

## Report Draft McPherson

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At approximately 5:50 p.m. on November 18, 1995, Lisa McPherson, a thirty six-year-old, 5'9" approximately 140 lb. female in apparent good health, was involved in a minor traffic accident; she rear-ended another vehicle, which was stopped for a traffic jam caused by an earlier accident. Paramedic Bonnie Portolano and her partner had responded to the earlier incident and were also asked to check out the drivers involved in McPherson's accident. McPherson told Portolano she was "sorry" about the accident, but was not injured. Her speech seemed mechanical and her manner strange. After being asked to move her car out of traffic (and almost causing an additional accident), the paramedics noticed that Lisa had taken off all her clothes and was walking past them down the street naked. Portolano stopped Lisa and brought her to the van. Her bizarre actions and conversation caused her serious concern for Lisa's psychological well being. Lisa told her "Well, you see nobody knows this but I'm an OT"(scientology jargon for operating thetan, which designates individuals capable of out of body experiences among other things). She indicated she wanted people to think she was crazy because she wanted help. She referred to herself variously as a bad person, having bad thoughts, who had taken "her eyes off the object" and was tired and wanted help.

Portolano got Lisa's consent to take her to Morton Plant for evaluation, where she was examined and found to have no physical injuries. Apparently as a result of Lisa's employer happening by the accident scene and concerns by the church that she might be the subject of psychiatric hospitalization, a bevy of high level church officials and employees arrived at the emergency room and asked to be present with Lisa.(at least one was distributing anti-psychiatric literature) After discussion between the psychiatric nurse and the treating physician over whether Lisa met the requirements for involuntary hospitalization, the hospital honored Lisa's request to leave with the other scientologists. She was required to sign out against medical advice, however, and allowed to leave only after church employee Judy Goldsberry -Weber (who Lovett knew from prior contacts) promised they would give her needed attention.

Eighteen days after Lisa left in the care of other scientologists, she arrived dead at Columbia New Port Richey Hospital. Janice Johnson had driven Lisa from the Ft. Harrison Hotel in Clearwater to Columbia Hospital in New Port Richey, bypassing Morton Plant, which was only a few blocks away. Lisa's bruised and severely dehydrated body, weighing only 108, pounds appeared "horrific" to attending physician David Minkoff (a devoted scientologist himself). Lisa's autopsy disclosed a significant embolus partially blocking one side of the left (double check) pulmonary artery. Laboratory tests of vitreous fluid taken at autopsy suggest extreme dehydration. Within hours of Lisa's death, and before police could view or seize evidence, the room in which she had spent the last 18 days of her life was completely cleaned and its furnishings replaced.<sup>1</sup> In the initial phase of the Clearwater Police Department investigation into Lisa's death church officials and employees claimed Lisa was there only for "rest and relaxation", that she had not requested that any Church "procedures" be performed on her and none were planned.

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<sup>1</sup> One explanation for this is the concern that Lisa might have died from an infectious disease; however, one wonders if anyone was concerned about the staff cleaning up the infected area.

Approximately one year after Lisa's autopsy was performed by Dr. Robert Davis, Chief Medical Examiner Joan Wood determined the cause of death to be the embolism, with the embolism's primary cause being her severe dehydration and continued bed rest and immobility. Unlike Dr. Wood, Dr. Davis (most recently employed by the Medical Examiners Office in Volusia County) did not believe he had sufficient information to determine the cause of the embolism. He also believes that the alternative suggestions by the defense experts in the civil case - that the embolus was an unpredictable result of an earlier minor injury- may be equally plausible.

In late November or early December of 1996, I received a duty call from Sergeant Wayne Andrews of the Clearwater Police Department seeking advice on how to get psychiatric records of Lisa's treatment at Morton Plant. As a result of my discussion with him about the investigation, I requested a meeting and then recommended to you that an assistant state Attorney be assigned full time to the investigation. The autopsy report was accidentally made public by the medical examiners office at about this time resulting in press reports of the autopsy conclusions and comments concerning the investigation from both the Church of Scientology and Clearwater Police Officials. I made my displeasure concerning police releasing information or commenting about a case under investigation to Detective Andrews and felt assured that it would not continue. Shortly after this Mark McGarry was assigned to the investigation; Dr. Wood, with the apparent encouragement of Clearwater PD and FDLE, but without our knowledge participated in an "Inside Edition" television interview in which she explained her findings on the still active investigation. She suggested that Lisa had been unconscious for at least two days prior to her death and that abrasions on her extremities appeared to be "roach bites"

Since Mark McGarry's assignment to the investigation, our office has systematically proceeded to gather information as to what happened during Lisa's eighteen day stay and why she died. No scientology witnesses would talk to us without the use immunity provided by a state attorney subpoena. All (with the possible exception of Dr. Minkoff) were represented by attorneys who were paid by the Church. Although the Church has cooperated by flying some witnesses in for investigation at their expense, many of the witnesses are foreign nationals and all are dedicated scientologists. Despite the difficulties and painstaking nature of the process, the witness testimony and caretaker records which have been supplied<sup>2</sup> established a picture of Lisa's mental and physical decline and her resulting death which was totally at odds with the initial statements given the police.

### **The FDLE Summary**

This investigation has proved one of the most frustrating and difficult experiences of my twenty-two years with the office. While the early taped interviews conducted by the Clearwater police have proven helpful and our relationship with the supervisors in both FDLE and Clearwater has been professional and courteous, I continue to have concerns about the objectivity and reliability of the work product of the investigators assigned to the case. Our relationship with them has been difficult and volatile since the outset. Despite my adamancy that the investigation not be publicly discussed, they appear to have supported Dr. Wood's agreement to be interviewed about the autopsy results and the reasons for Lisa's death on a National television "news" show. They did not advise Mark or I of Wood's intentions and apparently did nothing to warn Dr. Wood of my insistence that further press revelations not occur.

Both investigators have obliquely questioned the integrity of the office and I have reason to believe that they have undermined our credibility with the victim's family. Internet postings by scientology critics have attributed negative comments about our office to law enforcement sources and occasionally the fact of our meetings and specific discussions that occurred were revealed and posted on the internet - in one instance within twenty four hours of the meeting itself. More importantly, however, the FDLE prosecutive summary, which was generated without a request from our office, is a flawed document containing skewed inferences, misleading

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<sup>2</sup> The Church has not provided any records from Sunday Evening through the day of Lisa's death and has indicated any such records no longer exist. Also Heather Petzold and other caretakers who have described reports they wrote that have not been produced by the Church.

conclusions and outright inaccuracies. There are also instances of taking obvious speculation by witnesses without first hand knowledge and treating it as admissible testimony. Thus, while the document forms a useful index of witnesses and evidence in the case, the summary of testimony taken in our investigations (the investigators were given verbatim transcripts) is unreliable. I can only conclude that the investigators, (who are intimately familiar with the actual testimony, and who accompanied the transmission of the report with a press release that they had recommended criminal charges against three people) were more intent on making the case look prosecutable than actually assisting us in a meaningful fashion.

To begin with the summary recommends filing charges against three individuals, Alain Kartuzinski, Janice Johnson, and Laura Arrunada under a manslaughter statute that is clearly inapplicable in that it was enacted after Lisa's death. The summary does not identify the specific acts and omissions that they claim to be culpably negligent and appears oblivious to the fact that the evidence against Arrunada is based primarily on her own inadmissible immunized testimony.

Illustrative of the more egregious errors are the statement in the summary that "Lisa's steadily deteriorating medical condition caused caretaker Alice VonGrondelle to remark that she felt Lisa was obviously dehydrated ten days into the watch."<sup>3</sup> There is no testimony to support such a statement. The apparent source of this "fact" is that Judy Goldsberry-Weber testified that about ten days into Lisa's "watch", she was called by "Alice" asking if fever and disorientation were symptoms of dehydration. This person never indicated that she was asking because of Lisa or that Lisa actually exhibited the symptoms.<sup>4</sup> Alice Vangrondelle only had contact with Lisa for a single day, three days into her stay, and had never testified that she thought Lisa to be dehydrated. Thus, not only is the FDLE summary's suggestion unsupported by any admissible testimony of Vangrondelle, it has considerably extended and embellished the inadmissible hearsay testified to by Weber. In follow up interviews (Alice was initially questioned before Weber), Vangrondelle has denied making such a phone call or having any conversations with anyone that Lisa was dehydrated.<sup>5</sup>

Similarly, the summary quotes Marcus Quirino as testifying that he had seen a missing report of Heather Petzold's (one of Lisa's caretakers), in which Petzold wrote that "Lisa was pale, comatose, weak and sleeping". If this were true it would be highly significant since it would be documentation by an eyewitness that Lisa was essentially in a coma for the last 48 hours of her life – a suggestion made by Dr. Wood in her television interview which if substantiated could provide a basis for prosecution based upon culpable negligence. Petzold testified she did write reports that were not included in those supplied under our subpoena, and she did describe Lisa as "weak and sleeping more" on the Saturday before her death, but has never testified that Lisa was unconscious or comatose nor that she authored a missing report making such a claim.

Quirino was a COS official who gathered most of the caretakers together immediately after Lisa's death and had them write reports about their contact with her. He then incorporated their oral and written statements into a four page summary. The summary was retained, but the individual reports were destroyed by COS official Brian Anderson who considered them unnecessary. Quirino's written report quotes Petzold as saying Lisa was "pale, weak and slept more." When questioning Quirino during his state attorney statement, one of the investigators quoted this passage to him reading the punctuation marks as well as the words. It appears it the transcript as follows "—you wrote the paragraph—third paragraph down—that says, "Heather was then off until three days ago, when she was put back on. Once she returned to the room she found that Lisa was pale, **comma**, weak and slept more."<sup>6</sup> The witness responded "Mm-hmm". The only explanation I can give for FDLE's summary is that they have mistaken the word comma, denoting the punctuation mark, for the word coma, denoting unconsciousness. At the same time they have somehow ignored the fact that neither Quirino's written report nor Petzold's testimony offer any support for the existence of a written report that describes Lisa as comatose.

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<sup>3</sup> Summary @ page 106

<sup>4</sup> Weber did tell Alice to get the person to a doctor, indicating at least that she assumed the conversation was not hypothetical.

<sup>5</sup> This interview occurred after FDLE had completed its summary.

<sup>6</sup> Quirino Statement @ page 83

Needless, to say, a supervisor, or anyone else unfamiliar with actual text of the statements, who read this summary would be completely misled as to the sufficiency and nature of the evidence.

The report also contains misleading statements concerning Lisa being "held against her will" in the motel room, that she was not allowed to leave or have visitors without Paul Kellerhaus' approval and that Janice visited Lisa "at least" twice a day.

This latter issue is particularly crucial, since any charge of manslaughter based upon culpable negligence would depend on Johnson's awareness of the severity of Lisa's condition and the immediate danger it posed to her life if medical attention was not sought. We have no affirmative testimony from Lisa's caretakers placing Janice in contact with Lisa from Saturday December 2 until the evening of her death on Tuesday December 5<sup>th</sup>.<sup>7</sup> The FDLE summary quotes Barcenas as "observing Janice Johnson come to Lisa's room "at least" twice a shift " for the 8-10 day duration of his shift.<sup>8</sup>

Barcenas actual testimony is that he saw Johnson at Lisa's room "several" times over the course of the 8-10 days he was stationed outside. Asked when Johnson came by, Barcenas indicates she would come by in the morning and sometimes again in the afternoon. In a series of leading questions, investigators get Barcenas to respond "maybe" to the suggestion that Janice came by twice on "that" day and that she "could" have come by as many as sixteen times. Barcenas indicates in the end that he can only say he saw her several times, he doesn't know the actual number.<sup>9</sup> In this instance, as in others, the investigators have taken ambiguous, speculative or uncertain testimony, accepted the most incriminating of several possible interpretations, and then related it as affirmative testimony without qualification. Similarly, during their interview with Dr. Podgorny (an expert whom they approached and interviewed on their own) they were asked how often Johnson visited Lisa, an issue which Podgorny deemed crucial to whether Johnson was acting in the capacity of a physician or not. Investigators told Podgorny not only that she visited "at least" twice a day, but that it was as often as "six times" a day. Apparently, they took their exaggeration of Barcenas testimony ("at least" twice a day) and felt comfortable concluding that she was visiting twice more a day during each of the additional shifts (2-3 per day). There is of course no testimony to support such a suggestion.<sup>10</sup>

While there are indications that Lisa started to walk out of the room while undressed or in a delusional state, she never made a coherent request to leave the hotel. Virtually no force was used to keep her in the room, nor did she struggle in anyway when "guided" back into the room.<sup>11</sup> While detectives may be understandably suspicious of such testimony, since it comes from witnesses who demanded immunity before talking with us and who are members and paid employees of the COS, these suspicions do not justify the suggestion that there is affirmative evidence to the contrary.<sup>12</sup> Moreover, she clearly indicated to Morton Plant employees that she wished to leave with and be cared for by the other members of the Church.

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<sup>7</sup> We do have testimony that Johnson expressed concern about Lisa's condition on the morning of her death or the evening before it (from Emma Schamerhorn) and on the late afternoon of Tuesday, December the fifth, the day she died. I believe the times of these incidents are somewhat uncertain, as is discussed in the summary of evidence against Johnson. In her initial statement to detectives Johnson claimed that she did not see Lisa either Saturday or Sunday and when she went by for a visit Monday night, Lisa was already asleep and under the covers. She said she did not again see Lisa until paged by Laura at seven p.m. Tuesday.

<sup>8</sup> FDLE summary @ page 36. His 8-10 day involvement probably ended before the weekend preceding her death.

<sup>9</sup> Barcenas Statement @ pages 29,30.

<sup>10</sup> Similarly the summary indicates Rita Boykin would also confirm that Janice visited twice a day, despite ambiguity in both the questions and her responses. When later questioned specifically as to Janice presence during the last four days she did not recall her being there on any occasion.

<sup>11</sup> She did attempt to knee one of the security guards as she walked out the door.

<sup>12</sup> Since the caretakers were not authorized medically or legally to restrict Lisa's movements in any way and should have sought to have her hospitalized if she was unable to care for herself, these actions even though minimal may nonetheless have been unjustified. However, an

In short, the summary is inaccurate in its representation of the evidence of the frequency and timing of Johnson's contact with Lisa, of the severity and obviousness of Lisa's physical symptoms as described by caretakers, the admissible evidence concerning who was responsible for Lisa's physical welfare, and the evidence concerning Lisa being held "against her will".

#### **Lisa's Mental and Physical Deterioration**

Initial interviews portrayed Lisa as a parishioner voluntarily staying at the Ft. Harrison for rest and relaxation, who was not watched after on a full time basis and merely received some extra attention when requested. As the investigation progressed, however, actual caretakers were identified and interviewed under oath and their written records of caring for Lisa were subpoenaed. A different picture emerged.

From the outset of her stay and continuously until the evening of her death, Lisa was seen by her caretakers as deeply psychotic and unable to care for herself, talk coherently or make logical decisions. She was watched initially by Emma Schamerhorn, an elderly lady working in the Medical Liaison Office. Because of Emma's age and the importance of having continuity in Lisa's care, Alain Kartuzinski approached Andrea Sprecher and got permission to have Janice assigned full time to the task. Other employees organized a schedule where caretakers, only one of whom knew Lisa, watched her for her twenty four hours a day. They were asked to make written reports to Kartuzinski. Lisa's behavior as described in these notes indicated she was hyperactive, delusional and hallucinating. She tried to harm herself and others early in the stay, struck caretakers, engaged in repeated self-destructive behavior and had to be forcibly restrained on several occasions to prevent injury to herself or her caretakers. After the first week she routinely urinated and defecated on herself and rarely slept. She had conversations with people who were not there, claimed to be people she was not, sang and danced around the room as if giving a performance, crawled around on the floor, stood in the toilet, got in the shower fully clothed, tried to walk out of the room in a state of undress, "humped" the floor as if having sex with an imaginary person, drank her own urine and on at least one occasion placed her head in the toilet. It is apparent from the direct and circumstantial evidence, that Lisa was undergoing an isolation watch, in the belief that her condition would improve and stabilize so she could undergo an auditing procedure known as an introspection rundown.<sup>13</sup> There is no evidence that she requested or consented to such a procedure.

Her physical decline is more difficult to establish. Undoubtedly, Lisa's mental condition would have hidden the disorientation and confusion that is one of the major symptoms of extreme dehydration. Moreover, it is impossible to reconstruct the actual amounts of fluid and food ingested because the caretaker notes are erratic and imprecise in their notations and we do not have notes or accurate testimony for every shift. It is clear, however, that after the first several days she never completed a normal meal and her only real sustenance was an occasional protein shake and mixtures of fruit and protein powder. She sometimes would ingest an entire shake and on other occasions would spit out everything that she was fed. Her fluid intake was also limited, although again no precise amounts can be reconstructed from the available evidence. The combativeness that seemed to exemplify the early portion of her stay seemed to subside and guards were no longer posted at the doors for the last four or five days of her stay. At one point Sylvia DeLaVega could no longer handle her caretaker responsibilities and they were undertaken by more emotionally strong staff members. By Saturday, December 2<sup>nd</sup>, both Heather Petzold (

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argument can be made that the failure to restrict the movements of an obviously psychotic person who constituted a danger to herself would have itself been culpably negligent. In any event the fact that the caretakers controlled Lisa's movements and contact with the outside world, makes it difficult to argue that they were not caregivers with a legal and moral duty toward Lisa.

There is also substantial evidence that Lisa was forcibly restrained to prevent her harming herself or others and was forcibly restrained and medicated without consent; this evidence is considered in the sections summarizing the evidence against Johnson and Kartuzinski.

<sup>13</sup> Heralded by L. Ron Hubbard as the greatest discovery of the twentieth century that made Psychiatry obsolete, the introspection rundown is a "auditing" procedure, during which the subject is asked a series of bizarre questions while he holds a e meter. The purpose is to find points of "introspection", which when cleared up by the auditor will cure the apparent mental illness.

in her oral testimony) and Rita Boykin (in written notes to Kartuzinski) indicated that Lisa had grown so weak she could no longer stand or walk. They have since said, however, that Lisa made a "partial" recovery gaining back her strength before her sudden demise on Tuesday December 5<sup>th</sup>. Our expert witnesses believe based upon the vitreous readings that Lisa's dehydration was so severe that she would have been extremely and obviously symptomatic for at least a day and probably several days before her death. These symptoms would not only include mental confusion, but during the last few days lethargy increasing to almost complete unresponsiveness. This conclusion is inconsistent with the current testimony of the caretakers, however.

Except for statements made in Johnson's taped interview, there is no evidence that Lisa ever made coherent requests concerning her condition or that she was able to do so.<sup>14</sup> Because scientologists believe that a person in this state is prone to suggestion and will make irrational negative associations with words spoken in their presence and because they believed she would best be helped by "destimulating" her, her caretakers rarely if ever communicated with her nor did they ask her about her condition or symptoms.

### **Janice Johnson's Initial Statement**

On May 29, 1996 Clearwater detectives took a tape recorded statement from Johnson concerning Lisa's death. Johnson portrayed Lisa as a parishioner there for rest and relaxation who was to get extra care from the staff, but not the clearly incompetent, severely disturbed woman who was unable to speak coherently and oblivious to her own needs. She stated she first met Lisa about five days after the stay began and she had gone over with Suzanne Green (Schnurenberg) to make sure everything was okay because Suzanne had some concerns.<sup>15</sup> In fact, Janice had been assigned to handle Lisa's situation full time by her superior at Alain Kartuzinski's request, because Emma was elderly and not up to the task. By at least the fourth day of Lisa's stay and possibly earlier she was conversing on the phone with Dr. Minkoff hoping to get sleeping medication prescribed for Lisa, describing her as a "type III" or psychotic individual.

Janice repeatedly told detectives that "they" were not attempting to treat her mental or physical problems ("that is not the point of scientology; the church does not do that") because she had been "checked" out at Morton Plant and found not to be a danger to herself or others.<sup>16</sup> She stated Lisa had not requested any services and none would have been provided without her consent. She also claimed Lisa was taking an herbal supplement on her own, because the MLO would never make recommendations like that about over the counter sleep aids.<sup>17</sup> In fact, Houghton first talked to Johnson about his ability to get medication or other substances to be swallowed by Lisa as early as November 20<sup>th</sup>. She participated in conversations with Minkoff leading to two prescriptions for Lisa (valium and chloralhydrate) and gave her intermuscular shots of MgCl without any apparent authorization from a doctor. She was also aware (at least after the fact if not before) of Houghton force-medicating Lisa with a Benadryl and aspirin mixture. Although she denied knowing anything about an introspection rundown, it is clear that Kartuzinski intended Lisa to undergo an isolation watch to be followed by this auditing procedure.

During the interview Johnson repeatedly misstated or minimized the symptoms and bizarre behavior which we now know that Lisa exhibited. She said Lisa was "just upset" but "she was 'with it'"<sup>18</sup>; that Lisa just needed a break to get away from everything; if things weren't going well then (according to what Suzanne told Johnson) she would probably just sit and think about it and it would be hard for her to get to sleep.<sup>19</sup> She described Lisa as merely being "thin and real wound up" on her first visit and claims that on a second visit Lisa was better and made a

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<sup>14</sup> There is testimony that on a very few occasions she "thanked" the caretakers or gave lucid but terse requests, such as asking for a protein shake.

<sup>15</sup> Transcript @ 18

<sup>16</sup> Transcript @ 17,57,58

<sup>17</sup> Transcript @ 14

<sup>18</sup> Transcript @ 17

<sup>19</sup> Transcript @ 15

coherent request for powdered vitamins.<sup>20</sup> She implied that it was Lisa who was taking the herbal remedy valerian root. (in fact Lisa would normally refuse to swallow these and caretakers would mix them with other substances to get it down her). She acknowledged a single episode in which Lisa went into a rage and had to be given a "big hug" for about ten minutes till she calmed down<sup>21</sup>(she was actually restrained for forty five minutes on one occasion) but stated that was the only problem that they had.<sup>22</sup> On the day of Lisa's death, Johnson indicated she had a coherent conversation with Lisa in which she agreed to go to the hospital although she didn't want to. Virtually, every other caretaker believed Lisa incapable of coherent conversation concerning her welfare.

Johnson was also evasive and intentionally misleading when detectives repeatedly asked if anyone was assigned to look out for Lisa on a continuing basis., indicating Lisa was merely a "hotel guest"; it was true that they gave Lisa some extra services as people checking up on her but "nothing like that".<sup>23</sup> She claimed she was not sure what Lisa did or where she went during the day. (In fact she never left the room except for venturing a few feet out and being "guided" back in.) "The plan was have the people around there in the hotel just give her some extra attention."<sup>24</sup> Asked if anyone checked on her on a routine basis, she responded Suzanne would pop in to make sure everything was fine.

As is now obvious, caretakers were assigned to watch after Lisa on a round the clock basis. She urinated and defecated on herself, struck or struggled with her caretakers on more than one occasion and was having visual and auditory hallucinations. Guards were posted at the door in case their physical assistance was needed. Caretakers were so concerned they removed numerous objects from the room to prevent Lisa from harming herself. Even if we cannot establish that Johnson knew of all of these specific instances, it is clear that Lisa's condition is inconsistent with the level of care that Johnson claimed she was there for.

Janice neglected to mention the assignment of other staff members to serve as Lisa's caretakers, neglected to mention the actions of Houghton or her own involvement in giving Lisa medication and shots, and did not mention her being removed from most of her duties and assigned to Lisa. She did, however, admit that except for Suzanne (who was a friend of Lisa) she knew as much as anyone about Lisa's stay.<sup>25</sup> She admitted that she not only talked to others about Lisa's condition and got reports on her but on average went by about every other day to check on her. She indicated she usually tried to go by around four in the afternoon.<sup>26</sup>

As to the events leading up to Lisa's death, Janice indicated that she had first noted bruises on Lisa the week of Thanksgiving after Lisa had gone into a rage and was kicking furniture.<sup>27</sup> The Friday after Thanksgiving week (I believe she is referring to Friday December 1) she noticed that Lisa's health was deteriorating; she was noticeably thinner but calmer and had been sleeping better.<sup>28</sup> She allegedly told Laura (who had been to Medical School in Mexico City but never been licensed) to take extra time to get fluids and food into Lisa over the weekend. Janice was to be involved in a project over the weekend and knew she would not be able to check on Lisa. When she got back into her normal routine on Monday she went by to see Lisa on Monday night around eight p.m. and Lisa was already asleep under the covers. Janice backed out of the room and didn't wake her.<sup>29</sup> Laura indicated she had some difficulty getting food and fluids down Lisa but did not indicate that her condition had worsened. She did not go by the next day until around seven p.m. when she was beeped by Laura.<sup>30</sup> On going over there Lisa looked

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<sup>20</sup> Transcript @ 28

<sup>21</sup> Transcript @ 31,32

<sup>22</sup> Transcript @ 63

<sup>23</sup> Transcript @ 26

<sup>24</sup> Transcript @ 23

<sup>25</sup> Transcript @ 63

<sup>26</sup> Transcript @ 25,30,31

<sup>27</sup> Transcript @ 31,32

<sup>28</sup> Transcript @ 34

<sup>29</sup> Transcript @ 36,37

<sup>30</sup> Transcript @ 38. Laura allegedly said she had been having diarrhea for 24 hours. She did not say this in her statement to Mark, but was not directly confronted with Janice's statement.

septic (with what appeared to be petechial hemorrhages) and very, "majorly" dehydrated.<sup>31</sup> She was talking slowly, but not babbling or nor not making sense. Lisa was allegedly happy to see her and though expressing hesitation agreed to go to the hospital for treatment.<sup>32</sup> She says she called Minkoff telling him Lisa needed to be seen tonight and asking him to give them a room away from the "hoo ha" of the normal emergency room.<sup>33</sup>

Knowing the content of the caretaker notes and the testimonies of the other church employees, Janice's 1996 taped statement is clearly untruthful. These falsehoods may be more obvious than they are provable, however. In almost every instance, introducing the testimony of the caretakers to contradict Janice will allow the opposition to bring out testimony favorable to her position and which is completely inconsistent with our experts' view of the facts. Will not only be faced with the difficult tactical position of asking a jury to believe part of a witness' testimony yet conclude the remainder is false. Since, we will be unable to cross-examine or effectively impeach the witnesses we call to the stand, we will be ill equipped to accomplish this task.

### **Evidence of Janice Johnson's Involvement.**

While no one witness can testify to Johnson's exact responsibilities concerning Lisa's welfare a cogent case can be made for her direct responsibility for Lisa's welfare. Johnson was a deputy in the Medical Liaison Office who was responsible for handling staff employees in their dealings with health related professionals. Emma Schamerhorn was the deputy M.L.O. with parallel responsibilities over non-staff parishioners. When Lisa was allowed to leave Morton Plant on Saturday November 18, 1995, M.L.O. employee Judy Goldsberry-Weber, a subordinate of Johnson, promised Dr. Lovett (who she knew from prior dealings) that Lisa would receive necessary care. Weber was initially told that Emma would take care of Lisa the first night.

Early in Lisa's stay (we do not have an exact date), Alain Kartuzinski who was in charge of auditing for the Clearwater facility approached Andrea Sprecher, Johnson's supervisor, and requested that she assign Janice full time to Lisa's care. This made Sprecher have to cover Janice's normal duties, but she and Janice voluntarily agreed to do so. Alain felt Emma because of her age and the possibility of being contacted at all hours, was simply not up to the difficult task. About two days into Lisa's stay, Johnson was asked by Weber how Lisa was doing. Johnson gruffly told Weber to not to talk to anyone about it that she (Johnson) had been placed in charge and Weber was no longer involved. Some days later, Weber was asked to pick up a prescription for Lisa from a Largo pharmacy (she believes it was valium, but detectives have been unable to locate any prescription). She asked Janice how Lisa was doing in case she ran into Dr. Lovett and he asked. According to Weber they wound up getting in a screaming match after Janice said "you don't have to worry about him, I'm in charge. Butt out."<sup>34</sup>

Sometime before the 21<sup>st</sup>, probably on Monday the 20<sup>th</sup>, Janice is also overheard talking on the phone about Lisa by David Houghton, who indicates he believes he could get Lisa to swallow. Later, probably on the 21<sup>st</sup> he and Janice have a conversation with Dr. Minkoff about prescribing soporific medication to help Lisa sleep. There is an initial discussion of liquid chloral hydrate but they are unable to find that at any pharmacy. Minkoff then prescribes injectable valium under Houghton's name for Lisa after a second phone conversation involving Minkoff, Houghton and Johnson.<sup>35</sup> Houghton picks up the injectable valium from the pharmacy and returns it to Johnson the next day. During these conversations they describe Lisa as a type three (a psychotic person) who is having difficulty sleeping. Houghton does not believe that Lisa was ever given the valium, because in a follow up conversation with Alain Kartuzinski he overrules using this drug on the premise that it may be too strong and affect later attempts at auditing.

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<sup>31</sup> Transcript @ 39,40

<sup>32</sup> Id.

<sup>33</sup> Transcript @ 47. Minkoff does not confirm this.

<sup>34</sup> Weber is currently ill and has returned to her family in Oregon. Her availability to testify is unknown.

<sup>35</sup> Minkoff's recollection is imprecise as to who was on the phone during these conversations and it will be necessary to call Houghton to prove Janice's participation.



Houghton then on three occasions with Kartuzinski's approval "force" medicated Lisa with a mixture of Benadryl (an over the counter antihistamine generically known as diphenhydramine which is used in non prescription sleep aids) and aspirin. The aspirin was suggested by Kartuzinski after looking up Hubbard writings that suggested that aspirin may serve to block some of Lisa's visual delusions. Houghton did this by filling an irrigating syringe with a crushed aspirin and Benadryl (a liquid) mixture then injecting it down the back of Lisa's throat while she was held down by others. He never discussed with Lisa what he was giving her or why, as she was not capable in his estimation of coherent conversation or consent. We cannot establish that Janice knew of this procedure initially (Houghton does not recall discussing with her in advance or her being present during his discussions with Kartuzinski); however, Houghton is relatively sure he told Janice about this after the first incident and before the next two. Additionally, Weber recalls overhearing Houghton and Laura discussing the procedure and became very upset; Weber has a nursing background and in her home state of Oregon patients could only be force medicated with physician authorization. Houghton and Laura closed the door so that Weber could no longer hear what they were talking about. Weber then confronted Janice about this asking what doctor had approved such a procedure. Janice said to "butt out". When Weber indicated she thought something was wrong, Johnson said it's not your concern. Weber indicated to Johnson that she had never known Lisa to be violent and Janice responded "Well, you know psychotic breaks."

Thus, while Johnson's involvement with Lisa in the first few days of her stay is somewhat unclear we can prove through the testimony of Sprecher, Houghton, Goldsberry-Weber and Minkoff and the admissions made in her earlier taped interview by Suddler that within the first five days (and probably the first three days), Sprecher was contacted by Kartuzinski and agreed in Johnson's presence to Kartuzinski's request that she be assigned full time to assist Lisa. Johnson confirms this on three occasions to Weber beginning probably as early as the 20<sup>th</sup> or 21<sup>st</sup>. On probably the 20<sup>th</sup> and 21<sup>st</sup>, Johnson is involved in a series of conversations in which Houghton overhears her talking about Lisa over the phone and the difficulty of getting things down her and volunteers that he would have the ability to accomplish this. Johnson has an initial phone conversation with Minkoff and Houghton in which prescribing "soporifics" to a type three is discussed and a follow up conversation in which valium is actually prescribed by Minkoff. In addition to her conversation with Minkoff on the 20/21 leading to the valium prescription we can infer an additional conversation with him on November 29 the day of the chloral hydrate prescription.

Janice indicated in her taped statement that she first visited Lisa about five days into her stay and on average saw her about every other day. She indicated she usually went by about 4:00pm and also got information from talking to others when she went on "rounds". She admitted that other than Suzanne she probably knew as much about Lisa's stay as anyone. She noticed Lisa's health begin to deteriorate the Friday before her death and directed to Laura to spend extra time with her over the weekend trying to get fluids down. She next saw Lisa, briefly on Monday evening but Lisa was in bed asleep under the covers and Johnson did not stay. Laura did not indicate that Lisa was doing worse but did say it had been difficult to get fluids down her. She did not see Lisa again until Tuesday evening around seven p.m. when she was page by Laura.

From caretakers notes and witness interviews and Johnson's admissions it appears that Johnson was at Lisa's room on at least six dates: on November 23, November 24, November 29, November 30, December 1 and December 4<sup>th</sup> and that she talked with the caretakers or others about Lisa on November 26, 27 and December 3, 1995:

11/23/95 Security trainee Sam Ghiora who was posted at Lisa's room door from approximately eleven a.m. till 9p.m for 8-10 days in the middle of Lisa's stay remembered Johnson being at the room on only one occasion, Thanksgiving November 23, for about four hours. While Janice was there Lisa tried to exit the front door and Ghiora "guided" her back inside. Lisa said she doesn't know what's happening and asked Ghiora if he could help her. Ghiora described a number of bizarre behaviors by Lisa, including her "not making any sense", repeating "E. T. phone home", rattling off colors and numbers, and simply not being aware of what was going on around her. Although he did not say

these things occurred in Janice's presence it is likely that some or all did, since Ghiora was normally alone by himself outside.

11/23/95 Sylvia DelaVega testified that she began her shift at 3-4. p.m. (check date) and stayed until approximately three a.m. the next morning. Heather Petzold was there when she began her shift. During the shift Lisa was saying she was an artist and singing and dancing. Janice arrived around two a.m. Lisa was walking around the room, had hit the lamp and started taking off her clothes. (This appears to be while Janice was there although statement is not clear)

DelaVega was present when Johnson gave Lisa a shot in the buttocks. Initially she stated she didn't know the date, (can't say if it was the 26<sup>th</sup>, 27<sup>th</sup> etc) but later in statement indicates it was the first day she was on watch, which would be the 23<sup>rd</sup>. (This witness is a Mexican citizen who speaks limited English and is currently residing in Mexico.)

Petzold also indicated she was present when Janice gave Lisa a shot in the buttocks but doesn't recall the date. Janice said shot was to help her sleep but does not remember if she was told what the substance was.

11/23/95 Leslie Woodcraft testified that she replaced Sylvia DelaVega on the 23<sup>rd</sup> who apparently got burnt out before he shift was over. (She recalled this begin around 12 midnight to two a.m.) Johnson was there when Woodcraft arrived. Lisa was acting crazy the entire time, calling Janice "mommy", then walking backwards and talking to herself and then talking to Janice again as if she was someone else. Lisa went into the bathroom and turned on all the spigots. Janice gave her a small pill that was supposed to calm her. Janice went to get Lisa's dry clothes and returned with Woodcraft's replacement (Joan Stevens).

11/24/95 After being briefed by Kartuzinski at around 10:30 p.m. (he told them about Lisa's condition and that she had been medication so that she would go to sleep), Stracener and Pendizini began a watch with Lisa around midnight. Stracener testified that when she first arrived Lisa was asleep. She woke up and began engaging in bizarre behavior, saying she was Michael Jackson, singing, sucking her thumb and licking the wall. She vomited up a dark substance that looked like blood; Ghiora and Kellerhaus came and checked her out and didn't believe that the substance was actually blood. Janice showed up later for about a half hour and checked out Lisa's mouth. She directed them to give Lisa vitamins and water.

Pendenzini confirms that about two hours after she began watch with Stracener Johnson showed up at the motel room and helped them change Lisa's clothes. Janice gave her vitamins and orange juice, but did not give her a shot. Note Pendenzini is an Italian national and there appears to be a significant language difficulty when questioning her in English.

11/25/95 Houghton administered first dose of Benadryl and aspirin to Lisa using a syringe while others held her. He successfully got her to swallow the concoction and later (he believes) mentioned it to Janice. He did not ask for consent or explain the procedure to Lisa because he did not believe her capable of understanding. He did not ask her questions about her condition or otherwise talk to her because he had been privy to instructions (he believes from Janice) not to talk to her.

11/26/95 Sylvia DelaVega testified that on this Sunday she saw Janice Johnson twice; Johnson indicated that Lisa was refusing to take water or food and was refusing protein shakes and sleeping more. (witness identified this not by date but as second Sunday of watch.)

11/27/95 Houghton, presumably in the early evening, administers a second dose of the aspirin/Benadryl mixture. Houghton believed that Rita and Heather were watching

Lisa at the time she was gently restrained during the process. Lisa looked sweaty and red in the face and was talking in non sequiturs. She seemed more agitated than she had on the first occasion.

11/27/95 In her caretaker notes Rita Boykin indicates that Lisa had slept only forty five minutes from eight thirty to 12:30 and that she called the MLO to get some instructions. The notes indicate she spoke with "Dr. Johnson" re no real sleep at 4:00.

11/28/95 Houghton testified that he administered the final dose of the aspirin/Benadryl concoction before he leaves for Gainesville later in the day to take dental boards.

11/29/95 Valerie Demange testified that she believes it was on this date that she saw Johnson give Magnesium shot to Lisa. There is some ambiguity the substance injected but @ page 43 she indicates that Johnson told her it was Magnesium in the shot to relax her muscles and get some sleep; @ 75 she says it was her "impression" that the shot was Magnesium and that Johnson measured Lisa's respiration after the shot) and @ page 92 she indicates that Johnson told her the shot was Magnesium to relax the muscles.

11/29/95 Chloralhydrate prescription by Minkoff was filled.

11/30/95 is the approximate date of Sam Ghiora's last watch as security in front of Lisa's room. He had been told by Baxter she was not being violent anymore.

11/30/95 Rita Boykin's caretaker notes indicate at 1am (which would actually be Friday December 1<sup>st</sup>): "Dr. Johnson just visited. Not possible for her to have any more chloral hydrate. I need to get four more valerian root capsules into her and a quart of fluid."

12/1/95. Johnson issues note in her handwriting indicating Lisa was given 2 gm of MgCl<sub>2</sub> IM at 10:30 and two 500 mg chloral hydrates. Indicates Lisa fell asleep in midsentence after getting medication. She notes that respiration is 18-24 and that Lisa's extremities were cool but not cold. That Sylvia (DelaVega) needs relief and Janice will wait for replacement. Note directs that the "plan" for the next 8 hours is; needs two liters of fluids when awake and attempt to feed. Call if any questions or problems. Johnson has acknowledged in her taped statement of May, 1996 that she noticed Lisa's health deteriorating when she saw Lisa on this date; Lisa looked noticeably thinner.

12/2/95 According to her testimony, Arrunada gives Lisa chloral hydrate on at Janice's instructions to help her sleep. This was because Lisa was too active.

12/2/95 Both Heather Petzold's testimony (her reports are missing) and Rita Boykin's caretaker reports indicate that as of this Saturday, Lisa was considerably weakened and unable to walk. We have no direct evidence that they communicated this deterioration in Lisa's condition to Janice or Alain.

12/3/95 Although it is not documented in any of the caretaker notes both Rita Boykin and Heather Petzold's current testimony indicates that Lisa began to improve and regain strength from Saturday.

Sylvia DelaVega testified that she saw Janice on this date in the M.L.O. office and (the third Sunday) and asked he if she had seen Lisa. Janice responded that Lisa was doing better and sleeping better. (While this seems impossible based upon the degree of dehydration reflected at autopsy it is consistent with the current testimony of the caretakers.)

In Janice's statement she indicated she was going to be busy over the weekend and asked Laura to watch over Lisa. Houghton testified that he had heard Janice was with Dr. Megan Shields of California over the weekend who was giving physical exams to a number of high level auditors. We have recently confirmed this and are still trying to determine exactly how much time was involved. We are awaiting receipt of additional records.

12/4/95 Johnson admits in her statement that when she got back to her regular schedule, she stopped by Lisa's room at about eight on this Monday night to see her. Lisa was already asleep and under the covers, so Johnson alleges she backed out of the room without waking her.

12/5/95 The chronology of events on Lisa's last day is confusing and witnesses conflict on a number of material matters. There appears to be a significant period of time between making the decision to take Lisa to the hospital and actually leaving in a van for New Port Richey.

Emma Schamerhorn testified in her last statement that she talked with Janice Johnson on either Monday night or Tuesday morning and that she looked concerned. Johnson explained that Lisa looked "septic". Schamerhorn does not believe this was Tuesday night because she did not think she had any contact with Janice on the evening of Lisa's death. None of the caretakers remembered seeing Janice at all on Tuesday until Laura paged her on the evening of the Fifth and there is no indication that Janice expressed any belief about Lisa being toxic until the evening of the fifth. Janice indicated in her statement that she did have contact with Emma the night of Lisa's death. Janice did not know how to get to the hospital in NPR and Emma had come over with a hand drawn map. Thus, there is a possibility that Emma may by incorrect in timing this conversation and giving the map to Janice on the night of Lisa's death may be used as an explanation for when she heard this information.

Similarly, Janet Herring testified that she saw Johnson on Tuesday, December 5<sup>th</sup> and talked to her about Lisa. Janice had a strange look on her face and looked white, which she interpreted as Janice being distraught. Johnson said she was worried about Lisa and that Lisa was doing worse and she was going to take her to the hospital. Her impression was that there was some urgency and she was going to do it right away. Herring believes this conversation occurred during a break period in the internship training area which would place it (according to Herring's belief of when the breaks take place) at about 3:45 - 4:00 p.m. The difficulty here is that all three caretakers and Janice indicate that Janice was not present at the room and did not talk to the caretakers about Lisa's deterioration until she was paged by Laura sometime between five and seven p.m. It would seem to make little sense that Janice would believe Lisa to be septic, tell others about the necessity of going to the hospital and delay implementation of that decision for three hours. This could be explained if Lisa were waiting for approval by Kartuzinski or some other superior, but there is no affirmative testimony establishing this.

Even if the testimonies of Emma Schamerhorn and Janet Herring are not considered the timing of Lisa's deterioration and trip to New Port Richey still seems confusing. Heather Petzold and Rita Boykin had the afternoon shift taking care of Lisa. Laura had left at eight in the morning and was to return around five to relieve Rita. Rita initially testified that she was present when Lisa was given a bath around five o'clock and that Lisa was walking on her own and talking at the time. In her last statement however she insisted that she left before Lisa was given a bath.

Heather testified that after Lisa's bath she left for 45 minutes to an hour at a "normal time" for dinner; she believed it could have been 5:15 to 6:00 or 5:45 to 6:30. When she returned room was empty and Lisa was gone. She had not seen Janice at all that day or the day before. She recalled in her first statement that Lisa was unable to assist them during the bath, but didn't seem to recall re defecating during the bath or her rectal muscles being dilated.

Laura testified that she returned at five o'clock to replace Rita. Lisa seemed weaker and her eyes were fixed during the bath and she "shit" on herself. Laura believed this was the result of her anal sphincter relaxing – something she considered a sign of possible neurological trouble. Also noticed dark circles around Lisa's eyes. Laura said she left at six o'clock to tell Janice then returned to the room. Heather was with her at this time. Janice came over at approximately seven o'clock and indicated they were going to take her to Minkoff.

Johnson stated in her taped statement in May of 1996 that at about 7 p.m. she got a page from Laura; it took her about ten minutes to get over there. She was told by Laura that Lisa had diarrhea for almost 24 hours. (Neither Laura nor Heather testified to this; Rita indicated Lisa had several large bouts of diarrhea but not constant or continuous). She said Lisa was friendly and said Hi. Lisa was clean and neat, but looked septic; looked very, "majorly" dehydrated with dry membranes and sunken eyes. She had hemorrhaging similar to petechiae. She could carry on a conversation, and made sense, but was slow to respond. She agreed to go see Minkoff.

Janice said she called Minkoff and allegedly told him Lisa needed to be seen tonight that it wouldn't wait till tomorrow and that she wanted a separate room away from the hoo ha of the emergency room. Realized she didn't know how to get to hospital called Emma who ran over a map. She thought it was about a forty minute drive, but it took about an hour.

Minkoff testified that he was on duty at the emergency room and received a call from Janice shortly before seven (it could have been slightly earlier, but he is pretty sure of time frame). Janice said she was calling about the girl he had issued the prescription for and thought she had an infection, possibly strep throat. She had had some diarrhea and Janice wanted a prescription for penicillin. Minkoff said if she needs a prescription she needs to be seen by a doctor. If she was really sick, she should be taken to Morton Plant. Janice said she was not and said she would bring her to NPR. Minkoff said to bring her soon since he went off duty at ten. He told her not to show at 9:30. Minkoff does not believe he was told about petechial hemorrhages, nor that she was severely dehydrated.

Paul Greenwood was a chiropractor who was on staff in the COS in Clearwater. On December 5<sup>th</sup> he was studying how to use the e-meter when called by his superior Andrea Sprecher a little before eight. (Sprecher confirms she was paged by Janice to help and she assigned Greenwood instead because he was stronger, yet still gentle) She told him to help take this girl to the hospital. Greenwood went to the Cabanas. Laura was in the room and let him in. Lisa was in the room, lying down with her eyes open, breathing loudly.

They carried her to car. Greenwood never saw any voluntary movement by any extremity or any body part nor did he see Lisa ever acknowledge his presence. Lisa did not talk on way to hospital; her breathing changed about halfway to the hospital and became very quiet.

#### **Alain Kartuzinski's Initial Taped Statement.**

On May 30, 1996 Kartuzinski was interviewed by Det. Suddler. Similar to Johnson's initial statement, Kartuzinski gave no hint of Lisa's severe psychosis or his involvement in setting up "caretakers" to watch her around the clock or that he had directed that he be updated by written reports on her day to day condition.

Kartuzinski indicated he knew Lisa in passing as he did hundreds of other parishioners. He was informed (he believes through a phone call from David Slaughter, Lisa's employer) that Lisa had been in an accident and was Morton Plant. When he couldn't find another minister to go, he went down to the hospital himself. He was allowed back to the area where Lisa's was being questioned by psychiatric nurse Joe Price. Lisa answered his questions, indicating she was oriented to time and date and apologized for her irrational conduct in undressing after the accident (check this). Lisa wasn't crying but seemed embarrassed. Price asked him to leave the room while he continued to question her; Kartuzinski walked to the corridor but where DeCuyper and another scientologist were, but remained within earshot. Lisa made it clear she did not want to stay at the hospital, but wanted to go back to the Ft. Harrison with her friends from the Church.

Price decided there was no reason to keep Lisa and she was allowed to check out. Alain had the idea that she just wanted to go for rest and relaxation and she gave no indication of seeking services. He drove her to the Fort Harrison, dropping her off so she could check into a room. He implies that Lisa checked into the room herself in the ordinary course of events. About ten minutes later, Kartuzinski went to the room and briefly checked on her, she said she was okay. He did not see her again throughout her stay.

His only follow up was calling the MLO and talking to "whoever answered the phone" and asking them to check on Lisa and see if she needed anything. Partway into the stay in a follow up conversation he was told she wasn't eating or sleeping well the first two or three days but that it was better now.

Alain said he didn't see Lisa again. He found out about her going to the hospital just before it occurred. He was notified in the afternoon or evening that there was some sort of medical difficulty (this was two to three hours before her being taken to the hospital). He called for someone to check it out. (He believes Lacy had brought the problem to his attention). Says this was Later that evening Janice came by and said Lisa had some infection and she was worried; asked to use the phone to call the doctor. She called Minkoff and Alain "guessed" that Minkoff acknowledged that something needed to be done (Alain claims not to have understood a lot of the terminology). When asked what happened to Lisa's personal effects and who cleaned the room, Kartuzinski said he had no knowledge but the hotel did have maids. The detectives sum up saying "So... at Lisa's request she was pretty much you say left alone during this period of time?" Kartuzinski responds "I imagine."

#### **Evidence of Alain Kartuzinski's involvement.**

Alain Kartuzinski is the senior CS or case supervisor and supervises the other auditors located with the Church in Clearwater. After being notified that Lisa had been in an accident and was at the emergency room, he showed up at the emergency room and remained either in the room with Lisa or within earshot in the entranceway during Nurse Joe Price's attempt to interview Lisa. He drove Lisa to the Fort Harrison and had others assist her in getting a room. After this point we cannot show Alain having further personal contact with Lisa.

Kartuzinski briefed many of the caretakers, instructing them that Lisa was a type three and telling them to prevent her from hurting herself or others. A number of witnesses have made clear that the plan was to put Lisa on an isolation watch in a destimulating environment and then pursue an auditing program known as the introspection rundown. What was occurring with Lisa is somewhat consistent with two Hubbard Bulletins, which deal with treatment of type threes and the curing of mental illness.<sup>36</sup> Houghton testified he was specifically told by Kartuzinski that Lisa was to undergo an introspection rundown. Marcus Quirino testified that he was told by Kartuzinski that Lisa was a type three and a folder error summary<sup>37</sup> had been done to do an introspection rundown; although it was not normal for Kartuzinski to himself do the auditing, auditors had to be specially trained in the rundown. Kartuzinski also requested written reports from the caretakers and directed Lacy Spencer and Security Guards to have them right out answers to specific questions concerning what she was eating and drinking. Spencer subsequently saw many of the reports (she did not read them) in a folder in Alain's office on top of Lisa's PC (pre-clear) folder. Thus, while we cannot prove that Alain actually read reports there appears to be sufficient circumstantial evidence that he assumed a supervisory role in Lisa's care.

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<sup>36</sup> HCO Bulletin of 24 November 1965 entitled Search and Discovery lists three types of PTS (potential trouble sources AKA suppressive persons) the last of which – type III is "beyond the facilities of orgs not equipped with hospitals as these are entirely psychotic." The bulletin notes "Medical care of a very unbrutal nature is necessary as intravenous feeding and soponifics (sleeping and quietening drugs) may be necessary, such persons are sometimes also physically ill from an illness with a known medical cure..... there will always be some failures.... As the insane sometimes can't be kept alive" HCO Bulletins of 23 January 1974, 20 February 1974 and 6 March 1974 deal with the introspection rundown.

<sup>37</sup> A folder error summary is a review of prior auditing sessions on the person who has become psychotic to look for errors in the auditing that may have caused or failed to prevent the problem.

Kartuzinski may have been involved with one or more of the conversations with Minkoff that led to Lisa's prescriptions (Minkoff's memory is unclear). Houghton testified that after Minkoff prescribed valium to help her sleep, he had a discussion with Alain in which Alain overruled its use out of concern that its use might preclude future auditing. Houghton instead suggested Benadryl be used. Alain agreed and suggested after consulting Hubbard references that aspirin be added to the mix. This was to block her hallucinations (according to Hubbard).<sup>38</sup> As a result of Alain's authority Hubbard force medicated Lisa on three occasions, injecting a mixture of Benadryl and aspirin down Lisa's throat without discussing it with Lisa or getting her permission and without getting a doctors or any other health professional's authority. Kartuzinski was consulted before Lisa was taken to the hospital. A central question on Kartuzinski then is whether this conduct constituted practicing medicine.<sup>39</sup> Also, the only testimony connecting Alain to this procedure comes from a single conversation related by hostile and immunized witness David Houghton who bears arguably equal responsibility with Kartuzinski.

#### **Admissibility of the Caretaker Records.**

As the investigation progressed we became aware that individual caretakers had made allegedly contemporaneous notes to be sent to Alain Kartuzinski indicating their experiences with Lisa and her progress or lack of progress. We attempted to subpoena all such records and eventually received approximately thirty pages of notes, covering nineteen shifts on eleven separate days that were written by eleven separate caretakers. The notes detail the severity of Lisa's psychosis and her refusal to eat and drink normally on any regular basis. They also note instances where Lisa was violent and restrained, where she attempted to leave and attempts to medicate her with prescription medications, herbal remedies, vitamins, over the counter substances and even magnesium injections. They are in stark contrast to the taped statements of Johnson and Kartuzinski and expose their initial attempt to mislead the police. At the same time however, the reports are clear evidence that those caretakers watching after Lisa endured abuse from her under very trying circumstances and were pursuing a course of conduct that they mistakenly believed would improve her condition. Clearly, the Church now believes while the records portray Lisa's situation as severe, they at the same time reflect extensive efforts to take care of her. They watched her around the clock, endured verbal, and physical abuse from and repeatedly tried to get her to eat and drink. They cleaned up when she defecated and urinated in her clothes and dutifully reported her circumstances to superiors.

One of the notes was is entitled MLO report, is in Johnson's handwriting and is signed by her as "Janice Johnson, M.O."<sup>40</sup> It is a directive dated the Friday before Lisa's death and indicates Johnson gave Lisa 2 gm MgCl Im at 10:30 and two 500 mb chloral hydrate and that she fell asleep immediately. Janice also records Lisa's respiration rate and notes her extremities are still cool but not cold. It further states "Sylvia needs relief, I will stay until replacement comes." This note corresponds with caretaker notes by Boykin indicating Johnson was present and gave Lisa Mg shots; it is also consistent with other testimony about Sylvia DeLaVega suffering a burn out after caring for Lisa. Johnson outlines the following plan:

Plan:

1. Valerie or watch personnel w/ medical training for next 8 hrs.
2. Needs 2L fluids when awake and attempt to feed.
3. Call if any ?'s or problems.

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<sup>38</sup> HCB 17 October 1969 allegedly indicates that pain of discomfort if a psychosomatic nature comes from mental image pictures. These are created by the thetan or living beings and impinge or press against the body. It further asserts " By actual clinical test, the actions of aspirin and other pain depressants are to (a) inhibit the ability of the thetan to create mental image pictures and also (b) to impede the electrical conductivity of nerve channels."

<sup>39</sup> Chapter 458 exempts practicing the tenets of any church in this state.

<sup>40</sup> While this abbreviation presumably stands for medical office(r), there is no such office or position. Janice is referred to as doctor in the caretaker notes and was introduced to Dr. Carrow and Sue Minkoff as Dr. Johnson.

Thus while the caretaker notes are useful and expose Kartuzinski's and Johnson's initial duplicity to the police, they are definitely a double-edged sword. Moreover, getting them admitted against an individual defendant may prove an exercise in frustration. The chain of custody is hopelessly confused and is complicated by the fact that they were in PC folders which are allegedly off limits for people of a lesser level than Lisa. Mark spent many hours trying to track down how these records were located and where the still missing records might be. It was in large part a fruitless effort. It appears that all the records were in Kartuzinski's office before Lisa's death. After Lisa's death they were gathered up by Annie Mora from Kartuzinski's office (which resembled a "pig sty") and sent to California. They were searched for relevant documents by Lynn Farney who apparently then sent documents to the attorneys for the Church in Clearwater. Lisa's PC folders (there are 33, numbered in chronological order) remain in Los Angeles; the original caretaker notes that have been found have been Bates stamped and are in the possession of the lawyers handling the civil case. The judge originally ordered that the entire pc folder be handed over to the plaintiffs in the civil case (they appealed on a claim of privilege and lost since it had been waived by the PR of Lisa's estate). They then attempted to renew the issue based upon the Religious Freedom Restoration Act and are appealing another adverse ruling. As a result the plaintiffs have not yet received the entire file. The search in additional folders for the missing records is simply too convoluted to explain here, however there will be understandable complaints when we attempt to introduce these as business records against an individual defendant concerning their completeness and accuracy. We are ill equipped to deal with these issues.

#### **Cause of Death and the Nature and Severity of Lisa's Symptoms**

Dr. Wood determined based upon the autopsy conducted by Dr. Robert Davis, the laboratory results reflecting vitreous levels, and consultation with outside experts in nephrology that Lisa McPherson died as a result of a pulmonary embolism, which she believed was caused by severe dehydration and extended bed rest. We have been supplied with opinion letters from high profile defense experts who agreed that Lisa did indeed die from an embolism. They have concluded, however, that the embolism was the result of a minor injury from the auto accident (or possibly self inflicted at a later time) with dehydration and immobility playing no significant role in her death. Additionally, Dr. David Minkoff the scientologist-physician who pronounced Lisa dead continues to believe that she was "septic" and that a massive infection may have played a part in causing diarrhea and "acute" (i.e. quick onset) dehydration. Minkoff bases his belief on a positive test for bacteria in her blood and his interpretation that the abrasions on her extremities were septic petechiae. None of the other experts, either defense, plaintiff or prosecution seem to accept this view and our experts discount the single blood test (two are normally drawn) as being contaminated by skin bacteria. The defense experts do suggest that the diarrhea may have contributed to her dehydration and may suggest that some type of infectious process predisposed Lisa to thrombus formation. They also believe that the vitreous readings are so high and inconsistent with one another that they must be disregarded as flawed.

An embolism is the blockage of an artery or vein by a plug or clot (in this case the later) that has migrated from another part of the body. In this case the embolus (clot) is believed to have originated in a thrombus in the left popliteal vein, located on the back of the leg behind the knee. A thrombus is a blood clot inside a blood vessel, as opposed to a clot outside the vessel in surrounding tissue. Because the embolism emanated from a vein, it would travel to the lungs (for the blood to be oxygenated) after passing through the heart. (check with Wood on this and consequences of embolism of this size migrating through the heart). As the pulmonary artery branched and became smaller the embolism blocked most but not all of the blood entering the left pulmonary artery. This would leave the right pulmonary artery unobstructed, with theoretically half of the lungs available for oxygenating blood and returning it to the heart for distribution to the body. This has led the plaintiff's experts in the civil suit to conclude that it was not the embolism, but dehydration that caused Lisa's death.

The visual evidence of Lisa's dehydration seems well established. The caretaker notes and testimony establish a continuing concern with the amount of food and fluid Lisa was taking in.



She was estimated to be 150 lbs. by paramedic Bonnie Portolano at the time of the accident and weighed only 108 at autopsy. Janice Johnson acknowledged that on the day of the death she looked very thin, as if she had lost weight and appeared to be "majorly" or very dehydrated prior to being taken to the hospital. Janice described Lisa's skin and sunken eyes as indicators of the degree of dehydration. Dr. Minkoff also indicated she looked "horrific" when she arrived at the Columbia NPR emergency room and appeared to be severely dehydrated. Despite generic language in the autopsy report that Lisa was of "average nutritional status" it is clear from Davis' testimony that he felt she showed obvious physical symptoms of dehydration. Davis describes a "Hippocratic Facies" as being present. This term normally used to denote the "face" of death is apparently used (or misused) by Davis to describe the sunken facial expressions, gaunt look and tightness of the skin indicative of significant dehydration. The photos confirm these observations.

The most dramatic evidence of dehydration however are the results of tests run on the vitreous humor taken from the chambers of the eyes at autopsy. These samples are drawn from both eyes in single syringe, then refrigerated or frozen (except when a portion is used to test for alcohol) until sent to the Weusthoff lab in Daytona Beach.<sup>41</sup> Research has confirmed that since the eye is a closed chamber levels of such substances as urea nitrogen, chloride, creatinine and sodium are accurate reflections of the level of those substances in the blood at the time of death. Lisa's levels were extremely elevated and indicated extreme dehydration<sup>42</sup>:

Vitreous Potassium	13.9mmol/l
Vitreous Urea Nitrogen	300 mg/dl
Vitreous Creatinine	2.6 mb/dl
Vitreous Chloride	161 mmol/l
Vitreous Sodium	180 mmol/l

All of these levels are significantly elevated. The Potassium level rises significantly in the hours after death and is therefore sometimes used to determine time of death. The other substances particularly, urea nitrogen remain relatively stable after death and continue to reflect pre mortem blood serum levels. Blood Sodium levels normally range from 135 to 145 with readings over 145 being considered diagnostic of hypernatremia. Levels as high as 180 are rarely seen a living patient. The 161 Chloride level is also significantly above normal (the normal range is 96 to 106 for serum chlorine). Creatinine is an end product resulting from muscle activity. Normal levels are between .5 and 1.4. Levels of creatinine are relatively unaffected by diet and it is therefore a useful measure of kidney function; a level above 2.0 in a patient not suffering from dehydration for instance would indicate half the kidney function had been lost. Urea Nitrogen is a substance created as a result of protein metabolism and produced in the presence of specific enzymes in the liver. Lisa's urea nitrogen level is extraordinarily high. Urea nitrogen is normally present at a ratio to creatinine of 10 to one; Lisa's urea nitrogen level is almost 100 times her already elevated creatinine level. In evaluating how levels this high would have affected a living patient, Wood consulted with Child Protection Team Head Jay Whitworth, who is a pediatric nephrologist (kidney expert) with experience running an adult dialysis clinic.<sup>43</sup> She has since consulted with other medical examiners and with nephrologist Michael Pickering of Tampa (co-inventor of gatorade). Both kidney specialists agree that while these levels are extremely high there is no reason to doubt their validity. At this level of dehydration, Lisa would have been severely and obviously symptomatic for a considerable time and for at least the last 24 hours would have been virtually unresponsive. These experts further believe that the extreme dehydration, which dramatically reduces blood volume and pressure and the immobility resulting from her condition, would have been the logical cause of the thrombus that led to the embolism.

<sup>41</sup> The sample was not sent off immediately and not tested until Jan 31 and February 1, 1996.

<sup>42</sup> Urine values were: sodium 53, potassium 83, specific gravity 1.025, chloride 151, osmolality 6.002. Protein was 300. There was also blood in the urine; glucose was negative bilirubin was negative and ketones were negative.

<sup>43</sup> Whitworth has not practiced in this area since becoming head of Child Protection Teams eleven years ago. He has testified frequently as a child abuse expert and testified for our office on dehydration issues in the Judith Lundy case.

Forensic Examiner Steve Nelson confirms Wood's conclusion in this regard as do plaintiff's experts Bandt and Coe<sup>44</sup> and Thorton.

As you are aware, the defense initially provided us with forensic reports from three experts, but reneged on an agreement to let me interview them when we would not turn over all autopsy materials in advance of the interview. The defense experts who provided letters all concluded, for slightly different reasons, that Lisa died suddenly of an embolism resulting from an injury suffered during her automobile accident seventeen days earlier. Predictably, all concluded that either the state of her hydration could not be determined or was not a significant factor in the embolism that caused her death. All indicated the death was not preventable and an accident rather than a homicide.

John Smialek, Professor and Head of Forensic Medicine at the University of Maryland, concluded that Lisa died "suddenly" from an embolism which he believed resulted from an injury sustained in the auto accident. As to the the issue of dehydration he noted:

There is conflicting clinical and chemical evidence related to her state of hydration at the time of death. Clinically, Dr. Davis described her as "normally developed white female" who appears ... "of average nutritional status ... " He does not describe sunken eyes or poor tissue turgor that one would expect with a pattern of severe dehydration. He described her as "incontinent of feces" and goes on to describe the bladder as containing 15 cc. of urine. He does not characterize the urine as dark yellow, concentrated, containing debris or any other details that would suggest severe dehydration. These clinical features, which do not suggest dehydration, conflict with chemical values obtained from testing of the vitreous humor. These tests show potassium, sodium, and chloride values that reflect hemoconcentration. The urea nitrogen value of 300 mg/dL is so high as to indicate that the deceased was in a state of severe renal failure. However, the microscopic sections of kidney do not support this finding nor do they support the diagnosis of dehydration. Therefore, I cannot state with a reasonable degree of medical certainty what state of hydration Ms. McPherson was at the time she died.

Smialek's concerns about the inconsistency between the clinical and chemical evidence are misguided. The sunken eyes and other symptoms of dehydration are dramatically present in the autopsy photos, which he did not have access to. Moreover, Davis described these symptoms in his deposition and included them in the autopsy under the term "Hippocratic facies". Apparently, the defense did not give this information to the experts and they were also unaware of the fact that Janice Johnson stated in her May 1996 taped statement that she observed these same symptoms before Lisa was taken to the hospital. Dr. Minkoff also stated under oath that Lisa appeared to be severely dehydrated when he saw her at the emergency room after her death. He also criticizes the failure of Davis to describe the urine as dark yellow or containing debris. While this is true, subsequent tests of the urine indicated its specific gravity was 1.025.<sup>45</sup> According to Whitworth this is about as concentrated urine as the kidneys are able to produce.

Smialek also expressed concern over the extremely elevated urea nitrogen levels which were out of proportion to the elevated creatinine levels and feels it would indicate renal failure. The experts we consulted whose expertise is in kidney function say the apparent discrepancy is explainable. Unlike creatinine, urea levels are diet sensitive; since they were feeding her protein powder with a high level of soy protein and since she was malnourished and catabolic (metabolizing the protein in her own body due to malnourishment), her urea levels would be expected to be further raised. They would expect this divergence under these circumstances as her kidneys (which were stressed but still functioning) struggled to excrete these toxic substances in her urine. Finally, Bandt points out that urea is produced in the presence of a specific enzyme in the mammalian liver and is not the natural product of bacterial degradation. There is no natural mechanism which he can think of which would cause all of these solute and electrolyte levels

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<sup>44</sup> Coe was a pioneer researcher in the use of vitreous fluid for forensic purposes. Bandt worked with him in some of those research articles. I was allowed to talk with Bandt without restriction earlier this year. Coe's wife was ill and not available. Dandar has recently informed me that Coe is again available and confirms Bandt's findings.

<sup>45</sup> This is at the high end of the normal range.

which are measured by independent tests to be skewed in the same direction. Moreover, he knows of no form of contamination that would cause the urea level to be raised rather than lowered.

Smialek also notes:

In addition to the thromboembolism which resulted in sudden death, Ms. McPherson also exhibited evidence of localized inflammation in microscopic sections of tissue obtained from her left leg. This inflammation adjacent to deep veins of her leg would have pre-disposed her to develop thromboses within these veins.

There is a dark bruise (about 6-8 inches in diameter) on the outside of the middle of the left calf and another bruise on the anterior median portion of the thigh, but neither appears to have been sectioned from the photographs. Wood does not believe that either bruise or the trauma that caused them would be related to the thrombus in the popliteal vein behind the knee. Thus there does not appear to be any section of tissue taken from an area adjacent to the location of the thrombus.<sup>46</sup> The only section that appears (exactness is impossible because Davis actually took the slides) to be cut is from a bruise on the left calf. It seems likely that there would be inflammation in any area of bruising; our experts do not appear to think this significant.

Finally, Smialek concludes that it is reasonable to believe that the inflammation was associated with an injury and that the factor precipitating this sequence of events was a motor vehicle accident or other trauma. There is of course no evidence either from the nature of the accident, from Lisa's statements or from her physical examination at Morton Plant to conclude she was injured in the accident. There is evidence of activity by her during her stay that could have caused injury or bruises, however, no indication of injury or bruise in the specific area of the thrombus. Gloria Cruz, Lisa's roommate, indicated she noticed a bruise on the back of Lisa's leg about a month before her death. She described the bruise as 2-3 inches in diameter, but did not remember which leg it was on.

Church attorneys also supplied us with the reports of Dr. Michael Baden and William Sturmer. Baden is currently a "Chief Consulting Pathologist" with the New York State Police and a former medical examiner. He was defense expert in the O.J. Simpson case and I believe recently testified in the nanny case (involving baby epan) that the baby's death was not from shaken baby syndrome but from a pre-existing skull fracture that had gone unnoticed (need to double check this). Baden concluded after reviewing the slides autopsy report, deposition of Joan Wood (in the public records suit) and David (in the civil suit) and the report of a Dr. Jerome Goodard<sup>47</sup> that:

'The history, autopsy, and microscopic findings are entirely consistent with left leg thrombi developing as the result of an injury incurred in a motor vehicle incident that had occurred 17 days prior to the embolization and death.'

Baden further states in his letter that the vitreous readings are inconsistent with the autopsy findings that Lisa was a "normally developed white female" of "average nutritional status". He further suggests that malnutrition and dehydration were added to the cause of death based upon the vitreous laboratory results. While it is true that Wood's conclusion as to cause of death is on the protocol created after Davis' departure and not in his initial draft of the autopsy report, Baden is incorrect in assuming that the symptoms of dehydration were not observed and noted. Baden also indicates that the laboratory results are indicative of severe kidney disease, even though the other autopsy results indicate the kidneys are normal. Both Whitworth and Pickering, disagree and think that most kidney experts will dispute this claim. The levels are extremely high, but are consistent with functioning kidneys overwhelmed by severe dehydration. Her ability to concentrate urine and the level of creatinine suggest there was no renal failure. As explained before the urea nitrogen level is explainable both due to diet sensitivity and catabolism of her own body protein due to malnutrition. Baden also raises concerns about the substitution of this sample for another because of what he believes to be inconsistency in the markings between the MEO and Weusthoff - the patient identification numbers and collection dates differ.

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<sup>46</sup> Reaching this conclusion may be much easier than proving it in court, in light of Davis' reluctance to fully affirm the autopsy report and his bad memory on other issues.

<sup>47</sup> My notes indicate that Goodard is an entomology expert who disputes Wood's suggestion that the abrasions are roach bites. We have not been given a report or authority to discuss the case with him.

Sturmer's letter is filled with a profusion of technical terms that appear designed to impress more than enlighten. He concludes that the "evaluation of the post mortem studies revealed acute dehydration", acute apparently meaning dehydration occurring in a day or less.<sup>48</sup> While he does not disregard the vitreous readings he is somehow able to conclude that the dehydration "may have accelerated the pre-existing condition of thromboembolism, but did not precipitate it and was otherwise not responsible for her demise in and of itself. He suggest that the urea nitrogen level is so high to be out of sync with the other readings and may be artefactual and questionable. He does not explain how is able to determine how quickly she became dehydrated from the autopsy and laboratory results); certainly the urea nitrogen would be unlikely to rise this high in a short period of time. He bases at least some of his argument on the fact that changes in the tissues adjacent to the thrombus suggest (early fat necrosis and deep bruising of the subcutaneous fat) that the injury was of few weeks duration. As indicated the microscopic slides do not come from a bruise adjacent to the thrombus (there is in fact no bruise at that location suggestive of a nearby injury). Her legs or covered with bruises of various ages and she had bruising over her lower right (check this ) flank as well.

In addition to these expert reports (I believe they have retained additional experts to whom they did not give us access), the Church lawyers have supplied us with a purportedly exhaustive study of all embolism deaths in Pinellas and Hillsborough Counties for the last seven years. Superficially, these present a variety of situations in which embolisms developed after injury in normally healthy individuals. None of course were found to be negligent homicides. The point is that while there may be many predisposing factors for thrombus and embolism formation, there is a significant group of cases in which they occur unpredictably and that no one can say with certainty that this could have happened in Lisa's case. Further, many of these people died even after competent medical attention was given to them at various stages.

I have also engaged Dr. Lennie Williams of Bay Pines Hospital as an expert witness who specializes in treating elderly and disabled patients and has frequently testified in cases of nursing home abuse. He has considerable expertise in dealing dehydrated patients and patients who are not taking in enough food and water to maintain their health. He said the autopsy pictures visually reveal strong evidence of severe dehydration even without the accompanying lab analysis. He agrees with our experts and those retained by the plaintiff that there is no reason to ignore the vitreous readings (he has no direct experience with vitreous readings as opposed to blood serum readings) as they are consistent with the physical evidence of severe dehydration. He indicates that Lisa would have been obviously ill for several days, virtually unresponsive for at least forty eight hours, and so unresponsive as to appear comatose for the last twenty four hours. He does not believe she would have been capable of voluntary movement on the last day of her life or of coherent speech. He does not believe that her dehydration was acute, in that the urea nitrogen levels could not rise to this level in a short period of time under any circumstances. Moreover, acute dehydration approaching this severity could only come after diarrhea so severe and voluminous and repetitive that it would have been equally negligent not to seek immediate medical help.<sup>49</sup>

Williams believes it likely based upon the testimony of Paul Greenwood that when he first saw Lisa in the bed, she was undergoing agonal breathing and experiencing the embolus. Williams believes that had Lisa been brought to a hospital while extremely symptomatic with dehydration, she would have been rehydrated and restored to partial health and her chances of survival would have been good to excellent even if she had later thrown the embolus. There is a significant likelihood that treatment for the dehydration might have prevented the embolism. He agrees that trauma may have been associated with the formation of the thrombus but that this alone would be extremely unlikely to have caused the embolism in an otherwise healthy patient.

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<sup>48</sup> This time limitation on what is meant by "acute" comes from the lawyers and is not directly mentioned in his report.

<sup>49</sup> He also believes this type of diarrhea would have produced intestinal and other body changes that would have been difficult to miss at autopsy. Dr. Wood indicates, however, that she and other forensic pathologists do not routinely open and check the interior of the intestines absent special circumstances and it is unlikely that Davis look for any such changes.

He believes the only reasonable possibility is that dehydration and immobility were substantial factors in her death.

Williams also points out that the timing and actions surrounding Lisa's being transported to NPR are incomprehensible. If indeed Lisa was believed to be septic any reasonable person especially persons such as Johnson, Arrunada and Greenwood would have immediately called 911 and had her transported to the hospital. In any event, it is difficult to imagine that their actions during this time frame were based upon genuine concern for Lisa's best interests.

Williams also believes that Johnson's actions in giving Lisa injections and Kartuzinski's actions in authorizing Lisa's medication with over the counter pharmaceuticals without her consent to be practicing medicine without a license.

### **The Davis Autopsy**

It is clear that defense experts (although they are not yet privy to all the information in our possession including the autopsy photographs) will aggressively attack Wood's conclusion that the embolism was caused by dehydration and extended immobility. The formation of the embolism from an underlying thrombus (a coagulation of blood inside the popliteal vein) would have produced no identifiable symptoms for Lisa's caretakers to notice until the embolism caused a significant blockage. Embolism's can be difficult to detect even by experienced medical personnel and frequently result in death even when they occur in a hospital setting. Therefore any case of culpable negligence would have to be based upon the failure to take action despite obvious symptoms of severe and potentially life threatening dehydration. If it cannot be established beyond a reasonable doubt that dehydration (and the immobility resulting from dehydration-induced lethargy) was a proximate cause of the embolism or if the symptoms of dehydration were not so obvious as to be detectable by the responsible parties, then culpable negligence cannot be proven.

In addition to concerns that the defense experts will be able to create a reasonable doubt in this regard, our case is made more complicated by the fact that Wood reached her conclusions as to cause and manner of death but did not actually perform the autopsy. The physician who performed the autopsy, not only has some inherent personality difficulties that make him a difficult witness, but he contradicts Wood in several significant aspects and will give the defense unwitting support for their attack on Wood's professionalism. Davis was head pathologist at a small hospital in Washington state, then late in his career trained as a forensic pathologist in Texas and was hired by Wood as an associate medical examiner. Personality difficulties grew between Davis and other staff members. In December 1994 (check whether this is 95 or 94 and check month) he was arrested after refusing to leave a bar then struggling with the police officers when arrested for trespass. Wood fired Davis, but relented when his lawyer threatened suit under the ADA on the grounds that Davis' problems were caused by his bipolar (manic depressive) disorder. Davis was allowed to stay until his daughter completed high school. Despite his past problems and his scheduled departure at the end of the school year he was assigned by Wood to conduct the autopsy in this case.

For some reason, the vitreous fluid was not sent for analysis for over a month (it is refrigerated/frozen, except when used for alcohol testing so the delay should have no effect on the tests' validity) but the results were in by early February. According to Wood, Davis dictated the autopsy report and made corrections, however, no conclusion was made as to cause or manner of death and no protocol was ever dictated. On October xx, 1996, eleven months after Lisa's death and five months after Davis had left the Medical Examiner's Office, Dr. Wood issued the final autopsy report, concluding that Lisa died of an embolism as a result of dehydration and extended bed rest; the manner of death (e.g. accident, homicide) was left as undetermined. The discrepancies between Wood and Davis concerning the issuance of the report and the conclusions reached appear irreconcilable and will either result in Wood being significantly impeached or the person who performed the autopsy being shown as having serious memory problems.

Wood and Davis disagree on whether she "assisted" or was otherwise present during the autopsy and was an eyewitness to the conditions reported in the autopsy and autopsy photographs. Wood describes herself as being in and out during the autopsy, although she did

not formally participate. Davis has no recollection of her being there, but acknowledges she could have been in and out. Davis did not believe he had sufficient information to finalize the autopsy and does not believe he could have reached the conclusion that the embolism was caused by dehydration and bed rest. He therefore will not support Wood's conclusion in this regard, but does confirm that Lisa appeared severely dehydrated at autopsy. He seems unfamiliar with the reliability of the vitreous fluid in reflecting pre-mortem sodium, creatinine and urea nitrogen levels in the bloodstream although he agrees that Lisa's values, if the tests are valid, were extremely high. While Davis refuses to affirmatively support Woods cause of death conclusions, this can be partially explained by the fact that a medical examiner is not well equipped to determine the clinical effect on a living patient of blood serum levels of sodium and blood urea consistent with Lisa's vitreous results. Wood took the additional step of consulting with a respected expert in nephrology before making her determination that Lisa had essentially been unresponsive and immobile for a significant period of time prior to her death. Davis also, believes, however (based upon his testimony in his civil deposition) that the defense experts conclusion that the embolus was the result of an earlier minor injury rather than dehydration and extended bed rest is also reasonable.

Potentially more damaging is Davis' refusal (at least in my informal discussions with him) to acknowledge the accuracy of the autopsy report itself. Wood has assured me that the autopsy report is exactly as Davis dictated it; her only additions were the conclusions as to cause of death on the protocol with no changes being made in the body of the report. Davis will only respond that he didn't sign the report. Although he doesn't think there is anything of substance in the report that is inconsistent with his recollection of the autopsy, he does point out language that he believes was worded by someone else. He indicates that he could more accurately say whether the report is his if the MEO had supplied him with his handwritten notes, but states these were for some reason destroyed by the MEO without his knowledge. In fact, a detailed review of Davis's files indicates that although he initially kept handwritten notes on a form of his own design, from which he then dictated his report, he apparently changed this procedure in approximately May of 1995 after he knew his employment situation had been resolved. There are no handwritten notes for any autopsy done by Davis since this period. Despite this evidence, Davis is absolutely adamant that he has never done an autopsy without using this form and that the notes were always incorporated with the autopsy file. He is convinced that Wood's office for destroyed his notes. They of course deny this.

Additionally, Davis recollection of events surrounding the autopsy report being finalized and his contact with Wood and Larry Bedore at the time of his civil deposition appears to be so flawed that defense attorneys will easily be able to demean him or use him to demonize Wood. Davis insists that he was not contacted by or consulted by Wood prior to her issuing the autopsy. She insists she contacted him by phone and advised him of her resolution and he expressed no disagreement. Davis also relates a bizarre series of conversations with Wood in which he claims they sent him his personnel file and the autopsy pictures (unsolicited) and told him he could not talk with police or prosecutors about the case. Wood and Bedore indicate that these conversations were not initiated by them but by Davis, who called them on a Monday in early January, livid that an investigator for the Church had shown up at his house over the weekend. He specifically requested the photos to prepare for a meeting with an attorney for the Church to discuss the case. Wood suggested he not talk voluntarily about an open case, but did not tell him to avoid either police or prosecutors. His personnel file was sent because it had been requested by the COS and she felt he should be aware of the material in their hands (which included Bedore's notes on the problems the office was having with Davis and a "confidential" agreement in which he was rehired for a limited time and agreed to leave voluntarily without suing). When prompted, Davis finally recalled being visited by the investigator and on prompting by his own lawyer acknowledged that he did in fact meet voluntarily with an attorney representing the COS; he continued to deny that he had initiated contact with Wood's office.

Thus, if it is necessary to call Davis to the stand to establish the autopsy and cause of death, he will not confirm Wood's conclusions, will not fully confirm the autopsy report, may raise questions about Wood having seen portions of the autopsy first hand, will accuse Wood's office of inexcusably destroying his handwritten notes, and will attribute to Wood and Wood's office a bizarre series of statements and actions, which I believe to be untrue, but which will either make

Wood look completely unprofessional or Davis to incompetent. If we call him we will be limited by the rules against impeaching our own witnesses and the defense will have a field day. My experience with having used Davis as a witness and talking to other prosecutors who have is that Davis, although intelligent and well intentioned, is erratic and unpredictable as a witness, often rambling in an unresponsive manner.

**Newly Submitted Documents on Deaths in Jails, Nursing Homes, Psychiatric Hospitals and Police Custody.**

## TRIAL SUMMARY (NOT YET COMPLETE)

### Accident

**Joe McDonald**- Person who Lisa ran into and who later purchased car from Lisa's mother

**Mark Fabyanic**- EMT who assisted Portolano with accident and Lisa

**Bonnie Portolano**- Paramedic at accident scene who took Lisa to Morton Plant.

### Morton Plant

**Dr. Flynn Lovett**- ER physician who was reluctant not to admit Lisa and allowed her to sign out against medical advice into care of "friends" in the congregation.

**Joe Price**- psych nurse who determined Lisa should not be Baker acted since she evidenced no intent to harm herself or others (what about ability to take care of herself)

**Cindy Price**- had release signed by two people from church on Lisa's behalf?

**Kim Brennan** – RN who had most contact with Lisa; describes robot like monotone and Lisa's refusal to open eyes or provided information except in response to directive. Asked to be able to leave with "friends from congregation"