.D. 1996, at \_\_\_\_\_ M. to testify and the truth to speak in behalf of the State of Florida, in a certain matter before the Grand Jury, empaneled and sworn to inquire in and for the Body of Broward County.
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**ROBERT E. LOCKWOOD**, Clerk of the Circuit Court  
Seventeenth Judicial Circuit, Broward County, Florida

BY: *J. P. Garl*

Deputy Clerk



*Ralph J. Ray, Jr.*  
Ralph J. Ray, Jr. Florida Bar #108894  
State Attorney  
Phone: 831-7911

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding should advise the Witness Liaison Coordinator (see telephone number above) or 1-800-955-8770 via Florida Relay Service or 1-800-955-8771 (for Deaf/Hard of Hearing Services) not later than five business days prior to the proceeding.

SERVED  NOT SERVED TIME: \_\_\_\_\_ M. DATE: \_\_\_\_\_ 19\_\_

COMMENT:  
\_\_\_\_\_

State Attorney Investigator/Deputy Sheriff

002149

- GRAND JURY SUBPOENA  
 STATE ATTORNEY WITNESS SUBPOENA

STATE OF FLORIDA }  
COUNTY OF BROWARD } ss: IN THE NAME OF THE STATE OF FLORIDA

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA, AND/OR TO ALL AND SINGULAR THE INVESTIGATORS OF THE STATE ATTORNEY OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

(Pursuant to Chapters 27 and 48, Florida Statutes, as amended)

**YOU ARE HEREBY REQUIRED TO SUMMON**

**LT. TONY FANTIGRASSI**  
**Broward Sheriff's Office**

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- before the **Grand Jury** at Room 902, on \_\_\_\_\_ day of \_\_\_\_\_, A.D. 1996, at \_\_\_\_\_ .M. to testify and the truth to speak in behalf of the State of Florida, in a certain matter before the Grand Jury, empaneled and sworn to inquire in and for the Body of Broward County.
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**AND THIS YOU SHALL IN NO WISE OMIT.**

**WITNESS, ROBERT E. LOCKWOOD**, Clerk of our said Court, and the seal of said Court, at the Courthouse at Fort Lauderdale, Broward County, Florida, this 15th day of February, A.D. 1996.



**ROBERT E. LOCKWOOD**, Clerk of the Circuit Court  
Seventeenth Judicial Circuit, Broward County, Florida

BY: Isaac P. Grand  
Deputy Clerk

Ralph J. Ray, Jr.  
Ralph J. Ray, Jr. Florida Bar #108894  
State Attorney  
Phone: 831-7911

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding should advise the Witness Liaison Coordinator (see telephone number above) or 1-800-955-8770 via Florida Relay Service or 1-800-955-8771 (for Deaf/Hard of Hearing Services) not later than five business days prior to the proceeding.

SERVED  NOT SERVED TIME: \_\_\_\_\_ .M. DATE: \_\_\_\_\_ 19\_\_

COMMENT:  
\_\_\_\_\_

State Attorney Investigator/Deputy Sheriff

002150

GRAND JURY SUBPOENA  
 STATE ATTORNEY WITNESS SUBPOENA

STATE OF FLORIDA }  
COUNTY OF BROWARD } ss: IN THE NAME OF THE STATE OF FLORIDA

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA, AND/OR TO ALL AND SINGULAR THE INVESTIGATORS OF THE STATE ATTORNEY OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

(Pursuant to Chapters 27 and 48, Florida Statutes, as amended)

**YOU ARE HEREBY REQUIRED TO SUMMON**

**GREG SMITH**  
**Metro-Dade Police Department**

personally to be and appear at the Broward County Courthouse, 201 S.E. 6th Street, Fort Lauderdale, Florida, as indicated:

- before the Grand Jury at Room 902, on \_\_\_\_\_ day of \_\_\_\_\_, A.D. 1996, at \_\_\_\_\_ M. to testify and the truth to speak in behalf of the State of Florida, in a certain matter before the Grand Jury, empaneled and sworn to inquire in and for the Body of Broward County.
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**AND THIS YOU SHALL IN NO WISE OMIT.**

**WITNESS, ROBERT E. LOCKWOOD**, Clerk of our said Court, and the seal of said Court, at the Courthouse at Fort Lauderdale, Broward County, Florida, this 15th day of February, A.D. 1996.



**ROBERT E. LOCKWOOD**, Clerk of the Circuit Court  
Seventeenth Judicial Circuit, Broward County, Florida

BY: Isa P. Gard  
Deputy Clerk

Ralph J. Ray, Jr.  
Ralph J. Ray, Jr. Florida Bar #108894  
State Attorney  
Phone: 831-7911

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding should advise the Witness Liaison Coordinator (see telephone number above) or 1-800-955-8770 via Florida Relay Service or 1-800-955-8771 (for Deaf/Hard of Hearing Services) not later than five business days prior to the proceeding.

SERVED  NOT SERVED TIME: 10:20 A.M. DATE: 2/16 1996

COMMENT:  
\_\_\_\_\_

Ralph J. Ray, Jr. ASA  
State Attorney Investigator/Deputy Sheriff

GRAND JURY SUBPOENA  
 STATE ATTORNEY WITNESS SUBPOENA

STATE OF FLORIDA }  
COUNTY OF BROWARD } ss: IN THE NAME OF THE STATE OF FLORIDA

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA, AND/OR TO ALL AND SINGULAR THE INVESTIGATORS OF THE STATE ATTORNEY OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

(Pursuant to Chapters 27 and 48, Florida Statutes, as amended)

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**ROBERT E. LOCKWOOD**, Clerk of the Circuit Court  
Seventeenth Judicial Circuit, Broward County, Florida

BY: Lisa P. Grand  
Deputy Clerk

Ralph J. Ray, Jr.

Ralph J. Ray, Jr. Florida Bar #108894  
State Attorney  
Phone: 831-7911

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SERVED  NOT SERVED TIME: \_\_\_\_\_ M. DATE: \_\_\_\_\_ 19\_\_

COMMENT:  
\_\_\_\_\_

State Attorney Investigator/Deputy Sheriff

002152

GRAND JURY SUBPOENA  
 STATE ATTORNEY WITNESS SUBPOENA

STATE OF FLORIDA }  
COUNTY OF BROWARD } ss: IN THE NAME OF THE STATE OF FLORIDA

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA, AND/OR TO ALL AND SINGULAR THE INVESTIGATORS OF THE STATE ATTORNEY OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

(Pursuant to Chapters 27 and 48, Florida Statutes, as amended)

**YOU ARE HEREBY REQUIRED TO SUMMON**

**MARK SMITH**  
**Hollywood Police Department**

personally to be and appear at the Broward County Courthouse, 201 S.E. 6th Street, Fort Lauderdale, Florida, as indicated:

- before the Grand Jury at Room 902, on \_\_\_\_ day of \_\_\_\_\_, A.D. 1996, at \_\_\_\_\_ M. to testify and the truth to speak in behalf of the State of Florida, in a certain matter before the Grand Jury, empaneled and sworn to inquire in and for the Body of Broward County.
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**ROBERT E. LOCKWOOD**, Clerk of the Circuit Court  
Seventeenth Judicial Circuit, Broward County, Florida

BY: Isa P. Crand

Deputy Clerk

Ralph J. Ray, Jr.  
Ralph J. Ray, Jr. Florida Bar #108894  
State Attorney  
Phone: 831-7911

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SERVED  NOT SERVED TIME: \_\_\_\_\_ M. DATE: \_\_\_\_\_ 19\_\_

COMMENT:  
\_\_\_\_\_

State Attorney Investigator/Deputy Sheriff

002153

GRAND JURY SUBPOENA  
 STATE ATTORNEY WITNESS SUBPOENA

STATE OF FLORIDA }  
COUNTY OF BROWARD } ss: IN THE NAME OF THE STATE OF FLORIDA

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA, AND/OR TO ALL AND SINGULAR THE INVESTIGATORS OF THE STATE ATTORNEY OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

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**ROBERT E. LOCKWOOD**, Clerk of the Circuit Court  
Seventeenth Judicial Circuit, Broward County, Florida

BY: Lisa P. Grant  
Deputy Clerk



Ralph J. Ray, Jr.  
Ralph J. Ray, Jr. Florida Bar #108894  
State Attorney  
Phone: 831-7911

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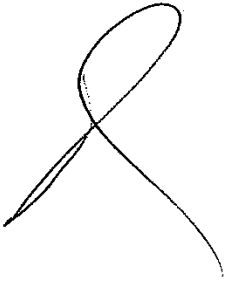
SERVED     NOT SERVED    TIME: \_\_\_\_\_ M.    DATE: \_\_\_\_\_ 19\_\_

COMMENT:  
\_\_\_\_\_

State Attorney Investigator/Deputy Sheriff

002154





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

CASE NO. 95-06324 CACE (13)

95 OCT 27 PM 3:27  
FILED FOR RECORD  
BROWARD COUNTY FLORIDA

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

Order Requiring Production of Public Records

THIS cause was considered by the Court on the following motions: Plaintiff's Renewed Motion for an Order Requiring Production of Public Records and Defendant's Status Advisory.

HEARING was held on October 18, 1995.

THE COURT having considered the grounds for the Motion, taken testimony, heard argument and considered the applicable law, it is

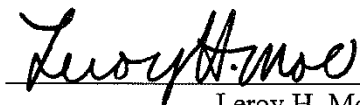
ORDERED AND ADJUDGED as follows:

Defendant shall by no later than 12 noon on February 16, 1996, make available for inspection and copying all records requested by the plaintiffs and any other records relating to

Case No. 95-06324 CACE (13)

the Adam Walsh murder investigation in existence as of February 16, 1996. Jurisdiction is reserved to consider any motion for costs or attorneys' fees.

Done and ordered in chambers at Fort Lauderdale, Broward County, Florida, this 24 day of October, 1995.



Leroy H. Moe  
Circuit Judge

Copies furnished to:

Thomas R. Julin  
Counsel for Mobile Press Register, Inc., Jay Grelen,  
Sun-Sentinel Co., and WFTV, Inc. d/b/a Palm Beach Newspapers, Inc.

Kathleen Pellegrino  
Counsel for Sun-Sentinel Co.

Jerold I. Budney  
Counsel for The Miami Herald Publishing Company

Joel Cantor  
Counsel for Richard Witt

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

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

Plaintiffs,

CASE NO. 95-06324 (13)

*[Handwritten signature]*  
v.  
RICHARD WITT, as Chief of  
Police of the City of  
Hollywood, Florida  
Defendant.

95 OCT 20 AM 9:14  
FILED FOR RECORD  
CLERK OF BROWARD COUNTY  
FLORENCE, FLORIDA

ORDER ADDING MIAMI HERALD AS ADDITIONAL CO-PLAINTIFF

THIS CAUSE came before the Court for hearing on October 18, 1995 on the Agreed Motion To Add The Miami Herald As A Plaintiff, and the Court having reviewed the Agreed Motion, and having been advised by all counsel that there is no objection to the Motion, it is hereby ORDERED that the Agreed Motion be and hereby is GRANTED and The Miami Herald Publishing Company, a division of Knight-Ridder, Inc. is hereby added as an additional co-plaintiff in this action.

ORDERED in Broward County, Florida this 18th day of October, 1995.

*[Handwritten signature]*  
\_\_\_\_\_  
CIRCUIT COURT JUDGE

cc: Mr. Joel Cantor  
Mr. Thomas Julin  
Mr. Jerold Budney

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

THE MOBILE PRESS REGISTER, INC.  
and JAY GRELEN,

Plaintiffs,

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

Defendant.

CASE NO. 95-06324 (13)

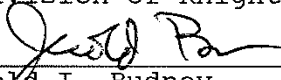
Fla. Bar No. 283444

FILED FOR RECORD  
IN BROWARD COUNTY  
95 OCT -9 AM 9:43

NOTICE OF HEARING

Please Take Notice that the Agreed Motion To Add The Miami Herald As A Plaintiff will be heard by the Honorable Leroy H. Moe on Wednesday, October 18, 1995 at 9:30 a.m. at the Broward County Courthouse, 201 S.E. 6th Street, Ft. Lauderdale, Florida 33301.

THE MIAMI HERALD PUBLISHING COMPANY  
a division of Knight-Ridder, Inc.

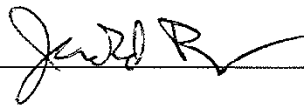
  
Jerold I. Budney  
One Herald Plaza  
Miami, FL 33132-1693  
(305) 376-4586

CERTIFICATE OF SERVICE

i HEREBY CERTIFY that a copy of the foregoing was served by mail this 3<sup>rd</sup> day of October, 1995 on:

Joel D. Cantor  
3250 Hollywood Blvd.  
Hollywood, FL 33021

Thomas R. Julin  
200 S. Biscayne Blvd.  
40th Floor  
Miami, FL 33131-2398



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

THE MOBILE PRESS REGISTER, INC.  
and JAY GRELEN,

Plaintiffs,

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

Defendant.

CASE NO. 95-06324 (13)

Fla. Bar No. 283444

AGREED MOTION TO ADD THE MIAMI HERALD AS A PLAINTIFF

The Miami Herald Publishing Company, a division of Knight-Ridder, Inc. (the "Herald") moves under Rule 1.250(c) to be added as a party plaintiff seeking access under Chapter 119, Florida Statutes (the "Public Records Act") to the same public records being sought by the other Plaintiffs in this case. Plaintiffs and Defendant have authorized the undersigned to represent to this Court that they do not object to this Motion. If this Court allows the Herald to be added as an additional plaintiff in the Complaint, then the Herald joins in the papers filed by the Plaintiffs, including the pending Renewed Motion for Order Requiring Production of Public Records. The grounds for this Motion are:

1. The Herald is a newspaper of general circulation throughout the State of Florida, including Broward County.

2. On June 19, 1995, the Herald requested Defendant to produce for inspection and copying under the Public Records Act the same records requested by Plaintiffs The Mobile Press Register, Jay Grelen, Sun-Sentinel Co. and WFTV, Inc.: "The Hollywood Police Department's investigative file involving the 1981 death of Adam Walsh, of Hollywood. Or, if there is an arrest in this case, the

probable cause report and all other supplemental information at the time of the arrest.". A copy of this Request is attached.

3. Defendant denied the Herald's public records request, asserting the same exemption as Defendant asserted against the other Plaintiffs, Section 119.07(3)(d).

4. The Herald's standing to seek access to these public records rests on the same basis as the other Plaintiffs. Section 119.07(1)(a), Florida Statutes, requires Defendant to permit these records "to be inspected and examined by any person desiring to do so...", unless there is a statutory exemption applicable to the requested records.

5. Accordingly, justice and judicial economy require the Herald be added as a plaintiff in this action to enable it to vindicate its rights under Florida's Public Records Act. Otherwise, the Herald would be forced to file a separate lawsuit. This would either create the risk of inconsistent adjudications and duplicative hearings, or require the Herald's lawsuit be transferred to this Court and consolidated with this action. Rule 1.250(c) expressly permits the Court to add parties such as the Herald under these circumstances "on its own motion or on motion of any party at any stage of the action and on such terms as are just."

6. If this Court grants the Herald's Motion and adds the Herald as an additional plaintiff in the Complaint, then the Herald joins in and incorporates by reference the papers filed by the Plaintiffs, including the pending Renewed Motion for Order

Requiring Production of Public Records.

CONCLUSION

For the foregoing reasons, this Court should: (i) add the Herald as an additional plaintiff in this action; and (ii) permit the Court to join in and incorporate by reference the papers filed by Plaintiffs in this action, including the pending Renewed Motion for Order Requiring Production of Public Records.

THE MIAMI HERALD PUBLISHING COMPANY  
a division of Knight-Ridder, Inc.

---

Jerold I. Budney  
One Herald Plaza  
Miami, FL 33132-1693  
(305) 376-4586

CERTIFICATE OF SERVICE

i HEREBY CERTIFY that a copy of the foregoing was served by mail this \_\_ day of October, 1995 on:

Joel D. Cantor  
3250 Hollywood Blvd.  
Hollywood, FL 33021

Thomas R. Julin  
200 S. Biscayne Blvd.  
40th Floor  
Miami, FL 33131-2398

# The Herald

BROWARD EDITION OF The Miami Herald

June 19, 1995

PUBLIC RECORDS REQUEST  
Attention: Paul Dungan

RICHARD WITT  
Police Chief  
Hollywood Police Department  
(Via facsimile, 967-4313)

Dear Chief Witt:

Under Florida Statutes, Chapter 119 of the Public Records Law, I request access to the following information ONCE IT BECOMES AVAILABLE AS A PUBLIC RECORD:

- \* The Hollywood Police Department's investigative file involving the 1981 death of Adam Walsh, of Hollywood.
- \* Or, if there is an arrest in the case, the probable cause report and all other supplemental information at the time of the arrest.

I understand the department is unable to release any files at this moment because of Broward Circuit Judge Leroy Moe's court ruling this month. However, I am seeking access to the records on the day they do become available under public records laws.

If you have any questions about my request, call me at 527-8412. I look forward to hearing from you.

Sincerely,



Ronnie Greene  
Herald Staff Writer  
527-8412

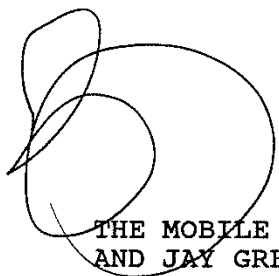


IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 9406324

DIVISION: 13

RECEIVED  
CLERK CIRCUIT COURT  
BROWARD COUNTY, FL  
OCT -3 AM 11:59



THE MOBILE PRESS REGISTER, INC. :  
AND JAY GRELEN :

Plaintiffs, :

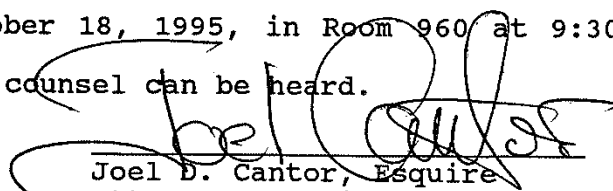
RICHARD WITT, as Chief of :  
Police of the City of :  
Hollywood, Florida, :

RE-NOTICE OF HEARING

Defendant. :

TO: THOMAS R. JULIN, ESQUIRE  
Attorney for the Mobile Press Register, Inc.  
Jay Grelen, the Sun-Sentinel and  
the Palm Beach Post  
200 S. Biscayne Boulevard, 40th Floor  
Miami, Florida 33131-2398

PLEASE TAKE NOTICE that the Defendant, RICHARD H. WITT, by and through the undersigned attorney, has set down for hearing the Defendant, RICHARD H. WITT'S, Status Advisory, requested to be held "In Camera", filed in the above cause, before the Honorable Leroy H. Moe, Judge of the Circuit Court, in Fort Lauderdale, Florida, for October 18, 1995, in Room 960 at 9:30 A.M., or as soon hereafter as counsel can be heard.

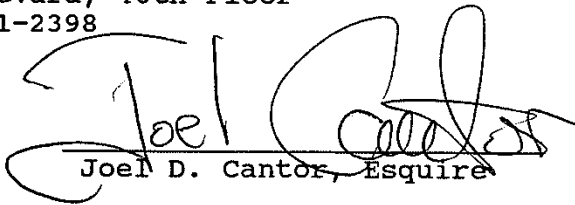


Joel D. Cantor, Esquire  
Attorney for Richard Witt,  
Chief of Police  
3250 Hollywood Boulevard  
Hollywood, FL 33021  
Telephone: (305) 967-4490  
Florida Bar #362093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the Notice of Hearing was on this 22th day of September, 1995, furnished by U.S. mail to:

THOMAS R. JULIN, ESQUIRE  
Attorney for the Mobile Press Register, Inc.  
Jay Grelen, the Sun-Sentinel and  
the Palm Beach Post  
200 S. Biscayne Boulevard, 40th Floor  
Miami, Florida 33131-2398

  
Joel D. Cantor, Esquire

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. )

FILED FOR RECORD  
CLERK, CIRCUIT COURT FOR  
BROWARD COUNTY, FLORIDA

95 SEP 28 PM 1: 10

Plaintiffs' Renewed Motion for Order  
Requiring Production of Public Records

Plaintiffs, Mobile Press Register, Inc. ("Mobile Press"), Jay Grelen, Sun-Sentinel Co. ("Sun-Sentinel"), and WFTV, Inc. d/b/a Palm Beach Newspapers, Inc. ("Palm Beach Post"),<sup>1</sup> renew their motion for an order requiring the defendant, Richard Witt, chief of police of Hollywood, Florida, to produce for immediate inspection and copying the City of Hollywood Police Department ("the Department") file regarding the abduction and killing of Adam Walsh.

Plaintiffs previously moved for this relief on May 18, 1995, and were heard by this Court on June 12, 1995. At that time, the Court denied plaintiffs' motion, without prejudice to its renewal, based upon the testimony of Detective Mark Smith that he expected to conduct several interviews "within the next few weeks." More than three months have passed since the

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1. This Court's allowed plaintiffs Sun-Sentinel and the Palm Beach Post to intervene as party plaintiff's by an oral ruling on June 12, 1995. (Ex. A 3, 74-75).

Court's hearing and, upon information and belief, Detective Smith has conducted the interviews that he expected to conduct; those interviews have not produced any new evidence upon which the Department could rest a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future; and the Department's investigation now must be regarded as "inactive" as a matter of law. Under these circumstances, the Public Records Law requires immediate release of the records regarding the investigation.

Facts Essential to this Renewed Motion

The following briefly summarizes the facts essential to this renewed motion and which the plaintiff expect to prove at the hearing on this motion. A transcript of the hearing on the plaintiffs' initial motion is attached and referred to as Exhibit A. Press reports regarding the current status of the Department's investigation are attached and referred to as Exhibits B and C.

Detective Smith Claimed to Have at Least One  
New Suspect and the Need to Conduct Several Interviews

The Mobile Press Register and Jay Grelen commenced this action on May 18, 1995, because they had requested and been denied access to all of the investigative files regarding the murder of Adam Walsh. The defendant, Chief Richard Witt, asserted that the records requested were exempt from the disclosure requirements of the Florida Public Records Law because they were related to an ongoing active criminal investigation.

At the initial hearing on June 12, 1995, Detective Mark Smith of the Department testified that he was a "cold case" specialist who had been assigned to reinvestigate the Walsh murder in August, 1994 (Ex. A 12); that he was looking at the same leads that had been investigated previously by other officers (Ex. A 19); 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. (Ex. A 27). Smith said he knew the location of the newer suspect and planned to interview him or her. (Ex. A 28-29). Smith testified that he did not know when his re-investigation would conclude (Ex. A 33), but that he hoped to conduct interviews "within the next few weeks." (Ex. A 34).

Smith testified that the Department had issued no arrest warrants and that no grand jury was investigating the matter. (Ex. A 31). Smith had not turned over the case to the State Attorney's Office, and he testified that he had no plans to do so in the foreseeable future. (Ex. A 31-32). Smith did not know how long he would be assigned to the case. (Ex. A 33).

Plaintiff Jay Grelen testified that he had interviewed defendant Witt about the status of the investigation for stories that were published in early May, 1995 in the Mobile Press Register. (Ex A 41). Defendant Witt told Grelen that he had assigned Smith to the Walsh murder at a time that it already had been considered "cold" for the purpose of re-interviewing witnesses previously interviewed. (Ex. A 42). Grelen also testified that defendant Witt told him that it would be "strictly speculation" as to whether an arrest was imminent. (Ex A 43).

The Court Denied the Plaintiffs' Motion  
to Allow Detective Smith to Complete His Interviews

At the close of the hearing, the Court found that the investigation was in fact a "cold case," (Ex A 73) but that the case had been reopened through its assignment to a "crack detective" and that the reopening of the case in this manner permitted the investigation to be considered "active" under the Public Records Law. (Ex A 73). The Court cautioned the Department, however: "I'm not going to allow a constant reopening of a cold case to serve as a

rouse to deny the public the right to access of materials that should be in the public domain.” (Ex A 73-74). 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. (Ex A 74). The Court then denied the original motion without prejudice to its renewal. (Ex. A 74).

The Department Admits that the Reinvestigation  
Has Not Produced Any “Exciting New Revelations”

Immediately after the hearing, the Department held a press conference at which it denied that it in fact was pursuing leads that were likely to result in an arrest or prosecution in the foreseeable future. ““The recent leads we have received may or may not lead to a successful conclusion to the Adam Walsh case,”” a Department press release stated. Hollywood Police Dep’t Press Release, quoted in Is It Time to Open the Walsh Files?, The Miami Herald, June 18, 1995, 1A, at 7A (Ex. B). ““If there has been a misinterpretation that there are exciting new revelations or breaking news in this homicide investigation, then we apologize for this misunderstanding.”” Id.

Notwithstanding this announcement, the plaintiffs chose not to ask this Court to reexamine its ruling immediately. Instead, by agreement with counsel for the defendant, the plaintiffs did not to renew the motion so that Detective Smith would have a further opportunity to conduct the interviews that he had identified at the hearing.

Chief Witt Admits that There are No New Suspects

Two weeks later, on or about June 29, 1995, defendant Witt told a reporter for The Miami Herald that Detective Smith’s re-investigative efforts had not yet been successful. ““I wish I could tell you that there have been things that have come about that we can jump for joy

about. But there haven't been," Chief Witt said. Adam Walsh Killing May Stay a Mystery, Miami Herald, June 30, 1995, 12A (Ex. C). The Chief then admitted that the Department did not in fact have any new suspects. "Somehow, there's the belief that there's this new suspect or suspects. That's just not true." Id.

After publication of these statements, counsel for the plaintiffs immediately contacted counsel for the defendant to determine whether the investigation had reached a conclusion. Counsel for the defendant represented that notwithstanding Chief Witt's public statements, Detective Smith was pursuing further interviews, that the detective was hopeful that the interviews would advance the investigation, and that if they did not advance the investigation, the defendant might agree to release the records at issue without further involvement of the Court.

Since that development in late June, 1995, counsel for the plaintiffs has been in regular telephone contact with counsel for Chief Witt, asking for reports concerning the status of the investigation and seeking a mutually amicable resolution of the case through a release of the records. This telephone contact recently resulted in the submission by the defendant of a document entitled "In Camera' Status Advisory" in which Chief Witt reports: "Since June 12, 1995, Hollywood Police have been actively investigating this matter in good faith in anticipation that an arrest or prosecution may result." (Emphasis in original). The document expressly does not state that the defendant or any members of the Hollywood Police Department in fact anticipate securing an arrest or prosecution in the foreseeable future. Rather, the document is couched in very specific language apparently designed to avoid committing the Department to

the position that it does in fact anticipate securing an arrest or prosecution in the foreseeable future.

Argument

I.

The Defendant Does Not Have a “Reasonable Anticipation of Securing and Arrest or Prosecution in the Foreseeable Future”

A criminal investigation is considered “active” and information related to it may be withheld from the public only as 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). At this point, it is clear that the defendant does not have a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future and therefore the records relating to the investigation must be released. Indeed, the defendant admits as much in his status advisory which informs the Court that the investigation is continuing not with an anticipation of securing an arrest or prosecution in the foreseeable future, but only because an arrest or prosecution “may result.” This could be said of any investigation, irrespective of the likelihood that the investigation ever would result in an arrest or prosecution, and therefore cannot meet the statutory standard applicable here.

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 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).

In this case, involving an investigation that was commenced 15 years ago, which lay dormant for many years, which is regarded as a “cold case” by the defendant himself, and which still has not resulted in an arrest or prosecution even after 13 months of reinvestigation by a crack detective and his cold case squad, the Court must hold that the defendant cannot reasonably anticipate that he will secure an arrest or prosecution in the foreseeable future.

This conclusion is consistent with 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 the course of affirming an order determining 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 the defendant’s assertion that it has neither decided to drop the case nor to place the case on hold. The fact that the Hollywood Police Department may still be reinvestigating the case does not change the fact that it cannot reasonably anticipate securing an arrest or prosecution in the foreseeable future. This is the standard that must be met in order to justify a further withholding of the records from the press and public. The statute does not provide 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 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 any indication that he anticipated providing information to the State Attorney’s office that would result in an arrest or prosecution. And there is nothing now to indicate that Detective Smith has come any closer to securing an arrest or prosecution. In fact, the public statements of Chief Witt seem plainly to show that Detective Smith has been unable to make any progress on the case and that the Department is now further from -- not closer to -- solving the case.

The plaintiffs do 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, the chief perhaps should be applauded for asking one of his detectives to devote more than a year to reexamining a long dormant investigation to make sure that every conceivable step was taken to solve this crime. But the fact that a detective is continuing to look at and reevaluate

the case on an indefinite basis cannot change the fact that neither an arrest nor prosecution reasonably can be anticipated in the foreseeable future. At this juncture, the longer the investigation goes on, the more 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 drags on and on and on, it becomes less, not more, likely that even if the case were "solved" in some abstract sense, that 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 Hollywood Police Department has had 15 long years of exclusive access to the files regarding this tragic incident. In that period it has been unable to solve the crime. Now is the time to allow the public and the press to review this file. Why was the investigation unsuccessful? Did the Department adequately follow all leads? Was evidence properly handled? Were adequate resources available to conduct the investigation? Only once the file is made available for public inspection can these important questions be answered.

Public access to the investigative file also holds out the hope that widespread dissemination of information of the case may turn up new leads which 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 Barfield court specifically observed that the public and the press have a legitimate and important interest in reviewing police files and concluded: "In passing, we note this is not a

situation where the information sought will remain permanently confidential. Rather, once the investigations are concluded, if no charges are filed, the records would cease to be 'active' and thus subject to disclosure." 639 So. 2d at 1018.

In this case, the investigation has been concluded, no charges have been filed, and now is the time to order the files released. The files may not be made permanently confidential.

In those cases where the courts have held that a criminal investigation properly is classified as "active," either prosecutorial action was imminent or the time from the date of the incident to the date of the request for access to the file typically has been very brief.

For example, in the Barfield case, 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 properly 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, 15 years have passed since the incident and the plaintiffs are aware of 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. Detective

Smith specifically acknowledged at the initial hearing, that no grand jury investigation was under way and no plans had been made to turn over any evidence to the state attorney to commence a prosecution. The defendant may be hopeful that Detective Smith may one day work a miracle that results on an arrest or prosecution. This mere hope for a miracle is not sufficient under Florida law to constitute a good faith anticipation of securing a prosecution or arrest in the foreseeable future.

II.

The Defendant Has Had Adequate Time  
to Conduct a Full Reinvestigation of this Case

At the initial hearing in this case, the defendant did not demonstrate that he had a reasonable anticipation of securing an arrest or prosecution in the foreseeable future. Nevertheless, this Court concluded that Detective Smith should be permitted a further opportunity to conclude those few interviews that he felt necessary to complete his reinvestigation of the case.

Detective Smith now has had more than a full and fair opportunity to complete his reinvestigation and it is evident from the public statements of Chief Witt together with the "Status Advisory" filed by Detective Witt that he cannot and will not say that he reasonably anticipates securing an arrest or prosecution in the foreseeable future.

The technical requirements of the Public Records Law aside, the Court and the plaintiffs have been extraordinarily deferential to the defendant to ensure that the defendant would have not only all the time permitted by the law to examine this extraordinary case before the records of the investigation are released, but even more time than is allowed by the law.

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The time for further deference to the defendant is now ended and the Court should order an immediate release of the records.

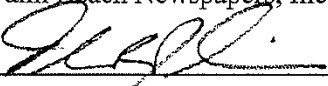
Conclusion

For all of the above reasons and for the reasons set forth in the original motion, this Court should (1) declare that the defendant's refusal to make the records requested available for inspections is in violation of the Florida Public Records Law; (2) issue a peremptory writ of mandamus or such other relief as may be appropriate requiring the defendant and his agents; servants, designees, subordinates and employees to permit the plaintiffs to inspect and copy the records requested; (3) issue a writ of mandamus or such other order, including an injunctive order, upon the failure of the defendants to permit immediate inspection and copying of the records; (4) reserve jurisdiction to award attorneys' fees and costs to the plaintiffs against the defendant or against the Hollywood Police Department pursuant to section 119.12, Florida Statutes (1993); and (5) provide such other relief as may be necessary to provide the plaintiffs with the full relief to which they are entitled.

Respectfully submitted,

Steel Hector & Davis  
Attorneys for The Mobile Press Register, Inc.  
Jay Grelen, Sun-Sentinel Co., and WFTV, Inc.  
d/b/a Palm Beach Newspapers, Inc.

By



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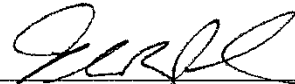
Case No. 95-06324 CACE (13)

Certificate of Service

I hereby certify that a true and correct copy of this motion was mailed on September 26,

1995, to:

Joel D. Cantor  
3250 Hollywood Boulevard  
Hollywood, FL 33021



Thomas R. Julin

MIAMI/190588-1

IN THE SEVENTEENTH JUDICIAL CIRCUIT IN  
AND FOR BROWARD COUNTY, FLORIDA  
CIVIL DIVISION  
CASE NO. 95-06324

THE MOBILE PRESS REGISTER )  
Plaintiff, )  
vs. )  
RICHARD H. WITT, Chief of )  
police, )  
Defendant. )

COPY

Transcript of Proceedings beginning at 1:30 P.M., and concluding at 2:55 p.m., on Monday, June 12, 1995, taken in the Broward County Courthouse, Fort Lauderdale, Florida, before the Honorable Judge Moe, Circuit Court Judge, Reported by Jeri Corona, Shorthand Reporter.

APPEARANCES:

THOMAS R. JULIN, Esquire, on behalf of the Plaintiff  
ADAM LEVIN, Esquire, on behalf of the Plaintiff as  
co-counsel.  
JOEL CANTOR, Esquire, on behalf of the Defendant.  
JAY GRELEN





1 THEREUPON, the following proceedings were had.

2 THE COURT: All right. Are we ready  
3 on the Mobile Press Register versus --

4 MR. CANTOR: Defendant is ready, your  
5 Honor.

6 Your Honor, Joel Cantor representing  
7 individual defendant, Chief Richard Witt,  
8 chief of the Hollywood Police Department.  
9 The case of Mobile Press Register versus  
10 Chief Richard Witt, Hollywood police  
11 chief.

12 MR. JULIN: Your Honor, Thomas Julin  
13 of Steel, Hector and Davis for the Mobile  
14 Press Register, and Jay Grelen, and also  
15 for the Sun Sentinel Company and the Palm  
16 Beach Post.

17 With us today is also Jay Grelen, one  
18 of the plaintiffs and reporter for the  
19 Mobile Press Register; and Adam Levin, an  
20 associate in my office.

21 THE COURT: Are there any other  
22 parties to the Walsh case?

23 MR. JULIN: These are the only --

24 THE COURT: The Register and the  
25 reporter?

1 MR. JULIN: The Register and the  
2 reporter. There has been -- motions have  
3 been filed by Palm Beach Post and the Sun  
4 Sentinel to join as plaintiffs to the  
5 case. And I spoke with Mr. Cantor about  
6 it and he indicated there is no objection  
7 to that motion being granted.

8 THE COURT: All right.

9 MR. JULIN: Your Honor, this is  
10 before the court on our motion for an  
11 order requiring the defendant, the chief  
12 of police of Hollywood, to release the  
13 records of the Adam Walsh murder  
14 investigation.

15 This case is a public records  
16 enforcement case and we have for your  
17 Honor basically a dispute over an  
18 interpretation of a single exemption to  
19 the public records law.

20 I think the essential facts are not  
21 in dispute in this case as far as the  
22 crime at issue here took place in July of  
23 1981, an investigation of the crime  
24 commenced by the Hollywood Police  
25 Department, and that investigation

1 continued for a number of years.

2 It is now fourteen years  
3 approximately after the date of the crime  
4 and the contention of the plaintiffs here  
5 is that this can no longer under the  
6 public records law be considered an active  
7 criminal investigation that the defendants  
8 are engaged in.

9 The crime remains unsolved. The  
10 crime had been assigned to the cold case  
11 squad of the Hollywood Police Department  
12 and our contention is, and we'll show your  
13 Honor, that this is not an active  
14 investigation.

15 THE COURT: How do you plan to do  
16 that? Are you going to present testimony  
17 or evidence?

18 MR. JULIN: Your Honor, as far as  
19 procedure goes I would propose this. In  
20 these cases under the Barfield decision  
21 versus the City of Fort Lauderdale Police  
22 Department the Fourth District Court of  
23 Appeal held that the burden of showing an  
24 exemption is applicable is on the  
25 defendant in the case, and I understand

1           that the defendant has witnesses here that  
2           are available to testify as to whether an  
3           active criminal investigation is underway  
4           or not.

5                     And we would propose, as far as  
6           procedurally things are concerned, it  
7           would be appropriate for the defendant to  
8           call any witnesses or offer any testimony  
9           that would be supportive of their  
10          contention that there is an active  
11          criminal investigation underway.

12                    The statute that we're dealing with  
13          is clear in its definition of active  
14          criminal investigation. We're dealing  
15          with Section 119.0113 D-2 which provides  
16          that criminal investigative information  
17          shall be considered active as long as it  
18          is related to an ongoing investigation  
19          which is continuing with a reasonable good  
20          faith anticipation of securing an arrest  
21          for prosecution in the foreseeable future.

22                    Now, in this case -- this case is  
23          somewhat unique in Florida history. We  
24          have not been able to find any Florida  
25          cases which have addressed whether a

1 criminal investigation can remain active  
2 for a period of fourteen years. There  
3 have been a number of decisions, the  
4 Barfield decision being one of them, where  
5 there was a fairly short period of time  
6 from the date of the crime to the date  
7 that the records were requested where the  
8 courts have concluded that that short  
9 period of time, typically a period of  
10 months, is not a sufficient time to --  
11 that there has not been enough past time  
12 to allow the police to conduct and  
13 conclude their investigation.

14 We submit in this case, where you  
15 have had the fourteen year lapse of time,  
16 that the defendant will not be able to  
17 meet its burden of showing that there is  
18 still an active criminal investigation  
19 underway.

20 In fact, we do have evidence to offer  
21 from Mr. Grelen who had a conversation  
22 with the chief of police about what he was  
23 told as far as the status of the  
24 investigation goes. But we think that  
25 properly the burden is on the defendant.

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THE COURT: You will assume the burden of going forward then?

MR. CANTOR: Yes, we will, your Honor.

THE COURT: Do you care to make an opening statement?

MR. CANTOR: Yes, I do, your Honor. Your Honor, clearly and even out of the articles that have been published by Mr. Grelen, this investigation is currently active. There are three primary cases that will affect this issue, Judge, and I would like to present them now as we review through them during the course of our argument.

One being the Barfield case which is in our district. Another one, Florida Freedom News Papers versus Dempsey and the other case is out of Lee County Circuit Court opinion that was affirmed on appeal that is News Press Publishing versus McDougall.

This case, your Honor, is currently being actively investigated, has been investigated feverishly by Detective Mark

1 Smith who is present in this courtroom who  
2 has also supplied this court with an  
3 affidavit verifying that he is actively  
4 pursuing this investigation in good faith.  
5 In good faith with the impression that he  
6 is going to bring this case to a final  
7 determination in the foreseeable future.

8 Your Honor, I believe that meets the  
9 burden and certainly shifts that burden  
10 back. But, if need be, your Honor,  
11 certainly we're prepared to offer Mark  
12 Smith, Detective Mark Smith, to testify  
13 before this court not as to the  
14 intricacies to what he is actually  
15 investigating, but certainly to further  
16 verify what he has suggested in his  
17 affidavit, the attached affidavit.

18 THE COURT: Will you accept the  
19 affidavit as substantive proof?

20 MR. JULIN: No, your Honor, we don't.  
21 We think that the statute conflicts that  
22 evidence be offered by affidavit.

23 THE COURT: Do you care to reply to  
24 the opening statement?

25 MR. JULIN: Your Honor, I would only



1 say as far as the affidavit is concerned  
2 the affidavit simply indicates that there  
3 has been an investigation of some type on  
4 the part of the detective to review  
5 reports in evidence and that says he is  
6 continuing to review the investigation  
7 that had been conducted by the Hollywood  
8 Police Department.

9 Essentially what happened here is the  
10 Hollywood Police Department conducted an  
11 investigation, which was concluded, and  
12 then it was assigned to what I think the  
13 evidence will show, to the cold case  
14 squad.

15 The case had become cold and I think  
16 at this point and time where the cold case  
17 squad investigated it for almost a year  
18 that at this point it is no longer  
19 reasonable to contend that there is an  
20 active criminal investigation.

21 None of the cases cited by the  
22 defendant here would support the  
23 proposition that a criminal investigation  
24 can remain active for a period of fourteen  
25 years unless there is an exceptional

1           circumstance where they can show your  
2           Honor that there really is some additional  
3           new evidence that has come to life which  
4           they're tracking down and this had given  
5           them the believe that they're going to  
6           secure an arrest in the foreseeable  
7           future.

8           The standard has never been simply  
9           that the case is unsolved. The standard  
10          has been do they have a reasonable good  
11          faith belief in securing an arrest.

12          MR. CANTOR: And I agree with that,  
13          your Honor. And just one last response,  
14          if I might, your Honor. The McDougall  
15          case, which I just handed to you which was  
16          affirmed correctly on an appeal, this is a  
17          1988 homicide where during the course of  
18          the investigation the victim passed away.

19          Over four years later two sexual  
20          battery victims alleged the same homicide  
21          perpetrator was involved as a defendant in  
22          their case. The local police department  
23          in Lee County decided to reactivate that  
24          homicide file after it had remained  
25          absolutely dormant for four years.

1           The District Court of Appeals and the  
 2           Circuit Court both affirmed then. And in  
 3           very specific language on page two of that  
 4           case, your Honor, while admitting that for  
 5           a period of excess of four years this file  
 6           was inactive, the main thing to look at on  
 7           page three, custodians only proper concern  
 8           is whether the file is active now.

9           And clearly, your Honor, even out of  
 10          the words of Jay Grelen, one of our  
 11          plaintiffs in this particular matter, this  
 12          case is currently under investigation.  
 13          Again, Detective Smith has suggested that  
 14          in verification and will do so, your  
 15          Honor.

16          THE COURT: All right. Call your  
 17          first witness.

18          MR. CANTOR: Your Honor, the defense  
 19          will call Detective Mark Smith.

20          THE COURT: All right. Come on up  
 21          here and be sworn in and have a seat over  
 22          there, please.

23   THEREUPON:

24    MARK SMITH

25   a witness herein, being of lawful age and being first

1 duly sworn by the court testified on his oath as  
2 follows:

3 DIRECT EXAMINATION

4 BY MR. CANTOR:

5 THE COURT: Have a seat and make  
6 yourself comfortable.

7 MR. CANTOR: With the court's  
8 permission I would like to inquire with  
9 this witness.

10 Q. (By Mr. Cantor) Detective Smith, you're  
11 currently employed by?

12 A. The City of Hollywood Police Department.

13 Q. In the capacity of?

14 A. A detective in the homicide division.

15 Q. Okay. With this case that seems to be the  
16 subject matter of this pending public records  
17 litigation, Detective Smith, how long have you been  
18 currently investigating this case?

19 A. Since August of 1994.

20 Q. Okay. So approximately ten months?

21 A. Yes.

22 Q. Over that -- during that ten month period,  
23 have you been -- without getting into the  
24 intricacies of your investigation, have you been  
25 going out of town to interview suspects, have you

1 been -- just generically, what have you been doing?

2 A. As you stated, I have traveled out of  
3 town. I have traveled out of state. I traveled  
4 within the state as recently as a month and a half  
5 ago. I went out of state about six months ago with  
6 this case and that's about it.

7 Q. Detective Smith, with as much time as you  
8 have been devoting to this case, notwithstanding  
9 the case you're currently testifying for right now,  
10 the homicide case for Mr. Magrino, but have you been  
11 devoting as much time to this case as any of your  
12 other cases that you have on your calendar?

13 A. I would say so. I mean, I have been as  
14 far as I've approached the prosecutors, the state  
15 attorneys office about this case. I've dealt with  
16 Mr. Magrino on this case and I would say I'm  
17 spending about as much time as I am on any other  
18 case that I have.

19 Q. Detective Smith, are you proceeding in  
20 this investigation in good faith with the  
21 anticipation that you will either secure an arrest  
22 or eventual prosecution in this case?

23 A. Absolutely. In that I don't know why I  
24 would be investigating it now if I wasn't expecting  
25 something like that.

1 Q. Prior to you jumping on this case in  
2 August -- let me -- just -- the plaintiff's counsel  
3 mentioned something about cold case. Is there any  
4 such things as a cold case squad?

5 A. Not necessarily cold case squad. But  
6 we -- I think it is generally called --  
7 investigating an old case is called investigating a  
8 cold case. I have investigated maybe a dozen older  
9 cases, unsolved cases over the six years that I have  
10 been there. This is considered one of those as  
11 well.

12 Q. Let me ask you, Detective, is that  
13 sometimes mentioned or is an investigator brought in  
14 as a cold case detective to bring sort of like a new  
15 fresh face or outlook to the case?

16 A. That's exactly what it is. The fact that  
17 in murder one there is no statute of limitations.  
18 Any murder case we have is considered -- actually  
19 considered open. It is never closed. Whether it is  
20 investigated or not is another story.

21 Q. Okay. With your current -- with your  
22 activity that you have been involved -- let me just  
23 even ask you, prior to your ten months that you have  
24 been devoting to the case recently, were you also  
25 aware of approximately two, two and half years ago

1 when the previously assigned detective was up  
2 interviewing Jeffrey Dahmer (phonetic) up in  
3 Minnesota as a potential suspect in this crime?

4 A. Yes, I had personal knowledge of that.

5 Q. How long ago was that?

6 A. About two years ago.

7 Q. Is it your knowledge that this case has  
8 been actively investigated through the years as  
9 opposed to what plaintiff's counsel is suggesting,  
10 that it has been sitting dormant?

11 A. It has not been sitting dormant. We get  
12 calls all the time on this case. There isn't a  
13 month that doesn't go by that we don't get a call.

14 Q. The interview with Jeffrey Dahmer two and  
15 a half, three years ago, did that require one of our  
16 homicide detectives to go up and actually go to  
17 Minnesota and interview Jeffrey Dahmer?

18 A. I believe we went to Wisconsin.

19 Q. Or Wisconsin, I'm sorry.

20 A. Yes.

21 Q. Okay. Detective Smith, what affect on  
22 your investigation would the revelation of the Walsh  
23 file? What affect would it have on your  
24 investigation?

25 A. Oh, if there is another witness out there,

1 if there is another someone that would have come  
2 forward and spoken to me, the fact that it would be  
3 opened up I think would harm the investigation  
4 without a doubt.

5 Q. Okay. Would it possibly impede your  
6 eventual final determination of this case?

7 A. I'm sure it could.

8 Q. Judge, I'll tenure any cross examination.

9 MR. JULIN: Thank you.

10 CROSS EXAMINATION

11 BY MR. JULIN:

12 Q. Detective Smith, good afternoon.

13 A. Good afternoon.

14 Q. Detective Smith, you testified that you  
15 started working on this case in August of 1994?

16 A. That's correct.

17 Q. Was there something that precipitated your  
18 investigation at that time or your assignment in the  
19 investigation at that time?

20 A. You're asking me why I got assigned to the  
21 case?

22 Q. Yes. How did you happen to start working  
23 on it in August of '94?

24 A. Well, the decision was made by the  
25 division manager at that time, who was Major Maher,



1 Major Brian Maher, who was in charge of the  
2 detective bureau. He made the decision along with  
3 my immediate lieutenant who assigned me the case.

4 Q. Did they tell you why they were assigning  
5 you to that case at that time?

6 A. No. I don't remember. I don't remember  
7 why. They brought me and told me that they wanted  
8 me to work the Adam Walsh case.

9 Q. Now, Detective, isn't it true that one of  
10 your specialties is working on cold cases?

11 A. I've worked them. I have worked them  
12 maybe more than any of the other detectives in our  
13 division, yes

14 Q. Isn't it true that you were assigned this  
15 case because one of your specialties is working on  
16 cold cases?

17 A. I guess you could say that's a  
18 possibility, yes.

19 Q. And this case was regarded as a cold case  
20 by the City of Hollywood Police Department, was it  
21 not?

22 A. I think, as I just mentioned before, any  
23 homicide case that is not solved is considered I  
24 guess you could say cold, meaning it hasn't been --  
25 a new approach hasn't been used, new technique. It

1 is just a different perspective. Cases haven't been  
2 looked at in a different perspective.

3 Q. Detective, the City of the Hollywood  
4 Police Department does not regard every one of its  
5 unsolved murder cases as cold cases, does it?

6 A. I believe they do. I would.

7 Q. So if a murder happened yesterday and you  
8 have an active lead and expect to make an arrest  
9 tomorrow, that is a cold case?

10 A. I stand corrected. If you put it that  
11 way, no. If there is a case that has been  
12 investigated thoroughly, one day it is probably -- I  
13 wouldn't use that as being -- leads that have been  
14 exhausted in one day. I would say that if you have  
15 a case in about a week's time everything has been  
16 exhausted, there are no further leads, I would think  
17 then it would be considered possibly a cold case.

18 Q. At the time that you were assigned to the  
19 Adam Walsh case the department had fully explored  
20 all the leads that they had at that time, had they  
21 not?

22 A. I don't believe so.

23 Q. Were there active leads that had not been  
24 followed up at the time you were assigned to the  
25 case?

1           A.    Well, it is a rather vast file.  There is  
2 a lot in that file that probably needs to be looked  
3 at and it is going to take some time.

4           Q.    And you found in August of 1994 that there  
5 were things that had not been looked at by the  
6 detectives, is that what you're testifying?

7           A.    I have to say they weren't looked at the  
8 way I would look at them or approach them.

9           Q.    So they had been looked at by other police  
10 officers, they had not resulted in any arrests or  
11 prosecutions, and then you decided to take another  
12 look at them, is that your testimony?

13          A.    I would say that that is the best way to  
14 look at a case that hasn't been solved.  Maybe one  
15 of the reasons it has not been solved is it hasn't  
16 been looked at correctly.

17          Q.    And that is what happened in this case,  
18 others have looked at the leads, not found anything  
19 there, and you were brought in for a second look, is  
20 that correct?

21          A.    Sure, there were leads that were looked  
22 at, yes.

23          Q.    That's what happened here, is that  
24 correct?

25          A.    Yes.

1 Q. Now, Detective, you have been working on  
2 this matter since August of 1994. You have been  
3 working a matter of ten months. Do you expect to  
4 conclude your investigation at any time in the  
5 future?

6 A. I would love to be able to answer that and  
7 I don't know. I don't know when we'll feel that  
8 everything else has been exhausted. I don't feel  
9 they have.

10 Q. Is there any way that you can quantify how  
11 much longer you are going to be on this  
12 investigation?

13 MR. CANTOR: Judge, I would object to  
14 even the form of the question, your Honor,  
15 because our case decision is very  
16 specifically set out the fact that our  
17 detective, who is being asked on direct or  
18 cross examination, doesn't have to respond  
19 to that question of quantifying when a  
20 prosecution or arrest may take place.

21 THE COURT: Overruled.

22 Q. (By Mr. Julin) Can you quantify how much  
23 longer you would expect to be working on this  
24 investigation?

25 A. That's hard to answer. The next lead I

1 look up might take me in two other different  
2 directions and those two leads might take me  
3 somewhere else. I don't know how I can answer that.  
4 I would love to say it would end next week.

5 Q. Can you say that it is probable that you  
6 will make an arrest or commence a prosecution next  
7 week?

8 A. No.

9 Q. Can you say that you will make an arrest  
10 or commence a prosecution within the next month?

11 A. Very possible.

12 Q. You say it is possible. My question is,  
13 can you say it is probable that you will make an  
14 arrest or commence a prosecution within the next  
15 month?

16 A. It is very difficult to answer that  
17 question because I do have things planned very soon  
18 and I don't know where they are going to lead me  
19 from there.

20 Q. So you cannot answer the question, is that  
21 your answer?

22 A. I cannot tell you -- I cannot -- yes, I  
23 cannot answer your question, that's correct.

24 Q. Now, the department, does it have other  
25 murders that have been unsolved for a period of

1 fourteen years --

2 A. Oh, yes.

3 Q. -- to your knowledge?

4 A. Yes.

5 Q. Can you tell us approximately how many  
6 have been unsolved for that length of period of  
7 time?

8 A. I'm looking at one now that is fifteen  
9 years. There is a few I know of that are twenty  
10 years.

11 Q. All right. Has the department ever solved  
12 a murder case where they have been investigating for  
13 a period of fourteen years to your knowledge?

14 MR. CANTOR: Objection, Judge. I'm  
15 not sure what the relevancy is of that.

16 THE COURT: Overruled.

17 A. (By the Witness) Yes.

18 Q. Okay. How many cases did it solve after  
19 fourteen years?

20 A. I know of one, maybe more. But my  
21 personal knowledge is one because I was involved in  
22 it.

23 Q. And was there something about that  
24 particular case that allowed you to solve that case  
25 after a period of fourteen years?

1 A. Yes.

2 Q. And what was that?

3 A. Exactly what we have been discussing, a  
4 new approach, a new -- in that particular case it  
5 was a different approach with an already known  
6 witness and all it took was just another approach to  
7 that witness and the case came to a conclusion.

8 Q. Detective, what is this different approach  
9 that you're using?

10 A. I would have to say it is anything other  
11 than what the original investigators had. In other  
12 words, they may have looked at -- they may look at  
13 someone who said something -- no, I would look at  
14 what someone said back then and just show up and  
15 talk to that person. And that person who was a  
16 friend of someone fifteen, fourteen years ago is now  
17 his enemy and all it takes is coming up and talking  
18 to him. Things like that. There is other things.

19 Q. Detective, is there anything beyond this  
20 different approach that gives you an expectation  
21 that you're going to make an arrest in the Adam  
22 Walsh murder case?

23 MR. CANTOR: Objection, asked and  
24 answered, your Honor.

25 THE COURT: Overruled.

1           A.     (By the Witness) Well, technology that we  
2     didn't have back in the early eighties.

3           Q.     Let me ask you about that, the technology.  
4     In this particular case Adam Walsh of course  
5     disappeared from a Sears store in Hollywood, do you  
6     recall that?

7           A.     Yes, I think I do.

8           Q.     And so it creates a difficulty for  
9     investigating this crime, does it not, because you  
10    don't have a crime scene, you don't have a place  
11    where the crime took place?

12          A.     It makes it a little more difficult, yes.

13          Q.     Makes it very difficult, does it not?

14          A.     Makes it more difficult, yes.

15          Q.     Would you say this is one of the most  
16    difficult investigations that you have worked on as  
17    a detective?

18          A.     I would say so, yes.

19          Q.     And the reason for that -- one of the  
20    reasons is that you don't have a crime scene to work  
21    with, is that correct?

22          A.     We don't have a crime seen that we know of  
23    now, that's correct.

24          Q.     Do you have reason to believe that you're  
25    going to find a crime scene in the future?



1 A. Absolutely. That's a possibility.

2 Q. And what is your basis for your testimony?

3 A. The basis for the testimony is that there  
4 might be a crime scene somewhere?

5 Q. Yes, you testified you might find a crime  
6 scene in the future, what is the basis for your  
7 saying that?

8 A. There is a crime scene somewhere, that's  
9 why I'm leaving that option open that some day maybe  
10 it will be found.

11 Q. Do you have any evidence now in your  
12 possession that is leading you to the crime scene?

13 MR. CANTOR: Your Honor, I object to  
14 that because this should not be a fact  
15 finding mission for the media to get into  
16 specific inquiries as to where this case  
17 is going, your Honor.

18 THE COURT: Sustained.

19 Q. (By Mr. Julin) Now, Detective, you  
20 mentioned that new technology is giving you a basis  
21 to believe that you might secure an arrest in the  
22 future, what new technology are you using that is  
23 giving you that basis?

24 A. I don't know. That's part of your same  
25 argument that you just mentioned. For that reason,

1 I don't know if I can expound upon it.

2 Q. Let me ask you this way, Detective, is  
3 there some invention, or machine, devise that you're  
4 now applying to evidence which could not have been  
5 applied to evidence in the proceeding fourteen years  
6 of this investigation?

7 MR. CANTOR: Again, your Honor, I  
8 have to object as to his methodology,  
9 detective's methodology now in  
10 investigating this case. Specifically,  
11 Judge, certainly it would disclose in the  
12 open courtroom as to what this detective  
13 is doing.

14 THE COURT: Sustained.

15 MR. JULIN: Your Honor, could I  
16 request that if there are matters that  
17 would show that some new technology is  
18 being used it might be appropriate for an  
19 in camera review by the court to consider  
20 what that is, because it is difficult to  
21 cross examine the witness about his  
22 assertions that are very general without  
23 getting into that specific.

24 THE COURT: Yes, it is. I recognize  
25 that is difficult, but at this point I

1 don't think an in camera inspection is  
2 warranted here.

3 Q. (By Mr. Julin) Detective, do you have a  
4 suspect in the case at this time?

5 MR. CANTOR: Again, Judge, same  
6 objection. Getting into the specifics for  
7 fact finding, your Honor.

8 THE COURT: Overruled.

9 A. (By the Witness) I have more than one.

10 Q. How many suspects do you have?

11 A. I can think of two or three possibilities.

12 Q. And had these people, who are currently  
13 suspects of the Hollywood Police Department, have  
14 they been suspects prior to your being assigned to  
15 the case?

16 A. One has and one hasn't.

17 Q. And at what point and time -- you said two  
18 or three, do you have two suspects or do you have  
19 three or can you tell?

20 A. Two for sure possibilities.

21 Q. All right.

22 A. Maybe one more.

23 Q. The one person who was a suspect before  
24 you came on the case, how long has that person been  
25 a suspect?

1 A. I can say about twelve years.

2 Q. And the one person -- the one additional  
3 person who is now a suspect, how long has that  
4 person been a suspect?

5 A. About six months.

6 Q. And are there specific steps that you are  
7 taking to investigate that suspect?

8 A. Yes.

9 Q. And can you describe to us in a general  
10 manner what it is that you're doing to conduct the  
11 investigation?

12 A. Generally I would be looking for someone  
13 that he knew and associated with back a few years,  
14 approach that person.

15 Q. And in the six months that this person has  
16 been a suspect, have you made efforts to find that  
17 person?

18 A. I know where he is.

19 Q. And since you know where he is, have you  
20 gone out and interviewed this person?

21 A. Not yet.

22 Q. Is there some reason that you haven't done  
23 that in the six months that this person has been a  
24 suspect?

25 A. Well, a lot has to do with my current case

1 load. At the present time I'm in another trial  
2 right now. It just happens.

3 Q. And do you have a time when you expect to  
4 be able to conduct that interview?

5 A. Hard to be specific on a time. I do plan  
6 on doing it in the near future.

7 Q. Would that be in the next week or month?

8 A. Hopefully.

9 Q. And once you have conducted that  
10 interview, will that be sufficient to conclude your  
11 investigation?

12 A. Not at all.

13 Q. Why is that?

14 A. Well, I don't know where that interview is  
15 going to lead me. I hope it leads me elsewhere.

16 Q. In the course of conducting your  
17 investigation, how many leads, approximately, have  
18 you followed up on would you say?

19 A. That's hard to answer. I'll guess about a  
20 dozen.

21 Q. All right. And none of those have led to  
22 an arrest or prosecution, have they?

23 A. Not yet.

24 Q. And in the previous fourteen years of the  
25 investigation, can you tell us approximately how

1 many leads the police department has followed up on?

2 A. Hundreds if not thousands.

3 Q. And the department thoroughly investigated  
4 each and everyone of those leads, did it not?

5 A. I don't believe so. Not thoroughly. They  
6 probably did as well as they could. Maybe if I look  
7 at a few of them I'll find out that, yes, they were  
8 in fact looked at thoroughly.

9 Q. In reviewing the file you found that the  
10 most probable leads have all been thoroughly  
11 investigated, haven't you?

12 A. I would have to say it was an exhausted  
13 investigation on most if not all the leads.

14 Q. The family members, friends, the usual  
15 most likely suspects have all been thoroughly  
16 investigated, have they not?

17 A. Yes.

18 Q. And the department has not arrested or  
19 prosecuted any of those people, have they?

20 A. That's correct.

21 Q. And so what we're talking about is finding  
22 a suspect who is an unusual suspect that you  
23 wouldn't ordinary suspect, isn't that true?

24 MR. CANTOR: Objection, your Honor.

25 Again, I'm not sure where that is going.

1 THE COURT: Sustained.

2 Q. (By Mr. Julin) Detective, there has been  
3 no warrants issued for an arrest, has there?

4 A. Not to my knowledge.

5 Q. And there is currently no Grand Jury that  
6 is investigating this matter, is there?

7 A. That's correct.

8 Q. And have you done anything to turn over  
9 the investigation to the State's Attorney's Office?

10 A. I have been in contact with the State  
11 Attorney's Office as far back as six months ago,  
12 maybe a little bit longer, about this case. As far  
13 as turning it over to them, no

14 Q. Do you have any plans to turn over the  
15 results of your investigation to the State  
16 Attorney's Office in the foreseeable future?

17 A. I would love to.

18 Q. The question is, do you have any plans to  
19 do that in the foreseeable future?

20 A. My plans right now are not definitive  
21 exactly where we're going to go with this case.

22 Q. And, therefore, you do not have any plans  
23 to turn over the results of the investigation to the  
24 State Attorney's Office in the foreseeable future,  
25 do you?

1           A.    When you say plan, no, I don't have a plan  
2 to do that.  But, hopefully, yes, we do.

3           Q.    Detective, have you found in other  
4 investigations that media coverage sometimes helps  
5 the police to solve the crime?

6           A.    Yes.

7           Q.    And is it possible that if you turned over  
8 this investigation, you opened this investigation  
9 up, that in fact the additional publicity that would  
10 result would result in solving this crime?

11          A.    I think it would hurt more than help.

12          Q.    But you don't know that?

13          A.    No.

14          Q.    And why do you think that it would hurt  
15 more than help in this case?

16          A.    I think the fact is, as I have explained  
17 to Mr. Cantor here, is that the fact this case would  
18 be -- if the press gets involved in this case I  
19 think in this particular case it would hurt because  
20 I don't know -- I don't know what affect it would  
21 have on anyone who originally wanted to come  
22 forward, that anyone I had planned on seeing in the  
23 near future would like the fact that it had been  
24 opened up to the press like that.  I don't know.

25          Q.    Is there some aspect of the investigation



1 that you're particularly concerned about keeping  
2 away from the press?

3 A. No, absolutely not. A homicide case is,  
4 due to its very nature, considered confidential to  
5 the press. It has been like that as long as I have  
6 known.

7 Q. All right. Then, Detective, from your  
8 testimony I understand that you do not know when you  
9 will complete your investigation, is that correct?

10 A. That's right.

11 Q. You don't have any time table as far as  
12 how long you will be assigned to this case, do you?

13 A. How long I will be assigned to the case?

14 Q. Yes.

15 A. No. That will be up to my superiors.

16 Q. Has the chief or superiors told you we  
17 want you to work on this for a period of a certain  
18 number of months?

19 A. They have not given me a time limit  
20 whatsoever.

21 Q. You're assigned to this case on an  
22 indefinite basis, is that correct?

23 A. I would assume so.

24 Q. Are there any other members of the City of  
25 Hollywood Police Department that are assigned to

1 this case with you?

2 A. Yes, there will be. Another detective  
3 will be accompanying me very soon.

4 Q. Will be accompanying you very soon to  
5 conduct the interview of the witness that you are  
6 talking about?

7 A. To conduct a few interviews with the  
8 witness.

9 Q. And when will that be happening?

10 MR. CANTOR: Objection, your Honor.  
11 Again, getting into now the very specifics  
12 of what they will be doing.

13 THE COURT: No, he can answer when.  
14 If you know when, you can answer that.

15 A. (By the Witness) I have it planned within  
16 the next few weeks.

17 Q. Thank you, your Honor. No further  
18 questions.

19 MR. CANTOR: I have no further  
20 redirect.

21 THE COURT: All right. Thank you  
22 very much for coming, sir.

23 THE WITNESS: Thank you.

24 MR. CANTOR: Just one last witness,  
25 your Honor. That would be Mike

1           Christianson as the representative of the  
2           Adam Walsh Foundation. Probably just  
3           answer two or three questions and that it  
4           will be it. Mike Christianson.

5   THEREUPON:

6                           MICHAEL CHRISTIANSON  
7           a witness herein, being of lawful age and being first  
8           duly sworn by the Court testified on his oath as  
9           follows:

10                           DIRECT EXAMINATION

11   BY MR. CANTOR:

12                           MR. CANTOR: With permission of the  
13           court.

14           Q.   (My Mr. Cantor) Mike, you're friends of  
15           John Walsh, are you not?

16           A.   I am.

17           Q.   We met a couple weeks ago in reference to  
18           the series of newspaper articles that have been  
19           issued through the reporter, Jay Grelen, in  
20           reference to this matter, correct?

21           A.   We did.

22           Q.   Okay. Did we discuss what impact  
23           disclosure of this file would have on the  
24           investigation?

25           A.   Yes, sir.

1 Q. And what was that?

2 A. Negative.

3 Q. Okay. Mike, the series of articles that  
4 have been published -- first of all, to your  
5 knowledge and through your discussions with John  
6 Walsh, what is the purpose of this public records  
7 disclosure for Mr. Grelen?

8 A. As far as we're concerned it is to sell  
9 more newspapers. It has nothing to do with the  
10 integrity of the investigation and it has nothing to  
11 do with finding Adam's killer.

12 Q. Has there been insinuations in these  
13 articles suggesting that John Walsh is still somehow  
14 the suspect in this crime because of his social  
15 connections?

16 A. Yes.

17 Q. Have you spoken to John Walsh and is John  
18 Walsh very disturbed about those defamatory  
19 comments?

20 MR. JULIN: Objection, hearsay.

21 THE COURT: Sustained.

22 MR. CANTOR: I have no further  
23 questions. Tenure the witness.

24 CROSS EXAMINATION

25 BY MR. JULIN:

1 Q. Mr. Christianson, your testimony was that  
2 the disclosure of the investigation would be  
3 negative as far as you were concerned, the impact on  
4 the investigation, is that correct?

5 A. Yes.

6 Q. What is the basis of your testimony?

7 A. What we're told by the Hollywood police.

8 Q. What have you been told by the Hollywood  
9 police?

10 A. That it would have a negative impact on  
11 the investigation.

12 Q. Did they explain to you why it would have  
13 a negative impact on the investigation?

14 A. Part of it has to do with the integrity of  
15 the reporter and the integrity of the newspaper in  
16 which it is being reported.

17 I mean, we're looking at a series of  
18 articles here that publish a photograph of John  
19 Walsh's house. I mean, here is a man who has been  
20 instrumental in the capture of 370 of the nation's  
21 deadliest criminals and this reporter and this  
22 newspaper publish a photograph of his house which is  
23 secured twenty-four hours a day, seven days a week  
24 for obvious reasons.

25 The house in which resides a family who

1 have already had one child abducted and murdered. A  
2 man who is responsible for putting many bad actors  
3 in jail. This reporter and this newspaper publish a  
4 photograph of his house in the geographic area in  
5 which the house is located.

6 This reporter and this newspaper also  
7 infer where the other children are going to school.  
8 Now, this is not, to our way of thinking,  
9 responsible journalism.

10 Q. Sir, Mr. Walsh is a member of the media,  
11 is he not?

12 A. In what respect? He is a television  
13 personality.

14 Q. John Walsh is on television and his job in  
15 television is to publicize unsolved crimes, is it  
16 not?

17 A. Yes.

18 Q. And Mr. Walsh is very proud of the fact  
19 that through publishing information about unsolved  
20 crimes that he has been able to solve many crimes,  
21 is that not true?

22 A. Yes. And so he knows --

23 Q. Thank you.

24 A. -- when media exposure would be helpful  
25 and when it would not be.

1 Q. I have no further questions.

2 MR. CANTOR: Just one redirect, your  
3 Honor.

4 REDIRECT EXAMINATION

5 BY MR. CANTOR:

6 Q. Mike, do you have any knowledge as to  
7 whether Mr. Grelen requires the information from the  
8 Walsh file in order to complete his book or novel?

9 A. That's what I understand. I understand  
10 that he has a book in the works. I understand that  
11 the conclusions that he is going to draw in his book  
12 have already been determined before he has had  
13 access to this file. Further causes us to question  
14 the integrity of his work.

15 MR. JULIN: I move to strike the  
16 testimony about Mr. Grelen is working on,  
17 what he believes is happening in the  
18 future.

19 THE COURT: Well, you can inquire in  
20 cross. I decline to strike it.

21 MR. CANTOR: No further questions.

22 MR. JULIN: No further questions.

23 THE COURT: All right. Thank you  
24 very much. All right. What says the  
25 department?

1 MR. CANTOR: Clearly, your Honor, I  
2 felt the affidavit --

3 THE COURT: Any other witnesses?

4 MR. CANTOR: No.

5 THE COURT: Any further evidence  
6 involved?

7 MR. CANTOR: I'm sorry, your Honor?

8 THE COURT: Do you have any other  
9 evidence?

10 MR. CANTOR: No.

11 THE COURT: Do you rest?

12 MR. CANTOR: That's correct.

13 MR. JULIN: Defendant calls Jay  
14 Grelen. Plaintiff, I'm sorry, calls Jay  
15 Grelen.

16 THE COURT: Come on up here and be  
17 sworn in. I'll allow both sides to make  
18 motions at the close of all the evidence.

19 THEREUPON:

20 JAY GRELEN  
21 a witness herein, being of lawful age and being first  
22 duly sworn by the court, testified on his oath as  
23 follows:

24 DIRECT EXAMINATION

25 BY MR. JULIN:



1 Q. Jay, would you state your name for the  
2 record.

3 A. Jay Grelen.

4 Q. And by whom are you employed?

5 A. Mobile Press Register in Alabama.

6 Q. All right. Have you been -- did you do an  
7 investigation of the Adam Walsh murder investigation  
8 that was conducted by the City of Hollywood Police  
9 Department?

10 A. Yes.

11 Q. All right. Over what course of time did  
12 you work on that investigation?

13 A. I made the first trip down here last  
14 November and then started full time on it in  
15 January. And the stories were published in early  
16 May.

17 Q. During the course of that investigation,  
18 did you have an occasion to interview Chief Witt?

19 A. Yes, I did.

20 Q. And did you ask the chief about the status  
21 of the investigation at the time that you conducted  
22 that investigation?

23 A. Yes.

24 Q. What did the chief tell you about the  
25 status of the investigation?

1           A.    The chief -- at that point the chief said  
2   that he had pulled in Detective Smith to do -- he  
3   explained the concept of a cold case squad to me and  
4   said -- explained the value of that.  And he said  
5   that cold cases are generally cases that have been  
6   lying dormant for awhile and he is bringing in a new  
7   detective to take a fresh look, reinterview people,  
8   pretty much like Detective Smith explained.

9           Q.    Did Chief Witt tell you that Detective  
10   Smith was brought in because this has been a dormant  
11   case, cold case, and that's his specialty?

12          A.    Maybe not specifically like that.  He was  
13   very high in the praise of Detective Smith's ability  
14   as an investigator and indicated that he had been  
15   successful in other cold cases.

16          Q.    Did the chief tell you that this was a  
17   cold case as far as he was concerned?

18          A.    Yes.  That was the implication of what he  
19   said.

20          Q.    Did the chief tell you that this case had  
21   been dormant for a period of time before Detective  
22   Smith had been assigned to it?

23          A.    He didn't use dormant specifically to this  
24   case but he said that that's when you bring in the  
25   cold case squad is when a case has been lying

1 dormant.

2 Q. Did you ask Chief Witt whether an arrest  
3 was eminent in this case?

4 A. Yes, I did.

5 Q. What did he tell you?

6 A. He said that that would be strictly  
7 speculation at this point.

8 Q. Did you have an opportunity to talk to  
9 other members of the Hollywood Police Department?

10 A. Yes, I did.

11 Q. And did any of them tell you that an  
12 arrest was foreseeable in the future?

13 A. No. Generally the response was no  
14 comments about the case.

15 MR. JULIN: Now, your Honor, I would  
16 like simply to offer into evidence, have  
17 the witness identify if necessary, the  
18 correspondence that was attached to the  
19 complaint. This would be Plaintiff's  
20 Exhibits 1 through 4.

21 THE COURT: Is that only for the  
22 purpose of laying a predicate for the  
23 statute?

24 MR. JULIN: Yes, it is, your Honor.

25 THE COURT: I'll accept that. Is

1           there any objection?

2           MR. CANTOR: I have no objection,  
3           your Honor. Both one by Norris and one by  
4           myself.

5           MR. JULIN: For the record Exhibit 1  
6           is the January 31 request from Mr. Grelen.  
7           Exhibit 2 is the February 2nd response  
8           from Stephanie Norris of the City of  
9           Hollywood Police Department. Exhibit 3 is  
10          the request that was made on behalf of Jay  
11          Grelen to the police department again and  
12          then Exhibit 4 is a February 15th response  
13          from the city.

14          MR. CANTOR: No objection.

15          THE COURT: All right. I'll  
16          recognize all the documents that are  
17          already in the file.

18          MR. JULIN: And I just like to focus  
19          on one aspect of Exhibit 4, if I may  
20          approach the witness.

21          Q. (By Mr. Julin) Jay, can you read the last  
22          paragraph of that. This is the letter from the City  
23          of Hollywood Police Department from Mr. Cantor. In  
24          fact, responding to the request for the document,  
25          can you read the last paragraph for the court?

1           A.    You have also inquired about when we  
2 expect in good faith to secure an arrest for the  
3 murder of Adam Walsh. We must respectfully decline  
4 to make any such projection. Such a forecast would  
5 not serve any public interest at this time.

6           MR. JULIN: No further questions to  
7 this witness, your Honor.

8           MR. CANTOR: Your Honor, just a few  
9 questions.

10                           CROSS EXAMINATION

11 BY MR. CANTOR:

12           Q.    Mr. Grelen, when you met with Chief Witt  
13 did you get the impression -- first of all, during  
14 this meeting you were down here on vacation?

15           A.    Absolutely not.

16           Q.    You just walked into the police department  
17 and asked if you could speak to him?

18           A.    No. I was down here to pursue a newspaper  
19 project. I called the chief's office shortly after  
20 I arrived in town, explained to the receptionist,  
21 who answered the phone, who I was, why I was here,  
22 and ask if I will be able to see the chief.

23                   And much to my surprise she said, well,  
24 can you be here at ten. I called sometime around  
25 nine in the morning. And so, of course, I was there

1 at ten, so there was absolutely no --

2 Q. Mr. Grelen, did you inform the chief that  
3 this was sort of a public interest inquiry as  
4 opposed to venturing or trying to just get  
5 disclosure of information in order to complete your  
6 book?

7 A. I'm not sure of where this talk of a book  
8 comes from. I work for the newspaper. There is no  
9 book in the works.

10 Q. You never mentioned to Chief Witt that you  
11 had to complete your book?

12 A. Absolutely not. I'm not writing a book.

13 Q. Did you tell him, though, this is a public  
14 interest inquiry as opposed to you wanted to report  
15 information for the Mobile Press Register?

16 A. No. I represented myself as a reporter  
17 for the Mobile Press Register and that's the only  
18 way I represented myself to anybody throughout this  
19 project.

20 Q. So while on vacation, is it safe to say  
21 you didn't walk in just as a public interest  
22 inquiry --

23 A. Sir, I have not been on vacation for more  
24 than a year. Ever since last September I have not  
25 been on vacation.

1 Q. And you never told Chief Witt you were on  
2 vacation?

3 A. Absolutely not.

4 Q. About the interview itself, you mentioned  
5 during direct examination about the chief telling  
6 you indirectly that the Walsh file was somehow  
7 dormant, correct, before it got assigned to  
8 Detective Smith?

9 A. When I asked about the case in the process  
10 of explaining what a cold case squad is he said that  
11 a cold case squad comes into cases that are  
12 considered dormant.

13 Q. Okay. Mr. Grelen, did he mention to you  
14 that one of our investigators just three years ago,  
15 prior to Detective Smith being assigned to the case,  
16 went up to interview Jeffrey Dahmer on this case?

17 A. Yes.

18 Q. Okay. Three years ago?

19 A. I don't remember the time frame but he  
20 mentioned that interview had taken place.

21 Q. Okay. Did he say that was prior to  
22 Detective Smith jumping on the case?

23 A. It was clear that that was the case.

24 Q. Okay. If a detective was going up to  
25 investigate and discuss with Jeffrey Dahmer about

1 his potential involvement with the Adam Walsh  
2 disappearance three years ago or two and a half  
3 years ago, would that lead you to believe that this  
4 case was dormant prior to Detective Smith taking  
5 this case ten months ago?

6 A. My understanding was that they made the  
7 trip based on a tip that came to them not on a tip  
8 that they turned up because of the investigation.  
9 It was a tip that was phoned in which they followed.

10 Q. Who was that detective that went up to  
11 meet with Jeffrey Dahmer?

12 A. Jack Hoffman.

13 Q. Okay.. Did he tell you about some other  
14 detectives and some other personnel that may have  
15 been involved in the review of this case over the  
16 past few years? Not six months, ten months, but a  
17 few years?

18 A. I don't remember discussing with any  
19 specific detective, no.

20 MR. CANTOR: I have no further  
21 questions.

22 MR. JULIN: I have no redirect, your  
23 Honor.

24 THE COURT: All right. Have a seat  
25 back here at the table, please. Do you



1           have any other witnesses or other  
2           evidence?

3           MR. JULIN: Your Honor, the plaintiff  
4           rests.

5           MR. CANTOR: Your Honor, since it is  
6           my burden, if I might go forward just for  
7           a minute in closing.

8           Normally, your Honor, I supply the  
9           court with a memorandum of law discussing  
10          this topic briefly and discussing these  
11          three cases, which appear to affect this  
12          particular decision as much as any other  
13          cases in the State of Florida.

14          I want to spend a little bit of time  
15          just going over the motion for order  
16          requiring productions of public record  
17          that has been submitted by the plaintiff.

18          What they do is suggest that we  
19          should take a look at three individual  
20          cases, your Honor -- excuse me, four  
21          individual cases. Out of those four  
22          individual cases three of them protect  
23          against disclosure.

24          So even walking in here today, into  
25          this courtroom, your Honor, I thought it

1 was a little unusual that the plaintiff  
2 spends time discounted three out of the  
3 four cases they cite to because it  
4 protects disclosure and because I  
5 mentioned it in my memorandum of law.

6 The fourth case is Bloodworth, which  
7 I have a copy of, your Honor. And the  
8 only reason Bloodworth has no relevance  
9 here, your Honor, is because our state  
10 attorney up in Palm Beach released  
11 information to defense counsel and to the  
12 defense and then thereafter could not  
13 protect the file because it had already  
14 been disclosed.

15 Well, that hasn't happened, your  
16 Honor. Even though this case will be  
17 fourteen years old as of next month, this  
18 case has certainly never been disclosed.

19 Just for a second, Judge, going  
20 through this motion. Just through a  
21 couple of just brief remarks. On page  
22 four plaintiff says the murder in question  
23 occurred almost fourteen years ago and  
24 that requested records could not be  
25 regarded as active at this time.

1           Your Honor, I would suggest the  
2           plaintiff may make an interpretation of  
3           what active is all about. But active has  
4           been determined and has been defined not  
5           just by the Fourth DCA but by this court  
6           in Barfield and has also been decided by  
7           the Second District with the Lee County  
8           decision with McDougall.

9           Active is related to an ongoing  
10          investigation which continuing with a  
11          reasonable good faith participation in  
12          securing an arrest or prosecution in the  
13          foreseeable future. Must an arrest or  
14          prosecution occur? Absolutely not, your  
15          Honor. Must that be testified to and must  
16          detectives get up here and suggest that an  
17          arrest or prosecution must occur?  
18          Absolutely not, your Honor.

19          In the Barfield case on the second  
20          page so correctly interpreted active means  
21          so long as an investigation is proceeding  
22          in good faith and the state attorney or  
23          Grand Jury will reach determination in the  
24          foreseeable future requested information  
25          is not subject to disclosure. It is only

1           necessary that an arrest or prosecution  
2           may result. Not that it must.

3           Now, just to go on just a little bit,  
4           your Honor. On page six, even if we're  
5           going to suggest, and that hasn't even  
6           been suggested here, but take the  
7           plaintiff's side, give them the benefit of  
8           the doubt that the case has been sitting  
9           dormant hypothetically, even for years.

10           The McDougall case speaks clearly to  
11           that issue, your Honor. A four year old  
12           case where the Lee County Sheriff  
13           specifically said it was an inactive  
14           investigation. But in 1992 it is  
15           reactivated because the homicide suspect  
16           is also a suspect in a sexual battery  
17           crime. It is now reactivated.

18           And the only thing that the court was  
19           looking at was on page four, which is,  
20           your Honor -- excuse me. The custodians  
21           only proper concern is whether the file is  
22           active now. And that's what the court  
23           made as a proper determination. Since it  
24           is active now, it is protected from  
25           disclosure. So the McDougall case

1           certainly speaks to that even if  
2           hypothetically you're going to accept  
3           plaintiff's arguments.

4           Plaintiffs suggest on page eight, the  
5           investigation now appears to be limited to  
6           responding to information sent to it on an  
7           infrequent basis, that the department  
8           ceased actively investigating the incident  
9           issue a long time ago.

10          I'm not sure where they're getting  
11          this information, your Honor. Detective  
12          Smith testified today that he has been as  
13          actively investigating this case as any  
14          other case among his case load and even  
15          prior to that.

16          I just brought up, for example,  
17          because the chief already disclosed that  
18          one piece of information to Jay Grelen and  
19          Jay Grelen reported it in his newspaper,  
20          the fact that an investigator went up and  
21          spoke to Jeffrey Dahmer. Two and a half,  
22          three years ago, your Honor. Well before  
23          Mark Smith was assigned to this case.

24          So I'm not sure where he is getting  
25          this information that this case ceased to

1 be actively investigated and it is not  
2 even being investigated now. In fact, the  
3 defendant himself has stated -- excuse me,  
4 the plaintiff in fact stated in his own  
5 article that it is currently being  
6 investigated.

7 Again, McDougall, plaintiffs speaks  
8 on page nine that here hypothetically if  
9 the investigation has been concluded and  
10 later may be closed to the public once the  
11 investigation is reopened such an  
12 interpretation of the statute would make  
13 no sense.

14 McDougall made an interpretation of  
15 the statute that clearly says that even if  
16 the case lay dormant it can be reopened  
17 and reinvestigated. Again,  
18 hypothetically, your Honor, because we're  
19 not suggesting that this case has ever  
20 laid dormant, ever laid dormant.

21 Must we show that a prosecution or an  
22 arrest might result? Absolutely not, your  
23 Honor. Barfield, so correct with its  
24 interpretation, your Honor, said that an  
25 arrest or prosecution as long as you can

1 testify that it may come about in the  
2 foreseeable future. And I believe that is  
3 exactly what the detective testified to.

4 One last thing, your Honor, before I  
5 just get into the three cases, one last  
6 time is Barfield, Bloodworth, even the Lee  
7 County case, not so much the Lee County  
8 case, I'm sorry. Barfield, Bloodworth,  
9 and the News Press Case versus Dempsey all  
10 speak to cases which have no statute of  
11 limitations restricting the investigation  
12 of the case.

13 Clearly if we were looking at an  
14 aggravated battery an aggravated assault,  
15 maybe even a sexual battery, your Honor,  
16 as long as it is not capital sexual  
17 battery, there is a statute of limitations  
18 where if the case goes on too long, you  
19 can't find a prosecution, you can't reach  
20 accumulation with an arrest because we  
21 have statute of limitations restrictions.

22 There is no statute of limitations  
23 here with a homicide. And clearly the  
24 detectives in the Hollywood Police  
25 Department they implore for the leeway to

1 continue investigating this case and  
2 following up the leads that they feel will  
3 bring this case to fruition by either an  
4 arrest, Grand Jury indictment,  
5 prosecution.

6 Active has been defined by both  
7 Barfield and News Press. Barfield has  
8 suggested that as long as the police  
9 agency is acting in good faith, regardless  
10 of whether for sure an arrest or  
11 prosecution may occur.

12 In the Florida Freedom Newspaper case  
13 versus Dempsey specifically says there is  
14 no fixed time limit for naming suspects or  
15 making arrests other than the applicable  
16 statute of limitations.

17 Clearly, both of these two cases on  
18 appeal suggest and affirmed on appeal,  
19 suggested that if there is a statute of  
20 limitation, that restricts the amount of  
21 time that case can remain active. This  
22 case is a homicide case.

23 The Barfield case, that is so  
24 correctly interpreted by the Appellate  
25 Court, this decision indicates the police



1 so long as they're acting in good faith  
2 shall be given substantial leeway in  
3 conducting an ongoing investigation even  
4 where there may be no immediate prospect  
5 of an arrest or prosecution.

6 Dempsey stands for the proposition  
7 that it is unnecessary to show an actual  
8 suspect will be arrested or prosecuted in  
9 order to prove an investigation is still  
10 active.

11 Again in Barfield, we do not believe  
12 the legislation intended that  
13 confidentiality be limited to  
14 investigations where the outcome and  
15 arrest or prosecution was a certainty or  
16 even a probability.

17 Your Honor, there is no contention  
18 here that detectives from the Hollywood  
19 Police Department unduly delayed this  
20 investigation, stalled this investigation.  
21 I don't think there is any contention of  
22 bad faith.

23 Clearly active has been met here,  
24 your Honor, with both these cases and also  
25 followed up with McDougall which, your

1 Honor, I believe is just right on point  
2 except for the fact that this case has  
3 never been dormant.

4 Your Honor, to disclose this file at  
5 this point would not just impede the  
6 investigation of Detective Mark Smith, but  
7 would also, from all probability, keep  
8 Detective Smith from following up the  
9 leads that he needs to to try to bring  
10 this case to fruition.

11 Your Honor, with that in mind, I  
12 would implore this court to deny the  
13 request for -- request for disclosure of  
14 the Adam Walsh file.

15 THE COURT: Well, how do you meet  
16 their allegation based upon testimony that  
17 this case, and the circumstances  
18 surrounding it, including the  
19 non-participation of the Walsh family, has  
20 been probably the most widely publicized  
21 case in the name of crime in the United  
22 States.

23 MR. CANTOR: And I think that speaks  
24 for the integrity of the Hollywood Police  
25 Department by not disclosing the

1 information so as not to impede on the  
2 investigation.

3 In fact, your Honor, when I met with  
4 John Walsh two weeks ago, John --  
5 Mr. Walsh, I only met him one time. He  
6 spoke very specifically, your Honor --go  
7 ahead, I'm sorry.

8 THE COURT: Well, is his testimony --

9 MR. CANTOR: I'm sorry?

10 THE COURT: His testimony is not in  
11 evidence. I'm talking about what has been  
12 testified to.

13 MR. CANTOR: That's correct.

14 THE COURT: I forget the name of the  
15 program, the one he is on often on T.V.

16 MR. CANTOR: Americas Most Wanted.

17 THE COURT: Yeah. And the Adam Walsh  
18 Foundation, you know, what news is there  
19 to reveal?

20 MR. CANTOR: What?

21 THE COURT: What news is there to  
22 reveal from the file? What is the purpose  
23 and intent of keeping it a secret? I  
24 mean, the statute has a purpose and intent  
25 that is --

1 MR. CANTOR: I would agree.

2 THE COURT: -- a very valid purpose.

3 What --

4 MR. CANTOR: I believe by revealing  
5 the contents from the file now, and, your  
6 Honor, this is the sort thing I would  
7 prefer to reserve for in camera.

8 I believe Detective Smith would not  
9 be able to properly interview the last  
10 remaining witnesses that he wishes to now,  
11 and that he plans to do it, as he  
12 suggested, over the next two to three  
13 weeks.

14 THE COURT: All right. What says the  
15 plaintiff?

16 MR. JULIN: Your Honor, with respect  
17 to that specific point let me just pick up  
18 on that. If the problem that the police  
19 department has is it needs to conduct an  
20 interview in the next two to three weeks,  
21 I think your Honor can properly fashion to  
22 allow that interview be conducted prior to  
23 the release of the records.

24 Once the interview has been  
25 conducted, I think if it were not

1 something that came out of that that would  
2 require further confidentiality, then at  
3 that point the records could be released.  
4 If that's the problem.

5 I don't think that there has been a  
6 sufficient evidentiary basis established  
7 by the defendant in this case to show that  
8 that particular interview gives them a  
9 reason to believe that they're likely to  
10 make an arrest in the foreseeable future.

11 Your Honor, this is a copy of the  
12 statute itself with the particular  
13 exemption highlighted at the bottom of the  
14 page. It has the particular language. It  
15 says actually in the statute this is not  
16 an interpretation of the cases.

17 There simply must be an ongoing  
18 investigation which is continuing within a  
19 reasonable good faith anticipation of  
20 securing an arrest or prosecution in the  
21 foreseeable future.

22 In the case of an unsolved murder  
23 obviously have conflicting interest here.  
24 There is a strong public interest in  
25 knowing why this investigation has not

1           resulted in an arrest in over fourteen  
2           years. There is a continuing interest in  
3           the police department in solving the case.

4                     But, your Honor, in resolving those  
5           conflicting interests you must look at the  
6           evidence that has been presented on this  
7           particular point. What is a good faith  
8           belief? What is the basis for belief  
9           there is going to be an arrest in the  
10          foreseeable future?

11                    Not just two years or three years or  
12          five years down the road something might  
13          happen, something might break, but there  
14          must be something definite and concrete  
15          about it.

16                    Foreseeable is a term which is  
17          defined under Florida law. There are a  
18          couple of cases in the negligence area  
19          that talk about foreseeability as being  
20          not simply a possibility that something  
21          will occur in the future, but a  
22          probability.

23                    I would cite, your Honor, the Florida  
24          Power and Light versus Lively case, 465  
25          Southern Second 1270, and Firestone Tire

1 and Rubber versus Lippincott, which is at  
2 383 Southern Second 1181. Those cases  
3 talk about the concept of foreseeability.

4 Again, not in the context of the  
5 public records law, but just in general  
6 Florida law terms dealing with a  
7 negligence concept. And this term  
8 foreseeability as used in the Firestone  
9 case talks about a foreseeable consequence  
10 as one which a prudent man would  
11 anticipate as likely to result.

12 It says that the consequence that a  
13 prudent man would anticipate as likely to  
14 result from an act are those consequences  
15 that happen so frequently that they may be  
16 expected to happen again and are therefore  
17 probable consequences. I think that those  
18 definitional terms can be applied in this  
19 context.

20 What we have is a police department  
21 which justifiably and rightfully so is  
22 hoping that they will solve this crime.  
23 And as we have said in our papers, we  
24 applaud the Hollywood Police Department  
25 for assigning Detective Smith to this case

1 and trying to get it solved after all this  
2 time.

3 But the facts are that the  
4 investigation was thoroughly conducted,  
5 that most obvious leads were followed up  
6 upon, even the non-obvious leads were  
7 followed up upon over the course of a  
8 fourteen year investigation, and then,  
9 according to Chief Witt himself, the case  
10 became dormant and Detective Smith was  
11 brought into this because of his specialty  
12 in dealing with cold cases.

13 Again there is nothing wrong with  
14 that. We think it is perfectly  
15 appropriate. But at this point where  
16 there has been so much passage of time,  
17 this is the kind of case which the public  
18 should have full access to to see what  
19 happened in this.

20 The public, the media may be able to  
21 solve this case by drawing more attention  
22 to what happened in the investigation.  
23 There is a strong, strong public interest  
24 in allowing that possibility to happen at  
25 this time.



1           This is not a case where we have not  
2           allowed the police department a full an  
3           adequate opportunity to conduct the  
4           investigation.

5           The Barfield case is, I think, the  
6           case to look to, and although it comes to  
7           the conclusion that the records will  
8           remain sealed, that case is very important  
9           because it's -- the Fourth DCA very  
10          recently, in 1994, saying the act -- the  
11          Public Records Act dealing with this  
12          exemption is to be construed liberally in  
13          favor of openness. And all exemptions of  
14          disclosure construed narrowly and limited  
15          to their designated purpose. Using --

16          THE COURT: Do you know who the judge  
17          was on that was?

18          MR. JULIN: Yes, your Honor, I noted  
19          that very closely. And that is one of the  
20          reasons that I think this is the case that  
21          we should all look to. Is the case from  
22          this court, obviously, dealing with the  
23          same exemptions and offered this guidance  
24          that the act is to be liberally construed.

25          Now, in this particular case the

1 result was that the records remain sealed.  
2 What factual distinctions do we have that  
3 could explain that? Well, in that case  
4 the testimony was that there would be --  
5 the matter would be submitted to the Grand  
6 Jury within a matter of three weeks.

7 There is no indications in the case  
8 of how long it was from the particular  
9 crime. There is a police shooting  
10 involved, a dog bite involved in that  
11 case. But my understanding is, and  
12 perhaps your Honor knows better, it was a  
13 relatively short period of time between  
14 the crime itself and the time that the  
15 records were sought.

16 In any event, there was a Grand Jury  
17 investigation underway, the records were  
18 to be turned over in a matter of three  
19 weeks. In this case we have no Grand Jury  
20 investigation, we have no plans even by  
21 the department, according to their own  
22 detective, to turn over the results of the  
23 investigation that they have undertaken.

24 This is simply a case where there is  
25 no likelihood of a prosecution or an

1           arrest in the foreseeable future. Sure it  
2           might happen, but that's not enough.  
3           Particularly where you have a fourteen  
4           year gap in time.

5                     The Dempsey case that is referred to  
6           by counsel for the department is another  
7           one where the crime had taken place, the  
8           request was made four and a half months  
9           after the crime took place. There the  
10          court concludes that's not enough time for  
11          the investigation and allowed it to go on.  
12          It is certainly nothing like fourteen  
13          years.

14                    The News Press case versus Sapp,  
15          another case relied upon, the case where  
16          the Grand jury was to receive the material  
17          from the police within four days of the  
18          hearing that was conducted. And the  
19          McDougall case, of course, is one, and I  
20          have not seen this one, but that one was a  
21          crime that took place in 1988 and an  
22          investigation followed thereafter was  
23          revived.

24                    There, of course, at most we had  
25          seven years. In this case we have double

1           that amount of time, fourteen years. At  
2           some point -- at some point it is no  
3           longer reasonable to contend that an  
4           investigation is going to result in a  
5           prosecution.

6           THE COURT: Well, in the McDougall  
7           case part of it reads by neither of those  
8           cases addresses the precise issue posed  
9           here. Whether an inactive criminal  
10          investigation file which has been  
11          available for public view can be  
12          reactivated so to exempt from disclosure  
13          in public records act, that's why the case  
14          is in court.

15          MR. JULIN: And I think that is an  
16          important point. I don't think that we  
17          have an evidentiary basis to establish  
18          that this case at this point and time,  
19          even if the police department made a  
20          conscious decision let's take another look  
21          at this case, and that's what the evidence  
22          says, that we're going to bring someone in  
23          who has a fresh look, he has got to have  
24          something more to go on that gives him a  
25          basis to believe that the arrest is going

1 to happen in the foreseeable future.

2 It is not enough just to assign a  
3 detective to the case and say take a fresh  
4 look at it and go to work on this case.  
5 There must be something there that gives  
6 the police department a basis to believe  
7 that an arrest or prosecution will be  
8 secured in the foreseeable future.

9 And none of the evidence that has  
10 been offered by the police department  
11 today shows that there is such a belief.  
12 All the testimony has been we cannot make  
13 a determination.

14 The testimony that Mr. Grelen gave  
15 the court was that the chief himself said  
16 it would be purely speculation as to  
17 whether an arrest will be made in the  
18 future. Not just the foreseeable future,  
19 but any future.

20 Under those facts the court I think  
21 construes the act liberally consistent  
22 with the mandate of Barfield must rule  
23 that this investigation should be made  
24 available to the public.

25 MR. CANTOR: Your Honor, just a very

1 extremely brief response, if I may.

2 THE COURT: All right.

3 MR. CANTOR: Your Honor, some of the  
4 language to me just has to be embraced in  
5 Barfield. Again, we don't get to one of  
6 the more important issues between these  
7 cases that protect disclosure but we also  
8 need to talk about the statute of  
9 limitations prohibition.

10 Your Honor, there is no statute of  
11 limitations that restricts a homicide  
12 investigation. But as I get to page 1017  
13 of the Barfield case, just in the last  
14 paragraph of the page, the Appellate Court  
15 so correctly affirmed the decision of --  
16 thus we interpret the definition of active  
17 to mean that even though there is no  
18 immediate anticipation of an arrest so  
19 long as the investigation is proceeding in  
20 good faith.

21 Good faith is just embellished  
22 throughout this case opinion. Another  
23 sentence down, quite differently we  
24 construe the phrase anticipation of an  
25 arrest or prosecution to mean that an

1           arrest or prosecution may result, not that  
2           it must.

3           Two last things, your Honor. In  
4           Florida Freedom versus Dempsey, no doubt,  
5           this is a quote, no doubt the legislature  
6           fully comprehended the disclosure of the  
7           status of a criminal investigation by  
8           requiring production of particular  
9           information developed during this progress  
10          would often impede the development of new  
11          leads, prevent successful conclusion of  
12          the investigation in the arrest of the  
13          offender.

14          Your Honor, again, as a last remark  
15          out of the Florida Freedom Newspaper, a  
16          law enforcement agency, as I mentioned in  
17          my own memorandum of law, a law  
18          enforcement agency should never be forced  
19          to guess whether or not an incident will  
20          or will not result in an arrest or  
21          prosecution. Barfield suggests the same.  
22          Florida Freedom suggests the same.  
23          McDougall suggests the same.

24          Your Honor, the only reason why we  
25          don't have a case on point discussing

1           fourteen years is because there is no  
2           statute of limitation prohibition or  
3           restrictions. There are some with four  
4           years, with five years, with seven years.

5                     Fourteen years, your Honor? As long  
6           as McDougall suggests that you have an  
7           officer going forth in good faith and  
8           suggests that he is actively investigating  
9           the case. And he has done that. I heard  
10          his testimony. And I would suggest it is  
11          quite different than plaintiff's version  
12          of what was heard today.

13                    MR. JULIN: One point. That the  
14          holding of the Barfield case is on page  
15          1017 just quoted from and it is because  
16          the evidence used below demonstrated the  
17          investigations were ongoing and soon to be  
18          presented to the Grand Jury, we hold the  
19          city satisfied its burden of proving its  
20          entitlement to the exemption in question.

21                    There is no Grand Jury that is  
22          looking at this. There is no plans to  
23          present this to the Grand Jury. This is a  
24          case that simply has been confidential  
25          long enough and public interest now, after



1           fourteen years, weighs in favor of  
2           disclosure.

3           THE COURT: Well, the case is  
4           certainly not about whether or not the  
5           reporter is writing a book or whether or  
6           not he is writing an article to sell  
7           newspapers. Obviously, the freedom of the  
8           press guarantees him that right.

9           And certainly the case is not whether  
10          or not Mr. Walsh's picture -- or picture  
11          of his house has been printed in the  
12          newspaper. Certainly there is laws  
13          relating to liability and invasion of  
14          privacy and other things that protect  
15          that.

16          But according to the testimony in the  
17          evidence I received here in court, this  
18          case was a cold case. It's been reopened  
19          by reassigning it to what probably is best  
20          described as a crack detective who  
21          testified that he has legitimate leads.

22          Now, I'm not going to allow a  
23          constant reopening of a cold case to serve  
24          as a rouse to deny the public the right  
25          to access to materials that should be in

1 the public domain. But Detective Smith  
2 does have a legitimate opportunity to  
3 pursue the leads that he is now pursuing  
4 before this file becomes public domain.

5 Therefore, the motion to enforce the  
6 public records law as to this  
7 investigative file at this time is denied  
8 without prejudice.

9 MR. JULIN: Thank you, very much,  
10 your Honor. I think, for the record, we  
11 had the motion to intervene the Palm Beach  
12 Post and Sun Sentinel and I'm not sure we  
13 got a ruling on that.

14 THE COURT: Can we call that moot?

15 MR. JULIN: Your Honor, since you're  
16 denying without prejudice, and I think  
17 that is the appropriate procedure, we may  
18 well be back at some period of time to ask  
19 the matter be revisited and I think those  
20 parties would like to be --

21 THE COURT: Is there any objection to  
22 that, to them intervening?

23 MR. CANTOR: I don't have an  
24 objection to them intervening, your Honor,  
25 if they truly are intervening as opposed

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to bringing local flavor to this case.

THE COURT: Local flavor?

MR. CANTOR: I have no objection,  
your Honor. I have an order. What I'll  
do is see if there is anything to be  
modified and we'll present this order to  
the court this afternoon. Thank you, your  
Honor.

THE COURT: All right. Again, in a  
very non condescending way, I appreciate  
the way in which this matter was  
presented. Compliments on both sides.  
This hearing is adjourned.

(Whereupon, the hearing was  
concluded at 2:55 p.m.)

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STATE OF FLORIDA  
COUNTY OF BROWARD

I JERI CORONA, Professional Reporter, certify that I was authorized to and did stenographically report the forgoing proceedings and that the transcript is a true record.

Dated this 21 day of June, 1995.

*Jeri Corona*  
-----  
JERI CORONA  
Shorthand Reporter



# The Herald

BROWARD EDITION OF *The Miami Herald*

SUNDAY, JUNE 18, 1995

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75 CENTS

## Is it time to open the Walsh files?

### Hollywood police say publicity could harm 14-year-old case

By **RONNIE GREENE**  
Herald Staff Writer

Fourteen years after the mysterious murder of young Adam Walsh, the hunt for the elusive killer is suddenly news again. And just as suddenly, the Hollywood Police Department appears to be backpedaling over just how close it is to cracking the case.

And it's a reporter from Alabama, of all places, stirring the pot — questioning whether a family acquaintance is a suspect

and triggering a fight to get to the bottom of the police investigation.

To fend off media inquiries, Hollywood police went into Broward Circuit Court last week and said they're on the trail of the killer — *maybe*. Their word convinced a Broward judge the case is still active, blocking newspapers from gaining access to the department's secret investigative files.

But just how close are Hollywood Police to actually catching the killer of the gap-

toothed boy abducted from a Hollywood Sears?

After a detective told the judge there are three possible suspects, including one identified in the past six months, the national media descended on the Adam Walsh saga once again.

But just as quickly as the fire spread, the police worked to put it out.

On Wednesday, the department issued a

PLEASE SEE ADAM WALSH, 7A



**HIS KILLER IS STILL AT LARGE:** Adam Walsh.

ADAM WALSH, FROM 1A

press release that appeared to deepen the flames.

"The recent leads we have received may or may not lead to a successful conclusion to the Adam Walsh case," a police statement said. "If there has been a misinterpretation that there are exciting new revelations or breaking news in this homicide investigation, we apologize for this misunderstanding."

To get to the bottom of it, some journalists and lawyers are starting to ask isn't it time to open the secret police files?

"We're certainly given the police every opportunity to solve this crime," said Thomas Julin, attorney for Alabama and Florida newspapers. "By releasing this information to a newspaper, it might well help in solving the crime. New leads will come forward."

Julin, unsuccessful so far, says there's another good reason.

"This investigation may well have been bungled. And if that is the case, then the public as the employer of the police department is entitled to see why."

Jay Green, a writer for The Mobile (Alabama) Press Register, whose three-part series this year triggered the renewed focus, is asking a basic question: If Adam's father, John Walsh, can make a television career publicizing unsolved crimes as host of America's Most Wanted, why shouldn't his son's case face the same public scrutiny?

"The great irony in this is that I'm only doing what John Walsh has made a career out of doing," Green said last week. "The bottom line is somebody killed this little boy and got away with it."

John Walsh's attorney, George Terwilliger, sees it a different way.

"I don't think there's any irony there," Terwilliger said. "We have a lot more faith in the Hollywood Police Department to solve this case than we do in Jay Green solving the case."

Hollywood Police put one of its finest, Detective Mark Smith, on the trail. Smith once helped solve a 15-year-old Hollywood murder, tracking the killer to Virginia.

Hollywood police hope Smith's fresh set of eyes will work the same magic now.

"We're always looking for that piece of the puzzle. By God, when we find it, that's going to be a wonderful thing," said Paul Dungan, administrative assistant to Chief Richard Witt.

But it's too soon to release the files, Dungan said.

"The Hollywood Police Department has not allowed access to the Adam Walsh file in the past because we feel that it would seriously compromise the integrity of the active investigation."

\*\*\*\*\*

Adam Walsh was 6, dressed in green shorts and a striped t-shirt, when he disappeared from a Sears in the Hollywood Mall July 27, 1981. He was snatched from the toy department while his mother Reve went to buy a brass lamp.

Two weeks later his head was found in a canal near Vero Beach. His body was never recovered.

The abduction stoked fear in parents everywhere, triggered made-for-TV movies and catapulted John Walsh to fame as a savior for lost children and crime victims.

As the police trail went cold, Adam's disappearance began to subside from the public spotlight. The last time the saga made The Herald's front page was 1991, the 10th anniversary of the abduction.

But Alabama reporter Green stirred the pot with his series, much of which recounts details already published, notably in The Herald's Tropic magazine in 1992.

In an interview, Green admits there's no local angle for his paper. He got it after talking with a reporter who helped The Denver Post win a Pulitzer Prize in 1986 for stories revealing that most "missing" children are involved in custody disputes or are runaways.

The friend developed "a lot of questions" about the Walsh case, Green said. "I encouraged him to resume his look at it. He decided he didn't have the time. He offered me what small files he had. I just took it from there."

There's one potentially startling revelation: That the son of a friend of John Walsh was a one-time suspect — and may still be a suspect.

The Herald is not naming the

*"We have a lot more faith in the Hollywood Police Department to solve this case than we do in Jay Green solving the case."*

GEORGE TERWILLIGER,

John Walsh's attorney, on Alabama reporter Green

family acquaintance because Hollywood police would not confirm he still is a suspect, if he ever was. Detectives "do not want to discuss any part of the Adam Walsh case at this time," the department's Dungan said.

And the man's father disputes any notion his son is a suspect, saying police told him he wasn't.

Potentially linking the man to Adam Walsh is a machete — the type of weapon that could have been used in the beheading of

Adam Walsh.

Three days after Adam's disappearance, the family acquaintance allegedly waved a machete in Oakland Park in a dispute over a skateboard.

The Oakland Park police report, obtained by The Herald, tells how a Margate teen, 19, accused the man of swiping his "special" skateboard.

When the teen snatched the skateboard back, he said, the man chased him to a nearby office — with the

machete.

"He was outside, I don't know who it was, but I didn't open the door that he was going to cut me," the victim told a detective. "Pretty soon he started busting the door down and I started seeing a blade coming through the door."

He gave the skateboard back, Oakland Park Police considered filing charges of aggravated assault, but the victim declined to prosecute.

Asked if he would make his son available for comment, the friend of John Walsh told The Herald, "My son is underground. I don't know where he lives, and I don't know what his telephone number is."

The Herald attempted to contact his son further leaving a note at the last known address

listed in public records for him, but received no response. In a statement last week, John Walsh contradicted any notion the suspect is a family friend.

"The suspect is a stranger," he wrote.

As for the police files, John Walsh says that's the department's call.

"The most important thing to John is they have the freedom they need to find Adam's killer," said Terwilliger. "And if they say it would compromise their ability to do that, then he supports their position to keep it closed for the time being."

But are police close to an arrest?

Julin, the media lawyer, is doubtful.

In court last week, Julin asked detective Smith whether he's

impeded a grand jury or plans to turn over files to the Broward State Attorney's Office for prosecution. Julin said the detective answered no.

"He really could not give us the answer as to when, if ever, they anticipated making an arrest," Julin said. "I think they walked out on a limb in that hearing, and they did so in order to protect the records. Now when they're being faced with the legitimate questions reporters have, they're trying to back down."

At Hollywood Police, "We know that someday we're going to have to release that file," Dungan said. "If we go open in public right now and say we have multiple suspects, and later on you look at it and you find that we don't, that makes us out to be liars."

# Adam Walsh killing may stay a mystery

By **RONNIE GREENE**  
Herald Staff Writer

Offering little hope Adam Walsh's killer will come to justice, Hollywood Police Chief Richard Witt said Thursday with Florida's most famous unsolved murder will likely remain just that.

"I wish I could tell you that there have been things that have come about that we can jump for joy about. But there haven't been," the chief said. "Somehow, there's the belief that there's this new suspect or suspects. That's just not true."

And the chief said a family acquaintance named Michael Monahan has been ruled out as a suspect.

Monahan, 20 at the time, was waving a machete in a dispute over a skateboard three days after Adam's disappearance July 27, 1981. Adam was later found beheaded.

"The recent follow-up interview with Michael Monahan confirmed that he did not have the opportunity to abduct or murder Adam Walsh," the chief wrote The Herald. "This has been independently supported by other witnesses."

Monahan, now 34, recently

# Walsh murder may always be a mystery

**WALSH, FROM 1A**

served time for extortion and kidnapping.

"Michael was one of the people who needed to be re-contacted," the chief said. "Some things came up later about Michael, including his associations and his later affiliations with threats and fraud and extortion. He was never questioned about those things, because those things happened later."

Monahan's father, John F. Monahan Sr., was so close to Adam's father, John Walsh, that he identified Adam's remains when the 6-year-old's



severed head was recovered in a canal near Vero Beach.

As part of the Walsh investigation, the Broward Crime Lab examined at least one machete — including the one waved by Monahan just after Adam's abduction.

"The machete or cutting instrument... have not been scientifically linked to the dismemberment of Adam Walsh," Witt wrote. "This statement specifically includes the instrument which at one time had been in the possession of Michael Monahan."

The chief refused to release the crime lab reports, saying Hollywood PD hasn't given up on its biggest case ever:

"We are unable to release bits and pieces of the Adam Walsh case without risking the potential for violating the integrity of the

entire case file."

Detective Mark Smith, put on the killer's trail 10 months ago, "has re-interviewed damn near everybody," Witt said. "One of the things you do with a cold case is you re-plow the same ground."

Florida and Alabama newspapers filed suit in Broward Circuit Court to gain access to the department's investigative files. Earlier this month, a judge refused to open the records after Smith said he's still investigating possible suspects.

The newspapers intend to return to court soon.

"We're either going to make or break this thing, really really soon," Witt said. "As exhaustive as Smith is, it will either lead to a successful conclusion or bring us to a point where we're going to have to say, 'We've done everything we know how to do.'"

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

CASE NO: 95 9406324

DIVISION: 13

THE MOBILE PRESS REGISTER, INC. :  
AND JAY GRELEN :

Plaintiffs, :

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

Defendant. :

NOTICE OF HEARING

FILED FOR RECORD  
CLERK OF CIRCUIT COURT  
BROWARD COUNTY, FLA.  
SEP 20 AM 9:30

TO: THOMAS R. JULIN, ESQUIRE  
Attorney for the Mobile Press Register, Inc.  
Jay Grelen, the Sun-Sentinel and  
the Palm Beach Post  
200 S. Biscayne Boulevard, 40th Floor  
Miami, Florida 33131-2398

PLEASE TAKE NOTICE that the Defendant, RICHARD H. WITT, by and through the undersigned attorney, has set down for hearing the Defendant, RICHARD H. WITT'S, Status Advisory, requested to be held "In Camera", filed in the above cause, before the Honorable Leroy H. Moe, Judge of the Circuit Court, in Fort Lauderdale, Florida, for October 17, 1995, in Room 960 at 9:30 A.M., or as soon hereafter as counsel can be heard.

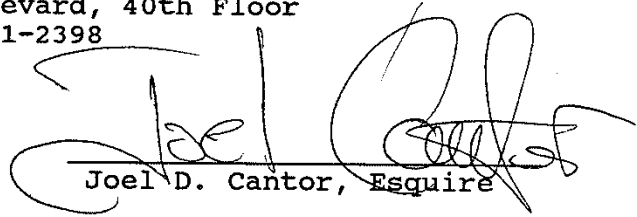
Joel D. Cantor, Esquire  
Attorney for Richard Witt,  
Chief of Police  
3250 Hollywood Boulevard  
Hollywood, FL 33021  
Telephone: (305) 967-4490  
Florida Bar #362093



CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the Notice of Hearing was on this 19th day of September, 1995, furnished by U.S. mail to:

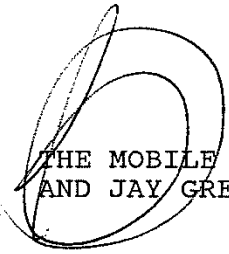
THOMAS R. JULIN, ESQUIRE  
Attorney for the Mobile Press Register, Inc.  
Jay Grelen, the Sun-Sentinel and  
the Palm Beach Post  
200 S. Biscayne Boulevard, 40th Floor  
Miami, Florida 33131-2398

  
Joel D. Cantor, Esquire

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

CASE NO: 95-06324

DIVISION: 13

  
THE MOBILE PRESS REGISTER, INC.  
AND JAY GRELEN

Plaintiffs,

vs.

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

Defendant.

"IN CAMERA" STATUS ADVISORY

COMES NOW, the Defendant in this action, RICHARD H. WITT,  
through his undersigned counsel, files this Status Advisory and in  
support thereof would state the following:

1. On June 12, 1995, this Honorable Court entered an order  
denying Plaintiff's request for the production/disclosure of the  
Adam Walsh criminal investigative file, maintaining the  
confidentiality of these records pursuant to Section 119.07(3)(d),  
Florida Statutes.

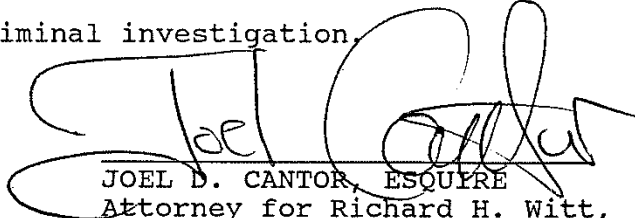
2. Since June 12, 1995, Hollywood Police have been actively  
investigating this matter in good faith in anticipation that an  
arrest or prosecution may result.

3. Proceeding in good faith, the Defendant, RICHARD H. WITT,  
wishes to apprise this Court, "In Camera", of the recent  
developments or direction in this case, in order to keep this

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CLERK OF CIRCUIT COURT  
BROWARD COUNTY, FLA.  
SEP 20 AM 9:37

Court informed of the efforts of the Hollywood Police Investigators assigned to this case.

WHEREFORE, Defendant, RICHARD H. WITT, prays that this Honorable Court recognize the good faith investigative effort currently being performed by the Hollywood Police Detectives assigned to the Adam Walsh criminal investigation.

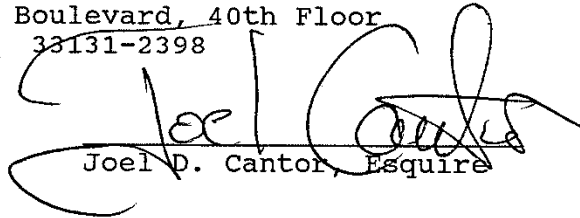


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Telephone: (305) 967-4490  
Florida Bar #362093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing was on this 18th day of September, 1995, furnished by U.S. mail to:

THOMAS R. JULIN, ESQUIRE  
Attorney for the Mobile Press Register, Inc.,  
Jay Grelen, the Sun-Sentinel and the  
Palm Beach Post  
200 S. Biscayne Boulevard, 40th Floor  
Miami, Florida 33131-2398

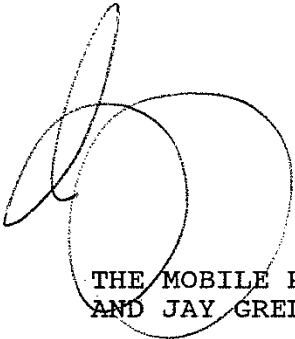


Joel D. Cantor, Esquire

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

CASE NO: 95-06324

DIVISION: 13



THE MOBILE PRESS REGISTER, INC.  
AND JAY GRELEN

Plaintiffs,

vs.

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

Defendant.

05 JUN 21 AM 9:42  
SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FL

MOTION FOR ATTORNEY'S FEES AND COSTS

COMES NOW, the Defendant in this action, RICHARD WITT, through his undersigned counsel, files this Motion for Attorney's Fees and Costs and in support thereof would state the following:

1. On June 12, 1995, Defendant, RICHARD WITT, was compelled to defend an action before this Court requesting disclosure of active criminal investigative information.

2. Defendant, RICHARD WITT, in defense of this action has incurred considerable attorney's fees and costs in defending this action.

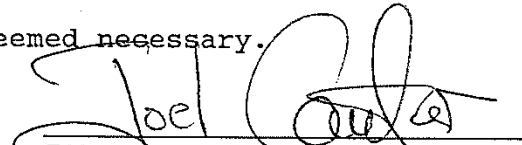
3. Since this Court ruled in favor of Defendant, RICHARD WITT, requiring that the subject investigative files remain exempt from disclosure and classifying these files as active criminal investigative information, Defendant, RICHARD WITT, is entitled to

recover his attorney's fees and costs.

4. Defendant, RICHARD WITT's, costs to date in defending this action is \$425.00, itemized as follows:

- (a) five (5) hours of attorney's fees at a rate of \$75.00 an hour = \$375.00
- (b) assignment of a court reporter to attend the June 12, 1995 hearing = \$50.00

WHEREFORE, Defendant, RICHARD WITT, prays that this Court issue an Order awarding attorney's fees and costs to the Defendant for the defense of this action in the amount specified above and provide other relief as may be deemed necessary.

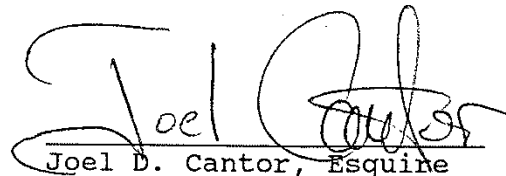


JOEL D. CANTOR, ESQUIRE  
Attorney for Richard Witt,  
Chief of Police  
3250 Hollywood Boulevard  
Hollywood, Florida 33021  
Telephone: (305)967-4490  
Florida Bar #362093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing was on this 16th day of June, 1995, furnished by U.S. mail to:

THOMAS R. JULIN, ESQUIRE  
Attorney for the Mobile Press Register, Inc.,  
Jay Grelen, the Sun-Sentinel and the  
Palm Beach Post  
200 S. Biscayne Boulevard, 40th Floor  
Miami, Florida 33131-2398



Joel D. Cantor, Esquire

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

CASE NO: 9406324

DIVISION: 13

*(Handwritten scribble)*

THE MOBILE PRESS REGISTER, INC. :  
AND JAY GRELEN :

Plaintiffs, :

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

Defendant. :

NOTICE OF HEARING

RECEIVED  
CLERK, CIRCUIT COURT  
BROWARD COUNTY, FLORIDA  
95 JUN 21 AM 9:42

TO: THOMAS R. JULIN, ESQUIRE  
Attorney for the Mobile Press Register, Inc.  
Jay Grelen, the Sun-Sentinel and  
the Palm Beach Post  
200 S. Biscayne Boulevard, 40th Floor  
Miami, Florida 33131-2398

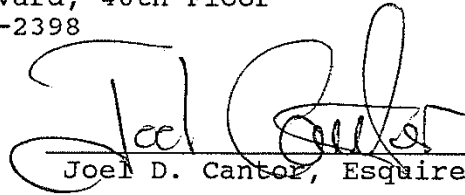
PLEASE TAKE NOTICE that the Defendant, RICHARD H. WITT, by and through the undersigned attorney, has set down for hearing the Defendant, RICHARD H. WITT'S, Motion for Attorney's Fees and Costs, filed in the above cause, before the Honorable Leroy H. Moe, Judge of the Circuit Court, in Fort Lauderdale, Florida, for July 12, 1995, in Room 960 at 8:45 A.M., or as soon hereafter as counsel can be heard.

*(Handwritten signature: Joel D. Cantor)*  
Joel D. Cantor, Esquire  
Attorney for Richard Witt,  
Chief of Police  
3250 Hollywood Boulevard  
Hollywood, FL 33021  
Telephone: (305) 967-4490  
Florida Bar #362093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing was  
on this 16 day of June, 1995, furnished by U.S. mail to:

THOMAS R. JULIN, ESQUIRE  
Attorney for the Mobile Press Register, Inc.  
Jay Grelen, the Sun-Sentinel and  
the Palm Beach Post  
200 S. Biscayne Boulevard, 40th Floor  
Miami, Florida 33131-2398

  
Joel D. Cantor, Esquire

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

CASE NO: 95-06324

DIVISION: 13

RECEIVED  
CLERK, CIRCUIT COURT  
BROWARD COUNTY, FL  
95 JUN 13 PM 4:06

THE MOBILE PRESS REGISTER, INC.  
AND JAY GRELEN

Plaintiffs,

ORDER

vs.

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

Defendant.

THIS CAUSE having come before this Court on Plaintiff's Motion for Production of Public Records and this Court having been advised of the premises, having heard argument for counsel representing both Plaintiff and Defendant, this Court hereby denies Plaintiff's request for production of public records, maintaining the confidentiality of these records pursuant to Section 119.07(3)(d), Florida Statutes.

*without prejudice*

DONE AND ORDERED in Court Room 960, Broward County Courthouse, Broward County, Florida, this 12<sup>th</sup> day of June, 1995.

*Leroy H. Moe*  
\_\_\_\_\_  
Honorable Leroy H. Moe  
Broward County Circuit Judge



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. )  
\_\_\_\_\_ )

95 JUN -8 PM 3:45  
CLERK OF COURT  
SEVENTEENTH JUDICIAL CIRCUIT  
FLORIDA

**Notice of Hearing**

To: Joel D. Cantor  
3250 Hollywood Boulevard  
Hollywood, FL 33021

Please take notice that the undersigned attorneys will call up for hearing The Palm Beach Post's Motion to Intervene before the Honorable Leroy H. Moe, 201 S.E. 6th Street, Fort Lauderdale, Florida 33301, at 1:30 p.m. on Monday, June 12, 1995, or as soon thereafter as counsel may be heard. The hearing has been scheduled for a period of 30 minutes.

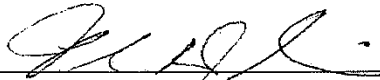
PLEASE GOVERN YOURSELF ACCORDINGLY.

CASE NO. 95-06324 CACE (13)

I HEREBY CERTIFY that a true and correct copy of this notice hand-delivered on June 8, 1995, to the above-named addressee.

Steel Hector & Davis  
Attorneys for The Palm Beach Post

By

  
Thomas R. Julin  
Florida Bar No. 325376  
200 S. Biscayne Blvd. - 40th floor  
Miami, Florida 33131-2398  
(305) 577-2810

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

CASE NO. 95-06324 CACE (13)

*(Handwritten scribble)*

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

Plaintiffs, )

vs. )

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

Defendant. )

05 JUN -9 PM 3:46  
CLERK OF CIRCUIT COURT  
BROWARD COUNTY FLORIDA

The Palm Beach Post's Motion to Intervene

WFTV, Inc. d/b/a Palm Beach Newspapers, Inc., publisher of The Palm Beach Post, moves pursuant to Florida Rule of Civil Procedure 1.230 to intervene in this action as a party plaintiff. This motion should be granted because The Palm Beach Post has done extensive reporting concerning the Adam Walsh murder and is interested in obtaining the immediate release of all records concerning the Hollywood Police Department's investigation of that murder.

Respectfully submitted,

Steel Hector & Davis  
Attorneys for WFTV, Inc. d/b/a  
Palm Beach Newspapers, Inc.

By *Thomas R. Julin*

Thomas R. Julin  
Edward M. Mullins  
Florida Bar No. 325376 & 863920  
200 S. Biscayne Blvd. - 40th Floor  
Miami, Florida 33131-2398  
(305) 577-2810 or 2844


STEEL HECTOR & DAVIS, MIAMI, FLORIDA

Case No. 95-06324 CACE (13)

Certificate of Service

I hereby certify that a true and correct copy of this  
motion was hand-delivered June 8, 1995, to:

Joel D. Cantor  
3250 Hollywood Boulevard  
Hollywood, FL 33021



---

Thomas R. Julin

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. )  
\_\_\_\_\_ )

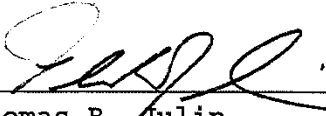
FILED FOR RECORD  
CIRCUIT/COUNTY COURT  
BROWARD COUNTY, FLA.  
1995 JUN -6 PM 4:12

Sun-Sentinel's Motion to Intervene

Sun-Sentinel Co., publisher of the Sun-Sentinel, moves pursuant to Florida Rule of Civil Procedure 1.230 to intervene in this action as a party plaintiff. This motion should be granted because the Sun-Sentinel has done extensive reporting concerning the Adam Walsh murder and is interested in obtaining the immediate release of all records concerning the Hollywood Police Department's investigation of that murder.

Respectfully submitted,

Steel Hector & Davis  
Attorneys for the Sun-Sentinel Co.

By 

Thomas R. Julin  
Edward M. Mullins  
Florida Bar No. 325376 & 863920  
200 S. Biscayne Blvd. - 40th Floor  
Miami, Florida 33131-2398  
(305) 577-2810 or 2844

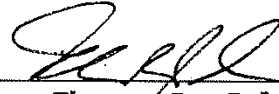
STEEL HECTOR & DAVIS, MIAMI, FLORIDA

Case No. 95-06324 CACE (13)

Certificate of Service

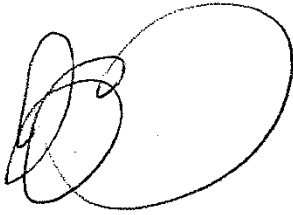
I hereby certify that a true and correct copy of this motion was hand-delivered June 6, 1995, to:

Joel D. Cantor  
3250 Hollywood Boulevard  
Hollywood, FL 33021



---

Thomas R. Julin



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. )

FILED FOR RECORD  
CIRCUIT/COUNTY COURT  
BROWARD COUNTY, FLA.

1995 JUN -6 PM 4: 12

Notice of Hearing

To: Joel D. Cantor  
3250 Hollywood Boulevard  
Hollywood, FL 33021


Please take notice that the undersigned attorneys will call up for hearing Sun-Sentinel's Motion to Intervene before the Honorable Leroy H. Moe, 201 S.E. 6th Street, Fort Lauderdale, Florida 33301, at 1:30 p.m. on Monday, June 12, 1995, or as soon thereafter as counsel may be heard. The hearing has been scheduled for a period of 30 minutes.

PLEASE GOVERN YOURSELF ACCORDINGLY.

CASE NO. 95-06324 CACE (13)

I HEREBY CERTIFY that a true and correct copy of this notice hand-delivered on June 6, 1995, to the above-named addressee.

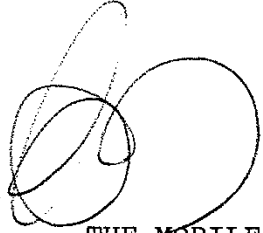
Steel Hector & Davis  
Attorneys for The Sun-Sentinel

By   
Thomas R. Julin  
Florida Bar No. 325376  
200 S. Biscayne Blvd. - 40th floor  
Miami, Florida 33131-2398  
(305) 577-2810



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

CASE NO. 95-06324 (13)



THE MOBILE PRESS REGISTER, INC.  
AND JAY GRELEN

Plaintiffs,

vs.

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

Defendant.

---

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CLERK OF DISTRICT COURT  
BROWARD COUNTY, FL  
SEP 17 23 PM 2:13

ANSWER/AFFIRMATIVE DEFENSES TO VERIFIED COMPLAINT

The Defendant, Richard Witt, through undersigned counsel, files this his Answer/Affirmative Defenses to the verified complaint and in support thereof would state as follows:

1. Denied as to Plaintiff's compliance with jurisdictional requirements.
2. Without knowledge to either admit or deny this allegation.
3. Admitted
4. Without knowledge to either admit or deny this allegation and strict proof thereof is demanded.
5. Admitted in part as this allegation relates to records sought by the Plaintiffs that are not considered public, but rather considered exempt from public disclosure.
6. Admitted

7. Admitted in part; access to records requested were denied because they are exempt from public disclosure.

8. Denied; Section 119.07(3)(d), Florida Statutes provides and exemption for "active" criminal investigative information. "Active" within meaning of public record act's exemptions for active criminal intelligence and investigative information means that, "even though there is no immediate anticipation of arrest, so long as investigation is proceeding in good faith...". In Florida Freedom Newspapers, Inc., 478 So. 2d. 1128 (1985), the First District stated "There is no fixed time limit for naming suspects or making arrests other than the applicable statute of limitations". "... the fact that the investigators might not yet have decided upon a suspect does not necessarily imply that the investigation fails to meet the statutory requirements of good faith and anticipation of prosecution in the foreseeable future".

The Appellate Court in Barfield vs. City of Fort Lauderdale Police Department, 639 So. 2d. 1016 (1994), further reiterates that the police should be given substantial leeway in conducting an ongoing investigation even when there may be no immediate prospect of an arrest or prosecution so long as the police are acting in good faith.

9. Admitted in part; renewed request for records exempt from public disclosure.

10. Admitted in part; Defendant did not expressly divulge or disclose whether an arrest for the murder of Adam Walsh was imminent or when any such arrest might take place by virtue of

Section 119.07(3)(d), Florida Statutes.

In Florida Freedom Newspapers, Inc., 478 So. 2d. at 1128, "the fact that the investigators might not yet have decided upon a suspect does not necessarily imply that the investigation fails to meet the statutory requirements of good faith and anticipation of prosecution in the foreseeable future".

11. Denied; all of the records requested are exempt from disclosure because these records are considered active criminal investigative information as it relates to an ongoing investigation.

\*(Please see attached Affidavit marked Exhibit "A" executed by Detective Mark Smith verifying as the lead investigator assigned to the subject case, that this investigation is continuing in good faith and that an arrest or prosecution may result).

12. Denied; Plaintiffs' request subjects the Defendant to potential criminal violations if exempted records are disclosed.

13. Denied; Defendant's refusal to allow inspection of records which are exempt from public disclosure is consistent with the provisions in Section 119.07(3)(d), Florida Statutes.

14. Denied; Defendant has no legal duty to allow inspection of records which are exempted from public disclosure.

15. Without knowledge; alternatively, the Defendant has retained undersigned counsel to represent him to protect records which are exempt from disclosure through applicable provisions of the Florida Public Records Law and has incurred considerable attorney's fees and costs in defending this action.

AFFIRMATIVE DEFENSES

16. For a defense herein, the Defendant states that the records requested by Plaintiff is active criminal investigative information related to an ongoing investigation which is continuing with a reasonable good faith anticipation of securing an arrest or prosecution in the foreseeable future as provided in Section 119.011(3)(d)2, Florida Statutes and is therefore protected from disclosure.

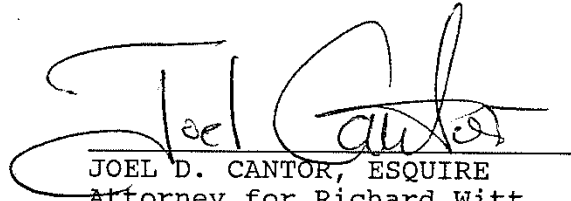
17. For a defense herein, Defendant submits that there is no fixed time limit for naming suspects or making arrests other than the applicable statute of limitations. (See Barfield vs. City of Fort Lauderdale Police Department). The records sought by Plaintiff relate to a homicide investigation and therefore are not subject to a statute of limitations.

18. For a defense herein, Plaintiff has failed to allege a sufficient basis for disclosure of the exempt records sought in this matter and through the Plaintiff's own words has suggested that the records sought are involved in an active criminal investigation. \*(Please see attached news article authored by Plaintiff, Jay Grelen, marked as Exhibit "B").

19. For a defense herein, the Plaintiff has failed to allege a legitimate basis for disclosure for the exempt records and premature disclosure of the investigative files will defeat the important objectives pursued by the investigator(s) in this matter, a resolution or disposition to this case.

WHEREFORE, Defendant prays that this Court:

- A. Issue an Order denying records disclosure in this matter.
- B. Issue an award of costs and attorney's fees to the Defendant for the defense of this action pursuant to Section 119.12, Florida Statutes.
- C. Provide any other relief as may be deemed necessary.

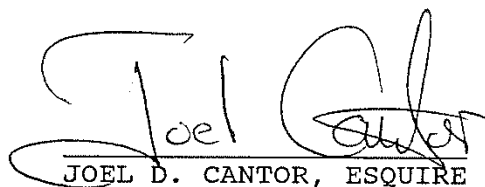
A handwritten signature in black ink, appearing to read "Joel Cantor", is written over a horizontal line.

JOEL D. CANTOR, ESQUIRE  
Attorney for Richard Witt,  
Chief of Police  
3250 Hollywood Boulevard  
Hollywood, Florida 33021  
Telephone: (305) 967-4490  
Florida Bar #360293

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing was  
on this 18th day of May, 1995, furnished by U.S. mail to:

THOMAS R. JULIN  
200 S. Biscayne Boulevard, 40th Floor  
Miami, Florida 33131-2398



Handwritten signature of Joel D. Cantor, Esquire, written in black ink. The signature is stylized and cursive, with the name 'Joel Cantor' clearly legible. Below the signature is a horizontal line.

JOEL D. CANTOR, ESQUIRE

EXHIBIT "A"

County of Broward )  
 ) ss.  
State of Florida )

Affidavit

Personally appeared before me, the undersigned authority, Mark Smith, who, after being duly sworn, deposed and said:

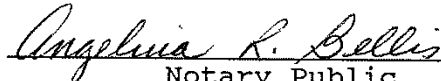
1. I am Mark Smith, a Police Detective with the City of Hollywood Police Department.

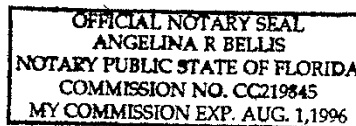
2. I am currently assigned as the lead investigator in the investigation of the homicide of Adam Walsh.

3. As the lead investigator in this matter, I have invested a substantial amount of time interviewing witnesses, reviewing reports and evidence, and I am continuing this investigation in good faith with the anticipation of interviewing potential suspect(s) and concluding this investigation in the foreseeable future.

  
DETECTIVE MARK SMITH

The foregoing statement was sworn as true and correct and signed before me this 19th day of May, 1995, by Mark Smith, who is personally known to me or who has produced a state driver's license as identification and who did take an oath.

  
Notary Public



# Police rejuvenate probe

▶ Through the years, tips have continued to come in; even serial killer Jeffrey Dahmer has been queried

By JAY GRELEN  
Staff Reporter

HOLLYWOOD, Fla. — Something new is happening in the 14-year-old investigation into the death of Adam Walsh.

Dick Witt, chief of the Hollywood Police Department, has created a "cold-case squad" to rejuvenate old, unsolved cases. Detective Mark Smith is taking up Adam's case.

Smith is reinterviewing witnesses, and in February, he interviewed John Walsh, father of the dead boy, Witt said.

"There was a lot of concentration on the Walshes and Campbell," Witt said of the days right after the abduction.

Jim Campbell was a close friend who lived with the Walshes in their Hollywood home for two years.

"There was no reason to suspect a stranger abduction," Witt said. "That came later. A standard is to investigate closely the friends and family of the victim. In 75 percent of the cases, that's where you're going to find the offender.

"The probability," he adds, however, "is that there is no John or Reve Walsh connection to the death of their son."

The chief, who believes a stranger probably took Adam, won't say that all the family's friends have been cleared.

Adam was kidnapped July 27, 1981, at the Sears store in the Hollywood Mall where his mother had left him to play video games in the toy department. His case became a national news story.

It's an old case, but not forgotten. The police department still receives about four tips a year, generally from other police departments that have a suspect in a similar crime. All the tips,

Witt says, are "plausible." It's a word he employed often in a two-hour interview about Adam Walsh.

A couple of years ago, the investigation took police Detective Jack Hoffman to Milwaukee to interview serial killer Jeffrey Dahmer. Hoffman was one of the original detectives assigned to the Walsh case.

He had verified a tip that Dahmer was living in the North Miami Beach area at

## into Adam's death

the time Adam was killed. (Hoffman never was able to locate Dahmer's roommate from that time.)

"Jeffrey was very candid with me," says Hoffman, who has been transferred to the department's patrol division. "He said, 'If I was responsible for a murder in Florida, where they have the death penalty, I would confess. I would welcome death.'"

The likelihood that Dahmer could

have been involved, Witt says, "was plausible."

"He killed young men. He was in the area. That's what makes it difficult, and why each of the leads must be followed."

The concept of cold-case squads is catching on in big-city police departments, says Witt, who became chief in Hollywood in 1986 after a career as a detective with the Miami Police Department.

ment.

"The whole idea is to get a fresh approach to a case that seems to be lying dormant," Witt said. "The value is that the newly assigned detectives tend to be far more objective. They don't have a stake — 'It's not my case.'"

"Six months ago, we did that with the Adam Walsh case. We are extremely pleased with the updates we have gotten with the cold-case investigation. I really feel good about where we're going with it.

"I think everyone's always felt it was solvable."

Witt wouldn't elaborate on where the case stands, other than to say it is an open case.

Detective Smith, a youthful-looking, bearded detective who has been with the department for 12 years, has solved all five of the cold-case homicides to which he has been assigned, Witt said. "He's very meticulous. Nothing is too small not to be worth attention."

The Hollywood Police Department has rejected requests by the Miami Press Register to review the Adam Walsh file, which a former detective said has grown to a thickness of 5 feet.

The department refused the newspaper's request on the grounds that the case is active. Last week, the Press Register sued in Broward County, Fla., circuit court in an effort to force the department to open the file.

Chief Witt concedes the department's position on keeping the Walsh case closed to the public may soon be difficult to defend.

Under Florida law, the department must show that the case is active and that it expects to make an arrest in the foreseeable future. A judge will decide what is foreseeable.

Said Witt: "I would think, truthful based upon Florida law, when our cold case people (are through) we will have difficulty" keeping it closed.



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

CASE NO. 95-06324 (13)

  
THE MOBILE PRESS REGISTER, INC.  
AND JAY GRELEN

Plaintiffs,

vs.

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

Defendant.

---

REC'D IN THE  
CLERK OF CIRCUIT COURT  
BROWARD COUNTY, FLA.  
MAY 23 1995

SE MAY 23 PM 2:43

MEMORANDUM OF LAW

This case represents a variation of the classic struggle under the Public Records Law, Section 119.07, Florida Statutes (1993) between the media's demand for documents in the custody of a governmental agency and the government's claim of confidentiality of such records. The documents sought by Plaintiff relate to a homicide investigation being conducted by the City of Hollywood Police Department.

The general purpose of the Florida Public Records Law is to open public records so Florida's citizens can directly observe the actions of their government. In fact, Section 119.01(1), Florida Statutes (1993), expressly states that "it is the policy of this State that all State, County, and Municipal records shall at all times be open for inspection by any person". This declaration appears to favor openness and promotes narrow interpretations of

the exemptions from disclosure. This action represents the media's pursuit for disclosure of records that Florida Courts have consistently declared as "active" and therefore statutorily protected from disclosure by Section 119.07(3)(d), Florida Statutes.

While Florida has a strong public policy in favor of open government, the protection of police records compiled during a criminal investigation also has a long heritage in this state. For many years, law enforcement has sought protection based on the common law "police secrets rule", a rule adopted by Florida Courts to protect investigative information from public inspection. This rule was based on the belief and recognition that some police records must remain confidential and free from public inspection as a matter of public policy so that the law enforcement agency may successfully complete it's investigation. Bearing in mind that police reports and documents frequently include leads to other cases and suspects, the information contained in these documents must be protected in order to afford fair pursuit of such involvement by others and the solving of other offenses. These objectives are certainly defeated if the police reports which are related to an active criminal investigation are made readily available.

In the case of Wait vs. Florida Power and Light Co., 372 So. 2d. 420 (1979), the Florida Supreme Court held the only exemptions to the Public Records Act, and thus disclosure, were those expressly adopted as statutory exceptions. In response to the Wait

ruling, the legislature codified the police secrets rule into the Public Records Act as an exemption for "active criminal intelligence/investigation information. Section 119.07(3)(d) now contains an express statutory exemption to disclosure and provides that "active criminal investigative information are exempt from the provisions of the Public Record Law".

WHAT RECORDS CONSTITUTE "ACTIVE CRIMINAL INVESTIGATIVE INFORMATION"

Section 119.07(3)(d) contains an express statutory exemption to disclosure classified as active criminal investigative information. "Active" within meaning of public records act's exemptions for active criminal investigative information means that even though there is no immediate anticipation of arrest, so long as the investigation is proceeding in good faith, and the case will reach a determination in the foreseeable future. That is, it is not necessary that an arrest or criminal prosecution must result, but rather that it could result. (See Barfield vs. Fort Lauderdale Police Department, 639 So. 2d. 1012 (1994)).

In this matter, the City of Hollywood Police Department, and more specifically the lead detective, Mark Smith, is investigating this particular homicide case in good faith, interviewing witnesses, reviewing evidence and interviewing potential suspect(s). There is no contention that the investigation has been unduly delayed or stalled, nor is there any contention that the police are acting in bad faith. It is virtually undisputed that this matter is still under active consideration.

THE PURPOSE AND SCOPE OF THE ACTIVE CRIMINAL INVESTIGATIVE INFORMATION EXEMPTION

The purpose of the active criminal investigative exception is to prevent premature disclosure of information during an ongoing investigation being conducted in good faith by a criminal justice agency. Section 119.011(3)(c), Florida Statutes specifically provides three categories of information which manifestly excludes any requirement to furnish information about the offense as it is developed during the investigation, except the victim's identity, before an arrest is made or a charge is filed. The defendant submits that the legislature fully comprehended that disclosure of the status of a criminal investigation by requiring production of particular information developed during its progress would impede the development of new leads and prevent successful conclusion of the investigation and the possible arrest of the offender.

**DOES THE FAILURE TO NAME A SUSPECT OR PROJECT AN APPROXIMATE TIME WHEN AN ARREST WILL BE SECURED DEFEAT THE CLAIMED EXEMPTION**

In Barfield vs. Fort Lauderdale Police Department, 639 So. 2d. 1012 (1994), the Trial Court and Appellate Court found that police records of criminal investigations into excessive force claims contained "active" criminal investigative information exempt from disclosure, notwithstanding the fact that the police detective assigned to the case was unable to say whether he had reasonable good faith anticipation of securing an arrest or prosecution. The Appellate Court concluded that as long as the investigation is proceeding in good faith, it is only necessary that an arrest or prosecution may result, not that it must.

The Appellate Court in Barfield interpreted the definition of

"active" to mean that, "even though there is no immediate anticipation of an arrest, so long as the investigation is proceeding in good faith...". Phrased differently, the court construed the phrase "anticipation of an arrest or prosecution" to mean that an arrest or prosecution may result, not that it must.

The defendant submits that the City of Hollywood Police Department is actively investigating the Adam Walsh homicide in good faith and investigative information is being compiled in the process and an arrest or prosecution may result. The First District court in Florida Freedom Newspapers, Inc., 478 So. 2d. 1128 has stated that "there is no fixed time limit for naming suspects or making arrests other than the applicable statute of limitations". The Adam Walsh homicide investigation is a capital offense investigation which is not subject to any applicable statute of limitations. The decision in Florida Freedom Newspapers indicates that police, so long as they are acting in good faith, should be given substantial leeway in conducting an ongoing investigation even when there may be no immediate prospect of an arrest or prosecution. A law enforcement agency should never be forced to "guess" whether or not an incident will or will not result in an arrest or prosecution.

**IS DETAILED JUSTIFICATION AND ADVERSARIAL TESTING NECESSARY TO UPHOLD CLAIMED EXEMPTION**

In Lorei vs. Smith, 464 So. 2d. 1330 (1985), the Second District Court of Appeal suggested that it would be an exercise in futility to require indexing, itemizing or further discovery regarding the claimed exemption in order to justify a claimed

exemption under Section 119.03(3)(d), Florida Statutes. The court stated that detailed justification and adequate adversary testing were not required to uphold the claimed exemption.

In Florida Freedom Newspapers and in Barfield, the testimony of a law enforcement agent alone was sufficient to establish that information requested by a newspaper was subject of an active criminal investigation and thus, exempt from disclosure. The trial court in Florida Freedom Newspapers essentially ruled that questions from the plaintiff concerning the facts of the case during the course of the investigation and investigative decisions based thereon were statutorily protected.


In our action at hand, Detective Mark Smith has submitted an Affidavit verifying that he is actively investigating the Adam Walsh homicide in good faith. The defendant submits that this affidavit is sufficient to impose the statutory protection from disclosure that this active homicide investigation deserves.

PUBLIC POLICY VERSUS CONFIDENTIALITY OF ACTIVE CRIMINAL INVESTIGATIVE INFORMATION

A plaintiff in this action, Jay Grelen, has already published a series of articles in the Mobile Press Register suggesting suspects and leads which are clearly speculative and even lack merit. For instance, the plaintiff's recent series of articles suggests that John Walsh, the father of Adam Walsh, is still being implicated in the death or disappearance of his child due to his social connections in life. This is clearly untrue as John Walsh, other than through the standard cursory procedures during the initial stages of a homicide investigation, has not been considered

a suspect in this horrible crime and to suggest otherwise only serves to compromise the investigative cooperation between the Walsh family and the City of Hollywood Police Department.

Disclosure of the Adam Walsh investigative file would clearly defeat the overriding important objectives being accomplished by the City of Hollywood Police Department, a final determination in this case. The City of Hollywood Police Department must have the latitude to successfully complete its investigation and ultimately have the opportunity to apprehend violators of the law. Even as far back as 1937, our Courts have recognized that many of our police records, including those contained in serious crime investigations must remain secret and free from public inspections as a matter of public policy. (See Lee vs. Beach Pub. Co., 173 So. 440 (1937)). Therefore, this Court, remaining consistent with its earlier ruling in Barfield must deny plaintiff's request for disclosure of the Adam Walsh investigative files by granting the statutory active criminal investigative information status to these records.

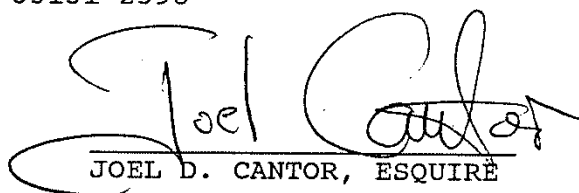


JOEL D. CANTOR, ESQUIRE  
Attorney for Richard Witt,  
Chief of Police  
3250 Hollywood Boulevard  
Hollywood, Florida 33021  
Telephone: (305)967-4490  
Florida Bar #360293

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing was  
on this 19th day of May, 1995, furnished by U.S. mail to:

THOMAS R. JULIN  
200 S. Biscayne Boulevard, 40th Floor  
Miami, Florida 33131-2398

  
JOEL D. CANTOR, ESQUIRE





Bill Ross

# CACE

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

CASE NO. 95-06324

13  
MAY 11 1995  
RECORDED  
COURT

THE MOBILE PRESS REGISTER, INC.  
AND JAY GRELEN,

Plaintiffs,

vs.

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

Defendant.

Sec'y To  
Chief REGINA WATERS  
5/9/95  
#212  
Authorized to Accept

ROBERT VOLLRATH  
2895 BISC. BLVD. #528  
MIAMI, FL 33137  
(305) 939-0375

## S U M M O N S

THE STATE OF FLORIDA

To All and Singular the Sheriffs of said State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the Verified Complaint or petition in this action on defendant:

Richard Witt, as chief of police of the City of Hollywood, Florida  
3250 Hollywood Boulevard, 4th Floor  
Hollywood, Florida 33021  
(305) 967-4600

Each defendant is required to serve written defenses to the Verified Complaint or petition on **Thomas R. Julin, Esq., Steel Hector & Davis**, Plaintiff's attorney, whose address is 4000 First Union Financial Center, 200 South Biscayne Boulevard, Miami, Florida 33131-2398 (Telephone: (305) 577-2810) within 20 days

after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this court either before service on Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against the defendant for the relief demanded in the Verified Complaint or petition.

MAY 05 1995

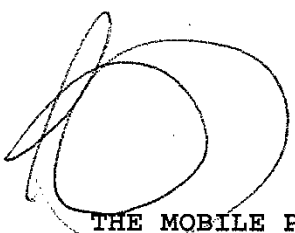
WITNESS my hand and the Seal of said Court on this \_\_\_\_ day of May, 1995.

ROBERT E. LOCKWOOD  
As Clerk of said Court  
BY: *[Signature]*  
As Deputy Clerk  
CIRCUIT COURT  
JUDICIAL  
CIRCUIT  
WARD COUNTY

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

CASE NO. 95-06324 CACE (13)

95MAY 19 PM 2:01  
RECORDED  
CLERK OF CIRCUIT COURT  
BROWARD COUNTY, FLORIDA



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

Notice of Hearing

To: Joel D. Cantor  
3250 Hollywood Boulevard  
Hollywood, FL 33021

Please take notice that the undersigned attorneys will call up for hearing the plaintiffs' motion for order requiring production of public records in the Circuit Court before the Honorable Leroy H. Moe, 201 S.E. 6th Street, Fort Lauderdale, FL 33301, at 1:30 p.m. on Monday, June 12, 1995, or as soon thereafter as counsel may be heard. The hearing has been scheduled for a period of 30 minutes.

PLEASE GOVERN YOURSELF ACCORDINGLY.

CASE NO. 94-22812-CA-27

I HEREBY CERTIFY that a true and correct copy of this  
notice was mailed on May 18, 1995, to the above-named addressee.

Steel Hector & Davis  
Attorneys for The Mobile Press Register, Inc.  
and Jay Grelen

By



Thomas R. Julin  
Edward M. Mullins  
Florida Bar No. 325376 & 863920  
200 S. Biscayne Blvd. - 40th Floor  
Miami, Florida 33131-2398  
(305) 577-2810 or 2844

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. )  
\_\_\_\_\_ )

95 MAY 19 PM 2:01

Motion for Order Requiring Production of Public Records

Plaintiffs, Mobile Press Register, Inc. and Jay Grelen, move for an order requiring the defendant, Richard Witt, chief of police of Hollywood, Florida, to produce for immediate inspection and copying the City of Hollywood Police Department file regarding the abduction and killing of Adam Walsh. The incident which led to the creation of this file took place on July 27, 1981 -- almost 14 years ago. The principles governing this case are discussed in detail in Barfield v. Fort Lauderdale Police Department, 639 So. 2d 1012 (Fla. 4th DCA 1994), and, as will be shown, under those principles there is no basis for maintaining the confidentiality of the records at issue.

The Parties

Plaintiff, The Mobile Press Register, Inc., is an Alabama corporation with its principal place of business in Mobile, Alabama. Plaintiff Jay Grelen is a reporter and columnist for The Mobile Press Register.

Defendant, Richard Witt, is the chief of police of Hollywood, Florida, and is an agency of the State of Florida.

The Essential Facts

Plaintiffs do not believe that the essential facts of this case are in dispute, but will be prepared to present evidence at the hearing on this motion which demonstrates the following facts.

On or about July 27, 1981, Reve Walsh reported that her son, Adam Walsh, had disappeared from the Sears store at the Hollywood Mall in Hollywood, Florida. Two weeks later, Adam Walsh's head was recovered in a canal. This led to one of the most extensive criminal investigations in the history of Hollywood and Florida.

After 14 years, the investigation has not resulted in the arrest or prosecution of any individuals, has been dormant for an extended period, and has been classified by the defendant as a

"cold case." Although the defendant assigned this case to the Hollywood Police Department's "cold case squad" approximately six months ago, the defendant does not and cannot have a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future given the extensive passage of time since the incident involved and the lack of any evidence which might lead to an arrest in the foreseeable future. Moreover, six months of investigation by the cold case squad has not resulted in sufficient evidence to make an arrest or to commence an investigation.

On January 31, 1995, plaintiffs delivered to the defendant a written request to allow inspection and copying of the City of Hollywood Police Department file from its investigation into the abduction and killing of Adam Walsh. A copy of that request is attached as Exhibit A to the complaint.

The defendant responded to this request on February 2, 1995, through a letter from Stephanie M. Norris, a media relations specialist with the Hollywood Police Department. In the response, the defendant produced the initial 1981 police report regarding the incident, but asserted that the entire remaining contents of the requested file is exempt from the



disclosure requirements of the Public Records Law by section 119.07(3)d) which exempts "Active criminal intelligence information and active criminal investigative information." The letter specifically stated that the file is considered to be active because "The Hollywood Police Detective Division has been actively working this case since the unfortunate incident occurred on July 27, 1981. To this very day we continue to respond to legitimate tips and leads." A copy of this letter is attached as Exhibit B to the complaint.

On February 10, 1995, the plaintiffs renewed their request for access to the requested public records through a February 10, 1995, letter from counsel for the plaintiffs which pointed out that the murder in question occurred almost 14 years ago and that requested public records could not be regarded as "active" at this time. A copy of this letter is attached to the complaint as Exhibit C.

The defendant responded to the renewed request by letter of February 15, 1995, from counsel for the defendant which stated that the renewed request was denied and that the defendant maintained that all requested records are exempt from the disclosure requirements of the Public Records Law by virtue of

section 119.07(3)(d). The letter specifically maintained: "The City of Hollywood Police Department has not abandoned it's (sic) investigation into the death of Adam Walsh and does not intend to do so any time in the immediate future, notwithstanding the age of the case." The letter further stated that the detective investigating the case "is actively investigating information which has been recently received and is currently reviewing leads created by this information." The letter closed by noting:

You have also inquired about when we expect, in good faith, to secure an arrest for the murder of Adam Walsh. We must respectfully decline to make any such projection. Such a forecast would not serve any public interest at this time.

A copy of this letter is attached to the complaint as Exhibit D.

Argument

A single exemption to the disclosure requirements of the Public Records Law is at issue in this case -- the exemption for "active criminal investigative information" Section 119.07(3)(d)(2), Florida Statutes (1993). Section 119.011(3)(d)2. expressly limits that exemption by providing:

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

Thus, 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 (I) the information in the records is related to an ongoing investigation that is continuing, (II) the investigation is being conducted with a reasonable, good faith anticipation of securing an arrest or prosecution, and (III) 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, 639 So. 2d at 1015.

In this case, involving an investigation that was commenced 14 years ago, which lay dormant for many years, which is regarded as a "cold case" by the defendant himself, and which still has not resulted in an arrest or prosecution after six months of reinvestigation by a cold case squad, the Court should hold that the defendant cannot meet any one of the three prongs of the "active criminal investigative information" exemption.

This conclusion is consistent with the fundamental proposition that the Public Records Law is to be liberally 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. And, "when in doubt the courts should find in favor of disclosure rather than secrecy." Bludworth, 476 So. 2d at 780 n. 1.

I.

There is no "On-Going  
Investigation Which is Continuing"

The initial relevant inquiry here is whether the Hollywood Police Department is engaged in an "on-going investigation that is continuing." The plaintiffs believe that the evidence will show that the Hollywood Police

Department ceased actively investigating the incident at issue a long time ago. While the Department may not have abandoned the hope that it may one day solve this case, its investigation now appears to be limited to responding to information sent to it on an infrequent basis. The Department in fact has classified this as a "cold case" and it is now under the jurisdiction of the "cold case squad." Once the case was so classified, the investigation ceased to be "active" and the records became public.

The Fourth District's decision in Barfield specifically anticipated a case such as this. In the course of affirming an order determining 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 the defendant's assertion that the investigation remains active. In fact, the defendant himself has stated that the case has been dormant for a considerable period. The dormancy of the

investigation should be regarded as the equivalent of a decision to put the case on "indefinite hold."

The fact that the Hollywood Police Department may recently have assigned this case to its cold case squad does not change the fact that the investigation had been discontinued. The statute does not provide that police records are exempt during the period of an initial investigation, are open to the public once the initial investigation has been concluded, and then later may be closed to the public once an investigation is reopened, and such an interpretation of the statute would make no sense.

The Hollywood Police Department certainly is acting appropriately in not ignoring this case merely because its investigation of it ceased to be active. And, the chief perhaps should be applauded for asking one of his detectives to take a second look at this long dormant matter. But the fact that a detective is looking at and reevaluating a dormant investigation cannot change the fact that the investigation has ceased to be active.

The Hollywood Police Department has had 14 long years of exclusive access to the files regarding this tragic incident.

Case No. 95-06324 CACE (13)

In that period it has been unable to solve the crime. Now is the time to allow the public and the press to review this file. Why was the investigation unsuccessful? Did the Department adequately follow all leads? Was evidence properly handled? Were adequate resources available to conduct the investigation? Only once the file is made available for public inspection can these important questions be answered. The Barfield court specifically observed that the public and the press have a legitimate and important interest in reviewing police files and concluded: "In passing, we note this is not a situation where the information sought will remain permanently confidential. Rather, once the investigations are concluded, if no charges are filed, the records would cease to be 'active' and thus subject to disclosure." 639 So. 2d at 1018.

In this case, the investigation has been concluded, no charges have been filed, and now is the time to order the files released. The files may not be made permanently confidential.

II.

The Defendant Lacks a Reasonable,  
Good Faith Anticipation that he  
will Secure an Arrest or Prosecution

The defendant next must prove that the investigation is continuing with a "reasonable, good faith anticipation of securing an arrest or prosecution." Section 119.011(3)(d)2. No Florida court has held that 14 years after an incident has occurred, it is reasonable to believe that an arrest or prosecution will result.

Indeed, in those cases where the courts have held that a criminal investigation properly is classified as "active," either prosecutorial action was imminent or the time from the date of the incident to the date of the request for access to the file typically has been very brief.

For example, in the Barfield case, 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 properly 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, 14 years have passed since the incident and the plaintiffs are aware of 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. The defendant instead is simply hopeful that the recent efforts of a detective to review the long dormant file might spot something that has been overlooked by others for 14 years. This mere hope is not sufficient under Florida law to constitute a good faith anticipation of securing a prosecution or arrest.

III.

Any Arrest or Prosecution Anticipated by the Defendant is not in the "Foreseeable Future"

Finally, the defendant must show that the arrest or prosecution will be in the "foreseeable future." Florida courts have not specifically defined this time, but it is easy to determine in this case that no arrest or prosecution will take place in the foreseeable future.

Will there be an arrest or prosecution within a week, a month, a year, two years, or ten years? The defendant has offered the plaintiff no indication in this regard and it is not anticipated that the defendant will be able to do so at the hearing on this motion. In fact, the defendant has refused to respond to the plaintiff's inquiries concerning when an arrest or prosecution is anticipated.

While a homicide case remains unsolved, the possibility always exists that an arrest or prosecution will be secured by an unexpected turn of events. But after the passage of one year, or two years, or five years, the likelihood of an arrest or prosecution diminishes greatly. With the passage of six years and then eight years and then ten years, the probability

of an arrest or prosecution being secured nearly vanishes. In the instant case, that probability is even more remote and cannot, by any measure, be regarded as an event that this Court can find will take place in the "foreseeable future."

Conclusion

The public and the press respectfully have waited 14 years for the Hollywood Police Department to complete its investigation of this case. At this point, in the absence of some extraordinary evidence demonstrating that what has not happened in the last 14 years will happen in the foreseeable future, the records of that investigation should be released.

This Court should (1) declare that the defendant's refusal to make the records requested available for inspections is in violation of the Florida Public Records Law, (2) issue a peremptory writ of mandamus or such other relief as may be appropriate requiring the defendant and his agents, servants, designees, subordinates and employees to permit the plaintiffs to inspect and copy the records requested, (3) issue a writ of mandamus or such other order, including an injunctive order, upon the failure of the defendants to permit immediate inspection and copying of the records, (4) reserve

Case No. 95-06324 CACE (13)

jurisdiction to award attorneys' fees and costs to the plaintiffs against the defendant or against the Hollywood Police Department pursuant to section 119.12, Florida Statutes (1993), and (5) provide such other relief as may be necessary to provide the plaintiffs with the full relief to which they are entitled.

Respectfully submitted,

Steel Hector & Davis  
Attorneys for The Mobile Press Register, Inc.  
and Jay Grelen

By



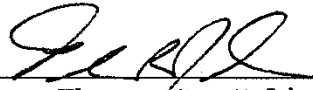
Thomas R. Julin  
Edward M. Mullins  
Florida Bar No. 325376 & 863920  
200 S. Biscayne Blvd. - 40th Floor  
Miami, Florida 33131-2398  
(305) 577-2810 or 2844

Case No. 95-06324 CACE (13)

Certificate of Service

I hereby certify that a true and correct copy of this  
motion was mailed on May 18, 1995, to:

Joel D. Cantor  
3250 Hollywood Boulevard  
Hollywood, FL 33021

  
\_\_\_\_\_  
Thomas R. Julin

IN THE CIRCUIT COURT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO: 9506324

DIVISION: 13

THE MOBILE PRESS REGISTER, INC., :  
AND JAY GRELEN, :

Plaintiffs, :

vs. :

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

Defendant. :

NOTICE OF APPEARANCE

RECEIVED  
CLERK, CIRCUIT COURT  
BROWARD COUNTY, FL  
95 MAY 17 AM 10:12

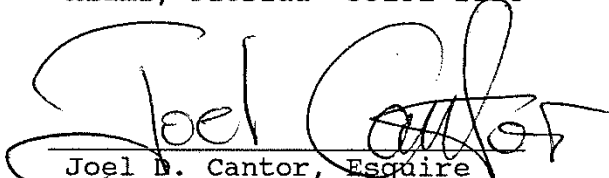
PLEASE TAKE NOTICE that the undersigned attorney  
has filed this Notice of Appearance on behalf of Defendant, RICHARD  
WITT, in his capacity as Chief of Police of the City of Hollywood,  
Florida, in the above cause, before the Honorable Leroy H. Moe,  
Judge of the Circuit Court, in Fort Lauderdale, Florida.

Joel D. Cantor, Esquire  
Attorney for Defendant,  
Richard Witt, Chief of Police  
of the City of Hollywood, Florida  
3250 Hollywood Boulevard  
Hollywood, FL 33021  
Telephone: (305) 967-4490  
Florida Bar #362093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing was  
on this 11th day of May, 1995, furnished by U.S. mail to:

Thomas R. Julin  
Edward M. Mullins  
200 S. Biscayne Boulevard  
40th Floor  
Miami, Florida 33131-2398

  
Joel D. Cantor, Esquire

CIVIL COVER SHEET

CACE

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075. (See instructions on the reverse of the form.)

I. CASE STYLE

(Name of Court) 17th Judicial Circuit Court, Broward County

Plaintiff The Mobile Press Register, Inc. and Jay Grelen,

Case #: 95-06324

Judge: \_\_\_\_\_

vs.

Defendant Richard Witt, as chief of police of the City of Hollywood, FL

II. TYPE OF CASE (Place an x in one box only. If the case fits more than one type of case, select the most definitive.)

Domestic Relations	Torts	Other Civil
<input type="checkbox"/> Simplified dissolution	<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contracts
<input type="checkbox"/> Dissolution	<input type="checkbox"/> Products liability	<input type="checkbox"/> Condominium
<input type="checkbox"/> Support - IV-D	<input type="checkbox"/> Auto negligence	<input type="checkbox"/> Real property/Mortgage foreclosure
<input type="checkbox"/> Support - Non IV-D	<input type="checkbox"/> Other negligence	<input type="checkbox"/> Eminent domain
<input type="checkbox"/> URESA - IV-D		<input checked="" type="checkbox"/> Other
<input type="checkbox"/> URESA - Non IV-D		
<input type="checkbox"/> Domestic violence		
<input type="checkbox"/> Other domestic relations		

III. Is Jury Trial Demanded in Complaint?

Yes

No

Date May 5, 1995

SIGNATURE FOR ATTORNEY FOR PARTY INITIATING ACTION  
Thomas R. Julin, Esq.



SENT BY: SABIN BERMANT

3-8-95 11:33

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RCV BY: SABIN BERMANT

3-8-95 12:57

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# MOBILE PRESS REGISTER

JAY GRELEN  
Columnist

January 31, 1995

Richard Witt, Chief  
Hollywood Police Department  
Hollywood, Fla. 33021

Dear Chief Witt:

As I mentioned during our conversation last week, we are attempting to take a thorough look at the Adam Walsh case. My efforts have been inhibited by the lack of opportunity to view your department's file from its investigation into the abduction and killing of Adam. I am writing to request your permission to review your Walsh file.

If I can't view the file in its entirety, I would like to see those parts that aren't privileged. And I would respectfully request that you identify those portions that are privileged and explain why they are classified that way.

Please contact me through Judi Rojeski, at 1-800-239-1340, ext. 634 by Friday.

Thanks for the information and two hours you've already given me, and thank you in advance for your consideration of this request.

Sincerely,

Jay Grelen  
Columnist

JG/jr

304 GOVERNMENT ST. • P.O. BOX 2488 • MOBILE, AL 36680 • 205-498-1551

002315

*9/2*  
*J*

CACE

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

CASE NO.

95-06324

13

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

EXPEDITED HEARING REQUESTED  
PURSUANT TO SECTION 119.11,  
FLORIDA STATUTES (1993)

Verified Complaint to Enforce the Public Records Law

Plaintiffs sue the defendant and state:

- Jurisdiction. This is a complaint to enforce the Florida Public Records Law, chapter 119, Florida Statutes (1993). This Court has jurisdiction pursuant to article V, section 5(b), Florida Constitution, and sections 86.011, Florida Statutes (1993).
- The Plaintiffs. Plaintiff, The Mobile Press Register, Inc., is an Alabama corporation with its principal place of business in Mobile, Alabama. Plaintiff Jay Grelen is a reporter and columnist for The Mobile Press Register.

*ok 8/4/80*  
*Ret-1*

3. The Defendant. Defendant, Richard Witt, is the chief of police of Hollywood, Florida, and is an agency of the State of Florida.

4. Preconditions Met. Plaintiff has met and fulfilled all applicable preconditions and requirements for the bringing of this action.

5. Defendant Possesses Public Records. At all times pertinent to this action the defendant has been in possession of the public records sought by the plaintiffs.

6. Plaintiff Requested the Public Records. On January 31, 1995, plaintiffs delivered to the defendant a written request to allow inspection and copying of the City of Hollywood Police Department file from its investigation into the abduction and killing of Adam Walsh. A copy of that request is attached as Exhibit A.

7. The Defendant Denied Access to the Public Records. The defendant responded to this request on February 2, 1995, through a letter from Stephanie M. Norris, a media relations specialist with the Hollywood Police Department. In the response, the defendant denied the request -- other than with respect to the initial 1981 police report regarding the incident -- and asserted that the entire remaining contents of the requested file is exempt from the disclosure requirements of the

Public Records Law by section 119.07(3)d) which exempts "Active criminal intelligence information and active criminal investigative information." The letter specifically stated that the file is considered to be active because "The Hollywood Police Detective Division has been actively working this case since the unfortunate incident occurred on July 27, 1981. To this very day we continue to respond to legitimate tips and leads." A copy of this letter is attached as Exhibit B.

8. The Exemption at Issue. Section 119.07(3)(d) does not provide a broad exemption for all police investigative records regarding unsolved crimes. Rather, it provides a narrow exemption for active criminal intelligence information and active criminal investigative information and is strictly limited by section 119.011(3)(d) which provides:

1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to the detection of ongoing or reasonably anticipated criminal activities.

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

In addition, criminal intelligence and criminal investigative information shall be

considered "active" which such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

9. The Renewed Request. On February 10, 1995, the plaintiffs renewed their request for access to the requested public records through a February 10, 1995, letter from counsel for the plaintiffs which pointed out that the murder in question occurred almost 14 years ago and that requested public records could not be regarded as "active" at this time. A copy of this letter is attached as Exhibit C.

10. The Renewed Request is Denied. The defendant responded to the renewed request by letter of February 15, 1995, from counsel for the defendant which stated that the renewed request was denied and that the defendant maintained that all requested records are exempt from the disclosure requirements of the Public Records Law by virtue of section 119.07(3)(d). The letter specifically maintained: "The City of Hollywood Police Department has not abandoned it's (sic) investigation into the death of Adam Walsh and does not intend to do so any time in the immediate future, notwithstanding the age of the case." The letter further stated that the detective investigating the case "is actively investigating

information which has been recently received and is currently reviewing leads created by this information." The letter expressly declined, however, to assert that the defendant or the Hollywood Police Department expected, in good faith, to secure an arrest for the murder of Adam Walsh in the foreseeable future or when any such arrest might take place. A copy of this letter is attached as Exhibit D.

11. The Records are Not Exempt. Upon information and belief, none of the requested records are exempt from the disclosure requirements of the Hollywood Police Department because the records are not related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to the detection of ongoing or reasonably anticipated criminal activities or related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

12. Request Sought Performance of Ministerial Act. Plaintiff's request to allow inspection and copying of the records requested constituted a request for the performance of a ministerial act.

13. Refusal Violates Public Records Law. The defendant's refusal to allow the inspection and copying of the

records requested violates the disclosure requirements of the Florida Public Records Law.

14. Refusal Violates a Clear Legal Duty. The defendant's refusal to allow inspection and copying of the records requested breaches the defendant's clear legal duty.

15. Attorneys' Retained. The plaintiff has retained the law firm of Steel Hector & Davis to bring this law firm to enforce applicable provisions of the Florida Public Records Law and the Public Records Law and has incurred reasonable costs and fees in bringing this action.

Wherefore, plaintiffs request that this Court:

(a) Issue an order to the defendant to make the records requested available for immediate inspection and copying or to appear in this Court to show cause why the records should not be made available for inspection and copying. A proposed order is attached.

(b) Hold an immediate hearing to enforce the provisions of chapter 119, Florida Statutes, as is required by section 119.11(1), Florida Statutes (1993).

(c) Declare that the defendant's actions in refusing to make the records requested available for inspections are in violation of the Florida Public Records Law.

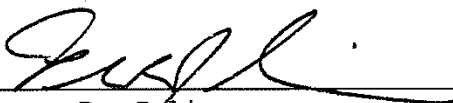
(d) Issue a Peremptory Writ of Mandamus or such other relief as may be appropriate requiring the defendant and his agents, servants, designees, subordinates and employees to permit the plaintiffs to inspect and copy the records requested.

(e) Issue a Writ of Mandamus or such other order, including an injunctive order, upon the failure of the defendants to permit immediate inspection and copying of the records.

(f) Award attorneys' fees to the plaintiffs against the defendant or against the Hollywood Police Department pursuant to section 119.12, Florida Statutes (1993).

(g) Provide such other relief as may be necessary to provide the plaintiffs with the full relief to which they are entitled.

Steel Hector & Davis  
Attorneys for The Mobile Press Register, Inc.  
and Jay Grelen

By   
Thomas R. Julin  
Edward M. Mullins  
Florida Bar No. 325376 & 863920  
200 S. Biscayne Blvd. - 40th Floor  
Miami, Florida 33131-2398  
(305) 577-2810 or 2844



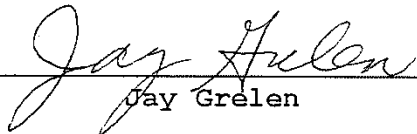
COUNTY OF MOBILE     )  
                                  )  ss.  
STATE OF ALABAMA    )

Verification

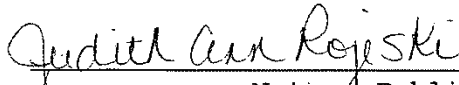
Personally appeared before me, the undersigned authority, Jay Grelen, who, after being duly sworn, deposed and said:

1. I am Jay Grelen, a plaintiff in this lawsuit.
2. I have read the allegations of the foregoing complaint and I have personal knowledge that all of the allegations are true and correct except those allegations that are set forth on the basis of information and belief and, with respect to those allegations, they are true and correct to the best of my knowledge and belief.

Affiant said nothing further.

  
\_\_\_\_\_  
Jay Grelen

The foregoing statement was sworn as true and correct and signed before me this 17 day of March, 1995, by Jay Grelen, who is personally known to me or who has produced a state driver's license as identification and who did take an oath.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires:  
Commission No.: NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: May 14, 1997.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.



# CITY of HOLLYWOOD, FLORIDA

POLICE DEPARTMENT - 3250 HOLLYWOOD BOULEVARD - ZIP 33021-3227

RICHARD H. WITT  
Police Chief

February 15, 1995

Henry A. Callaway, III  
For the Firm  
3000 First National Bank Building  
Post Office Box 123  
Mobile, Alabama 36601

RE: Public Records Request

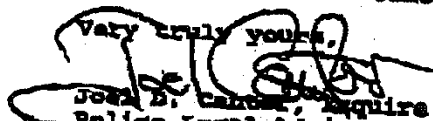
Dear Mr. Callaway:

In response to your public records request addressed to the City of Hollywood Police Department Media Relations Specialist, Stephanie Morris, please be advised that I have investigated the current status of the case about which you inquired. As previously indicated by Mrs. Morris, this particular homicide case is classified as "active" and the information which has been requested by representatives of Mobile Press Register, Inc. is exempt from disclosure pursuant to FGS 119.07(3)(d). The City of Hollywood Police Department has not abandoned it's investigation into the death of Adam Walsh and does not intend to do so any time in the immediate future, notwithstanding the age of the case.

Your characterization of our criminal investigation as merely consisting of receiving tips and leads is inaccurate. The detective assigned to this case is not just passively waiting to receive tips. To the contrary, he is actively investigating information which has been recently received and is currently reviewing leads created by this information.

You have also inquired about when we expect, in good faith, to secure an arrest for the murder of Adam Walsh. We must respectfully decline to make any such projection. Such a forecast would not serve any public interest at this time.

Very truly yours,

  
Joe B. Canine, Esquire  
Police Legal Advisor  
3250 Hollywood Boulevard  
Hollywood, Florida 33021

JDC:lw



SENT BY: SABIN BERMANT  
RCV BY: SABIN BERMANT

3-8-95 13:26  
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# CITY of HOLLYWOOD, FLORIDA

POLICE DEPARTMENT • 3250 HOLLYWOOD BOULEVARD • ZIP 33021-6867

RICHARD H. WITT  
Police Chief

February 2, 1995

Mr. Jay Grelen, Columnist  
Mobile Press Register  
304 Government Street P.O. Box 2488  
Mobile, Alabama 36630

Mr. Grelen:

I am responding to your public records request dated January 31, 1995, addressed to Chief Richard Witt. Because the Hollywood Police Department has a Media Relations Office and two full time Media Relations Specialists I am asking that your communications with the Hollywood Police Department be with this office. This enables us to accommodate your requests as quickly and accurately as possible while still conforming with the State of Florida's Public Records Laws.

The Hollywood Police Detective Division has been actively working this case since the unfortunate incident occurred on July 27, 1981. To this very day we continue to respond to legitimate tips and leads. It is because this case is still active that we must refuse your request to inspect this file. Florida State Statute 119.07(3)(d) reads, "Active criminal intelligence information and active criminal investigative information are exempt..."

I have included some the initial police report which is, by law, a public record. For your information there have been recent (within the past two years) articles done on the case in both of our local newspapers; the Miami Herald and the Ft. Lauderdale Sun-Sentinel.

Sincerely,

Stephanie M. Norris  
Hollywood Police Department  
Media Relations Specialist  
3250 Hollywood Boulevard  
Hollywood Florida 33021  
Ph (305) 967-4600 Fx (305) 967-4432



# HAND, ARENDALL, BEDSOLE, GREAVES, & JOHNSTON LLC.

LAWYERS

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POST OFFICE BOX 122  
MOBILE, ALABAMA 36601

(205) 882-5555  
FAX (205) 882-6378

SUITE 200  
410 FIRST STREET, S.E.

WASHINGTON, D.C. 20003  
(202) 882-0055

February 10, 1995

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J. WENDELL FRIE  
PATRICIA J. POWERS  
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LISA WESLEY O'PARA  
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ALLEN E. REEVES  
J. STEPHEN KARNET  
J. MICHAEL FRENCHER III  
JOHN P. KASANOVA, JR.  
DOUGLAS W. FIRM

CHAS. S. HAND  
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C. E. ARENDALL, JR.  
1918 - 1993  
OF 882-2221  
T. MASSY BEDSOLE  
THOMAS S. GREAVES, JR.  
COUNSEL  
KATHY DIXON JONES  
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ORREN L. JONES, III  
DOUGLAS L. BRYANT  
WESLEY S. CALLAWAY, III  
BLAINE E. CUMMINGS  
DAVID E. DUTTMER  
FORRESTO, WILSON, III  
J. BETH L. HENNING  
BRIGAN S. GIBSON

*file*

Direct Dial: (205) 694-6224

Via UPS Overnight

**RECEIVED**  
FEB 13 1995

Ms. Stephanie M. Norris  
Hollywood Police Department  
Media Relations Specialist  
3250 Hollywood Boulevard  
Hollywood, Florida 33021

Re: Request for records involving Adam Walsh

Dear Ms. Norris:

I am writing on behalf of Jay Grelan and the Mobile Press Register, Inc. with regard to Mr. Grelan's public records request dated January 31, 1995 and your February 2, 1995 response. The code section which you cited to Mr. Grelan further defines an "active" criminal investigation as one which is "related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future." Fla. Stat. § 119.011(3)(d). The murder in question occurred almost fourteen years ago. I would not describe receiving tips and leads, as described in your letter, as an active investigation. Please supply us with information that would support the Department's contention that this investigation is "active" within the definition of the statute. Please also let us know when within the foreseeable future the Department anticipates in good faith that it will secure an arrest for Adam Walsh's murder.

Yours very truly,

*Henry Callaway*  
Henry A. Callaway, III  
For the Firm

HAC:lm  
M:39864

SENT BY: SABIN BERMANT

; 3- 8-95 ; 11:33 ;

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913055777001;# 4/ 5  
MAR 08 '95 11:26AM

Ms. Stephanie M. Norris  
February 10, 1995  
Page 2

bcc: Mr. Stan Tiner (Via Facsimile 434-8662)  
Mr. Jay Grelan (Via Facsimile 434-8662)  
Richard Bernstein, Esq.