

**THE DOCTOR WHO WROTE A BOOK ABOUT WHEN TO CALL 911 – WON'T STOP CALLING.**

**Dr. Perper during the Burial Hearing:  
February 15, 2007**

THE COURT: I am going to have them remain here and my good medical examiner, nice to see you.

DR. PERPER: It's nice to be seeing you, Your Honor.

THE COURT: Good to see you.

DR. PERPER: It is good to see you.

THE COURT: We are going to give you a seat somewhere, because I know --

DR. PERPER: This is our legal counsel.

THE COURT: Nice to meet you.

THE COURT REPORTER: Your name?

MS. EICHELE: Patrice Eichele.

THE COURT: And the medical examiner, it's independent position?

DR. PERPER: Yes.

THE COURT: Does he work for the country commission?

MS. EICHELE: He's appointed by the Governor as a county employee.

THE COURT: I remember all your predecessors. You have done a great job for us. I appreciate it.

DR. PERPER: Thank you, Your Honor.

THE COURT: We are going to have you take the best seat in the house. Is anyone requesting that he should be placed under oath for purposes of formality?

MR. RALE: I will stipulate that he is one of the most honest guys in the country.

(Joshua Perper is called as a witness and examined by The Court)

**EXAMINATION BY THE COURT OF DR. JOSHUA PERPER.**

Q State you name for the record.

A Joshua A. Perper.

Q What is the country – what is your country?

A I was born in Romania.

Q What year did you come here?

A Well, I came her to specialize in forensics after I finished medical and legal studies.

Q What year was that?

A Sixty-seven.

Q They kid around with my accent, they say, when did I come here?

A My accent has a advantage, because once you speak to someone, they remember me.

Q You have been with us at least, as the Medical Examiner, for at least ten years?

A Thirteen.

Q You replaced Ronald, right?

A Yes, that's correct.

Q All right. We have issues, many issues, and I want to just start off a little bit and get a feel for this. We want to protect Ms. Smith's body. We want to give it the respect and

dignity that it deserves. That's the overriding issue concerning you and I and everybody else here. What happens now with her body?

A Well, I think that we have a number of decisions, of course, to place over time, and some of them will change. This is Friday, we got the California court –

Q I don't want the legal. I want the biological.

A Biological?

Q Where is she now, physically?

A She is physically under refrigeration and she is not significantly damaged to any degree. However, any further delay might reach a point where she would be damaged.

Q Tell me about that. What do you mean by damage? You can be descriptive.

A Refrigeration keeps the normal processes of body deterioration, which will occur after death, from being very fast, so it delays them significantly. However, this delay is not always consistent and at any time, it can become more much pronounced.

Q When?

A It's had to make a determination.

Q I am not going to put your feet to the fire. Do we have a week, a month?

A I cannot tell you, Judge. What I can tell you is at this time, we finished our examination, we took all the sampling necessary. If anyone would require additional sampling for testing, we have the capability of doing so. In terms of doing DNA, we take DNA sampling in every death we have an autopsy. In this case, we took much more.

Q Why?

A Because we expected there would be a number of people that might be qualified by the court.

Q Because why?

A Because they might ask for repeated DNA testing and , therefore, we want to make sure that we were able to comply.

Q This DNA, how many samples did you take?

A We took first three DNA cards. On each one of those three DNA cards, there is a splotch of blood, which can be used for DNA. This can be kept indefinitely, because the blood is absorbed into the sponge paper and it becomes dry and it can virtually –

Q Take your time, because I was thinking about you last night. I knew I was going to visit with you today. I had that feeling. So take your time, I need a lot of information.

A Sure. I will be glad to provide it.

Q I need your guidance.

A The second thing is, we have several vials of blood, which can also be used for DNA. In addition to that, we have a piece of bone with bone marrow, which is used for DNA.

Let me just make an explanation. Usually DNA checks the nuclei of the cells, so we need cells, which have nuclei. And such cells are present in the blood in some of the white blood cells and are present in the bone and the bone marrow. We also had preserved hair. We really, I must say, we did an extremely vast array of tests. All this testing is available. There's absolutely no reason to keep the body at this time.

Q I am in anticipation. We have to stay ahead, right. That is how you and I have survived the wars. Staying ahead of what is going to happen, right, we try to, don't we? The body, as it is presently in the condition it's in, Ms. Smith's body, how long more can you keep taking DNA from it?

A Well, if you do the –

Q Can I take it in two years?

A Yes, you can. It's a question of the composition. In another words, if the DNA is present in the nuclei –

Q Is it good in five years?

A No. If the tissue decomposes completely, then there is no DNA.

Q How long would it decompose in refrigeration? I know I am putting your feet to the fire.

A No. It's very difficult. But if the process of the decomposition is definitely stalled by refrigeration –

Q How long does it really stall?

A As I said, Your Honor, it depends if the body is fat –

Q You can tell I'm a former prosecutor.

A Well, we deal with prosecutors all the time. So it depends on a variety. If she has an infection and maybe she had one, this might accelerate, so that is why I cannot give you a reasonable estimate.

Q Now, there are issues down the road on the chain of custody, you and know what that is.

A Yes.

Q Did you take the DNA from her body?

A WE are medical examiners and, therefore, the chain of custody of evidence, which we take from an individual who unfortunately died, is very tight. In this particular case, there was a very tight and document chain of custody, which in my opinion, cannot raise any kind of suspicion that something happened.

Q No conspiracy theory, you know, when I say that, I mean we want to have a tight chain of custody?

A Correct.

Q How many people were present when the DNA was taken?

A The people who were present, there were approximately, as an estimate, Your Honor, about six, which was myself, the other medical examiner who worked with me on the autopsy, there was two medical examiners online. There was the chief toxicologist present and there was a technician who assisted us.

The samples, which you have made your concern about that were given directly to the chief toxicologist, which was present and this is labeled and, you know, everything is done.

Q Have you been informed that there is an examination by the Seminole Police Department that there – what is the phraseology, my Sheriff's legal advisor?

MR. LYNCH: Investigation.

Q That there is a criminal investigation, have you been informed of that?

A No, I was not informed of an investigation. The only thing which I know about is the statement of Chief Tiger at the press conference.

Q Has it reached the level of criminal investigation?

MR. LYNCH: It's a death investigation.

Q Have you been informed that there is a death investigation?

A We have been informed.

Q By the Seminole Police?

A Those are statements the Chief of Police made at my press conference, the first one. At that time, he said that there was no evidence of foul play and they did not find drugs of abuse.

Q Let's assume that it turns into a criminal investigation, will you need to take any further testing of Ms. Smith's body?

A No, sir. It doesn't matter if it's a criminal investigation – if it is a criminal investigation or a civil investigation or whether it's a civil investigation alone. Or whether it's a paternity suit, it does not matter. In my opinion and it's my opinion as a professional, we did really the maximal and optimal testing, which we did in this case and we have plenty of material to present to whoever wants to do the test.

Q So on Ms. Smith's body you did everything, you left nothing else because you knew you were going to walk through many inquiries concerning this?

A Correct. And the other thing which we did and is going to help us significantly, and has helped us significantly in our investigation, is that we spoke to a number of people, such as Mr. Stern, the doctor who flew with the deceased from the Bahamas here. So, I – sometimes you look in retrospect and you think, I should have done this or that.

Q Right, late at night.

A I don't have any concern. We did everything professionally and more than that what we had to do.

Q Now, let's go on a little bit of a different road. Let's assume that the Seminole Police Department informs the Sheriff's Department that they are going to want to do additional testing. If the Sheriff's Office instructs you, might you do more testing?

A The Sheriff's Office usually does not instruct me. I don't think they have an authority along those lines. But if the Sheriff's Office should ask us or any other law enforcement agency –

Q Might they ask you or may they ask you?

A Oh, sure. It doesn't matter how they ask me, if they ask me in any fashion, because of any concern, which law enforcement had about the death might be – might not be natural, we would comply.

Q So therefore, there may be additional testing, but I thought you did all the testing?

A I tell you, Your Honor –

Q Tell me.

A It would be very difficult for me to see what additional testing is available.

Q But there might be?

A Whatever additional testing would be available, there is plenty of material to provide it. Because the additional testing is directed to what, to tissues and body fluids, and we have both preserved for additional examination or repetition of some of the testing, which we did already.

Q Might there be additional testing that the Sheriff's Department asks you to take?

A Absolutely there is no problem. As I said, there are no mysteries.

Q How do I – what do I do with Ms. Smith's body if there is still going to be additional testing? Do I keep it in refrigeration.

A No, no. As a matter of fact, in all the homicides which we do, we do less testing than in this case.

Q You do less testing in this case than a homicide case?

A Yes.

Q Why did you do more testing?

A Because sometimes in a homicide case, the cause of death is very obvious, if somebody was shot, I don't have to do a special test.

Q I see.

A There is no difference between tests you do in the average case and in a case in which we do what we call high profile case. This is a high profile case, so I deal with them the same way. There are only two differences in which we do a high profile case. Number one, we document negative findings by photographs. Some people may claim that some positive finding is present and we can say, no, here is the photograph.

The second thing which we do is that I would say we do some additional testing for what I would call Low probability events, something which is very unlikely to happen. But because we predict it has any kernel of possibilities, we will do the test. For example, if somebody – it would be a case in which somebody would raise the possibility that someone is high profile died of radiation poisoning. We would say we checked the body with a Geiger counter and there was no radiation. The suggestion is outlandish.

Q Are you at liberty to tell us the cause of death?

A Well, Your Honor – well, I am at liberty, but at this time, I do not know the cause of death.

Q You don't?

A What happened so far is that, as I told you, we did a large number of testing, a large array of tests. As the results of test dripping come in one by one, for cocci bacteriology or cocci virology and the results of toxicology. But they are not – all the tests are not in, so we are not really sure what happened. But as I said, the fact that we had those interviews of the witnesses that permitted us to connect our interests, which were very important, and I believe at the end of the road, we would be able to come up with a reliable determination of the cause of the death.

Q How long will it take you to reach a high probability of what caused her death?

A As I said in my initial press conference, I assume – and it's a good probability, that within three to five weeks we will be able to do so.

Q Let's go to a spiritual level. I am going to take you to a spiritual level.

A I used to be a professor of psychiatry, so go ahead.

Q I was a former taxi driver, so I had a lot of conversations with people. When I have some lawyers that want to take DNA, more DNA with their own specialist, what problem is that of Ms. Smith's body? What kind of invasion is that?

A Well, Your Honor, first of all, let me say there is absolutely no justification for any additional testing. We took plenty. We are never asked to do so. There was never to my knowledge any medical examination of where such a thing occurred.

Q You mean there has been no precedent?

A None that I know.

Q Where an outside –

A And the only other thing is biologically, it's almost impossible to take the DNA. Because remember, the DNA, you have like two major strands which one comes from the

father and one comes from the mother. If you fake it, you have to have a person who has one which would fit another person if you want to match. So it's unreasonable from the professional, biological point of view. Besides that, you have a mother and the testing of the mother will prove immediately whether any illegal switch or criminal switch took place. So it's not –

Q It's a completely fruitless mission?

A Absolutely.

Q Well, I am going to allow you to – we are going to ask you a few questions by the other side.

A Sure.

EXAMINATION BY MS. HASS OF DR. JOSHUA PERPER:

Q May we proceed, Your Honor?

THE COURT: Yes.

Q Thank you. Doctor Perper, let me ask you a few simple questions. Now, I heard you indicated that at some point you had posted a Sheriff at the Medical Examiner's Office, correct?

A Yes.

Q But that was not done immediately upon your examination of the body, was it?

A No. I would have to – it was done before the examination of the body. The reason I asked for the Sheriff, Sheriff Jenne, he was very gracious and more than cooperative in providing us with security because this was a high profile case in which I was concerned. While we have plenty of security, I have concern with some criminal action maybe taken by someone who is imbalanced or wants something else, and they are going to break in our office and therefore, they are going to view the body and they may take photographs or they may damage the body. And because of that, in the moment when we are notified a body is under the jurisdiction of the Medical Examiner, we have one of our social medical examiner ride with the transportation service to the hospital and at the hospital, make sure that no one was unauthorized. At the time when we received the body –

Q But you are going a little far afield. I asked you a specific question.

A I cannot answer your question. Please be patient.

THE COURT: You take your time.

A So number one, at the time when the body was received, it was under the direct supervision of the Associates Medical Examiner. The body was taken back to the hospital in the ambulance. It was with the Associates Medical Examiner. The body arrived at the Medical Examiner's Office, again with an Associates Medical Examiner. We brought the body into the autopsy room. This was the day before the autopsy, so, because we had the concern that they were going to take our blood center.

The next day we took blood samples – the same day from the body, before the autopsy. The day before the autopsy, the blood samples we took them before the autopsy. We took a variety of cocci and other tests. We took several spinal fluid from the brain for cocci to see if she had meningitis.

Then, after that, after we completed this initial examination and testing, if you look at the testing from the outside before the autopsy, the body was placed in a refrigeration area in the Medical Examiner's Office. This refrigeration area was – we make sure nobody comes to the autopsy room during the examination. We had this area covered with paper, so nobody can look even at the body. We had the body in a bag, in the refrigeration area alone and we have the – I think we had at that time the Sheriff's deputy outside.

So I don't have any kind of concern, Your Honor, about any kind of – because we were extremely careful. We did not want to have a photograph. We did not want to have the public excited by this kind of things. So we were very careful and I am more than confident that –

Q That is not what I asked you.

A I did not understand.

Q I am going to repeat my question. Since you took the samples of the blood samples –

A Yes.

Q The spinal fluid, the hair sample, which you just indicated that you took before the autopsy, because you were so concerned –

A Correct. Not only because of that, but because the cocci deteriorates.

Q I understand. Have those samples been guarded by the Broward Sheriff's deputy since they were taken?

A We did not ask for a Sheriff inside the medical –

Q So they have not been guarded?

A No. That is not correct.

Q Who is guarding them?

A You are going to wait.

Q I am going to wait?

A Let me explain. Once the samples are taken, then the chain of custody is documented. Those samples are locked in the refrigerator under key. Nobody has this. The refrigeration is in a room. The room is in the Medical Examiner's Office. The Medical Examiner's Office was watched and kept under the protection by the BSO. So this method is more than adequate.

THE COURT: In the usual course of conduct, you have a Sheriff's deputy at your building, at your facility, and they are there 24 hours a day?

A Correct. And there were two of them. Once, because we were concerned and we wanted to make sure that both the front and back are protected and they are still there.

Q Doctor Perper, how many people have the keys to that refrigerator?

A Only one person, the chief toxicologist.

Q What is the name of the chief toxicologist.

A Dr. Schuler.

Q Dr. Schuler?

A Yes.

Q And he is the only one?

A That's my knowledge.

Q So you don't know personally whether Dr. Schuler may have disseminated another key?

A I don't know.

Q So you don't know how many people have keys to that refrigerator?

A It's my understanding that only Dr. Schuler. There maybe someone else, but you have to ask Dr. Shuler.

Q Now, I have another question.

A You may.

Q It is true that once the body is embalmed, if further DNA samples need to be taken for the purpose of paternity, is it true that those samples may not be as pure after you embalm someone, as if you were to take additional samples, if necessary?

A That's correct. If the body is embalmed, some of the sample might be more difficult to test because, some of the tissue might be affected. And there are other such bone marrow and so on and hair and we took a lot of hair that can be tested, so there are still possibilities of tests.

Q If the judge so ordered, it would be better if additional testing be done in an expeditious –

A It is absolutely unjustified.

Q That is not my question, sir.

A Ma'am, you are not answering the question.

Q I don't have to answer. I am here to ask you questions. You need to answer mine.

MS. BARTH: Objection. Argumentative. And I don't even represent him.

THE COURT: Doctor, you were so kind to come here and you are getting drilled.

A You know, it's fine. Let me explain one thing. You are asking a question and don't like my answer. If you don't like an answer, it's very unfortunate.

Q Sir, it's not that I don't like your answer. I said to you, if the court ordered additional testing, it would be better if the test was done before the body was embalmed?

A No, it's not true, because it's not necessary.

Q But what if this kind Judge ordered that? Wouldn't it be better today than two months down the road?

MR. RALE: Asked and answered.

A We did all the testing.

Q I have another question.

THE COURT: Let me ask you, have there been cases where you have kept a body refrigerated for a period of time?

DR. PERPER: Yes.

MS. HASS: Give me some of the period of time you kept a body?

DR. PERPER: We kept a body refrigerated for several days or several weeks, which we were not concerned of deterioration of the body. It happens.

THE COURT: For a few weeks?

DR. PERPER: Yes. But then the condition of the body is, obviously, there is some deterioration. But if it does not matter or sometimes if you look for a family and we want to make sure there is a family --

THE COURT: We are searching for a family here.

MS. HASS: You would have no objection to an independent DNA expert reviewing the samples.

DR. PERPER: Absolutely not. No, I don't have any objection.

THE COURT: Then you would all stipulate to that?

MR. TUNSTALL: Sure.

MR. RALE: Well, Your Honor, to the extent that conflicts with what is going on in California, I would have an objection. Because that issue -- Dr. Baird, who they want to submit, he is -- he may not be allowed to under the California order. We are still waiting to see. And I should add, Your Honor, that one of reasons and really we are on red herring, is because the real issue for the paternity is to test the father. This is a baby. Why do we need the mother?

THE COURT: Stay with me. Do you agree to what they said?

MR. RALE: No.

THE COURT: That was in an abundance of caution.

MS. OPRI: We have a standing order on a case that has not been dismissed or vacated. We have a standing order for the DNA collection.

THE COURT: Is that your position now that you are going to be satisfied with our Medical Examiner's DNA?

MS. OPRI: I, I --

THE COURT: I am turning to your colleague.

MS. BROWN: What we are looking to do is have our person inspect the samples and see if they are sufficient. If they are insufficient or he cannot properly establish --

THE COURT: You want to look first.

MS. BROWN: -- and come back if they are not sufficient or damaged or they are tampered with.

THE COURT: Your testimony is so strong that they are buying your position.

MS. BROWN: Not exactly.

THE COURT: Without prejudice.

MS. HASS: We would also like Dr. Schuler, who has a key, to come before the Court as well, because we want to understand who has access --

MS. BARTH: Your Honor --

MS. HASS: We would be satisfied to save --

THE COURT: Saves us a lot of work.

DR. PERPER: If The Court directs me to, I would be glad to show the samples, so you can check with your expert.

MS. BROWN: That part. But it's not --

THE COURT: Don't retire on me, doc.

DR. PERPER: I am not going to leave you without your permission.

MS. BROWN: Judge, if they are not adequate according to our expert, we need the body held so we can come back and say, I cannot establish custody.

THE COURT: I am not releasing this body. I have so many hoops to jump through yet. We are talking about the DNA.

MS. BROWN: We need –

THE COURT: Where is your expert? Stay here. As a friend of the court, my medical examiner, stay with me. He is going to testify and you listen.

MS. HASS: And he is going to explain why it's important that we have mom's DNA as well and I think it's important for the Court to hear that.

THE COURT: You mean, not just what the doctor provided?

MS. HASS: Exactly. Can I ask one more question of the doctor?

THE COURT: Be gentle.

MS. HASS: Dr. Perper, do you do paternity testing as part of your job?

DR. PERPER: No. What we do is take samples of blood or tissue, which can be used for paternity tests. One moment. What is happening is that there is such a request for a paternity, we make sure we get the legal right to give this to the person and we make sure that we send the test to a verified lab, which has a reputable lab, and then we sent the sample by FedEx or some other legal fashion, to a reputable place. I am not an expert in paternity. I do not perform the test in our office and no such tests are performed. But we sent them to a reputable lab at the request of interested people who have a right to make such a request.

MS. BROWN: You have never testified in court as to the appropriate test of paternity?

DR. PERPER: I might have testified. I have so many times.

MS. BROWN: But you acknowledge that --

DR. PERPER: I just said that --

THE COURT: We have an expert from the Sheriff's Office right here. You came up to be his lawyer, right? We have the lawyer's doctor representing the Sheriff's Department. No, we have two lawyers. What is your role?

MS. SCHWARTZREICH: He is the commander of the crime lab.

(Same day after the testimony of Dr. Duncan and Dr. Baird)

THE COURT: Get your pens ready, I am entering orders. Doctor if you are comfortable, you will take the swab test. I am ordering that. And you two meet at a convenient location. Anyone can be present. Everything is open in this courtroom. There is no mystery. What you know, I know. And he will examine what elements to --

MS. BROWN: So he can --

THE COURT: If he is dissatisfied, we are coming back tomorrow. It will be on the agenda.

MS. HASS: When can he do this?

THE COURT: I would like to have it done immediately.

DR. PERPER: It's not complicated. It takes ten seconds.

THE COURT: What time do you want him at your office? You want him there at 2:30?

DR. PERPER: That's fine.

MS. BROWN: I would request that you --

THE COURT: You want to be physically there.

MS. BARTH: We need to be there. And we need an order that he is not to take any DNA out of there, no samples. No pictures or media.

THE COURT: I want to give you lunch and a chance to go over there.

MS. BROWN: Do you want it documented in some way that it's done properly, video?

MS. BARTH: No, no.

THE COURT: We are not changing his normal course.

MS. BROWN: So we are going to be presenting, as officers of the court --

THE COURT: As representing your client. You are not an officer of the court, you are watching what is taking place.

DR. PERPER: Your Honor, I would like you to issue an order --

THE COURT: You don't have to do the swab with them present.

DR. PERPER: Oh, without them.

THE COURT: Only your usual course of conduct.

DR. PERPER: Okay, fine.

THE COURT: You are going to show them the results. I don't want anyone invading your province. One of the things -- what I am interested in as long as Nicole is in your custody, that no one has access in order to describe to the media how she looks or anything.

MS. BARTH: Absolutely.

DR. PERPER: So, therefore, if you want --

THE COURT: If your expert wants to do an examination of the sample, we will go in a separate room without the viewing of Nicole.

MS. BARTH: Absolutely.

THE COURT: Can you do it at one o'clock?

DR. PERPER: I will.

MS. BROWN: And then we'll come back here at --

THE COURT: It's going to take awhile. How long are you going to need?

DR. PERPER: Probably the paperwork is going to take longer than to collect.

THE COURT: I will see you at two o'clock.

DR. PERPER: Who are the people that are supposed to be present, everybody?

MS. BARTH: Well, Your Honor, I would state only counsel, no parties. I would request that it's just the lawyers.

THE COURT: We all agreed to this. We need to wrap this up.

MS. OPRI: Would it be okay if Dr. Baird kept the swab?

THE COURT: No.

MS. BARTH: No.

THE COURT: We want to keep this with BSO, I am sorry, the medical examiner.

DR. PERPER: May I ask another thing, Your Honor? Is there now a decision --

(Further discussion between The Court and the attorneys. Court recesses for lunch).

THE BAILIFF: All rise.

THE COURT: Thank you. Please be seated everyone.

MS. BARTH: could I ask for just a moment, I need to file something?

THE COURT: Absolutely.

MS. BARTH: We just got an order from Judge Korda.

THE COURT: We did not do the test, I am told, there were parties missing.

MR. RALE: Mr. Tunstall.

MR. TUNSTALL: I never had any intention of going.

THE COURT: We are going to stop it at four and we are going to do what we planned to do. Therefore, we are going to leave at four o'clock and whoever gets there is there.

MR. TUNSTALL: I am sorry.

THE COURT: They worried you were not there. I wanted everyone present.

MR. TUNSTALL: I am sorry. I should have told someone that I don't care. I trust the M.E.

(Further discussion between The Court & the attorneys addressing the issue of embalming)

DR. PERPER IS ON THE PHONE WITH THE COURT:

THE COURT: We were all meant to be together. Hello, Doctor. We are starting to believe that you did everything airtight and we hope so. Now, we are going to be on another threshold, the embalment. My suggestion to you, in order to prevent a media circus and to have maximum security of the body, the best thing would be to have the embalment designated by you.

DR. PERPER: We have all the facilities required here, all the security, which is required and we can isolate it so no one is there except the embalmer from the funeral home, which is designated by you, and the one that helps him. We have one witness there, in order to make sure there is no photography of the body.

THE COURT: Somehow, age does create wisdom, Doctor.

DR. PERPER: Obviously, I don't have to say it. Your decision and whatever you want and you instruct us to do.

THE COURT: You are invited here any time you want, Doctor. We are pretty much accept a lot of your recommendations and I appreciate your availability on a moments notice with us.

DR. PERPER: You are very welcome, Your Honor.

THE COURT: Thank you. It's a pleasure. We are going to all shift, we are going to take a – how long will it take you to set up, a few minutes. So this proposed order that you are going to write, every attorney will look at it, and, of course, the Guardian Ad Litem for the child, and you will present it to The Court.

MS. BARTH: Mr. Tunstall has kindly offered to prepare it.

THE COURT: If you want to work late tonight, you're fine.

MS. BROWN: They are drafting the guardian order?

THE COURT: No, the order about the embalming.

MS. BARTH: Nice try though.

THE COURT: We are going to protect the sanctity of Ms. Smith. While you are all cooperating and working together, we are getting really far. What is the next issue.

(Discussion between The Court and the attorneys regarding the California paternity issue)

**PHONE TESTIMONY OF DR. PERPER (February 20<sup>th</sup> – afternoon session)**

MR. PERPER: This is Dr. Perper speaking.

MR. MILSTEIN: Is this something to be made public?

MR PERPER: Let me tell you what it is first.

THE COURT: Everyone is listening to us. Whom am I speaking to?

MR. PERPER: This is Dr. Joshua Perper, the Chief Medical Examiner for Broward.

THE COURT: Your accent is distinct. Tell me, do you have any news to report?

MR. PERPER: Yes. When I returned to my office, I was informed by my the Chief investigator, Edwin Johnson and my deputy, that the two embalmers that performed the embalming on Saturday had returned to check the condition of the body and they observed unfortunate deterioration, much faster than expected. And their opinion was, if the body is to viewed, the viewing should be done this week. Saturday or before. So I wanted to make you aware of the situation, because they said if it's next week, they are not sure that they can guarantee that there would be changes that would interfere with the face of the deceased.

THE COURT: And this deceased is Ms. Anna Nicole Smith. She cared about beauty, Doctor, as you are well aware.

MR. PERPER: Early in the game, we told them shortly after our autopsy that we would like to see the embalming as early as possible, precisely because of this reason. Your Honor.

THE COURT: Therefore, we were buying me a couple weeks. I don't have a couple weeks.

MR. PERPER: And other possibilities is because shipping the body involves some procedure, which may take two or three days, that perhaps who has the custody of the body will agree to have the viewing here in Broward and then ship the body to the place of burial.

THE COURT: Well, I had two jets ready to go. I had two jets ready to go this morning. I had two of our Citizens in Broward County. I called them early this morning. One owns a ball team in town and another is a good heart doctor. This is what I was trying to do here. So I was ready to go. Because I thought for a minute, we were getting a resolution of this issue.

MS. BARTH: Can we take a break?

THE COURT: Yes. You can relax there. All right. So --

MR. PERPER: We thought of another possibility, that perhaps the funeral home could leave the embalming – who would agree to receive the death certificate and make the necessary steps for shipping the body.

THE COURT: Then you are going to change my statute.

MR. PERPER: Probably the best thing would be to have a viewing in Broward County so it can be seen in the optimal condition if that is still good.

THE COURT: Doctor, as always, you are the best.

MR. MILSTEIN: Is there any other procedure that can be utilized to insure the lack of deterioration of the body as a result of embalming on Saturday?

MR. PERPER: There is no other procedure.

THE COURT: No, no. We exercised all due care.

MR. PERPER: At this time, the delay in the next week might create a problem and, you know, the face of the deceased might --

THE COURT: Well, the Court is going to render an opinion by the end of this week.

MR. PERPER: I just wanted to make --

THE COURT: The public know and the parties know. Doc, thank you.

MR. PERPER: You're welcome.

THE COURT: You know where I stand. I thought I had two additional weeks. I was looking at three weeks. I don't have three weeks. I don't have three weeks. So these objections that slow me down, don't slow me down anymore

(discussion between The Court and the attorneys)

MR. MILSTEIN: Okay. My co-counsel partner has suggested that maybe the parties would consider a stipulation for the ability to have Ms. Smith brought to a funeral home in Florida without prejudice to anyone's decision-making.

THE COURT: To do what?

MR. MILSTEIN: In case there is any type of viewing.

THE COURT: Do we agree that family members can view?

MS. OPRI: We have no opposition.

THE COURT: Timing is everything in life.

MS. BARTH: Can we have a new moments with our client?

THE COURT: To ask them if they want to view: I am not going to stop anyone for the viewing. If you say we do not want this one, anyone that wants to view --

MR. STERN: I want to make sure there is no cameras or pictures or media.

THE COURT: It's going to be under the supervision of Dr. Perper. He is going to supervise it with the help of the Guardian Ad Litem, Mr. Milstein.

MR. TUNSTALL: Judge, is there a problem with doing it at the Medical Examiner's Office?

Because it would seem to me if that is what they are talking about, they have security.

THE COURT: Yes. Do you thing there is a reason why I keep having Dr. Perper here?

MR. TUNSTALL: He has been a tremendous help.

MR. MILSTEIN: Respectfully, the location and the current nature of Ms. Smith is probably not the best place to be viewed.

THE COURT: You work it out and call me on my phone. Drink orange juice.

MR. MILSTEIN: If it's agreed that Ms. Smith's body will be removed from the Medical Examiner's Office to the funeral home, I would like to have a stipulation that I am not waiving any of my rights or the current statute that we have argued.

THE COURT: Do we all agree to that: It's important when we move to a funeral home that it's a new set of laws.

MR. TUNSTALL: Now -- now Judge, let's clarify. We have changed gears here, because of new evidence.

THE COURT: Being that her body is deteriorating in a rapid pace.

MR. TUNSTALL: Now, we are not talking a public viewing. We are talking a viewing by the family?

THE COURT: Absolutely.

MR. TUNSTALL: So – I've never been to the Medical Examiner's Office –

THE COURT: It's in Daytona Beach.

MR. TUNSTALL: So what's the problem with family members going there?

MR. MILSTEIN: It's a very –

THE COURT: It's a sterile laboratory.

MR. TUNSTALL: That's fine. Look –

MS. BARTH: She has to be clothed.

THE COURT: I am not going to go through this. You guys analyze it. I will be on call tonight. You want to have an emergency hearing, I will come do it. I can't waste on every minute matter. Figure it out.

MR. MILSTEIN: Your Honor, you have asked me to work with family members to resolve the issue, is there a way we can get Dr. Perper on another number?

THE COURT: Well, I have his cell phone. He is always in touch with me. He will be available to perform these duties.

MR. MILSTEIN: But the question is, I have some questions about logistics about the capability of doing these things and I need that information.

THE COURT: I will give information to Milstein. You guys got enough to worry about. Let's thing where we are. Do you have anything else?

**PHONE TESTIMONY OF DR. PERPER - FEBRUARY 21<sup>ST</sup> DURING THE TESTIMONY OF MS. ARTHUR.**

THE COURT: Take a second, Dr. Perper is on the phone. Doctor, how are you today?

MR. PERPER: Fine, thank you, Your Honor.

THE COURT: You are almost like the sword for me with time. Tell me, Doctor, what status is Ms. Nicole Smith in, what is her status?

MR. PERPER: As Anna Nicole Smith is at this time, there may be preparation of showing the body in Broward.

THE COURT: Don't go into that, don't go into that. We are on the issue, the next issue. What condition is she in?

MR. PERPER: The condition is a very good condition. However, as I said before, the discoloration changes, which can be masked today successfully but as additional time would pass by, it would be much more difficult to show the body.

THE COURT: I am going to render a court's decision by Friday morning. Are you okay with that?

MR. PERPER: Yes. I think that his would be satisfactory in terms of a timeline.

THE COURT: That's my timeline.

MR. PERPER: Yes.

THE COURT: And I appreciate your helping us here.

MR. PERPER: You are very welcome, Your Honor.