

**MAR 28 2002**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**KENNETH J. MURPHY, Clerk  
CINCINNATI, OHIO**

**JACQUELINE CHESHER,**

**Plaintiff,**

**vs.**

**TOM NEYER JR., et al.**

**Defendants.**

**: Case No. C-1-01-566  
: (Consolidated With  
: Case No. C-1-01-771)  
:  
: Judge Spiegel  
: Magistrate Judge Hogan  
:  
:  
:**

**FIRST AMENDED CLASS ACTION COMPLAINT AND JURY DEMAND AND  
CLAIM OF UNCONSTITUTIONALITY**

**PRELIMINARY STATEMENT**

1. This civil rights class action challenges the shocking practice of using bodies in government custody for private, grotesque and disrespectful purposes. Defendants either engaged in the practice or permitted others to pose, disrupt and photograph the remains of deceased persons held in the custody of Hamilton County at the Hamilton County Morgue. Also challenged is the practice of publicly releasing crime scene photographs and autopsy photographs of the Plaintiffs' deceased relatives in violation of Ohio law. These actions were taken over a five month period ending in January, 2001 and at no time were they supported by any law enforcement or other legitimate governmental purpose. Over this period the County completely failed to protect the sanctity of the deceased persons and completely failed to respect the privacy and integrity of each of the deceased persons and their relatives. Class members seek to prevent further invasion of the dignity of their loved

ones and seek compensation for the violation of the class members' constitutional rights of privacy, liberty and due process as well as for violations of state law.

2. This First Amended Class Action Complaint amends the Class Action Complaint originally filed on November 15, 2001 as Robert Willenbrink on behalf of the Estate of Adam Richardson, Deceased, et al. v. Hamilton County, Ohio, et al., Case No. C-1-01-771. On December 28, 2001 this Court consolidated the Willenbrink action with this action, Chesher v. Neyer, et al., Case No. C-1-01-566, and directed that all pleadings henceforth be captioned as Chesher.

### **JURISDICTION**

3. Jurisdiction over the federal civil rights claims is conferred on this Court by 28 U.S.C. § 1343 (3) and (4). Jurisdiction over the state law claims is conferred by 28 U.S.C. § 1367(a). Venue is proper in this Division.

### **PARTIES**

4. Plaintiffs ROBERT WILLENBRINK on behalf of the ESTATE OF ADAM RICHARDSON, Deceased; THERESA PAYNE; ROBERT and CAROL WILLENBRINK; PEARL GARNER, Co-Administrator of the ESTATE OF JEFFREY BOWLES; PEARL AND FLOYD GARNER; RICHARD BOWLES, Co-Administrator of the ESTATE OF JEFFREY BOWLES; RICHARD AND CAROL BOWLES; ALICIA A. BOWLES and JENNA N. BOWLES, by PAMELA JENKINS; ROBERT FOLCHI on behalf of the ESTATE OF CHRISTINA FOLCHI; ROBERT AND CINDY FOLCHI, Individually and as Legal Guardians of MICAYLA A. FOLCHI; JACQUELINE CHESHER as Executrix of

the ESTATE OF ROBIN L. MELTON, Deceased; CLARA GREENE AND JAMES GREENE, individually and as co-executors of the ESTATE OF ULYSSES GREENE; MARILYN SENTENEY, individually and on behalf of the ESTATE OF THOMAS SENTENEY; GLENN MICHAEL SENTENEY; JOHN T. BRADY as Administrator of the ESTATE OF JOHN P. BRADY; JOHN T. AND LOIS J. BRADY; KATIE KOCH, individually and on behalf of the ESTATE OF DEBORAH BECKMAN; JESSICA KOCH, AMANDA KOCH, and CHRISTINA KOCH, by DOUGLAS J. KOCH; DANTE HILL, individually and as Executor of the ESTATE OF DERRICK THOMAS; DENISE THOMAS; WILLIAM F. GEARY on behalf of the ESTATE OF EDDIE D. GIBSON; KAREN GIBSON; BARBARA STEVENS, individually and as Executrix of the ESTATE OF BARBARA SOWARDS; CONNIE LEIST, individually and on behalf of the ESTATE OF EUGENE WHITE; GREG WHITE, individually and on behalf of the ESTATE OF EUGENE WHITE; JOYCE WHITE; MARY SMITH, individually and on behalf of the ESTATE OF TOBY MALAKOFF; ROSA NIX; and LINDA HOWARD, individually and on behalf of the Estate of RECIAL BALDWIN; ROY BERNARD SMITH, individually and as Administrator of the Estate of ROY LEE SMITH; and OSCAR SMITH are representatives and/or family members of deceased persons whose bodies were accessed, viewed, manipulated, or photographed by Thomas Condon, Jonathan Tobias, M.D., or one of their agents between August 2000 and January 2001 (inclusive) while such bodies were in the custody of the Hamilton County Coroner's Office, without permission from the legal representatives of the deceased, in violation of their constitutional rights.

5. Defendant Hamilton County, Ohio is a unit of local government organized under the laws of the State of Ohio. Hamilton County is responsible for the operation of the Hamilton County Coroner's Office and the Hamilton County Morgue.

6. Defendant Thomas Condon ("Condon") resides in Hamilton County, Ohio.

7. Defendant Jonathan Tobias ("Tobias") is a Hamilton County, Ohio resident and, for all times relevant to this case, he was a pathologist employed by the County. Defendant Tobias is sued individually and in his official capacity as an employee of the County.

8. Defendant Carl L. Parrott, Jr., M.D. ("Parrott") was at all times relevant herein the Hamilton County Coroner, responsible for the operation of the Hamilton County Coroner's Office and Hamilton County Morgue. Defendant Parrott is sued individually and in his official capacity as a County official.

9. Defendant Robert Pfalzgraf, M.D. ("Pfalzgraf") was at all times relevant herein an employee or agent of the Hamilton County Coroner, sharing responsibility for the operation of the Hamilton County Coroner's Office and the Hamilton County Morgue as Chief Deputy Coroner. Defendant Pfalzgraf is sued individually and in his official capacity.

10. Defendant Gary Utz, M.D. ("Utz") was at all times relevant herein an employee or agent of the Hamilton County Coroner, sharing responsibility for the operation of the Hamilton County Coroner's Office and the Hamilton County Morgue as a Staff Pathologist. Defendant Utz is sued individually and in his official capacity.

11. Defendant Terry Daly ("Daly") was at all times relevant herein an employee or agent of the Hamilton County Coroner, sharing responsibility for the operation of the Hamilton County Coroner's Office and the Hamilton County Morgue as Administrative

Aide to the Hamilton County Coroner. Defendant Daly is sued individually and in his official capacity.

12. Defendant Rhonda Lindeman (“Lindeman”) was at all times relevant herein an employee or agent of the Hamilton County Coroner, sharing responsibility for the operation of the Hamilton County Coroner’s Office and the Hamilton County Morgue as Administrator. Defendant Daly is sued individually and in her official capacity.

13. Defendants John Doe are individuals whose identities are unknown to the Plaintiffs. The John Doe Defendants assisted Thomas Condon in gaining access at the Hamilton County morgue to photograph the bodies. The John Doe Defendants are sued individually and in their official capacity as employees of Hamilton County.

#### **STATEMENT OF FACTS**

14. Between August, 2000 and January, 2001, each of the Plaintiffs in this action suffered the loss of a relative. The remains of each of these relatives were held for one or more days in the Hamilton County Morgue.

15. The Hamilton County Morgue is the place where Defendants Hamilton County and Parrott hold human remains for autopsies, ongoing criminal investigations or for other governmental purposes.

16. The Hamilton County Morgue is staffed and operated by Defendants Hamilton County and Parrott.

17. At all times relevant to this action Defendant Pfalzgraf served as the Chief Deputy Coroner with authority to act in the place of the Coroner. Additionally, Defendant Pfalzgraf had supervisory authority of Defendant Tobias.

18. At all times relevant to this action , Defendant Utz served as a Senior Pathologist with authority to act in the place of the Coroner. Additionally, Defendant Utz had supervisory authority of Defendant Tobias.

19. At all times relevant to this action, Defendant Lindeman served as Administrator of the the Hamilton County Coroner's Office and the Hamilton County Morgue with authority to act in the place of the Coroner.

20. At all times relevant to this action, Defendant Daly served as the Administrative Aide of the Hamilton County Coroner's Office and the Hamilton County Moruge with authority to act in the place of the Coroner.

21. Although Plaintiffs were required to permit Defendants Hamilton County, Parrott, Tobias, Pfalzgraf, Utz, Daly, Lindeman and the John Doe Defendants ("the County Defendants") to temporarily possess the remains of their loved ones, the Plaintiffs each expected that the remains would be treated with complete respect, consistent with the highest standards of care. This is true of remains that were encountered by the County Defendants at crime and/or death scenes as well as those held at the Morgue.

22. In or about August, 2000 the County Defendants permitted Defendant Thomas Condon to begin photographing the bodies of the Plaintiffs' deceased relatives.

23. Defendant Condon photographed bodies of deceased persons at the Hamilton County Morgue for at least a five month period ending in January 2001. His grotesque pictures included a deceased young woman whose hand rested on a copy of *Alice in Wonderland*. Other pictures showed the girl with a snail shell, with sheet music, with a torn piece of paper with the word "will" and a picture of a man showing his physique. Additional pictures included a deceased boy posed with an apple on his head.

Condon viewed, photographed and examined the bodies of plaintiffs' relatives and collected crime scene and other photos of these deceased persons from other defendants.

24. There was no law enforcement, medical or other governmental purpose for the photographs that were taken and collected by Defendant Condon nor for permitting him to have ongoing access to the remains of the Plaintiffs' deceased relatives.

25. Defendant Parrott has publicly stated that there are only two legitimate reasons to be at the morgue: you are either a body or you are attending an autopsy. The County Defendants, however, failed to ensure that persons present at the morgue were present for one of those two reasons. The County Defendants failed to maintain records of who was in the building or why they were there and failed to record the identity of visitors. Defendant Condon, in fact, never signed a log-in sheet. The County Defendants also failed to equip the morgue with satisfactory security equipment. The lack of equipment included the lack of digital cameras, the lack of a computerized keyless entry system, and an inadequate burglar alarm. The County Defendants' failure to maintain these security systems rendered the morgue beneath the security standards of other county buildings.

26. As a result of these deliberate failures to insure security it is not possible to know with precision the exact number of excursions Defendant Condon made into the morgue during this five month period or know all of his actions during each of these excursions. On information and belief, during these excursions Defendant Condon opened morgue drawers, viewed deceased persons, moved and manipulated the bodies of the deceased persons, and otherwise failed to respect the dignity of the human remains, in addition to taking photographs of deceased persons.

27. Dr. Parrott was personally aware of the fact that Defendant Condon intended to take photos of the human remains in the custody of the Hamilton County Coroner's Office for Condon's own commercial purposes, having been shown examples of such photos before granting Condon access to the Morgue. Dr. Parrott authorized Condon to enter the facility and put no restrictions on his activity in the facility. Condon and Dr. Parrott agreed that visual images of the deceased family members would be captured by Condon without the consent of the families.

28. Defendants Tobias, Pfalzgraf and Utz performed autopsies of family members of the Plaintiffs and permitted Defendant Condon to photograph those autopsies and often photograph the Plaintiffs' deceased family member for purposes unrelated to the autopsies, all without securing any consent from the family members.

29. On at least one occasion Dr. Tobias disturbed the quiet repose of one of Plaintiffs' deceased at a death scene and photographed her in a pose that had no law enforcement purpose. Dr. Tobias shared crime and death scene photos with Defendant Condon and did not preserve them as required at the Coroner's Office.

30. Defendants Pfalzgraf and Utz have admitted that they personally observed Defendant Condon taking photographs of corpses and took no action to question his presence or activities.

31. Defendants Lindeman and Daly permitted Condon unsupervised and unlimited access to the Morgue and to the remains of the Plaintiffs' family members without securing any consent from the family members themselves.

32. The knowing and deliberate failure to preserve the dignity of the remains of the Plaintiffs' loved ones was consistent with a tradition of disrespect for bodies

exhibited by the County defendants. Specifically, during the five months of photos and other actions by Condon and for several years previously, the County was in litigation with other relatives of deceased persons based on its former practice of removing corneas from deceased persons without authorization from the relatives.

33. The actions of the County Defendants and Condon have been pursuant to a policy and custom of Hamilton County.

34. Defendant Condon acted as an agent, co-conspirator, and/or joint venturer of the County Defendants.

35. The actions of the County Defendants and Condon have been taken pursuant to an agreement or conspiracy to injure the person or property of the plaintiffs.

36. By taking exclusive custody of the bodies, the County Defendants became the sole protector of the integrity and peaceful repose of the deceased relatives. By allowing access to the bodies of the relatives of the Plaintiffs for brutal, demeaning, and harmful purposes, the County Defendants have failed to protect the rights of the plaintiffs and engaged in acts which shocks the conscience.

37. The Defendants' conduct constitutes an arbitrary exercise of power and abuse of government power and shocks the conscience. Defendants have acted maliciously, with deliberate indifference and in reckless disregard to the privacy rights, associational rights, property rights and other federally protected rights of the plaintiffs.

38. As a result of the wrongful actions of defendants, plaintiffs have sustained great pain and suffering and emotional distress.

## CLASS ACTION ALLEGATIONS

39. Plaintiffs bring this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Plaintiffs bring this action individually and on behalf of the Class Members that they seek to represent. The Class is defined as follows:

The family members and estates of all the deceased whose bodies were accessed, viewed, manipulated, or photographed by Thomas Condon, Jonathan Tobias, M.D., or one of their agents between August 2000 and January 2001 (inclusive) while such bodies were in the custody of the Hamilton County Coroner's Office, without permission from the legal representatives of the deceased.

40. The Plaintiffs and all Class Members seek damages and other relief, including but not limited to, reimbursement of costs, litigation expenses, interest to the extent legally applicable, punitive damages, attorneys' fees, injunctive relief, and any other relief to which they may be entitled in law and/or equity. The family members' claims are not pursued solely through the Estates.

41. The Class is believed to number in excess of 1000 people. The number of Class Members is so numerous that joinder of all members is impracticable. Plaintiffs believe that the Class consists of numerous persons whose deceased family members were in the Hamilton County Morgue over at least a five month period. The number of Class Members and the identity of the Class Members easily can be obtained through the records of the Defendants.

42. The claims of Plaintiffs are typical of the claims of the Class that they seek to represent. The Defendants have treated all of the Class Members the same. Additionally, each member of the Class is entitled to the same form of relief.

43. Given their direct injuries, clear stake in the outcome of this action, and lack of conflict with the other members of the class, the named Plaintiffs will protect fairly and adequately the interests of the members of the Class. The Plaintiffs chosen counsel are experienced in class action, civil rights, and tort litigation and will diligently and professionally prosecute the litigation.

44. Common questions of law and fact exist as to the Plaintiffs and all members of the Class. The common issues include but are not limited to:

- A. Whether the Defendant Condon's actions constituted an abuse of a corpse;
- B. Whether the County Defendants failed to supervise Defendant Condon;
- C. Whether Defendant Tobias's actions constituted an abuse of a corpse;
- D. Whether the Defendants failed to supervise Defendant Tobias;
- E. Whether Defendant Condon conspired with Defendant Tobias to abuse corpses;
- F. Whether Defendant Condon conspired with the County defendants to abuse corpses;
- G. Whether the family members and estates of all the deceased whose bodies were accessed, viewed, manipulated, or photographed are entitled to damages;
- H. Whether the defendants acted intentionally, with deliberate indifference, maliciously, and negligently;
- I. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to compensatory damages, and, if so, the nature of such damages;
- J. Whether the plaintiffs and the members of the Plaintiffs' Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and
- K. Whether Plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.

45. A class action is superior to all other available methods to adjudicate this litigation. Additionally, common issues predominate over individual issues. The size of the class renders joinder impracticable. The failure to certify the class likely will prevent the families residents from pursuing their claims because of the expense of individual litigation. Individual litigation will be burdensome, time consuming, and repetitive. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and it provides access to the courts for several families whose relatives were unlawfully photographed. Accordingly, class certification pursuant to Federal Rule 23(b)(3) of the Federal Rules of Civil Procedure is desirable and appropriate.

**COUNT ONE – 42 U.S.C. §1983**

46. Plaintiffs incorporate by reference all other allegations of the Complaint as if fully rewritten.

47. Defendants have, under color of law, deprived plaintiffs of rights, privileges and immunities secured by the First and Fourteenth Amendment to the United States Constitution, including but not limited to property and privacy rights and to due process of law.

**COUNT TWO - §1983 CONSPIRACY**

48. Plaintiffs incorporate by reference all other allegations of the Complaint as if fully rewritten.

49. Defendants have, under color of law, engaged in a conspiracy to abuse the corpses of the deceased and to photograph such corpses for personal reasons, all thereby depriving Plaintiffs of rights, privileges and immunities secured by the First and Fourteenth Amendment to the United States Constitution.

**COUNT THREE - STATE LAW CONSPIRACY**

50. Plaintiffs incorporate by reference all other allegations of the Complaint as if fully rewritten.

51. Defendants have maliciously engaged in a conspiracy to abuse the corpses of the deceased and to photograph such corpses for personal reasons, all thereby causing injury to the Plaintiffs.

**COUNT FOUR – STATE LAW NEGLIGENCE OF COUNTY DEFENDANTS**

52. Plaintiffs incorporate by reference all other allegations of the Complaint as if fully rewritten.

53. Hamilton County, Parrott, Tobias, Pfalzgraf, Utz, Daly, Lindeman, and Doe ( the County Defendants) were negligent in conducting a proprietary function pursuant to Ohio Revised Code 2744.02 (B)(2) and/or was negligent in conducting a governmental function within a government building pursuant to Ohio Revised Code 2744.02 (B)(4).

54. In the alternative, the County Defendants, by maintaining custody and control of the bodies of the deceased for the specific purpose of permitting Defendant Condon to view and photograph the bodies for non-governmental purposes, engaged in

an activity that is outside of the scope of the County's responsibilities and obligations, which suggests that the activity was outside of the County's traditional quasi-judicial function, and thus proprietary in nature, rendering the County Defendants liable to the Plaintiffs and to members of the class for the injuries that their conduct caused the Plaintiffs and members of the class to sustain.

55. In the alternative, to the extent it is determined that the County Defendants authorized and/or approved and/or permitted Defendant Condon to gain access to the bodies and to photograph the bodies and gave County photographs to Defendant Condon, the County's activities are not functions expressly delegated to the Coroner under the Ohio Revised Code and are not activities performed in connection with either a governmental or proprietary function. The County Defendants, therefore, are liable for their willful and wanton conduct because their conduct falls outside of the protections afforded to the County by the General Assembly and because the conduct caused injuries to the plaintiffs and to members of the class.

56. As a proximate cause of the county Defendants' negligent conduct, the Plaintiffs and members of the class have suffered injuries including serious emotional distress.

#### **COUNT FIVE – NEGLIGENCE SECURITY**

57. Plaintiffs incorporate by reference all other allegations of the Complaint as if fully rewritten.

58. The County Defendants admitted lack of proper security allowed Defendant Condon access to the morgue to prepare a documentary and to view and photograph

bodies. The lack of security included but is not limited to, failure to supervise Defendant Condon and failure to record the ingress and egress of both employees and non-employees in the morgue, and the failure to maintain proper security equipment.

59. As a proximate cause of the county Defendants' negligent conduct, the Plaintiffs and members of the class have suffered injuries including serious emotional distress.

#### **COUNT SIX – ABUSE OF CORPSE BY ALL DEFENDANTS**

60. Plaintiffs incorporate by reference all other allegations of the Complaint as if fully rewritten.

61. The County Defendants, by permitting Defendant Condon to view, photograph, manipulate and pose the bodies of the deceased for personal, non-governmental use, engaged in conduct that was intentional, reckless, and/or negligent which constitutes an abuse of corpses. The County Defendants acted with malicious purpose, in bad faith, and in a wanton manner.

62. Defendant Condon, by viewing, photographing, manipulating and posing the bodies of the deceased for personal, non-governmental use engaged in conduct that was intentional, reckless, and/or negligent which constitutes an abuse of corpses. Defendant Condon acted with malicious purpose, in bad faith, and in a wanton manner.

63. As a proximate cause of the county Defendants' negligent conduct, the Plaintiffs and members of the class have suffered injuries including serious emotional distress.

**COUNT SEVEN – AIDING AND ABETTING IN AN ABUSE OF A  
CORPSE**

64. Plaintiffs incorporate by reference all other allegations of the Complaint as if fully rewritten.

65. The County Defendants, by permitting Defendant Condon direct access to view and photograph the bodies of the deceased, substantially assisted Defendant Condon in his nefarious scheme and plan. The County Defendants, therefore, directly aided and abetted Defendant Condon when he abused the corpses of the deceased.

66. As a proximate cause of the county Defendants' negligent conduct, the Plaintiffs and members of the class have suffered injuries including serious emotional distress.

**COUNT EIGHT – UNAUTHORIZED DISCLOSURE OF NONPUBLIC  
MEDICAL INFORMATION BY DEFENDANTS COUNTY AND TOBIAS**

67. Plaintiffs incorporate by reference all other allegations of the Complaint as if fully rewritten.

68. Ohio Revised Code Section 313.10 imposes specific guidelines for the release of public records related to the functions of the County Coroner. The requirements include that records only can be provided with a proper written demand to review records and accompanied by payment.

69. Despite the legislative requirements contained in the Ohio Revised Code, Defendant Tobias provided Condon County records including but not limited to photographs of death scenes and photographs of deceased. Prior to releasing this information, the County and Tobias failed to obtain a written request or the payment of

money. This release of this information constitutes the release of nonpublic medical information.

70. As a proximate cause of the county Defendants' negligent conduct, the Plaintiffs and members of the class have suffered injuries including serious emotional distress.

**COUNT NINE- INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS BY  
ALL DEFENDANTS**

71. Plaintiffs incorporate by reference all other allegations of the Complaint as if fully rewritten.

72. The putative class members, all family members, have a property interest in a corpse. Along with this right comes the right to have the body treated with respect without outrage or indignity thereto. Any disturbance to this right is an actionable wrong.

73. The actions of the Defendants of mishandling of a dead body, photographing and permitting the photographing, accessing and viewing of the bodies was so beyond the normal acts of decency that the actions naturally offend the sensibilities of the public and particularly would traumatize family members of the decedent.

74. By intentionally permitting the bodies of the deceased to be used for such grotesque purposes, the Defendants intended and foresaw that their actions would cause family members emotional distress. By promoting Condon's actions and by assisting Condon, Defendants either intended to cause emotional distress or knew or should have known that such actions would result in serious emotional distress to class members

75. That Defendants' actions proximately caused the Plaintiffs and members of the class to suffer physical manifestations, psychic injuries, including anguish, trauma, and serious emotional distress.

**COUNT TEN – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS  
BY ALL DEFENDANTS**

76. Plaintiffs incorporate by reference all other allegations of the Complaint as if fully rewritten.

77. The actions of the Defendants of photographing and permitting the photographing, accessing and viewing of the bodies was so beyond the normal acts of decency that the actions naturally offend the sensibilities of the public and particularly would traumatize family members of the decedent.

78. The family members who learned of the actions have suffered and will continue to suffer emotional distress.

79. By negligently permitting the bodies of the deceased to be used for such grotesque purposes, the Defendants knew or should have known that their actions would cause family members emotional distress.

80. The Defendants' negligent conduct proximately caused injury to the Plaintiffs and members of the class including physical manifestations, psychic injuries, mental anguish, trauma, and serious emotional distress.

81. Any claim by Defendants that they are, or any of them is, immune from liability for this or any other claim or for any damages, whether such immunity be claimed pursuant to statutory or common law, would be inconsistent with the Constitution of the State of Ohio (*see* Butler v. Jordan, 92 Ohio St.3d 354, 750 N.E.2d

554 (2001)). Moreover, Ohio Revised Code Chapter 2744 et seq. violates the Ohio Constitution to the extent it purports to grant any immunity to political subdivisions.

**COUNT ELEVEN – HARM TO THE PLAINTIFFS AND CLASS AND UNJUST ENRICHMENT ON DEFENDANTS**

82. Plaintiffs incorporate by reference all other allegations of the Complaint as if fully rewritten.

83. Plaintiffs and Class Members, including the Estates of the deceased, were the victims of Defendants' wrongful conduct. As set forth above, the accessing, viewing, manipulation, or photographing by Thomas Condon, Jonathan Tobias, M.D., or one of their agents between August 2000 and January 2001 (inclusive) while Plaintiffs' decedents' bodies were in the custody of the Hamilton County Coroner's Office, without permission from the legal representatives of the deceased, was for personal, non-governmental use.

84. By way of their wrongful conduct, Defendants intended to and did obtain access, view bodies, manipulate bodies, and take and obtain photographs, resulting in personal gain.

85. As a direct and proximate result of the wrongful conduct of Defendants, Plaintiffs and Class Members, have been injured in an amount to be determined at trial.

86. In particular, Defendants, by using the bodies of the deceased for such grotesque purposes, and/or negligently permitting such use, have been unjustly enriched as a result of the accessing, viewing, manipulation, and photographing of Plaintiffs' deceased.

87. If the Defendants have been unjustly enriched, the Estates of Plaintiffs' decedents are necessary parties who have claims for damages as a result of the conduct alleged in this Complaint.

88. In addition, or in the alternative, by using the bodies of the deceased for such grotesque purposes, and/or negligently permitting such use, the Defendants may have arrogated to themselves property which they should not, in equity, hold nor benefit from, resulting in the creation of a constructive trust. Justice requires that Defendants not be entitled to derive pecuniary benefits from their celebrated wrongdoing such that a constructive trust should be imposed now and hereafter on any such benefits.

89. If the Defendants hold property belonging to the Estates of Plaintiffs' deceased, such Estates are necessary parties who have claims for damages as a result of the conduct alleged in this Complaint.

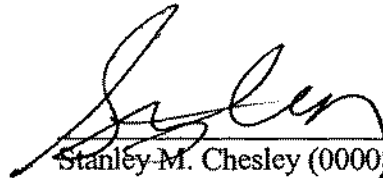
#### **PRAYER FOR RELIEF**

**WHEREFORE**, the plaintiffs, on behalf of themselves and all others similarly situated, prays the Court to enter judgment against the defendants and in favor of the Plaintiffs, on behalf of herself and the members of the Plaintiffs' Class, and to award the following relief:

- A. Certifying this action as a class action pursuant to Federal Rule of Civil Procedure 23;
- B. Awarding each class member compensatory damages for the acts complained of herein;
- C. Awarding each class member punitive damages for the acts complained of herein (punitive damages are not sought against the County);

- D. Awarding the class costs and attorneys' fees against the defendant, as allowed by law, and/or awarding counsel for the class attorneys' fees;
- E. Granting such other or further legal and/or equitable relief as may be appropriate under the circumstances.

Respectfully submitted,



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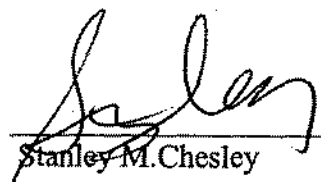
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COUNSEL FOR THE PLAINTIFFS AND  
THE CLASS THAT THE PLAINTIFFS  
SEEK TO REPRESENT

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues that are triable by a jury.



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing First Amended Class Action Complaint and Jury Demand and Claim of Unconstitutionality was served by regular U.S. Mail upon the following this 26th day of March, 2002:

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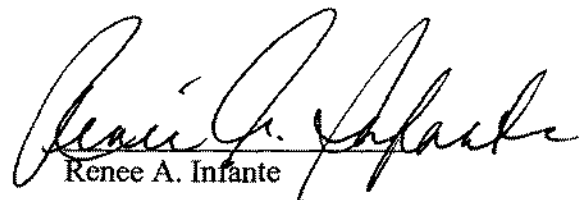
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