

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

**Estate of ROBERT E. WONE, by
KATHERINE E. WONE,**

Plaintiff,

v.

JOSEPH R. PRICE,

VICTOR ZABORSKY,

and

DYLAN WARD,

Defendants

**Civil Action No. 0008315-08
The Honorable Brook Hedge
Next Event: December 15, 2010
Witness Lists Due**

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO DISMISS COUNTS ONE, THREE AND FOUR,
or in the alternative, MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants Joseph R. Price, Victor Zaborsky, and Dylan Ward, by and through their undersigned attorneys, pursuant to D.C. Superior Court Rules 12(b)(6) and 56, hereby submit the following Memorandum of Points and Authorities in support of their Motion to Dismiss Counts One, Three, and Four of the Plaintiff's Complaint and/or Amended Complaint, or in the alternative, Motion for Partial Summary Judgment as to Counts One, Three and Four of Plaintiff's Complaint/Amended Complaint:

I. INTRODUCTION

On November 25, 2008, Plaintiff Katherine Wone, as Personal Representative of the Estate of Robert Wone (hereinafter "the Estate") filed a four-count civil Complaint against the Defendants, alleging claims of Wrongful Death (Count One), Negligence-Failure to Aid (Count Two), Spoliation of Evidence (Count Three), and Conspiracy (Count Four). The claims arise

from the August 2, 2006 death of Robert Wone at the former home of Defendants Price and Zaborsky, located at 1509 Swann Street, N.W., Washington, D.C. (the “home” or “residence”).¹

Count One of the Complaint alleges Wrongful Death pursuant to D.C. Code §16-2701, et seq.² Plaintiff alleges that all three Defendants “directly and proximately caused the death of Robert Wone, although no specific acts are alleged as to any particular Defendant.”³ The gravamen of the Complaint is that the Defendants stabbed Mr. Wone to death and then “fraudulently concealed” certain facts relating to their actions.⁴ The Complaint does not allege that the Defendants concealed the fact that Mr. Wone was murdered.

Although encompassed within Plaintiff’s Wrongful Death Count, Count Three of the Complaint purports to allege as an independent cause of action “Spoliation of Evidence.”⁵ This Count is premised upon Plaintiff’s theory that Defendants had a legal duty not to destroy evidence relating to Mr. Wone’s murder and not to provide “deliberately false” or misleading statements to authorities, but did so.⁶ Plaintiff’s claimed damages for the Spoliation Count consist solely of the loss of recovery of damages under the Wrongful Death statute, despite the fact that Plaintiff has contemporaneously filed a wrongful death claim.⁷

Finally, Count Four alleges that Defendants civilly conspired in order to prevent criminal or civil liability against them and to “prevent law enforcement, Robert Wone’s family and friends, and the public at large from knowing all persons who bear responsibility for Robert Wone’s murder and the circumstances surrounding the murder.”⁸

¹ Defendant Ward was a resident, but not an owner of 1509 Swann Street.

² See Plaintiff’s Complaint, p. 11-12. Unless otherwise expressly noted, citations to paragraphs of “Plaintiff’s Complaint” shall refer to the original Complaint filed by Plaintiff on November 25, 2008.

³ See Plaintiff’s Complaint, ¶ 49.

⁴ See Plaintiff’s Complaint, ¶ 49-51.

⁵ See Plaintiff’s Complaint, p. 13-14.

⁶ See Plaintiff’s Complaint, ¶ 61-62.

⁷ See Plaintiff’s Complaint, ¶ 63.

⁸ See Plaintiff’s Complaint, ¶ 68.

The present matter was stayed by this Court on February 26, 2009, in order to allow criminal prosecution of Defendants to proceed. The criminal trial commenced on May 17, 2010, and ended on June 29, 2010. In that case, Defendants were charged with tampering with evidence, obstruction of justice and conspiracy to obstruct justice, all arising from the same facts alleged by Plaintiff. The tampering charges against Ward and Zaborsky were dismissed by the Court. Defendants were acquitted on all the remaining counts. Defendants have – as they do to this day – consistently and fervently denied any involvement in Mr. Wone’s murder or any purported cover up. With the criminal case concluded, the Court, by the Honorable Brook Hedge, lifted the stay in the present civil case on July 6, 2010.

On September 28, 2010, Plaintiff filed a Consent Motion to file an Amended Complaint, which this Court granted and accepted for filing on September 30, 2010. Plaintiff’s Amended Complaint does not alter the causes of action referenced above, which would relate back to the original filing date of November 25, 2008, nor do any of the additions/deletions of the Amended Complaint alter the grounds or bases for Defendants’ Motion to Dismiss Counts One, Three, and Four. Accordingly, Defendants’ Motion and this Memorandum are equally applicable to both the original Complaint and the Amended Complaint.

II. BACKGROUND⁹

Plaintiff alleges that Mr. Wone made arrangements with Defendant Price, his friend of more than fourteen years, to spend the night at Mr. Price’s home on August 2, 2006.¹⁰ At 11:49 p.m. on August 2, 2006, Defendant Zaborsky called 9-1-1 to report that Mr. Wone had been

⁹ Consistent with the posture of a dispositive motion pursuant to Rules 12(b)(6) and 56, this section sets forth factual allegations that are either undisputed or stated in a manner that assumes the truth of all well-pleaded and material facts in a light most favorable to the non-moving party. Defendants submit this section only in support of their Motion and vehemently deny the factual allegations as stated in Plaintiff’s Complaint. Defendants expressly reserve their right to contest Plaintiff’s factual assertions in the event that this Motion is not fully dispositive.

¹⁰ See Plaintiff’s Complaint, ¶ 8, 12. In fact, on July 29, 2006, Mr. Wone emailed Mr. Price, indicating that on August 2, 2006, Mr. Wone would be attending a continuing legal education course in downtown D.C., and then visiting the radio-broadcast late crew at his employer, Radio Free Asia (“RFA”).

stabbed.¹¹ When EMS and Metropolitan Police Department officers (“MPD”) arrived minutes later, Mr. Wone had “no pulse or heart activity,” and he was pronounced dead at 12:25 a.m. on August 3, 2006 at George Washington University (“GWU”) Hospital.¹² That same day, Lois Goslinoski, DO, Deputy Medical Examiner of the Office of the Chief Medical Examiner for the District of Columbia (“OCME”), performed an autopsy and confirmed that Mr. Wone was murdered by stabbing.¹³ The police investigation began immediately, and Defendants told police on August 3, 2006 that they believed that an unknown intruder entered the house and committed the murder.¹⁴

It is undisputed that at the same time that Mr. Wone was being transported to GWU Hospital, each of the Defendants were separately transported to MPD’s Violent Crimes Branch, and subsequently subjected to an aggregate of more than twenty-five hours of interrogation without counsel by numerous MPD detectives. All three men denied – as they do to this day – any involvement whatsoever with Mr. Wone’s death or any knowledge of the identity of the Mr. Wone’s assailant.

During the course of the August 3, 2006 interrogations of the Defendants, the MPD detectives and officers aggressively accused each Defendant of knowing more than he was stating and being involved in Mr. Wone’s death. During Mr. Price’s interrogation, one of the lead detectives blatantly accused the Defendants of murdering Mr. Wone because they are gay and Mr. Wone was straight: “I’ve got three homosexuals [referring to Defendants] in a house – ... and I’ve got one straight guy. What’s he doing over there!? What is he doing – ... over there!? I think we were all drinking wine. You know what’s going to happen tonight, you’re

¹¹ See Plaintiff’s Complaint, ¶ 13.

¹² See Plaintiff’s Complaint, ¶ 2.

¹³ See Plaintiff’s Complaint, ¶ 17.

¹⁴ See Plaintiff’s Complaint, ¶ 15.

[referring to Wone] coming to Jesus tonight. That's what's going on." Price Interrogation Tr. 54:19-22; 55:1-3 (Aug. 3, 2006), attached at **Exhibit 1**.

MPD quickly publicized its opinion that the Defendants were involved with Mr. Wone's death, and several newspapers and local television stations eagerly disseminated MPD's theories, including the fact that the Defendants were the targets of the investigation. Just a few examples of the extensive and pervasive press coverage within the first weeks and months following Mr. Wone's death, include:

- *Legal Times*, August 14, 2006, "Police Comb Law Firm for Clues In Murder"(a complete copy is attached as **Exhibit 2**):

According to the affidavit by Detective William Xanten III, technicians determined that the 'crime scene had been tampered with, including that the area where the victim's body was located had been cleaned. The use of chemicals and an artificial light source showed trace blood evidence located around where the victim's body was found. This trace blood evidence was located on the walls, floors, sofa bed and door frame of the bedroom where the decedent was killed. [...] As of press time, police had yet to bring charges in the case, and investigators maintain that witness accounts from that night don't add up. "Some of the information we were told, I just don't believe." [Det.] Morris said at a televised press interview Aug. 3.

- *Washington Post*, August 16, 2006, "Police Say Crime Scene was Altered" (a complete copy is attached as **Exhibit 3**):

The house [where Wone was stabbed] is owned by two men [Price and Zaborsky] who are well known in the gay community. They and a third resident [Ward] at the home...have hired criminal defense attorneys.

In an affidavit to search Price's office at the law firm of Arent Fox, police assert that the scene had been altered. "Technicians were able to determine that the crime scene had been tampered with, including that the area where the victim's body was located had been cleaned," said the document, which was first reported in *Legal Times*.

"A lot of evidence we should have seen at the house, we didn't see," Capt. C.V. Morris, head of the police department's violent crime unit, said yesterday.

Shortly after the killing, one of the three men [referring to Price, Zaborsky, and Ward] told police that an intruder had broken in through the back door and killed Wone, according to the affidavit...But investigators said there were no signs of forced entry into the house, nothing was ransacked, and nothing appeared to have been taken.

- Channel 9 – News Now:

Law enforcement sources tell 9 News Now it's becoming increasingly clear the murder of Robert Wone involves a criminal conspiracy. Multiple sources say, at the very least, the attempted clean-up; if not the act of murder itself, involves more than one person. When police arrived at the Swann Street row house, Robert Wahn's [sic] body was found in the second floor bedroom with three stab wounds. Detectives estimate those wounds were at least an hour old. In the preceding hour, 9NEWS NOW has learned the body was moved and then moved again. According to sources, the body of the attorney for Radio Free Asia had been moved out of the bedroom where the stabbing occurred. It was then returned to it after the scene had been cleaned.

- *Washington Post*, October 9, 2006, "A New Glimpse into Night of D.C. Slaying" (a complete copy is attached as **Exhibit 4**):

The case took on greater notoriety when investigators asserted that the crime scene was cleaned before police arrived. And they expressed doubt that an intruder killed Wone, saying they found no signs of forced entry or anything taken.

In an [August 4, 2006] affidavit used to get one of the warrants, Detective William Xanten cast doubt on the idea that an intruder killed Wone, writing: "There was nothing that appeared out of place, nothing disturbed, nothing ransacked and nothing was taken." Police technicians, using chemicals and artificial light, had determined that the crime scene was "tampered" with, the detective wrote.

A year after Mr. Wone's death, Katherine Wone and her attorneys began publicly questioning the Defendants' cooperation with police and whether they had been fully forthcoming. Mrs. Wone and counsel for the Estate held a press conference at Covington & Burling, where counsel for the Estate expressly accused Defendants of being involved in Mr. Wone's death and its alleged cover-up, as the following quotes from Plaintiff's then-counsel, Eric Holder, reflect:

The reality is that a great young man was murdered in the house of three people who were his friend—claimed to be his friend—and yeah they said they talked to the police and yeah they gave samples of DNA and things of that nature, it was clearly compelled if anything, so it was given before the prosecutors and police made them do it, but my sense is that, again I don't know all the details of the investigation, but my sense is that information that could be shared and should be shared simply has not, and that I think is the most egregious thing.¹⁵

Member of Press: “Mr. Holder as you, I think, are aware, for the past year we have received a couple of constant messages from the police department and they are that the crime scene was tampered with, cleaned up, and that the residents, the three residents of the house have lawyered up and been more or less uncooperative. Be candid with us, do you feel that they have, that the scene was cleaned up by somebody in that house and that they have been uncooperative with the police?”¹⁶

Eric Holder: “I don't know if the crime scene was cleaned up but I certainly know that a police officer raised his right hand and swore in an affidavit that in fact that has occurred. I have no reason to believe that an officer for the Metropolitan Police Department would say anything other than the truth to a judge”¹⁷

Eric Holder: “I spoke earlier today to the head of the homicide unit who indicated to me that the US Attorney's Office still has this matter as a priority, that they will be doing things in the near future to ratchet up the pressure on all who are—I'll simply say involved in this case—and that hopefully this matter will be resolved.”¹⁸

Meanwhile, the MPD continued to implicate the Defendants:

- Washington Post, August 5, 2007, “Year Later, Lawyer's Slaying still Shrouded in Mystery” (a complete copy is attached as **Exhibit 5**):

Police said that they did not get full cooperation from the three men known to have been in the house at the time of the killing: Wone's longtime friend Joe Price and his housemates, Victor Zaborsky, Price's domestic partner, and Dylan Ward. None has been charged with any wrongdoing, and they deny impeding the investigation. “We believe they have not been candid about what they know about the events.” Said Sgt. Daniel Wagner, a homicide investigator.

¹⁵ Eric Holder speaking at a press conference at Covington & Burling (Aug. 6, 2007), available at Asian American Focus: Robert Wone Press Conference Part 4 of 4, <http://www.youtube.com/watch?v=OLGyorY7S-c&feature=related>

¹⁶ Eric Holder speaking at a press conference at Covington & Burling (Aug. 6, 2007), available at Asian American Focus: Robert Wone Press Conference Part 3 of 4, <http://www.youtube.com/watch?v=Ci8S3LNrf-g&feature=related>

¹⁷ *Id.*

¹⁸ *Id.*

Kathy Wone and her attorneys hope to raise the profile of the investigation with a news conference tomorrow. In an e-mail, she said she believes Price, Zaborsky and Ward could provide additional information. "Anything short of full and complete cooperation is very troubling and essentially the equivalent of helping Robert's killer or killers get away with this terrible crime," wrote Kathy Wone...

- MetroWeekly, August 9, 2007, "Information Deficit" (a complete copy is attached as **Exhibit 6**):

"[Defendants] need to truly ask yourselves, 'Have I provided the police with all of the information that might be relevant to the investigation of this crime?'" [Katherine Wone's attorney Eric] Holder said to a full room of about 150 people. "Only you, your conscience and your God will know the answer to that question," he added. "If you truly care about Robert...and his family...you will come forward and share all of the information that you have."

III. STANDARD OF REVIEW

Pursuant to D.C. Rule 12(b)(6), a party may successfully move to dismiss if, in its pleadings, the plaintiff has failed to state a claim upon which relief can be granted. The motion to dismiss shall be granted under Rule 12(b)(6) where the complaint fails to allege the elements of a legally viable claim. *Jordan Keys & Jessamy, LLP v. St. Paul Fire & Marine Ins. Co.*, 2005 D.C. App. LEXIS 42 (D.C. 2005). If any matters outside the complaint are presented to the Court, then the rule requires that the motion be treated as one for summary judgment and disposed of as provided in Super. Ct. Civ. R. 56.

A defending party may move for summary judgment, with or without supporting affidavits, as to all or part of any claim. D.C. Rule 56(b). If the undisputed facts show that the movant is entitled to judgment as a matter of law, the Court should grant the motion forthwith. D.C. Rule 56(c). Summary judgment is appropriate where there is no genuine issue of material fact and, under the facts presented, the moving party is entitled to judgment as a matter of law. *Osborne v. Capital City Mtg. Corp.*, 667 A.2d 1321 (D.C. App. 1995); *Sturdivant v. Seaboard Serv. Sys.*, 459 A.2d 61 (D.C. App. 1983). The movant has the burden of establishing a clear

absence of any genuine issue of material fact, and any doubt as to the existence of such issue is resolved against the movant. *Malcom Price, Inc. v. Sloane*, 360 A.2d 779 (D.C. App. 1973). However, a prima facie showing by the movant for summary judgment shifts the burden of producing evidence to the party opposing the motion. *Nader v. de Toledano*, 408 A.2d 31 (D.C. App. 1979), *cert.denied*, 444 U.S. 1078, 100 S.Ct. 1028 (1980). The non-moving party must counter the factual allegations with specificity, and conclusory allegations and hearsay are insufficient to raise a genuine issue of fact or to prevent the entry of summary judgment. *Musa v. Continental Insurance Co.*, 644 A.2d 999 (D.C. App. 1994); *Ferguson v. District of Columbia*, 629 A.2d 15 (D.C. App. 1993); *Spellman v. American Sec. Bank*, 504 A.2d 1119 (D.C. App. 1986).

IV. ARGUMENT

A. Plaintiff's Wrongful Death Claim is Barred by the Statute of Limitations.

Where, as here, a party seeks judgment as a matter of law on statute of limitations grounds, the court must determine when the cause of action accrued. *Cevenini v. Archbishop of Washington*, 707 A.2d 768, 770-71 (D.C. 1998). "What constitutes the accrual of a cause of action is a question of law; the actual date of accrual, however, is a question of fact." *Id.* citing *Diamond v. Davis*, 680 A.2d 364, 370 (D.C. 1996); *see also Bussineau v. President & Directors of Georgetown College*, 518 A.2d 423, 425 (D.C. 1986); *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1204 (D.C. 1984). Where there is no "'genuine issue as to any material fact' concerning the date on which . . . [a] claim[] accrued" and the date of accrual exceeds the proscribed limitations period, in the absence of a condition tolling the running of the applicable period, the moving party is "entitled to a judgment as a matter of law." *Cevenini*, 707 A.2d at 771, citing Super. Ct. Civ. R. 56(c).

“Under both the general rule of claim accrual and the discovery rule exception,¹⁹ the statute of limitations begins to run when a plaintiff either has actual knowledge of a cause of action or is charged with knowledge of that cause of action.” *Id.* at 771, citing *Diamond*, 680 A.2d at 372; see also *Bums v. Bell*, 409 A.2d 614, 615 (D.C. 1979) (“where the fact of injury is readily discernible, the cause of action accrues when the injury occurs.”). When a plaintiff obtains that “quantum of knowledge required to commence the running of the statute of limitations in a particular case,” they are deemed to have “notice” of the cause of action. *Id.* (citation omitted). Notice is divided into two categories: “actual notice and inquiry notice. ‘Actual notice’ is that notice which a plaintiff actually possesses; ‘inquiry notice’ is that notice which a plaintiff would have possessed after due investigation.” *Id.* (citation omitted)

The Court of Appeals has repeatedly held that “either actual notice or inquiry notice will be sufficient to start the clock running under the statute of limitations.” *Id.* Our Court of Appeals has also repeatedly held that “[i]n the District of Columbia, a plaintiff can be charged with inquiry notice of his claims even if he is not actually aware of each essential element of his cause of action.” *Id.* The Court has expressly considered and rejected the “‘each element’ or ‘all elements’ test of accrual” holding that “the law of limitations requires only that [the plaintiff] have inquiry notice of the existence of a cause of action . . .” *Id.* (citations omitted). Rather, the Court has “repeatedly held that a claim accrues when the plaintiff knows of (1) an injury, (2) its cause, and (3) some evidence of wrongdoing.” *Id.*, citing *Diamond*, 680 A.2d at 379-380; *Knight*, 553 A.2d at 1236; *Bussineau*, 518 A.2d at 425.

¹⁹ “A claim usually accrues for statute of limitations purposes when injury occurs, but in cases where the relationship between the fact of injury and the alleged tortious conduct [is] obscure, this court determines when the claim accrues through application of the discovery rule . . .” *Doe v. Medlantic Health Care Group, Inc.*, 814 A.2d 939, 945 (D.C.2003) (internal quotations and citations omitted).

1. Within hours of Mr. Wone's death, Plaintiff had notice of the existence of its wrongful death claim.

The Estate brings a claim for wrongful death pursuant to D.C. Code § 16-2701.²⁰ A claim for wrongful death “shall be brought [...] within one year after the death of the person injured.” D.C. Code § 16-2702. See, *Hudert v. Alion Science & Technology Corp.*, 526 F. Supp. 2d 57, 60 (D.D.C. 2007) (dismissing claim for wrongful death brought nearly three years after death as untimely under D.C. Code § 16-2702); *Nichols v. Greater Southeast Community Hospital*, 382 F. Supp. 2d 109, 113 (D.D.C. 2005) (dismissing wrongful death claim as untimely under D.C. law where “Plaintiff's original Complaint was filed almost three years after [decedent]'s death, well beyond the one-year statute of limitations period”).

It is undisputed that (1) Robert Wone was fatally stabbed on August 2, 2006 and pronounced dead shortly after midnight on August 3, 2006; (2) the applicable limitations period for filing a wrongful death claim expired no later than August 4, 2007; and (3) Plaintiff filed its Complaint for wrongful death on November 25, 2008, which was more than two years and three months after Mr. Wone's death.²¹ Thus, barring some tolling exception, Plaintiff's Complaint is time barred and must be dismissed.

Plaintiff's Complaint makes it abundantly clear that the Estate was well aware that it missed the applicable limitations period for its wrongful death claim. Plaintiff seeks to save its claim by proactively contending that Plaintiff did not know the basis of the existence of the facts

²⁰ D.C. Code § 16-2701 provides in pertinent part:

When, by an injury done or happening within the limits of the District, the death of a person is caused by the wrongful act, neglect, or default of a person or corporation, and the act, neglect, or default is such as will, if death does not ensue, entitle the person injured, or if the person injured is married or domestic partner, entitle the spouse or domestic partner, either separately or by joining with the injured person, to maintain an action and recover damages, the person who or corporation that is liable if death does not ensue is liable to an action for damages for the death, notwithstanding the death of the person injured, even though the death is caused under circumstances that constitute a felony.

²¹ As stated, the Plaintiff's Amended Complaint contains the same four causes of action against Defendants, and for limitations purposes, relates back to the original filing of November 28, 2007.

forming the basis of its wrongful death claim until reviewing an affidavit by the MPD in support of the arrest warrant for Mr. Ward (the “Affidavit”) that was executed and publicly released on or about October 27, 2008.²² In conclusory fashion, Plaintiff contends that the facts contained in the Affidavit were fraudulently concealed by the Defendants, thus preventing Plaintiff from having knowledge of the facts giving rise to the Estate’s wrongful death claim.²³ Yet, it is well established that “[f]ailure to disclose information does not rise to the level of fraudulent concealment.” *Lewis v. United States*, 173 F. Supp. 2d 53, 55 (D.D.C. 2001) (interpreting District of Columbia law), citing *Cevenini*, 707 A.2d at 774.

More importantly for this case, as the Complaint itself makes clear, within hours of Mr. Wone’s death, Plaintiff had knowledge that Mr. Wone’s death resulted from his having been repeatedly stabbed and that the stabbing was an illegal, wrongful act. This knowledge alone is sufficient to constitute actual notice of Plaintiff’s wrongful death claim. Moreover, there is no question that Plaintiff was provided a great deal of additional knowledge both through press coverage and through direct communications with law enforcement. Accordingly, any “fraudulent concealment” argument cannot, on its face, stand.

In reality, Plaintiff’s wrongful death count is founded upon the same allegations that have received exceptional media attention since August 3, 2006. Indeed, within hours of Mr. Wone’s death, the MPD had already accused the Defendants of being responsible for Mr. Wone’s death and targeted them – and only them – as the sole suspects. The MPD very quickly publicized its suspicion by stating to the press that it did not believe that an intruder killed Mr. Wone, which is what Defendants asserted and continue to assert. In addition, within a week of Mr. Wone’s death, MPD had publicly accused Defendants of being untruthful, of engaging in a conspiracy to

²² See Plaintiff’s Complaint, ¶ 19, 50-51. It should be noted that during the criminal matter, the government abandoned many of the alleged facts that were contained in this Affidavit and other MPD affidavits.

²³ See Plaintiff’s Complaint, ¶ 19, 50-51.

hide the true circumstances of Mr. Wone's death, of tampering with and destroying evidence, and of "cleaning" the crime scene.²⁴ In other words, all four of the allegations contained in Plaintiff's Complaint had already been made by MPD in the days immediately following Mr. Wone's death.

Removing all doubt concerning Plaintiff's notice of its alleged wrongful death claim, on the one year anniversary of Mr. Wone's death, Plaintiff and its legal counsel held a press conference where Plaintiff's counsel and Mrs. Wone expressly accused Defendants of being involved in Mr. Wone's death and its alleged cover-up. Thus, Plaintiff's own statements make clear that Plaintiff had knowledge of Mr. Wone's injury, its cause and alleged evidence of some wrongdoing on August 3, 2007, more than one year and three months prior to the date that the Complaint was filed.

It must also be noted that in July/August of 2008, months before the execution and release of the MPD Affidavit used to support Mr. Ward's arrest warrant and the filing of Plaintiff's Complaint, Plaintiff's counsel telephoned Defendants' then-defense counsel, including David Schertler, counsel for Mr. Ward, stating that Plaintiff was considering filing a lawsuit, and the parties discussed meeting before any suit was filed.

In sum, there is indisputable evidence that Plaintiff's cause of action for wrongful death accrued in August of 2006, and Plaintiff's Complaint was plainly filed after the limitations period expired.

²⁴ See, *supra*, p. 5-7.

2. **“Fraudulent concealment” tolls the statute of limitations only where the cause of action itself is concealed, not where the identity of the alleged tortfeasor is concealed.**

Plaintiff’s attempted pre-emptive strike by alleging “fraudulent concealment” in its Complaint demonstrates a critical misunderstanding of the narrow “fraudulent concealment” tolling exception. The statute of limitations may only be tolled “on a showing of ‘fraudulent concealment of the existence of a cause of action’” *Flemmings v. District of Columbia*, 719 A.2d 963, 964 (D.C. 1998) (quoting *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 936 (1967)) (emphasis added). A fraudulent concealment claim cannot legally stand when the plaintiff knew, or by the exercise of due diligence could have known, that he may have had a cause of action. *Weisberg v. Williams, Connolly & Califano*, 390 A.2d 992, 996 (1978), quoting *Westinghouse Electric Corp. v. City of Burlington*, 122 U.S. App. D.C. 65, 67, 351 F.2d 762 (1965). “[A] mere doubt in the mind of a party in connection with his legal rights, or his right to recover in a lawsuit, will not suspend the running of the statute of limitations.” *Estate of Chappelle v. Sanders*, 442 A.2d 157, 158 (D.C. 1982) (citation omitted). Moreover, “[a]n act of fraudulent concealment by a defendant does not relieve a plaintiff of his independent duty to pursue his cause of action diligently. On the contrary, the case law makes clear that a claim of fraudulent concealment is available only to a plaintiff who has exercised due diligence in the pursuit of his cause.” *Cevenini*, 707 A.2d at 774.

The District of Columbia Court of Appeals has expressly held “that concealment of the identity of liable parties, unlike the concealment of the existence of a claim, is insufficient to toll the statute of limitations.” *Estate of Chappelle*, 442 A.2d at 159 (citing cases collected in 51 AM.JUR.2d Limitation of Actions § 148). In *Estate of Chappelle*, the plaintiff estate brought a wrongful death claim arising out of an automobile accident more than one year after the

decedent's death. In an attempt to circumvent the limitations bar, the plaintiff alleged that the driver of the other vehicle provided a false name and address at the scene and left before police arrived, and the owner of the vehicle denied that her car had been in an accident. *Estate of Chappelle*, 442 A.2d at 157-158. The plaintiff argued that the defendants' fraudulent concealment of their identities acted to toll the running of the statute of limitations, but the D.C. Court of Appeals disagreed, holding that "concealment of the identity of liable parties, unlike the concealment of the existence of a claim, is insufficient to toll the statute of limitations." *Id.* at 159.

In the present case, any argument that the Plaintiff did not know all the "true circumstances" of Mr. Wone's death such that a cause of action for wrongful death could not have been discovered earlier is without merit. *See, Cevenini*, 707 A.2d at 771. Plaintiff simply cannot sustain an argument that Defendants fraudulently concealed the existence of the wrongful death cause of action. There has never been any concealment of Mr. Wone's fatal injuries, the cause of those injuries, or the fact that they resulted from wrongful conduct. Having had this quantum of knowledge, Plaintiff Estate had notice of the existence of a claim for wrongful death immediately upon learning of Mr. Wone's fatal stabbing. In short, the facts underlying the wrongful death claim alleged by the Estate were known to Plaintiff, and indeed the public at large, from the beginning of August, 2006. Accordingly, Plaintiff's Wrongful Death was untimely and judgment should be entered against Plaintiff on that claim as a matter of law.

B. Plaintiff Cannot Sustain its Claim for Spoliation.

In the present case, the Estate's Spoliation Count alleges that Defendants destroyed evidence of Mr. Wone's murder, although no specific actions are pled in the count.²⁵ While in

²⁵ See Plaintiff's Complaint, ¶ 61. The Complaint also alleges spoliation of evidence in the form of false statements to the police. A claim for spoliation cannot rest upon allegations of false statements because providing a false

limited circumstances the District of Columbia recognizes an independent tort claim for spoliation of evidence, it only recognizes such a cause of action where a plaintiff's claim against a defendant is undermined by a *third party's* destruction of necessary evidence. See, *Holmes v. Amerex Rent-A-Car*, 710 A.2d 846 (D.C. 1998). Where, as here, the plaintiff alleges that its ability to recover on an underlying claim against a defendant was undermined by that very defendant's own alleged destruction of evidence the appropriate relief is a jury instruction on an adverse inference. See, *Williams v. Washington Hosp. Ctr.*, 601 A.2d 28, 31 (D.C. 1991); *Battocchi v. Washington Hosp. Ctr.*, 581 A.2d 759, 766-67 (D.C. 1990). Defendants are aware of no authority in this jurisdiction or any other that establishes an independent cause of action for spoliation against a person who has been sued as a defendant for the underlying tort from which the claim of spoliation arises. Because Plaintiff's Spoliation Count is not a recognized cause of action under D.C. law, it should be dismissed.

Assuming, *arguendo*, that D.C. law recognized a plaintiff's right to bring a claim for spoliation against a defendant who allegedly destroyed evidence relevant to the plaintiff's underlying claim against that defendant, Plaintiff Estate would nevertheless lack standing to bring such a claim, as no such claim could have accrued to the decedent prior to his death. Because a personal representative of a decedent "has the same standing to sue and be sued in the courts of this and any other jurisdiction as the decedent had *immediately prior to death*," D.C. Code § 20-701(c), Plaintiff lacks standing to bring such a claim.²⁶ In other words, a personal representative of a decedent has no standing to sue based upon causes of actions that could not

statement does not constitute destruction of evidence as required within the elements of spoliation. A false statement is inherently distinct from the destruction of evidence. There exists no precedent in the District of Columbia to support a position that false statements could constitute destruction of evidence as understood in the context of spoliation.

²⁶ Both a wrongful death and a survival claim are statutorily-created causes of action that accrue to the Estate only upon the death of the decedent. See, D.C. Code §§16-2701 and 12-101. Indeed, a survival action, as its name suggests, permits survival of a right of action that had accrued to the decedent prior to his death. *Jones v. Rogers Mem'l Hosp.*, 442 F.2d 773, 774 (D.C. Cir. 1971).

have accrued prior to the decedent's death. Here, the damages alleged – that Plaintiff would have been able to recover damages against Defendants earlier in time – further illustrates that no actionable claim exists.

C. Plaintiff Cannot Sustain its Claim for Conspiracy.²⁷

Civil conspiracy “is not an independent tort but only a means for establishing vicarious liability for an underlying tort.” *Paul v. Howard Univ.*, 754 A.2d 297, 310 n.27 (D.C. 2000). The statute of limitations period for a civil conspiracy claim is the same as the limitations period for the underlying tort which was the object of the conspiracy. *Thomas v. News World Commc'ns*, 681 F. Supp. 55, 73 (D.D.C. 1988). In the present case, Plaintiff's underlying tort claim is for wrongful death which, as stated *supra*, has a one-year statute of limitations period. Therefore, Plaintiff's claim for civil conspiracy as to wrongful death is also barred by the statute of limitations and must be dismissed.

Other than the wrongful death claim, the only other actionable claim alleged by Plaintiff is Count II – Negligence (failure to aid). Even assuming that the limitations period for Count II is three years instead of one, an assumption that Defendants do not make or concede, one cannot conspire to be negligent. Jurisdictions across the country require that a civil conspiracy claim be based on an intentional tort, not negligence. *See, e.g., Sonnenreich v. Philip Morris Inc.*, 929 F. Supp. 416, 419 (S.D. Fla. 1996); *Campbell v. A.H. Robins Co.*, 615 F. Supp. 496, 500 (W.D. Wis. 1985); *Altman v. Fortune Brands, Inc.*, 268 A.D. 2d 231, 701 N.Y.S. 2d 615, 615 (App. Div. 2000); *N. American Van Lines, Inc. v. Emmons*, 50 S.W. 3d 103, 116 (Tex. App. 2001). These authorities support the obvious conclusion that, because civil conspiracy is an intentional tort, it is illogical to conclude that persons can conspire to commit negligence. *See, e.g.,*

²⁷ It must be noted that Plaintiff's claim for civil conspiracy is generally no more than a redundant allegation of Plaintiff's spoliation of evidence claim and, therefore, the arguments set forth herein, *supra*, at Section B, likewise warrant entry of judgment against Plaintiff as to the conspiracy count.

Sonnenreich, 929 F. Supp. at 419; *Campbell*, 615 F. Supp. at 497. Conspiracy to commit negligence is a *non sequitur*. *Triplex Comm. v. Riley*, 900 S.W.2d 716, 719 n.2 (Tex. 1995) (“Given the requirement of specific intent, parties cannot engage in a civil conspiracy to be negligent.”); *Holland v. Sanfax Corp.*, 106 Ga. App. 1, 126 S.E.2d 442, 446 (Ga. App. 1962). Accordingly, Plaintiff’s claim for conspiracy as it relates to the negligence count is a legal impossibility and must be rejected as a matter of law. *Campbell v. A.H. Robins Co.*, 615 F. Supp. at 496 (dismissing insurer of IUD manufacturer because conspiracy to cause negligent harm found incomprehensible).

Independently, the civil conspiracy claim fails because the Estate has no standing to bring the claim. The alleged conspiracy claim had not accrued to the decedent prior to his death²⁸ and the damages claimed are not recognized as forming the basis of recovery in tort. Although no specific acts of conspiracy are sufficiently alleged, the Plaintiff’s Complaint clearly articulates the objects of the alleged conspiracy: “to (1) prevent the imposition of criminal and or civil liability on the Defendants for their actions of August 2, 2006; and (2) prevent law enforcement, Robert Wone’s family and friends, and the public at large from knowing all persons who bear responsibility for Robert Wone’s murder and the circumstances surrounding the murder.”²⁹ For the Plaintiff to establish a cause of action for conspiracy, it must show that the cause accrued to the Decedent and caused injury to the decedent.³⁰ The Decedent was not injured by the objects of conspiracy defined by Plaintiff’ Complaint.

²⁸ See, *D.C. Code § 20-701(c)*.

²⁹ See Plaintiff’s Complaint, ¶ 68.

³⁰ In order to establish a claim for civil conspiracy, a party must show: (1) an agreement between two or more persons (2) to participate in an unlawful act, and (3) injury caused by an unlawful overt act performed by one of parties to the agreement, and in furtherance of the common scheme. *Hill v. Medlantic Health Care Grp.*, 933 A.2d 314, 334 (D.C. 2007) (citing, *Paul*, 754 A.2d at 310). In the case at bar, Plaintiff has failed to sufficiently plead its claim of conspiracy. While Plaintiff vaguely alleges that each Defendant is a party to a conspiracy, there is no specific allegation that Defendants formed an agreement to commit an unlawful act, nor can Plaintiff establish that Defendants reached an agreement to commit any unlawful act. Because there is no allegation or evidence that

Accordingly, judgment against Plaintiff on the civil conspiracy count is proper as a matter of law.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, Defendants Joseph Price, Victor Zaborsky, and Dylan Ward respectfully request that this Honorable Court dismiss Counts One (Wrongful Death), Three (Spoliation of Evidence), and Four (Conspiracy) of Plaintiff's Complaint/Amended Complaint with prejudice; or, in the alternative, enter summary judgment in Defendants' favor as to Counts One (Wrongful Death), Three (Spoliation of Evidence), and Four (Conspiracy) of Plaintiff's Complaint/Amended Complaint, and grant Defendants such further and additional relief as is deemed appropriate.

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Defendants agreed to act illegally, Plaintiff's claim for conspiracy must be dismissed. *Paul* 754 A.2d at 310 (holding summary judgment on civil conspiracy was properly granted in favor of defendant where plaintiff failed to establish specific facts evidencing agreement between defendants to commit an unlawful act).

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³¹ Admitted *pro hac vice* pursuant to Court's 2/26/10 Order.

³² Admitted *pro hac vice* pursuant to Court's 8/2/10 Order.

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1 SERGEANT WAGNER: I see it all the time.
2 JOE PRICE: -- you'd say, that's never going
3 to happen.
4 SERGEANT WAGNER: I see it every day.
5 JOE PRICE: There's no reason. There's no
6 reason.
7 SERGEANT WAGNER: Don't need one. Suppose he
8 --
9 JOE PRICE: He just -- he randomly --
10 SERGEANT WAGNER: Okay. I'll give you one
11 right now. I'll give you one right now.
12 JOE PRICE: Okay.
13 SERGEANT WAGNER: And you know it. You're
14 making me say it.
15 JOE PRICE: Uh-huh.
16 SERGEANT WAGNER: You know the reason.
17 JOE PRICE: I don't know it.
18 SERGEANT WAGNER: I've got three homosexuals
19 in a house --
20 JOE PRICE: Uh-huh.
21 SERGEANT WAGNER: -- and I've got one straight
22 guy. What's he doing over there? What is he doing --

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Price, Joseph 08.03.2006

55

1 JOE PRICE: What is he --

2 SERGEANT WAGNER: -- over there? I think
3 we're all drinking wine. You know what's going to
4 happen tonight, you're coming to Jesus tonight. That's
5 what's going on.

6 JOE PRICE: That's fascinating, and insulting,
7 and offensive, in --

8 SERGEANT WAGNER: Here we go.

9 JOE PRICE: -- every imaginable way.

10 SERGEANT WAGNER: That's why you're making me
11 say it.

12 JOE PRICE: But, you know what, that's not
13 what happened.

14 SERGEANT WAGNER: You don't know that.

15 JOE PRICE: Robert's happily married. I do
16 know that.

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2006 WLNR 25580112

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August 14, 2006

Volume 29; Issue 33

Section: Court Watch

POLICE COMB LAW FIRM FOR CLUES IN MURDER

Emma Schwartz

The crime scene where murdered Washington lawyer Robert **Wone** was found had been tampered with before police arrived, according to an affidavit for a warrant to search the office of D.C. lawyer Joseph Price.

Price, a partner at Arent Fox, owns the Northwest Washington house in which **Wone's** body was found around midnight Aug. 2.

Police executed the search warrant Aug. 4 at the Connecticut Avenue N.W. offices of Arent Fox and seized Price's computer.

Price owns the Swann Street house with Victor Zaborsky, a marketing manager at the International Dairy Food Association. A third man, Dylan Wade, also resides there. All three were home the night of **Wone's** murder, according to police and Wade's lawyer.

At least one of the residents told police the night of the murder that **Wone** was killed by an intruder, according to the affidavit for the search warrant.

D.C. Metropolitan Police officers were called to the house at 1509 Swann St. N.W. around midnight Aug. 2. Upon arrival, they found **Wone** unconscious in a second-floor bedroom, suffering from three stab wounds to the chest. He was pronounced dead after being transported to George Washington University Hospital.

According to the affidavit by Detective William Xanten III, technicians determined that the "crime scene had been tampered with, including that the area where the victim's body was located had been cleaned. The use of chemicals and an artificial light source showed trace blood evidence located around where the victim's body was found. This trace blood evidence was located on the walls, floors, sofa bed and door frame of the bedroom where the decedent was killed."

Investigators were told that Price and **Wone**, who knew each other through their alma mater, the College of William & Mary, had spoken and e-mailed each other before **Wone** came over to Price's house that evening, the affidavit states.



Wone, who was general counsel for Radio Free Asia and a former associate at Covington & Burling, had decided to stay with Price that evening instead of driving to his Oakton, Va., home, where he lived with his wife of three years, Katherine Yu, say friends, co-workers, and police.

MPD Capt. C.V. Morris told Legal Times that, right now, the residents are considered witnesses, although he says that could change. The three residents have hired criminal defense lawyers. Price and Zaborsky turned to Kathleen Voelker, a former Arent Fox partner who is now running a solo practice. David Schertler, former chief of the homicide Section of the U.S. Attorney's Office, is representing Wade, who could not be reached for comment. Price and Zaborsky did not return phone calls.

Jonathan Rosen, a partner at Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, says he is representing Sarah Morgan, a friend of the owners who lives in the English basement apartment at the Swann Street house. Meanwhile, former Deputy Attorney General Eric Holder Jr. of Covington has been brought in to represent the **Wone** family.

Lawyers for the three men say their clients gave extensive statements to police the night of the murder. Regarding her clients, Price and Zaborsky, Voelker says, "They remain hopeful that the police will identify the intruder who committed this senseless crime."

Of Wade, Schertler says, "My client has not done anything wrong, and I don't believe he will be charged."

The case is being investigated by a squad of homicide detectives working alongside Assistant U.S. Attorney Colleen Covell.

As of press time, police had yet to bring charges in the case, and investigators maintain that witness accounts from that night don't add up. "Some of the information we were told, I just don't believe," Morris said at a televised press interview Aug. 3.

Police took custody of the house after the incident and have been searching it ever since. On Aug. 10, FBI investigators began assisting the probe and were heard sawing and hammering inside.

"We don't think it was a random act of violence," says Brett Parson, sergeant in the MPD's Gay and Lesbian Liaison Unit, which is aiding in the investigation.

According to the police affidavit, one of the residents told police that an intruder had entered the house through the back door. But "there were no signs of any forced entry to the house, either through the back door or any other location," the affidavit states. "There was nothing that appeared out of place, nothing disturbed, nothing ransacked and nothing was taken."

Morris told Legal Times that the police had not entirely ruled out a break-in.

On the night of Aug. 2, **Wone**, who started his job at Radio Free Asia about a month earlier, met up with his counterpart at Radio Free Europe, John Lindburg. The two shared an early dinner at Subway on 18th Street N.W. and then walked over to a continuing legal education class at the D.C. Bar. During the approximately three-hour-long course on federal grants, the two exchanged notes and whispers, Lindburg says. "He clearly wanted to learn as much as possible that could help him at his job," he says.

The class ended at 9:15, and while the two were walking back to the Metro Center Metro station, Wone told Lindburg he needed to head back to the office to meet up with workers on the night shift. Lindburg last saw Wone when he exited at the Farragut North station. Radio Free Asia Communications Director Sarah Jackson-Han says that Wone returned to the office that night.

Eventually, Wone showed up at the Swann Street house. At 11:49 p.m. police received a phone call from someone in the house saying that Wone had been stabbed. Police arrived on the scene 13 minutes later. Wone was taken to GWU Hospital, where he was pronounced dead at 12:24 a.m., according to the police report.

Wone was found in a second-floor bedroom, but the MPD's Morris would not say whether he was lying on a bed or a sofa. He was fully clothed, Morris says. The knife used in the attack was located on the table next to Wone and was from a "set of matching knives located in the kitchen of the house," according to the affidavit. The residents told police that everyone else in the three-bedroom house was sleeping when the incident occurred.

Price, who handles litigation and intellectual property at Arent Fox, has also done considerable legal work on gay rights issues. He is general counsel to Equality Virginia, for which he represented Janet Miller-Jenkins, a woman who sought custody rights after she and her partner broke up. Wade is a former spokesman for Equality Virginia, according to the group's Web site.

"Joe's [Price] one of those people in the legal community that everyone looks up to," says Jeff Trammell, a political consultant.

Price and his domestic partner, Zaborsky, bought the Swann Street house last year for \$1.2 million. In 2004, Price and Zaborsky were the subject of a USA Today article on gay parents. The two fathered children with a lesbian couple in Silver Spring, Md., by donating sperm.

William Charyk, managing partner at Arent Fox, says that Price has been at work all week. "He's gone through a horrible tragedy," Charyk says. "We're just making sure that he'll hang in there."

Emma Schwartz can be contacted at eschwartz@alm.com. News Editor Brendan Smith contributed to this article.

---- INDEX REFERENCES ----

COMPANY: RADIO FREE ASIA

NEWS SUBJECT: (Social Issues (ISO05); Violent Crime (1VI27); Criminal Law (1CR79); Legal (1LE33); Crime (1CR87); Judicial (1JU36))

REGION: (North America (1NO39); Americas (1AM92); USA (1US73))

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ler; Dylan Wade; Emma Schwartz; Equality Virginia; Eric Holder Jr.; Janet Miller-Jenkins; Jeff Trammell; Joe; John Lindburg; Jonathan Rosen; Joseph Price; Katherine Yu; Kathleen Voelker; Lindburg; Morris; POLICE COMB; Popeo; Price; Robert Wone; Sarah Jackson; Sarah Morgan; Victor Zaborsky; Voelker; Wade; William Charyk; Wone; Zaborsky)

Word Count: 1440
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The Washington Post

Police Say Crime Scene Was Altered

By Allison Klein and Henri E. Cauvin
Washington Post Staff Writers
Wednesday, August 16, 2006

Two weeks after a prominent lawyer was killed in a Washington townhouse, D.C. police are still searching the home for clues, and they believe crime scene evidence was cleaned, according to court documents.

The body of Robert Wone, 32, general counsel for Radio Free Asia, was found Aug. 2 in a Swann Street NW townhouse. He had been stabbed three times in the chest. The house is owned by two men who are well known in the gay community. They and a third resident at home the night of Wone's killing have hired criminal defense lawyers.

Police said Wone was spending the night at the townhouse near Dupont Circle because he had worked late and did not want to drive home to Virginia, where he lived with his wife. She has declined to speak publicly since his death.

Wone was a college friend of one of the townhouse's owners, Joseph Price, a lawyer.

In an affidavit to search Price's office at the law firm of Arent Fox, police assert that the scene had been altered.

"Technicians were able to determine that the crime scene had been tampered with, including that the area where the victim's body was located had been cleaned," said the document, which was first reported in Legal Times.

Police said they also were struck by what they did not find.

"A lot of evidence we should have seen at the house, we didn't see," Capt. C.V. Morris, head of the police department's violent crime unit, said yesterday.

Police used chemicals and an artificial light to detect trace blood on the walls, floors, door frame and sofa bed near where Wone's body was found, according to the affidavit.

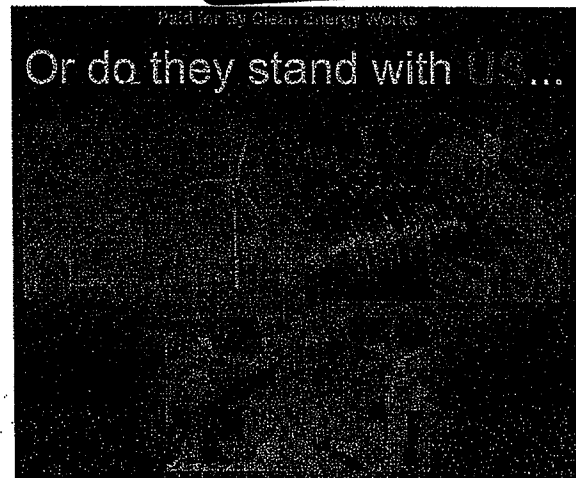
Police took a computer from Price's office, looking for e-mails to and from Wone, the document says.

Three men, including Price, were at the house when Wone was killed. The second man is Victor Zaborsky, who owns the home with Price, according to property records. The third is Dylan Ward, who works for a software company in Virginia.

Kathleen E. Voelker, an attorney for Price and Zaborsky, did not return a phone call yesterday.



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David Schertler, who is representing Ward, said that his client had been living in the Swann Street home for more than a year and that he was acquainted with Wone through Price.

Schertler, a former homicide chief for the U.S. attorney in the District, said Ward had nothing to do with Wone's slaying. Schertler said Ward told police that neither of the other two men was involved, either.

Doctoring a crime scene could lead to criminal charges of obstruction of justice or accessory after the fact.

Police are trying to determine a motive in the slaying, according to a law enforcement official who did not want to be identified because the case is open.

Shortly after the killing, one of the three men told police that an intruder had broken in through the back door and killed Wone, according to the affidavit. Schertler also said the slaying was committed by an intruder.

But investigators said there were no signs of forced entry into the house, nothing was ransacked and nothing appeared to have been taken.

Morris said the three men told police they did not see an intruder or hear Wone being killed.

The FBI is helping investigators, providing technicians with expertise in blood spatter, Morris said. The agency also brought in a behavioral scientist who specializes in crime scene reconstruction.

Investigators say they are not sure Wone was killed in the second-floor guest room where he was discovered.

Price and Zaborsky were identified as a couple in a 2004 article in USA Today about gay parents. They had donated sperm to a lesbian couple, the article said. Price is general counsel to Equality Virginia, a gay rights organization.

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The Washington Post

A New Glimpse Into Night of D.C. Slaying

By Paul Schwartzman
Washington Post Staff Writer
Monday, October 9, 2006

On the night of Aug. 2, Robert Wone called his wife, Kathy, at their home in Virginia, checking in as he walked to his downtown Washington office.

The Wones had rarely spent a night apart since 2002, when Robert surprised Kathy with rose petals leading to a silver fortune cookie and the message, "Will You Marry Me?" But Wone, a lawyer, planned to work late that night, his wife said. Days before, he had arranged to stay with friends at a townhouse near Dupont Circle.

"I love you," Robert told his wife as they hung up about 9:30 p.m.

Just after midnight, the phone awoke Kathy Wone. It was Joe Price, the co-owner of the townhouse. Robert has been stabbed, he said. Get to the hospital -- immediately. Less than 30 minutes later, a doctor pronounced her 32-year-old husband dead.

The killer, Wone would learn, plunged a kitchen knife into her husband's chest, piercing his heart. The knife came from the townhouse in the 1500 block of Swann Street NW -- the home of Price, his domestic partner, Victor Zaborsky, and Dylan Ward, all of whom were in the building at the time.

More than two months after Wone's death, investigators have seized personal computers, examined phone records, consulted the FBI and convened a grand jury. For more than three weeks, they kept control of the three-story, \$1.2 million house where Wone died, removing flooring, pieces of walls, a chunk of staircase, the washing machine, even sink traps. They used chemicals to search for traces of DNA and other evidence, staining walls, floors and bathrooms.

Yet no arrest has been made and no suspect or motive identified, causing Kathy Wone, 35, to worry that the crime might never be solved. "I feel like I've been holding my breath, waiting for a break in the investigation, hoping that this doesn't become a cold case," she wrote in an e-mail, her first public comments about the slaying.

Authorities have offered only the broadest outline of what transpired, saying that a resident told them an intruder came through the back door and killed Wone -- a theory that detectives have publicly questioned. Yet as police await the results of evidence testing, new details have emerged about Wone's final hours and what Price, Zaborsky and Ward have said occurred after their friend arrived.

In a city of more than 100 homicides this year, Wone's death captured public attention because he was a rising star in Washington's legal world, active in the Asian American community. He died in a neighborhood where homicides are rare, at the home of friends who are affluent, well-established



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An advertisement for Ryan Homes. The background is dark with a textured, grainy appearance. At the top, the text "Why Buy NEW?" is written in a large, white, serif font. Below this, there is a bulleted list of three items: "Personalize Your Home", "Simple & Timely", and "ENERGY STAR® Homes". At the bottom of the ad, the "Ryan Homes" logo is displayed in a large, white, stylized font.

professionals; one is prominent in the gay community.

The case took on greater notoriety when investigators asserted that the crime scene was cleaned before police arrived. And they expressed doubt that an intruder killed Wone, saying they found no sign of forced entry or anything taken.

Police Chief Charles H. Ramsey said detectives are waiting for the FBI to complete tests on blood and other items from the crime scene. Police want the FBI to treat the case with urgency, Ramsey said, and hope to get the results in a matter of weeks or months.

Police and prosecutors have sought to reconstruct what happened inside the house before and after the killing. According to sources with direct knowledge of the investigation, Price, Zaborsky and Ward have described a routine evening that began with a dinner at home before Wone arrived about 10:30 p.m. to sleep over.

The sources, who spoke on the condition of anonymity because the case is under investigation, said the men have given this account:

Wone first sat in the kitchen, chatting with Price, 35, a lawyer at a prominent law firm with whom he attended the College of William & Mary, and Ward, 36, who works for a software company. Zaborsky, 40, a marketing manager at the International Dairy Foods Association, was in the third-floor bedroom he shared with Price. A female tenant who lived in the basement was not home.

Price has said that he went upstairs to the third floor to sleep about 11 p.m. Ward retired to his bedroom, near the top of the stairs on the second floor, overlooking the back yard. He later told police that he took a sleeping pill that night, as he often did. Wone showered and went to a second-floor guest room facing Swann Street.

According to the sources, Price recalled falling asleep and then being awakened by a chime that the alarm system sets off when the front or back doors open. Price did not go downstairs because he assumed that his tenant was returning; she did not return home that night.

Price has said that minutes later, perhaps as many as 10, he heard the sound of deep, guttural moaning. He ran downstairs with Zaborsky and found the door to the guest room ajar and Wone on the sofa bed, bleeding. Price moved the knife from Wone -- police later found it on a side table -- and tried to stanch the bleeding, the sources said. Zaborsky stood in the hallway, his screams waking Ward.

At 11:49 p.m., Zaborsky called 911. Paramedics arrived at 11:54, followed by police, who found Wone, wearing bed clothes, unconscious and showing no signs of life. He had been stabbed twice in the chest and once in the abdomen.

After Price phoned Kathy Wone, she picked up her husband's parents, who had recently moved nearby from Brooklyn to be closer to them, and his brother, Andrew, 27, who had flown in to visit. A doctor pronounced Robert Wone dead at 12:24 a.m., before his family reached George Washington University Hospital.

The next day, friends and family sat vigil with Kathy Wone, a crowd that included Price, Zaborsky and Ward. The men attended the funeral; Price was a pallbearer.

By then, investigators had taken over the Swann Street townhouse, obtaining search warrants to seize

computers and phones there and from Price's law office. In an affidavit used to get one of the warrants, Detective William Xanten cast doubt on the idea that an intruder killed Wone, writing: "There was nothing that appeared out of place, nothing disturbed, nothing ransacked and nothing was taken." Police technicians, using chemicals and artificial light, had determined that the crime scene was "tampered" with, the detective wrote.

Price hired a criminal defense lawyer, Kathleen Voelker, and Ward retained David Schertler, a former federal prosecutor. Zaborsky hired Thomas G. Connolly. Before they had hired lawyers, the three men submitted to hours of police questioning immediately after Wone died. Days later, they submitted their fingerprints and DNA samples.

In a statement issued Friday, the attorneys said the three men "continue to mourn the death of their dear friend" and remain hopeful that "the authorities will identify and apprehend the intruder who is responsible for the senseless murder."

Through their attorneys, the men declined to comment for this article. With their home in disarray, they are now living in Virginia. Their friends and associates are reluctant to speak about them publicly, seeking to protect their privacy.

Price, a lawyer at Arent Fox, also serves on the board of Equality Virginia, a gay rights group, where Ward formerly was development director.

In her e-mailed responses to questions, Kathy Wone cited the investigation in declining to share her view of the men, with whom she was friendly through her husband. She is being advised by Eric H. Holder Jr., a former U.S. deputy attorney general, and Benjamin J. Razi, who work at Covington & Burling, her husband's former firm.

Describing her emotional state in her e-mail, she said: "It hurts me a great deal to think that whoever took Robert's life is probably going on with life as usual while I'm struggling to close an enormous, gaping wound and move on; I can't help but shake my head at that picture of incredible unfairness."

The Wones met in January 2002 at a conference in Philadelphia, where they struck up a conversation that continued as they took a late-night stroll and ended up at a Cosi cafe eating s'mores. "It was cold that night," recalled Kathy Wone, a public-interest manager for the American Health Lawyers Association. "But we didn't feel it."

Until then, Robert Wone had concentrated on his career, pro bono work and keeping up with a wide network of friends, including Price. Small-framed and boyishly handsome, he often seemed more mature than his years, urging friends to buy life insurance and arrange their wills.

In interviews, friends described him as energetic and earnest, with a touch of street savvy born of growing up in New York. Jason Torchinsky, who had shared an Arlington apartment with Wone, said his friend had kept a baseball bat under his bed for self-defense and carried two wallets -- one of them an empty decoy in case he was mugged.

The son of a retired bank executive and teacher, Wone had always been serious. As a youngster growing up in Brooklyn, some classmates at his all-boys Catholic high school predicted that he would be the first Asian American president.

At William & Mary in the mid-1990s, he majored in public policy and immersed himself in student

government, through which he became friendly with Price. At exam time, Wone liked to sneak around the library, handing out candy to unsuspecting students. "He was about random acts of kindness," said classmate Tara Ragone. "It was like a Disney movie."

Although he seemed a natural politician, remembering names and keeping in touch, Wone shunned the spotlight. "He often said he'd love to be chief of staff," classmate Michelle Kang said. "He wanted to be the person in the background who made it all happen."

After graduating from the University of Pennsylvania law school, Wone clerked for a federal judge before landing a job at Covington & Burling. His work was his focus until he met Kathy. Within months, he was talking about marriage. "I was stunned," Torchinsky said. "I had never seen him so interested in anybody. It was like this instant thing."

They were married in 2003. Robert turned 30 the next year, an event marked by a party at the home of Price, Zaborsky and Ward, who were then living on Capitol Hill. The Wones bought a townhouse in Oakton and began talking about adopting a baby girl from China.

Then, in the first week of July, Wone started a new job as general counsel at Radio Free Asia, which broadcasts news in Asian countries that do not get free media. It was a dream position, allowing him to be the legal version of a jack-of-all trades.

More than a week before he died, Wone told his wife that he planned to work late Aug. 2, attending a seminar and then making a stop at Radio Free Asia to meet the night staff. He said he might stay over in the city and visit an old friend -- either Price or another William & Mary alum. "Robert was trying to kill three birds with one stone," Kathy Wone wrote. "Attend a class, get to know more of the Radio Free Asia staff and spend time with a friend."

"I thought it was a great idea," she recalled. "Our marriage was such that I completely trusted and supported pretty much anything he wanted to pursue."

A few days later, she said, her husband told her that he'd stay at Price's house. On the morning of Aug. 2, the couple worked out at their gym and then took Metro into the District. As usual, he walked her to her office, where they kissed goodbye.

At 6 p.m., he arrived at the seminar, after which he called his wife to say good night. At close to 10, he arrived at his office. He stayed for 15 minutes, introducing himself to the staff, before heading off to see his friends on Swann Street.

Staff writers Henri E. Cauvin and Allison Klein contributed to this report.

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The Washington Post

Year Later, Lawyer's Slaying Still Shrouded in Mystery

Widow to Plead for Witnesses to Speak Out on Husband's Death in Attempt to Raise Investigation's Profile

By Allison Klein
Washington Post Staff Writer
Sunday, August 5, 2007

The wife of a prominent lawyer slain last summer inside a townhouse near Dupont Circle plans to issue a public appeal tomorrow for witnesses to come forward in a case that police say has been plagued by a lack of cooperation.

D.C. police have yet to make any arrests in the slaying of Robert Wone, who was killed late Aug. 2, 2006 while staying overnight at a friend's home. Wone, 32, was stabbed three times in the chest with a butcher knife that came from the kitchen, police said.

Police said they did not get full cooperation from the three men known to have been in the house at the time of the killing: Wone's longtime friend Joe Price and Price's housemates, Victor Zaborsky, Price's domestic partner, and Dylan Ward. None has been charged with any wrongdoing, and they deny impeding the investigation.

"We believe they have not been candid about what they know about the events," said Sgt. Daniel Wagner, a homicide investigator. He would not elaborate.

Kathy Wone and her attorneys hope to raise the profile of the investigation with a news conference tomorrow. In an e-mail, she said she believes Price, Zaborsky and Ward could provide additional information.

"Anything short of full and complete cooperation is very troubling and essentially is equivalent of helping Robert's killer or killers get away with this terrible crime," wrote Kathy Wone, who declined requests to be interviewed last week by phone or in person.

She said she has not had contact with the men since her husband's death. Robert Wone, general counsel for Radio Free Asia, was attacked in his bedclothes as he spent the night in a spare bedroom at the home in the 1500 block of Swann Street NW. He and Price, also a lawyer, were close friends from their days at the College of William & Mary. Wone spent the night there rather than go home to Oakton because he was working late in the District, friends said.

Price, Zaborsky and Ward have retained attorneys. The attorneys -- Kathleen Voelker, Thomas Connolly and David Schertler -- released a joint statement last week saying that the men are "puzzled and concerned regarding the false accusation that they have somehow withheld information from the police."

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"They have told the police everything they know about what happened," the statement said. "They still hold out hope that the police will apprehend the intruder who murdered their friend."

All three men were interviewed by police for hours and later voluntarily submitted DNA samples and fingerprints, the attorneys said. After the killing, police predicted they would solve the case quickly. But the investigation grew complicated as police said there was no sign of forced entry into the home. They also alleged that the crime scene had been altered and cleaned before authorities arrived. Police took over the house for three weeks and removed a large amount of potential evidence, including flooring, pieces of walls, a chunk of staircase, the washing machine and sink traps. Police are waiting for the FBI to complete its analysis of blood and other evidence.

In the e-mail, Kathy Wone, 36, said she is confident that police will solve the case, saying investigators have shown "steadfast commitment, skill, and focus."

"We also have time on our side. . . . [W]e can wait for as long as it takes for the killer to break under the growing pressure of having to constantly live with the knowledge of what he did," Wone wrote.

Still, she expressed frustration with the pace of the FBI's lab work. "It has been trying at times as we continue to wait for the FBI to complete their analysis of all the samples that were taken," she wrote.

A spokeswoman for the FBI crime lab said she could not comment on the case. The case has taken strange twists. Three months after the killing, the Swann Street rowhouse was burglarized. Stolen items included \$7,700 in flat-screen televisions and other electronics. Two men have been charged with the break-in. One is Michael Price, brother of homeowner Joe Price. The second is Phelps Collins, a friend of Michael Price, authorities said. The burglary charges remain pending.

After losing her husband of three years, Wone wrote that she is starting to move forward with her life. "I am laughing again and enjoying the company of friends over a delicious meal," she said.

She reflected on how the tragedy has tested her resolve. "During this year of intense sadness, I learned that being still and letting grief interrupt whenever it wished was often times the best thing I could do for myself as that was the only way my seemingly broken life would begin to heal," she wrote. "When grief barges in and demands a visit, it's best to let her have your undivided attention."

She said she relies heavily on friends and family members. "We've come through this most difficult year in one piece and that is reason enough to rest in the immense relief of knowing that we made it through some of the darkest moments we'll ever know while also celebrating Robert's influence in all of our lives," she wrote.

Staff writer Henri E. Cauvin contributed to this report.

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Information Deficit

Friends, family and colleagues of slain lawyer, Robert Wone, are asking the general public to come forward with information

by Yusuf Najafi


Published on August 9, 2007, 12:00am | 0 Comments, 0 Tweets

Prominent gay attorney Joseph R. Price, his partner Victor Zaborsky and their former roommate Dylan Ward were noticeably missing on Monday, Aug. 6, at the Covington & Burling offices in Northwest, during a press conference about the unsolved murder of Robert Wone. Wone was the 32-year-old lawyer who died from multiple stab wounds inside their Swann Street townhouse last year.

Despite their absence, Eric H. Holder Jr., a former U.S. deputy attorney general representing Wone's widow, Kathy, had a message for the three men, who have yet to talk publicly about the night in which Wone was killed.

"You need to truly ask yourselves, 'Have I provided the police with all of the information that might be relevant to the investigation of this crime?'" Holder said to a full room of about 150 people.

"Only you, your conscience and your God will know the answer to that question," he added. "If you truly care about Robert...[and] his family...you will come forward and share all of the information that you have."



Robert Wone

Over the past year, representatives from the Metropolitan Police Department (MPD) have reported that the Price, Zaborsky and Ward -- who voluntarily took DNA tests in addition to participating in extensive interviews shortly after the murder, before each hired defense attorneys -- claim an intruder murdered Wone while they were asleep.

Holder addressed the frustration he feels from the lack of answers surrounding the case over the past 12 months.

"This is despite the fact that Robert was in a house occupied by friends at the time that he was stabbed," he said. "It was despite the fact that the knife used to stab him was taken from the kitchen of the house where he was spending the night.

"These are people who have gone out of their way to claim that they are friends of Robert's... I have to think that among the three, if not all three, have information that would be relevant to the solving of this crime."

Holder added "It's inconsistent to claim to care about Robert and his family and then not to share any information.... Somebody in that house has to come forward with even a small bit of information that might be inconsequential to them, but could be key in solving this case."

Holder said the MPD's Homicide Unit has indicated that the U.S. Attorney's Office still considers the Wone case a priority.

Wone's wife, Kathy, has relied on colleagues, family and her church to get through, what she describes as the "darkest year" of her life.

"Slowly but surely life has been coming back," Kathy Wone said, speaking publicly for the first time since her husband's death.

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In addition to laughing, spending time with friends and listening to music again, Wone said she is "starting to hope again." She concluded with a message to the person or persons responsible for her loss.


"Having a murder on your conscience is no small load to carry as you try to live, I imagine, as normal a life as possible. Confessing will be the hardest thing that you do in your life, our laws will impose severe consequences, but it will also be the most freeing thing that you can do for yourself. A secret like the one you are hiding from the world will only grow heavier with time."

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