

Justices Will Not Consider Earnhardt Autopsy Photo Case

Without comment, the U.S. Supreme Court has rejected the petition of a student newspaper at the University of Florida, the *Independent Florida Alligator* (Gainesville), to access the autopsy photos of race car driver Dale Earnhardt. Access to the photos became restricted after an amendment to Florida's Public Records Law was passed by the Florida legislature in March 2001, following the accident that killed Earnhardt during the last lap of the Daytona 500 on Feb. 18, 2001. The amendment reversed Florida's earlier law that for nearly 100 years had allowed autopsy photos to be public. Now anyone wishing to examine autopsy photos must file a court petition and demonstrate "good cause." The name of the case is *Campus Communications v. Theresa Earnhardt et. al.*, No. 03-484.

Teresa Earnhardt, Dale Earnhardt's widow, had been instrumental in the passage of the amendment, in part due to an earlier incident where 86 autopsy photos of other race car drivers, Rodney Orr and Neil Bonnett, were posted on the Internet following their deaths during practice runs prior to the 1994 Daytona 500. Orr's father, Beacher Orr, had testified on Teresa Earnhardt's behalf in urging the Florida legislature to pass the amendment.

The *Orlando Sentinel*, along with other newspapers, had originally requested access to the autopsy photos in order that an expert in biomechanics could examine the photos to determine the cause of Earnhardt's death. According to an article posted on the Web site of the Reporters Committee for Freedom of the Press (RCFP), the expert determined that Earnhardt's death was the result of "violent head-whipping action" which was contrary to NASCAR's findings that he had died as the result of a faulty seatbelt. RCFP's story is available online at www.rcJP.org/news/2003/0703.html. (See "Florida Autopsy Records Remain Sealed" in the Summer 2002 issue of the *Silha Bulletin*, "Autopsy Records Laws Restricting Access" in the Winter 2002 issue of the *Silha Bulletin*, and "New Florida Law Closes Door on Autopsy Photos" in the Summer 2001 issue of the *Silha Bulletin*.)

In 2001, the *Alligator* had filed its own petition to view the photographs to determine whether the official investigations into Earnhardt's death were adequate. Tom Julin, attorney for the *Alligator*, told the RCFP, "There was a very serious issue about whether NASCAR had covered up the true cause of Dale Earnhardt's death." But while that suit was pending, the amendment restricting access was passed. It was applied retroactively to the *Alligator's* lawsuit, and the

petition was denied. The decision was upheld by an appeals court, and the *Alligator's* appeal to the Florida Supreme Court in July 2003 was denied.

The RCFP reported that the *Alligator's* brief to the U.S. Supreme Court argued that, "the Florida Legislature's decision to remove autopsy photographs from public view is directly analogous to a governmental decision to remove thousands of books from public library shelves because the government believes that the content of the books is no longer suitable for the public." That article is available online at www.rcJP.org/news/2003/1204campus.html.

United Press International reported that the *Alligator's* brief also questioned whether a ban on "viewing and copying of a broad category of traditionally open government records" is "unconstitutionally overbroad because the viewing restriction does not serve a compelling governmental interest."

Julin told the *News-Journal* (Daytona Beach), "Public records should be public to everyone. The law now lets judges pick and choose who gets to see public records. That violates the First Amendment. Autopsy photographs have been open to the public for decades. They have allowed reporters and others to discover malpractice, product defects, and crimes overlooked by medical examiners." Julin added that privacy rights can be protected by a law that allows the photos to be inspected without copying them, according to the *News-Journal*.

Upon hearing the U.S. Supreme Court's decision not to hear the case, Parker Thompson, attorney for Teresa Earnhardt, told the *Orlando Sentinel*, "The Earnhardt case is done. It's over."

— Elaine Hargrove-Simon
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