

IN THE SUPREME COURT OF OHIO

MARK ALBRECHT, et al., : Case No. 07-0507  
Respondents, :  
- vs - :  
BRIAN TREON, M.D., et al., : Certified Question from  
Petitioners. : United States District Court,  
Southern District of Ohio,  
Western Division

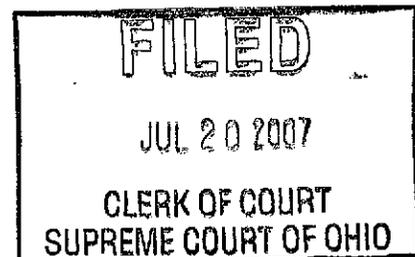
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PETITIONERS' MERIT BRIEF

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## STATEMENT OF THE CASE

On March 16, 2007, Judge Susan J. Dlott of the United States District Court certified a question of state law to this Court. Thereafter, on June 11, this Court agreed to answer the following question:

Whether the next of kin of a decedent, upon whom an autopsy has been performed, have a protected right under Ohio law in the decedent's tissues, organs, blood or other body parts that have been removed and retained by the coroner for forensic examination and testing.

The District Court described this matter as follows:

This lawsuit is a putative class action against all county coroners and/or medical examiners in the State of Ohio that have removed, retained, and disposed of body parts without prior notice to next of kin, and the County Commissions and Commissioners of those counties. Eighty-seven counties (all Ohio counties except Hamilton) are implicated in this suit. Plaintiffs Mark and Diane Albrecht brought this lawsuit against the coroner of Clermont County, Ohio, as well as the Board of County Commissioners, after discovering from their son's autopsy report that the coroner's office, or others on its behalf, had removed their son's brain for forensic examination and retained it after the autopsy. The coroner's office did not notify the Albrechts that their son's brain had been retained. The Albrechts buried their son without his brain and without any notice from the coroner of that fact. They alleged that they have suffered legal damages as a result."

For purposes of this Brief, Petitioners Brian Treon, M.D., and the Board of County Commissioners of Clermont County do not dispute that during the 2002 autopsy of Respondents' son, his brain was removed during the course of a lawfully performed autopsy procedure, and, retained for subsequent study without notice to Respondents.

Seeking redress under 42 U.S.C. section 1983, Respondents in their Complaint assert that the questions of law involved in this matter include "whether the next of kin were denied Due

Process of law in having the County ‘take’ body parts of their loved ones; whether defendants’ conduct under color of State law which resulted in the taking without an opportunity to be heard or contest such taking violates plaintiffs’ clearly established Constitutional rights; whether a State can enact a statute protecting those who operate thereunder from liability if such conduct violates the Constitution of the United States.” Complaint at paragraph 14.

Respondents do not assert that they did not receive the body of their decedent for burial. Nor do Respondents assert that Petitioners mishandled or in any way abused the corpse. They allege, instead, that the exigencies of a properly conducted forensic examination performed by a person lawfully authorized to do so resulted in their not receiving the *entire* body for burial. And, Respondents assert, Petitioners’ failure to notify them that because of the dissection and removal and testing of blood, organs, fluids and tissue, they would not receive the entire body for burial, violates their due process rights.

Accordingly, this Court has been asked by the United States District Court to determine whether next of kin have an interest protectable by the United States Constitution with regard to tissues, organs, blood or other body parts of their decedents. Such protected liberty or property right must be created and its dimensions defined by existing rules or understandings that stem from Ohio law.

## ARGUMENT

### Proposition of Law No. 1

The next of kin of a decedent, upon whom a forensic autopsy has been performed under the auspices of Revised Code Chapter 313, have no protected right under Ohio law in the decedent’s tissues, organs, blood or other body parts that have been removed and retained by the coroner for examination and testing.

**A. Respondents' reliance on federal decisional law in this matter is misplaced.**

Respondents, as members of a putative class, wish to include in the class all persons similarly situated to them. That is, Respondents assert the class to be all persons who are next of kin of decedents upon whom a forensic autopsy was otherwise properly performed who may have had autopsy specimens of their decedents retained by a coroner without notice. Respondents claim that the class includes next of kin who have been allegedly damaged by this failure of notice since 1991.

In asserting their claim, Respondents rely on a 1991 holding of the Sixth Circuit Court of Appeals, *Brotherton v. Cleveland* (6<sup>th</sup> Cir.1991), 923 F.2d 477. In *Brotherton* the Sixth Circuit held that the unauthorized harvesting of corneas, i.e., removal of the corneas without consent of the decedent's wife, rose to the level of a constitutionally protected taking (but did not create a property right in a decedents body for any other purpose). The court held, further, that on the facts asserted, plaintiff's due process right to dispose of her husband's corneas had been violated. *Id.*, 482. It is Respondents' contention that *Brotherton* provides them with a protected interest in autopsy specimens.

The case at bar does not, however, involve the Uniform Anatomical Gift Statute or a denial of Respondents' right to bury their son or an unauthorized disturbance of his body.<sup>1</sup> Subsequent to the filing of the Complaint in this matter, in fact, the Sixth Circuit distinguished the *Brotherton* facts – and resulting holding – from the case at bar. On May 2, 2007, the Sixth

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<sup>1</sup>To be sure, a similar complaint filed in Hamilton County has been successful in that after the district judge expanded the *Brotherton* holding to encompass facts identical to those at bar, defendant Hamilton County agreed to pay all affected plaintiffs some portion of a \$6,000,000 settlement for the alleged violation of the *Brotherton*-defined protected interest in autopsy specimens. See *Hainey v. Parrott*, 2007 WL 2397704.

Circuit denied Respondents' petition for a writ of mandamus directing the district court to withdraw the certification to this court or for a writ of prohibition directing the district court not to consider any answer this Court might offer. In doing so, the Sixth Circuit stated: "Here, the plaintiffs invoke a holding in a decision [*Brotherton*] issued in another case on a distinguishable set of facts. Since *Brotherton* was decided, changes in Ohio law suggest another reading may be possible." Order of the Sixth Circuit Court of Appeals, May 2, 2007, Case No. 07-3419, at Appendix, Exhibit A, page 1.

**B. State law governs the formation of an interest protected by the United States Constitution.**

Section 1983 was designed to prevent states from violating the Fourteenth Amendment to the United States Constitution and certain federal statutes and to compensate injured plaintiffs for violations of their federal rights. *Carey v. Phipps* (1978), 435 U.S. 247. Two elements are required to establish 1983 claims against public officials: "(1) the conduct complained of must be committed by a person acting under color of state law, and (2) the conduct must deprive the plaintiff of a federally protected right, either constitutional or statutory." *St. Clair Corp. v. Cleveland* (1990), 49 Ohio St. 3d 33, 34; *Cooperman v. Univ. Surgical Assoc., Inc.* (1987), 32 Ohio St. 3d 191, 199; *Roe v. Hamilton Cty. Dept. of Human Serv.* (1988), 53 Ohio App. 3d 120.

Procedural due process protects those life, liberty, or property interests that fall within the Due Process Clause of the Fourteenth Amendment. *Women's Med. Prof'l Corp. v. Baird* (6th Cir.2006), 438 F.3d 595, 611. In order to establish a procedural due process claim, a plaintiff must show that (1) he had a life, liberty, or property interest protected by the Due Process Clause; (2) he was deprived of this protected interest; and (3) the state did not afford him adequate

procedural rights prior to depriving him of the property interest. See *Hahn v. Star Bank* (6<sup>th</sup> Cir.1999), 190 F.3d 708, 716. As the United States Supreme Court stated in *Olim v. Wakinekona* (1983), 461 U.S. 238, 250, “process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement.” And “an expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause.” *Id.* at 250 n.12

In the case at bar, Respondents have alleged deprivation of both property and liberty interests. Federal courts approach due process questions in two steps: the first asks whether there exists a liberty or property interest which has been interfered with by the defendants; the second examines whether the procedures attendant upon the deprivation were constitutionally sufficient. *Kentucky Dep't of Corrections v. Thompson* (1989), 490 U.S. 454, 460. The *Thompson* Court noted that “the types of interests that constitute ‘liberty’ and ‘property’ for Fourteenth Amendment purposes are not unlimited; the interest must rise to more than ‘an abstract need or desire’ . . . . Rather, an individual claiming a protected interest must have a legitimate claim of entitlement to it.” *Id.* Procedural requirements alone cannot establish a liberty interest. *Hewitt v. Helms* (1983), 459 U.S. 460, 469.

Protected liberty interests spring from two possible sources, the due process clause itself and the laws of the state involved. *Id.* at 466. That is, state law in the form of statutes, rules, regulations or policy statements, may give rise to a protected liberty interest that cannot be infringed absent observance of procedural due process. *Washington v. Starke* (6th Cir. 1988), 855 F.2d 346, 348.

In determining whether state law creates a protected liberty interest, the question is

whether the state has imposed specific “substantive limitations” on the discretion of state officers, or, in other words, whether the state has used explicit “language of an unmistakably mandatory character, requiring that certain procedures ‘shall,’ ‘will’ or ‘must’ be employed.” *Hewitt*, 459 U.S. at 471; *Washington*, 855 F.2d at 349; *Franklin v. Aycock* (6th Cir. 1986), 795 F.2d 1253, 1260. “The *mandatory* nature of the regulation is the key, as a plaintiff ‘must have a legitimate claim of entitlement to the interest, not simply a unilateral expectation of it.’” *Washington*, 855 F.2d at 349, (emphasis in original), quoting *Bills v. Henderson* (6<sup>th</sup> Cir. 1980), 631 F.2d 1287, 1292. Even so, “[s]tate-created procedural rights that do not guarantee a particular substantive outcome are not protected by the Fourteenth Amendment, even where such procedural rights are mandatory.” *Tony L. v. Childers* (6th Cir. 1995), 71 F.3d 1182, 1185.

Similarly, “[p]rotected interests in property are normally not created by the Constitution. Rather they are created in their dimension and are defined by an independent source such as state statutes or rules entitling the citizen to certain benefits.” *Board of Regents v. Roth* (1972), 408 U.S. 564, 577; see, e.g., *Connell v. Higginbotham* (1971), 402 U.S. 207 (property right found in tenured employment in state civil service); *Goldberg v. Kelly* (1970), 397 U.S. 254 (recipients with statutory rights to welfare may invoke the due process clause); *Wolff v. McDonnell* (1974), 418 U.S. 539, (cancellation of prisoner’s good-time credits triggered due process protections).

Indeed, in 1995 the Sixth Circuit, in deciding a case in the state of Michigan brought on facts similar to those in *Brotherton* summarized its rationale for determining the existence of a “protected right” in *Brotherton*.

We then examined Ohio law for indicia of these types of rights in a dead relative's body, and noted: (1) that Ohio's version of the Uniform Anatomical Gift Act, OHIO REV. CODE § 2108.02(B),

grants the next of kin the right to control the disposal of the body; (2) that the Ohio Court of Appeals decision in *Everman v. Davis*, 54 Ohio App. 3d 119, 561 N.E.2d 547 (Ohio Ct. App. 1989), acknowledged that the next of kin have the right to possess the body for burial; and (3) that the Ohio Court of Appeals decision in *Carney v. Knollwood Cemetery Ass'n*, 33 Ohio App. 3d 31, 514 N.E.2d 430 (Ohio Ct. App. 1986), allows a claim by the next of kin against those who disturb a buried dead body.

*Whaley v. County of Tuscola ex rel. Tuscola County Bd. of Comm'rs* (6<sup>th</sup> Cir.1995), 58 F.3d

1111, 1114. To be sure, the Court found a liberty interest in mandatory language of R.C.

2108.02(C) which granted next of kin the right to control the disposal of the body with regard to

the making of anatomical gifts. The question of forensic examination of the body of the deceased

did not, however, arise in *Whaley* and it did not arise in *Brotherton*. The Sixth Circuit has,

however, decided *Montgomery v. County of Clinton* (6<sup>th</sup> Cir., August 9, 1991), 1991 U.S. App.

LEXIS 19070. There the plaintiffs asserted a claim against a coroner who performed an autopsy

on their son without their consent but otherwise within the scope of his statutory duties. In

denying the plaintiffs' due process claim, the Sixth Circuit opined that:

There is no merit in the procedural due process claim founded on the state statutory requirement that the medical examiner make a diligent effort to notify the next of kin as to the decision to perform an autopsy. **Whatever the nature of the right created by the statute there is an insufficient liberty or property interest under this statute to create a valid procedural due process claim.** Although the notice requirement in the state statute does not appear to be discretionary, it does not purport to establish a right to control the dead body. We would distinguish this case from *Brotherton v. Cleveland*, 923 F.2d 477 (6th Cir. 1991). In *Brotherton* the plaintiff had an "aggregate of rights granted by the state of Ohio" to control disposition of the body, including the corneas, and thus had a right to refuse removal of corneas for purposes of a cornea transplant. *Id.* at 482.

[Emphasis supplied.] The *Montgomery* court found no property interest or other protected right in the decedent's body, let alone in the specimens remaining after the autopsy. As demonstrated

below, the decision of the *Montgomery* court, although interpreting Michigan law, correctly reflected Ohio law in the same area at that time and to date.

Indeed, none of the decisions or statutes upon which the Sixth Circuit relied in *Brotherton* are applicable to the case at bar. With respect to forensic examination there are no specific substantive limitations on the ability of a coroner to perform his duties, there is no mandatory language, no rules, no understandings in Ohio law that permit the wishes of next of kin to supersede the right of a coroner to perform his statutory duties which invariable results in damage to and destruction of portions of a corpse. There is no liberty interest in autopsy specimens to be found in the Ohio Revised Code. Further, appellate courts in Ohio have been clear there is no property interest in either a body or its parts.

**C. In 1991 when *Brotherton* was decided there were no indicia in Ohio law to support a next-of-kin's protected interest in autopsy specimens where the body had been subject to forensic examination under the jurisdiction of a county coroner.**

Ohio law has historically provided next of kin the right to respectful disposition of the bodies of their family members. Ohio law has, at the same time, permitted a county coroner<sup>2</sup> to perform his professional duties without interference and even over the objection of family members. Ohio's coroners perform their duties clothed in the police power of the state. "The object of the police power is the public health, safety and general welfare. To be valid, its exercise must bear a substantial relationship to that object and must not be unreasonable or arbitrary." *Hudson v. Albrecht, Inc.* (1984), 9 Ohio St. 3d 69.

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<sup>2</sup>For purposes of this Motion, Petitioners request the Court to take notice of the use of the word "coroner" to mean both the elected official as well as his deputies appointed pursuant to Revised Code section 313.05(A)("[t]he coroner may appoint, in writing, deputy coroners, who shall be licensed physicians in good standing in their profession ....").

It is Respondents' claim in this matter that because the Clermont County coroner has not followed the "law" of *Brotherton*, the Coroner and County Commissioners are liable to Respondents and every other similarly situated individual who, since the 1991 *Brotherton* decision, have allegedly been denied a due process right in autopsy specimens. Yet, a review of Ohio law from 1991 to the current day demonstrates otherwise.

**1. No protected right in autopsy specimens can be found in past Ohio statutes.**

At the time *Brotherton* was decided, Ohio statutes set forth no protected interest in autopsy specimens. Indeed the sections of Chapter 313 enacted shortly after *Brotherton* indicated a lack of interest by the Ohio legislature to incorporate the *Brotherton* holding into Ohio law. By 1993 the following statutes with respect to coroners, their powers and their duties provided:

A person holding the office of coroner was required to be a physician licensed by the State of Ohio and in good standing. R.C. 313.02<sup>3</sup>. In cases where persons died of "criminal or other violent means, by casualty, by suicide or in any suspicious or unusual manner, or when any person, including a child under two years of age, dies suddenly when in apparent good health," the coroner was to be notified. R.C. 313.12 Upon receiving notice of such death, the coroner was required to notify next of kin. The next of kin had "prior right as to the disposition of the body of the deceased person." R.C. 313.14.

The coroner was required by statute to perform an autopsy if, in the opinion of the coroner himself, it was necessary to do so. R.C. 313.131. However, upon obtaining evidence that an autopsy was "contrary to the deceased person's religious beliefs," the coroner was to delay to

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<sup>3</sup>The statutes cited in the following paragraphs are those in effect in 1991 and 1992. The administrative code section became effective in 1993.

autopsy for forty-eight hours to give the objecting person time to file suit to enjoin the autopsy. This provision did not apply to cases involving “aggravated murder, suspected aggravated murder, murder, suspected murder, manslaughter offenses or suspected manslaughter offenses.” Nor did the provision prohibit the coroner from drawing blood or other fluids to perform drug or alcohol screens. R.C. 313.131. Further, except in the circumstances described above, the coroner had no obligation to obtain consent from family or friends of the deceased to perform an autopsy. R.C. 2108.52.

No person was permitted to disturb the body of any person dying under circumstances described in R.C. 313.12 without an order from the coroner. Indeed, such improper disturbance carried a criminal penalty. R.C. 313.11. The death of any child under two years of age who was in apparent good health was to be reported to the coroner who was mandated by statute to perform an autopsy. The coroner or deputy coroner was authorized to “perform research procedures and tests when performing the autopsy.” R.C. 313.121. With respect to R.C. 313.121, the Ohio Administrative Code set forth a specific protocol which demanded that the coroner remove and examine certain specimens from the child’s body. O.A.C. 3701-5-14.

The coroner’s right to perform an autopsy was paramount to the ability of the decedent or next of kin to make a gift of an organ. “If he takes charge of and decides to perform, or performs an autopsy on a dead body ... the coroner may waive his paramount right to any donated part of the dead body.” R.C. 313.13. To be sure, Ohio’s Uniform Anatomical Gift statute provided that the coroner had the right, when performing an autopsy, to remove and donate a pituitary gland “and give it to the national pituitary agency to use for research and in manufacturing a hormone ....” Only an objection grounded on the tenets of a well-recognized religion could prevent a

coroner from making such donation. R.C. 2108.53.

The coroner had the right to hold any dead body “until such time as the coroner ... has decided that it is no longer necessary to hold such body to enable him to decide on a diagnosis giving reasonable and true cause of death ....” R.C. 313.15. Ultimately, it was the coroner’s duty to deliver a verdict announcing the cause of death, manner and mode of death. R.C. 313.19.

The coroner’s rights and duties were spelled out by the Ohio legislature at the time of the *Brotherton* decision. The only exception to a coroner’s right to perform an autopsy in the manner he saw fit as a medical professional was in a case where a decedent had, prior to death, made it known that an autopsy violated his religious beliefs, and even that exception could be overridden where criminal misconduct was suspected. Further, the Uniform Anatomical Gift Statute specified that the coroner’s right to a body part for forensic examination was paramount to that of the donee. Ultimately, under Revised Code Chapter 313, while next of kin had a prior right to disposition of a body, such right did not arise until *after* the coroner had performed his duties, duties which, as a matter of forensic practice, require the removal, destruction and/or retention of specimens from the body.

To be sure, in 1991, the Uniform Anatomical Gift statutes, those upon which *Brotherton* was decided, provided, in section 2108.52, that the requirements of section 2108.50 [consent of next of kin for non-forensic autopsy] of the Revised Code *do not apply* to a post-mortem or other examination performed under sections 313.01 to 313.22 of the Revised Code, or to medical, surgical, and anatomical study performed under sections 1713.34 to 1713.42 of the Revised Code.” [Emphasis supplied.]

Accordingly, where the coroner’s ability to use his professional discretion to determine

whether and how an autopsy would be performed, no protected interest in autopsy specimens existed under the above-cited statutes. That is, the above-cited statutes provided no specific “substantive limitations” on the discretion of the coroner. Further, the only statutes using explicit “language of an unmistakably mandatory character, requiring that certain procedures ”shall,’ ‘will’ or ‘must’ be employed” were statutes directing the coroner to perform autopsies. To be sure, while an objecting relative could complain to the court of common pleas about the performance of an autopsy, the relative had no guarantee that the court would forbid the autopsy and, further, no such objection could be entertained when certain crimes were suspected by the coroner.

**2. There is no protected interest in autopsy specimens to be found in current Ohio law.**

On August 17, 2006, the Ohio Legislature enacted Revised Code section 313.123. In that statute, the Ohio legislature clarified any lingering doubts regarding a coroner’s paramount right to perform autopsies and to deal with resulting specimens. Revised Code 313.123(B)(1) provides, in relevant part, that:

Except as otherwise provided in division (B)(2) of this section, **retained tissues, organs, blood, other bodily fluids, gases, or any other specimens from an autopsy are medical waste** and shall be disposed of in accordance with applicable federal and state laws, including any protocol rules adopted under section 313.122 [313.12.2] of the Revised Code.

[Emphasis supplied.] Here, the mandatory procedure is to dispose of autopsy specimens as medical waste.

Section 313.123(B)(2) provides for objections to autopsies solely on religious grounds.

If an autopsy is performed on a deceased person and pursuant to section 313.131 [313.13.1] of the Revised Code the coroner has

reason to believe that the autopsy is contrary to the deceased person's religious beliefs, the coroner shall not remove any specimens, including, but not limited to, tissues, organs, blood, or other bodily fluids, from the body of the deceased person unless removing those specimens from the body of the deceased person is a compelling public necessity. Except as otherwise provided in division (B)(3) of this section, if the coroner removes any specimens from the body of the deceased person, the coroner shall return the specimens, as soon as is practicable, to the person who has the right to the disposition of the body.

Yet even such objections do not guarantee a halt to the forensic procedure. In this regard, Revised Code 313.131 provides for a hearing on the objection of a friend or relative that an autopsy is contrary to the deceased's religious beliefs. While an autopsy *may* be delayed for forty-eight hours under these circumstances, the statute also provides that when aggravated murder, suspected aggravated murder, murder, suspected murder, manslaughter offenses, or suspected manslaughter offenses are suspected, no such hearing is available. And in those cases where a hearing is available, there is no guaranteed outcome provided for. Indeed, there are no other grounds provided for in the Revised Code by which next of kin may object to an autopsy or claim return of autopsy specimens.

Again, statutes now in effect provide no specific substantive limitations on the ability of a coroner to perform his duties, no mandatory language, rules, or understandings in Ohio statutory law that lead a person to believe that he, as next of kin, has a protected liberty interest in autopsy specimens. On the contrary, a coroner is directed by statute to treat autopsy specimens as medical waste.

**3. Ohio appellate decisions have never supported a protected right in autopsy specimens.**

In 1986 Ohio's Eighth District Court of Appeals affirmed a judgment in favor of

plaintiffs, next-of kin, against a cemetery association and its superintendent for mishandling the body of their decedent. *Carney v. Knollwood Cemetery Assn.* (8<sup>th</sup> Dist.1986), 33 Ohio App.3d 31. After a lengthy analysis of the question whether plaintiffs were entitled to recover for a claim of intentional infliction of emotional distress without physical injury, the court held, first, that “a cause of action of abuse of a dead body has long been recognized in this country.” *Id.* at 32, citations omitted. The court, relying on Prosser, acknowledged that, with respect to the mishandling or perceived mishandling of a corpse, the next-of-kin are likely indeed to suffer “genuine and serious mental distress.” *Id.* at 34. The court next pointed out that in other cases “in order to facilitate recovery for the mishandling of a dead body without conceding the existence of a cause of action for emotional distress, the courts have in the past resorted to a fiction of a ‘quasi-property’ interest in the dead body.” *Id.* at 35, citation omitted.

The court then noted that “a trend away from the quasi-property fiction is discernible in the case law.” *Id.* at 36, citation omitted. The court cited *Scarpaci v. Milwaukee County* (1980), 96 Wis.2d 663, 672, for the proposition that “[t]he law is not primarily concerned with the extent of physical injury to the bodily remains but with whether there were any improper actions and whether such actions caused emotional or physical suffering to the living kin.”

Ultimately, the *Carney* court held:

*... this court rejects the theory that a surviving custodian has quasi-property rights in the body of the deceased, and acknowledges the cause of action for mishandling of a dead body as a subspecies of the tort of intentional infliction of serious emotional distress.**Id.* at 37 [emphasis supplied].

In 1989 Ohio’s Second District Court of Appeals denied plaintiff husband’s claim that his Fourth Amendment right to be free from unreasonable seizure was violated when defendant

coroner performed an autopsy on his wife's body. *Everman v. Davis* (2<sup>nd</sup> Dist.1989), 54 Ohio App.3d 119. Following *Carney* and rejecting the "property right" asserted by plaintiff under the Fourth Amendment theory, the *Everman* court held:

The argument that a dead body is an "effect" within the meaning of "houses, papers and effects" stretches the imagination and the language of the amendment. \* \* \* *Nothing in this language suggests that, despite the respect due to the dead, the body of the former person is the "effect" of anyone else.*

*Id.* at 122 [emphasis supplied].

In 1995 the Ohio Eight District Court of Appeals had occasion to reassert that a personal, not property, right exists where the next-of-kin has been aggrieved by alleged wrongdoing of those handling a corpse. *Biro v. Hartman Funeral Home* (8<sup>th</sup> Dist. 1995), 107 Ohio App.3d 508. Again rejecting the existence of a property right in a corpse, the Eighth District Court of Appeals cited its prior decision in *Carney* at length:

The law is clear in this state that the family of the deceased has a legally recognized right to entomb the remains of the deceased family member in their integrity and without mutilation. Thus, the next of kin have a claim against one who wrongfully mutilates or otherwise disturbs the corpse \*\*\*. *The basis for recovery of damages is found not in a property right in a dead body, but in the personal right of the family of the deceased to bury the body.* The mutilating or disturbing of the corpse is held to be an interference with this right and an actionable wrong \*\*\*. The law is not primarily concerned with the extent of physical injury to the bodily remains but with whether there were any improper actions and whether such actions caused emotional or physical suffering to the living kin.

*Biro* at 512-13, citing *Carney v. Knollwood Cemetery Assn.* at 36 [emphasis supplied].

In the appellate courts, most recently, in March 2007, the Sixth District Court of Appeals found that parents have no protected right in the tissue of a fetus of less than 20 weeks gestation.

*Walker v. Firelands Community Hospital*, 2007 Ohio 871. The Appellate Court summarized the facts as follows:

Hayth alleges that she had a miscarriage at appellee, Firelands Community Hospital (“Firelands”), some time between the years 1988 through 1996. She was told by her physician that the “fetus” of 20 weeks or less gestation would be cremated. It is uncontroverted that during that period, it was hospital policy to dispose of all tissue by means of a tissue grinder or incineration. The tissue included the tissue of fetuses at or less than 20 weeks gestation n4 that were the result of a miscarriage or were stillborn.

*Id.* at P6, footnotes omitted.

The Sixth District upheld the trial court’s dismissal of all of plaintiff’s claims, including violation of Ohio statutes and regulations governing unlawful possession of a dead body and those regulations governing the humane disposal of a fetus; the common law tort of mishandling a body or corpse (appellant also added “fetus” in this claim); fraud by omission (raised against Firelands only); negligent infliction of emotional distress; intentional infliction of emotional distress; and a claim for punitive damages. *Id.* at P10.

In *Firelands*, the court held that where the fetal tissue could not, as a matter of law, be considered a “person,” the means and method of disposal of the tissue was at the hospital’s discretion. While *Firelands* does not involve a coroner it does involve questions Ohio law regarding the decision of a medical professional regarding post-mortem disposal of tissue. To be sure, there are no appellate court decisions on point with the case at bar, but holdings in other cases indicate an unwillingness by several appellate districts to find a protected property right in even a fully-developed human corpse.

Accordingly, in Ohio, there is no support in the decisional law for the “property right”

asserted by Respondents in the case at bar. Further, it is beyond dispute that Ohio law recognizes – both in its statutes and judicial decisions – that the next of kin have a right of action where they believe that there has been mishandling or abuse of the corpse of their decedent. See also, *Dunker v. Babbitt Funeral Home*, 1996 Ohio App. LEXIS 1692 (8<sup>th</sup> Dist., Apr. 25, 1996); Ohio Revised Code section 1713.34.

Twenty years ago Ohio’s Eighth District Court of Appeals held that “a trend away from the quasi-property fiction is discernible in the case law,” holding unequivocally that there is, as a matter of law, no property interest in a corpse. *Carney v. Knollwood Cemetery Assn.*, 33 Ohio App.3d at 36-37. Several courts since then have followed *Carney*, but there is nothing in Ohio law that suggests any court approves of the theory of a property interest in all or part of a body.

**D. A properly conducted autopsy is legitimate and important exercise of the police power of the state, and is entitled to protection by this Court.**

As argued above, there is no support in Ohio statutory or decisional law for a finding that a protected interest exists in autopsy specimens. These statutes and decisions are a clear reflection of the public policy of this State with regard to the proper exercise of the police power.

“The object of the police power is the public health, safety and general welfare. To be valid, its exercise must bear a substantial relationship to that object and must not be unreasonable or arbitrary.” *Hudson v. Albrecht, Inc.* (1984), 9 Ohio St. 3d 69. The above-cited cases provide significant legal protection for doctors, hospitals and funeral homes who perform their duties properly. Where the actor in question is a county coroner, striving to properly exercise the police power of the state, the protection must be as great or greater.

“The office of coroner is a very ancient one, and is said to be of equal antiquity with that

of the sheriff, the two having been ordained together to keep the peace, and the historical development of the office may be traced back practically to the Norman conquest of England. In this state, however, the coroner can only exercise such powers and jurisdiction as are provided by statute. His duties are largely ministerial in character, but certain of them are, nevertheless, in a limited sense quasi judicial.” *State ex rel. Harrison v. Perry* (1925), 113 Ohio St. 641. Because a coroner can “only exercise such powers and jurisdiction as are provided by statute,” to protect a county coroner’s ability to exercise such powers and jurisdiction in no way permits state-sanctioned disrespect for the sensibilities and wishes of families and friends. That is, the question before this Court does not involve an allegation that the Clermont County Coroner improperly performed his duties.

**1. In the absence of allegations of improper conduct, the Court must protect the ability of coroners to make informed medical decisions.**

Petitioner Brian Treon is not alleged to have acted with disrespect toward the body of Respondents’ son. Yet, the autopsy procedure, even when properly performed, is by its nature destructive of the remains of a body. Frequently a body brought to a morgue for autopsy has already been subject to significant damage, damage from which has arisen the need for forensic examination to determine the cause and manner of death. A coroner must be completely free to use his best professional judgment with regard to examination, testing and study of a body to arrive at his verdict. To date, Ohio’s coroners have been permitted this freedom. It is significant that Respondents seek to invoke federal law to engage eighty-seven of Ohio’s county coroners in litigation over conduct in which the coroners have engaged for literally hundreds of years without interference by any court in the state of Ohio.

Retention of tissues, whole organs, blood, fluids and other specimens is a widely recognized – and in Ohio, mandated – forensic medical practice.<sup>4</sup> Such retention permits Ohio’s coroners to accurately report cause and manner of death. The work of Ohio’s coroners has a direct impact on both law enforcement and public health concerns. Nor can one dispute that a body that has been subject to autopsy leaves the morgue in a condition considerably different from that in which it arrived. To be sure, during the course of the autopsy on Respondents’ son, the body was subject to extensive dissection and concomitant damage. According to the autopsy report, the Coroner dissected and examined the spine: vertebrae, ligaments and disks. In addition, he opened the thoracic cavity, removing and weighing the right and left lungs, heart, liver, right and left kidneys, and spleen. The Coroner also removed and retained the brain, blood, tissue samples, and various fluids (pericardial sac, gall bladder, pulmonary parenchyma, stomach, urinary bladder) for forensic examination. See “Opinion,” and “Post Mortem Examination of the Body of Christopher Albrecht,” Appendix, Exhibit B, page 4. The body was, in fact, returned to Respondents physically damaged and without its brain and blood as well as other fluids and certain tissues.

**2. A protected right in autopsy specimens will significantly burden a coroner in the proper exercise of his obligations.**

In the case at bar, Respondents claim only to seek vindication of their alleged right to “notice” of whether body parts will be retained by the coroner. No such right exists. Indeed, the creation of such right would require a coroner, whose duties are time-sensitive in the best of

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<sup>4</sup>See, e.g., R.C. §313.121(B)(autopsy mandated where apparently healthy child under two dies); O.A.C. 3701-5-14 (certain fluids and tissues to be removed from child’s body and retained by coroner).

circumstances, to locate next of kin, to determine whether there is other next of kin, to discover whether there are competing interests between or among the next of kin with regard to disposal of the specimens, to resolve the question of who has the first right to make the determination of disposal (probably with advice of counsel). Patrick Fardal, M.D., J.D., who filed a brief in support of certification in this matter on behalf of the National Association of Medical Examiners stated "... the value of the autopsy declines as the body deteriorates ...."

The case at bar would in fact have presented Petitioner Treon with such a dilemma. Respondents herein, Mark and Diane Albrecht, represent themselves to be the next of kin of their son, Christopher Albrecht. At the time of his death, however, Christopher Albrecht, although divorced, had a minor son for whom, during the course of the Probate proceedings, a guardian was appointed. See "Probate Court of Clermont County, Surviving Spouse, Children, Next of Kin, Legatees and Devises," Appendix, Exhibit C, page 10; Letter dated May 16, 2002, from McCaslin, Imbus & McCaslin regarding guardianship of William Christopher Albrecht," Appendix, Exhibit D, page 12. According to Respondents' argument, then, such appointment would have had to be made prior to the performance of the autopsy so that notice could be provided to Christopher Albrecht's son's guardian. Under Ohio law, a son has a superior right to parents with regard to disposal of a body. See R.C. 2105.06, 2108.02(B).

The question of notice – aside from the obligation of the coroner to address a fairly unpleasant issue with grieving family and friends – is far more complex than it may appear. Further, according to Dr. Fardal, providing notice may "undermine a criminal investigation, hamper public health surveillance, and endanger homeland security if it results in notice to someone under suspicion."

To be sure, in the law, “notice” is followed inevitably by “an opportunity to be heard.” Aside from the inevitable delay, to be heard in these circumstances is to permit the next of kin to second-guess the professional decisions of the coroner: to question why a certain fluid was retained, to argue over the size of an organ sample, to debate the necessity of a particular, destructive test. Indeed, this right, should it be found, may require courts to determine whether next of kin have been unconstitutionally deprived of not just a decedent’s heart or brain, but of tissues, blood, other bodily fluids or even gases, remaining after the completion of an autopsy. Ohio law now provides that even where next of kin raise a religious objection to the autopsy itself, where aggravated murder, suspected aggravated murder, murder, suspected murder, manslaughter offenses, or suspected manslaughter offenses are suspected, there is simply no statutory opportunity for a hearing.

Ohio coroners are physicians licensed to practice medicine by this State. Such professional licensure carries with it the right to make medical judgments – no matter how distasteful to a particular individual or family-- judgments upon which public is entitled to rely.

A coroner’s verdict has evidentiary value in court. The reliability of the coroner’s finding regarding cause and manner of death can be said, without exaggeration, to be a matter of life and death. In criminal cases, the retention of body parts protects the due process rights of the accused who may wish to have their own experts perform forensic examination of retained specimens. Such reliability will undoubtedly be called into question when a non-medical person has the right to question the retention and/or destruction of autopsy specimens and interfere with a coroner’s ability to perform tests and research procedures. The cross-examination of a coroner under these circumstances can only be imagined.

Further, a coroner's forensic examination has public health implications. A coroner is expected to discover and report on contagious disease. Further, except where an objection arises on religious grounds, a coroner is permitted by statute to remove a pituitary gland "and give it to the national pituitary agency to use for research and in manufacturing a hormone ...." R.C. 2108.53(A).

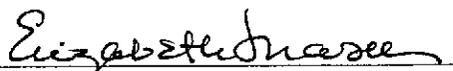
Public health and law enforcement are quintessential elements of the police power of the state. These functions are exercised by Ohio coroners on a daily basis. For this Court to find a protected right in autopsy specimens thus permitting the *Albrecht* Respondents to burden a coroner's lawful exercise of his duty would amount to a significant and unwarranted change in Ohio law.

#### CONCLUSION

Based on the foregoing, Petitioner Brian Treon, M.D., the Clermont County Coroner, and Petitioner Clermont County Board of Commissioners, respectfully request this Court to answer the question certified to it by the United States District Court in the negative, and conclusively determine the rights of next of kin and county coroners with respect to autopsy specimens and their disposal.

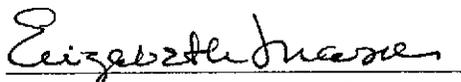
Respectfully submitted,

Office of the Clermont County Prosecutor  
Donald W. White, Prosecutor

By:   
Elizabeth Mason (0051967)  
Assistant Prosecuting Attorney  
101 E. Main Street, Third Floor  
Batavia, Ohio 45103  
(513) 732-7585 Fax: 732-8171

**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing Brief has been served upon John H. Metz, Esq., counsel of record for Respondents, at his office, 441 Vine Street, 44<sup>th</sup> Floor, Cincinnati, Ohio 45202-3016, and upon Patrick J. Perotti, Esq., counsel for Plaintiffs-Respondents, at his office, Dworken & Bernstein, 60 South Park Place, Painesville, Ohio 44077, by ordinary U.S. mail, postage prepaid, this 20<sup>th</sup> day of July, 2007.



Elizabeth Mason (0051967)  
Assistant Prosecuting Attorney

## **APPENDIX**

FILED

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

MAY 02 2007

LEONARD GREEN, Clerk

In re: MARK ALBRECHT and DIANE	)	
ALBRECHT, Individually and on behalf of others	)	
similarly situated,	)	<u>ORDER</u>
	)	
Petitioners.	)	
	)	

Before: KENNEDY, MOORE, and McKEAGUE, Circuit Judges.

The petitioners brought this action against a county coroner who performed an autopsy on their deceased son. They charge that the coroner removed and retained their son's brain, without notice to them or their permission, in violation of their constitutional rights. The petitioners sue on behalf of themselves and others in a similar position. They also seek to certify a defendant class composed of all Ohio county coroners.

Acting on motions made by the defendant and interested parties, the district court certified the following question to the Ohio Supreme Court:

Whether the next of kin of a decedent, upon whom an autopsy has been performed, have a protected right under Ohio law in the decedent's tissues, organs, blood or other body parts that have been removed and retained by the coroner for forensic examination and testing.

The petitioners opposed certification and argued that this court had already decided the question in *Brotherton v. Cleveland*, 923 F.2d 477 (6th Cir. 1991). They seek a writ of mandamus directing the district court to withdraw the certification or a writ of prohibition directing the district court not to consider any answer that the Ohio court might offer. They also move to stay the certification order.

The defendants have responded in opposition to the motion to stay.



Mandamus is a drastic remedy and is reserved for extraordinary circumstances or to confine a lower court to the lawful exercise of its jurisdiction. *Will v. United States*, 389 U.S. 90, 95 (1967); *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 382-385 (1953). There are several factors we consider when determining whether to grant the writ:

- (1) The party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desired.
- (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal. (This guideline is closely related to the first).
- (3) The district court's order is clearly erroneous as a matter of law.
- (4) The district court's order is an off-repeated error, or manifests a persistent disregard of the federal rules.
- (5) The district court's order raises new and important problems, or issues of law of first impression.

*In re Bendectin Products Liability Litigation*, 749 F.2d 300, 304 (6th Cir. 1984). It is not required that every element be met; the factors may "be balanced in opposition to each other." *In re Chimenti*, 79 F.3d 534, 540 (6th Cir. 1996).

Although this circuit does not appear to have addressed the issue, other courts have held that an order granting or denying the certification of a question of law to a state court is not immediately appealable as a collateral matter. *Nemours Foundation v. Manganaro Corp., New England*, 878 F.2d 98 (3rd Cir. 1989) (certification of question of law to state court is not immediately appealable); see also *Brown v. Argosy Gambling Co., L.P.*, 360 F.3d 703, 705 (7th Cir. 2004) (denial of certification is not immediately appealable). However, the absence of an immediate appeal does not lead to automatic review by mandamus.

In general, "mandamus or prohibition should never be used as a substitute for appeal." *Application of Wilkinson Storage Corp.*, 776 F.2d 751 (6th Cir. 1983). The plaintiffs argue that an

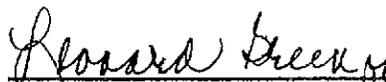
appeal will come too late because once the Ohio Supreme Court decides the issue, the matter will be at rest. We are not so convinced as to the course that this litigation will take. Ultimately, the district court must render a judgment from which an appeal may be taken. That is, "the litigants will take whatever answer they receive from [the] state supreme court back to the federal district court to resolve the issues in the ongoing federal dispute." *Brown*, 360 F.3d at 705-06.

This case also is distinct from *Blasband v. Rales*, 979 F.2d 324 (3rd Cir. 1992), on which the plaintiffs rely in support of a writ. In *Blasband*, the district court certified a question of law that had been decided by the court of appeals in a prior appeal within the same case. The appeals court issued a writ directing the court to withdraw the certification order in order to enforce its own mandate and the law of the case. Here, the plaintiffs invoke a holding in a decision issued in another case on a distinguishable set of facts. Since *Brotherton* was decided, changes in Ohio law suggest another reading may be possible.

The plaintiffs also suggest that the district court erred by asking the Ohio Supreme Court whether there is a "protected" interest, rather than a "property" interest. Although the two terms generate some confusion, we are convinced that the district court recognized that there is a state component and a federal component to the plaintiffs' cause of action.

Upon review and consideration, the petition for a writ of mandamus and the motion to stay are **DENIED**. Fed. R. App. P. 21(b)(1).

ENTERED BY ORDER OF THE COURT

  
Clerk

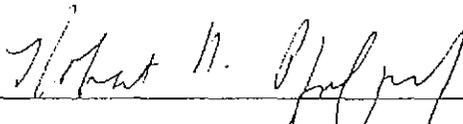
OPINION

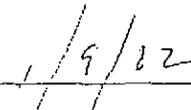
Diagnoses:

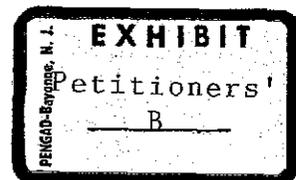
1. Drowning.
2. Remote craniotomy with seizure disorder.

Cause of death:

It is my opinion, based on the autopsy findings and the information available to me at the time of autopsy, that the cause of death is drowning.

  
\_\_\_\_\_  
Robert R. Pfalzgraf, M.D.  
Chief Deputy Coroner, Hamilton County, Ohio

  
\_\_\_\_\_  
Date



POSTMORTEM EXAMINATION  
OF THE BODY OF  
CHRISTOPHER ALBRECHT

A postmortem examination of the body of a Caucasian man identified as Christopher Albrecht is performed at the Hamilton County Morgue on December 7, 2001. The examination is conducted by Robert R. Pfalzgraf, M.D., and is begun at 8:30 a.m.

EXTERIOR OF THE BODY:

The body is that of a well-developed, well-nourished, adult, Caucasian man that weighs 214 pounds, measures 72 inches in length, and appears compatible with the stated age of 30 years. The body is cool to touch. Rigor mortis is fully fixed in the extremities and jaw. Diffuse, unfixed, pink-purple livor mortis extends over the posterior surface of the body, except in the areas exposed to pressure.

The scalp hair is red-blond and measures 1 inch in length over the crown with frontal balding. The decedent has a mustache and goatee style beard. The irides are green; the corneas are clear. The pupils are bilaterally equal. The sclerae and conjunctivae are unremarkable. The nose and ears are not unusual. The lips and gums are congested. The teeth are natural and in good repair. The neck is supple, without masses, and the larynx is in the midline. The thorax is well developed and symmetrical. The abdomen is flat. The penis is circumcised; the testes are descended within the scrotum. The anus and back are unremarkable. The upper and lower extremities are well developed and symmetrical, without absence of digits.

IDENTIFYING MARKS AND SCARS:

No identifying marks or scars are readily apparent.

EVIDENCE OF MEDICAL THERAPY:

A plastic oral airway is within the mouth. Two electrocardiographic pads are attached to the anterior surface of the torso.

EVIDENCE OF INJURY:

Head and Neck:

A small punctate abrasion is over the right upper aspect of the forehead.

Over the midline of the forehead is a medium-sized, linear, vertically oriented abrasion.

A bite mark hemorrhage is identified in the musculature of the tongue.

Internally, no injuries are noted. A posterior neck dissection is unremarkable.

Torso:

No external injuries are noted on the torso. Internally, a small amount of hemorrhage is identified over the anterior aspect of the lumbar vertebrae. The anterior longitudinal ligament is lacerated over the intervertebral disc between the 1st and 2nd lumbar vertebrae. The disc has a superficial laceration.

Upper and Lower Extremities:

None.

**INTERNAL EXAMINATION:**Body Cavities

No adhesions or abnormal collections of fluid are in any of the body cavities. All body organs are present in normal anatomical position.

**CARDIOVASCULAR SYSTEM:**

The heart weighs 390 grams. The pericardial surfaces are smooth, glistening and intact; the pericardial sac contains a physiologic amount of fluid. The coronary arteries arise normally, follow the usual distribution, and are widely patent, without atherosclerosis or thrombosis. The chambers and valves exhibit the usual size-position relationships and are unremarkable; the atrial and ventricular septa are intact. The myocardium is red-brown and firm, without focal abnormalities. The aorta and its major branches arise normally, follow the usual courses, and are widely patent, with mild atherosclerosis of the aorta. The venae cavae and their tributaries return to the heart in the usual distribution and are free of thrombi.

**RESPIRATORY SYSTEM:**

The right and left lungs weigh 620 grams and 580 grams, respectively. The upper airway is clear of debris and foreign material; the mucosa is pink-tan and smooth. The pleural surfaces are smooth, glistening and intact. The pulmonary parenchyma exudes slight to moderate amounts of blood and frothy fluid, and is without focal lesions. The pulmonary vasculature is unremarkable.

**HEPATOBIILIARY SYSTEM:**

The liver weighs 1620 grams. The hepatic capsule is smooth, glistening and intact, covering a red-brown parenchyma with no focal lesions noted. The gallbladder contains approximately 50 milliliters of yellow-green-brown, slightly mucoid bile; the mucosa is velvety and unremarkable. The extrahepatic biliary tree is patent, without evidence of calculi.

**ENDOCRINE SYSTEM:**

The pituitary, thyroid, and adrenal glands are unremarkable. The pancreas has the usual pink-tan, lobulated appearance and the ducts are clear.

**DIGESTIVE SYSTEM:**

The esophagus is lined by a gray-white smooth mucosa. The gastric mucosa is arranged in the usual rugal folds and the lumen

contains 100 milliliters of tan liquid and fragments of food. The small and large intestines are unremarkable. The appendix is present.

**GENITOURINARY SYSTEM:**

The right and left kidneys weigh 150 grams and 160 grams, respectively. The renal capsules are smooth, thin and semitransparent, and strip with ease from the underlying smooth, red-brown, firm cortical surfaces. The cortices are sharply delineated from the medullary pyramids, which are red-purple to tan and unremarkable. The calyces, pelves and ureters are unremarkable. The urinary bladder contains approximately 2 milliliters of cloudy yellow urine; the mucosa is gray-tan and smooth. The prostate gland, seminal vesicles, and testes are unremarkable.

**RETICULOENDOTHELIAL SYSTEM:**

The spleen weighs 160 grams and has a smooth, intact capsule covering a deep red-purple, moderately firm parenchyma; the lymphoid follicles are unremarkable. The regional lymph nodes appear normal. The exposed bone marrow is red-purple and homogeneous, without focal abnormalities.

**MUSCULOSKELETAL SYSTEM:**

Except as noted, the bony framework, supporting musculature, and soft tissues are not unusual.

**NECK:**

Examination of the soft tissues of the neck, including strap muscles, thyroid gland, and large vessels, reveals no abnormalities. The hyoid bone and larynx are intact.

**HEAD AND CENTRAL NERVOUS SYSTEM:**

The brain weighs 1450 grams. A healed craniotomy site is identified over the left temporoparietal region of the skull. The left temporal lobe of the brain is atrophied and is adherent to the overlying dura. Otherwise, the leptomeninges are thin and delicate. The cerebral hemispheres are symmetrical, except for the atrophy of the left temporal lobe. The structures at the base of the brain, including cranial nerves and blood vessels, are intact and free of abnormalities. The brain is fixed in formalin prior to further examination.

Examination of the cervical spinal cord reveals no abnormalities.

**LATER BRAIN EXAMINATION AFTER FIXATION:**

The brain is examined at the Neuropathology Conference on December 26, 2001, with Dr. Greg Balko and Dr. Daniel Schultz.

The brain has a normal size and shape except that the majority of the left temporal lobe is surgically absent. Only the left superior temporal gyrus is remaining. The left hippocampus is absent. Very little staining is identified at the surgical margin. The leptomeninges are thin and delicate. The cerebral

hemispheres are otherwise symmetrical. Structures at the base of the brain, including cranial nerves and blood vessels, are intact and free of abnormalities. Coronal sections through the cerebral hemispheres reveal no lesions within the cortex, subcortical white matter, or deep parenchyma of either hemisphere. The ventricles are normal in caliber. Sections through the brain stem and cerebellum reveal no other abnormalities.

**MICROSCOPIC EXAMINATION:**

Tongue: Focal interstitial hemorrhage is identified.

Brain: Focal parenchymal loss with surrounding gliosis is identified. A dropout of neurons from Sommer's sector of the hippocampus is evident.

Representative sections of lungs and kidneys are unremarkable.

**LABORATORY EXAMINATIONS:**

Laboratory examinations were ordered and the results attached.

Lab Results For OC- 198-01

Gas Chromatography (GC) Results:

PER-TA	ACETONE	negative
PER-TA	ETHYL ALCOHOL	negative

ELISA Drug Screen Results:

SERUM	BARBITURATES	negative
SERUM	BENZODIAZEPINES	negative
SERUM	CANNABINOIDS	negative
SERUM	COCAINE/METABOLITES	negative
SERUM	METHAMPHETAMINE	negative
SERUM	OPIATES	negative
SERUM	TRICYCLIC ANTIDEPRESSANTS	negative

12/21/01

  
Robert H. Powers, Ph.D.  
Chief Toxicologist





CLEMENT J. DEMICHELEIS  
PHILIP J. MARSH  
JOHN K. HURD  
R. GARY WINTERS  
THOMAS J. GRUBER  
JOSEPH C. GRUBER  
BERNARD W. WARTON  
MICHAEL P. CURTIS  
IAN R. SMITH  
STEPHEN M. BERNAT

OF COUNSEL  
JEANETTE H. ROST

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JOHN M. MCCASLIN (1889-1960)  
ROBERT J. IMBUS (1911-1978)  
JOHN M. MCCASLIN, JR. (1920-1991)  
ALSO LICENSED IN KENTUCKY

May 16, 2002

*Mailed  
5-16-02  
[Signature]*

Via Facsimile & Ordinary Mail (732-8118)

Mr. Nico Capurro  
Clermont County Coroner  
333 East Main Street  
Batavia, OH 45103

Re: **Guardianship of William Christopher Albrecht**  
**Our File : 6493**

Dear Mr. Capurro:

Please be advised that I represent the guardian of Christopher Mark's Albrecht's son, William. In order to process insurance documentation from his employer, we need to obtain a copy of the Coroner's Autopsy Report.

Per our discussion, I would appreciate your faxing me a copy of the report today as well as mailing the original. Our check for \$10 will be mailed today with this original letter.

Thank you again for your cooperation in this matter.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

MCCaslin, Imbus & McCaslin

*[Signature]*  
Stephen M. Bernat

SM3/bab  
ID: (bath\correspo-BAB\6493 Clermont Coroner.wpd

