2015

ALASKA HIGH SCHOOL

MOCK TRIAL

CHAMPIONSHIP COMPETITION

Anchorage, March 26-28, 2015

In Re Estate of Latham

Case No. 3AN-14-09999 PR

OFFICIAL CASE MATERIALS & COMPETITION RULES

TEAM MEMBER'S PACKET

Including all evidence, applicable law, competition rules, and team registration forms

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Young Lawyers Section

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2015 Alaska High School Mock Trial Problem

In Re Estate of Latham

Introduction: Statement of Facts

Crisscross Pass is a small Alaska town of 84 residents, give or take, just off the Glenn Highway somewhere between Palmer and Glennallen. Most residents work in some capacity for the state or federal government, either maintaining roads or working for the Bureau of Land Management, or provide guide and other services to recreational hunters and fishers. There is not much wealth to be found in Crisscross Pass. The one shining exception was Allison Latham, a world-famous painter who just happened to be born in Crisscross Pass and never left. Allison, who painted under the pseudonym "Lite Metal,"[1] amassed a great fortune through her art. However, Allison, who had a history of mental illness, was found dead on the morning of October 28, 2014 by Avery Martinez, a friend of Allison. Allison had shot herself in the head.

In Allison's will, she left the vast majority of her fortune to Sidney Winston, Allison's agent, as opposed to Taylor Markovich, Allison's only sibling. Allison also left a small amount of money to her cousin Koren Andrews, who had also been a witness to the will signing. Taylor had previously been very concerned about Allison's mental health and arranged for a state social worker, Pat Bernstein, to go to Crisscross Pass and conduct a mental health screening interview with Allison. Pat did this assessment and concluded that Allison was able to function sufficiently on her own. Allison signed the will, which had been drafted by attorney Jesse Montgomery, on October 8, 2014.

Taylor challenged the validity of Allison's will and Sidney's right to the estate on three grounds: 1) that Allison was not mentally competent to sign her will at the time it was executed; 2) that Sidney exerted undue influence on Allison in getting her to sing the will; and 3) that Sidney took actions resulting in Allison's suicide. The Parties agreed that for the convenience of all involved, the trial should be held in Anchorage. Due to the complexity of this case and the serious allegations contained therein, it has been calendared for Superior Court instead of the normal probate processes. Both sides have included on their potential witness list a psychiatrist as an expert witness — Robin Carlson for the plaintiff and Kael Bruch for the defendant. Since neither of these psychiatrists has ever personally examined Allison Latham, each relied heavily upon a diary of hers that was found after her death.

And hence we begin . . .

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1 "Lite Metal" is a trademark of Mayfair Games and Hans im Gluck Games (Germany). All images are used with permission of the trademark owners.

Author's Note

This year's problem is a slightly updated version of the problem from 2005. The problem was well received then and hopefully will be well received again. It deals with two very complicated issues — one legal (a contested will) and the other social (mental illness). On the legal side, the rules for adjudicating a will are much more complicated than I have set forth here in this year's problem. For one thing, I skipped the entire probate process. Disputes over wills are frequently handled by a specialized judge known as a Probate Master before going to Superior Court. It is likely that a dispute such as this one would ultimately end up in Superior Court, but there is a good chance it would not start there. But if we kept to the normal court processes, there would be a recommendation by the Probate Master, which in turn the students would be arguing for or against. Having the matter originate in Superior Court, though not legally correct, gives students more freedom to craft their arguments as best they see fit. Also, this would not be a jury case, but the standard Mock Trial procedures call for a jury, so that will remain in place as well.

With regard to mental illness, I have tried to be as sensitive as I could to the issue while at the same time creating an interesting problem. There may be certain diary entries or witness statements that students find humorous. I did, to a certain extent, try to inject some levity into the problem. Mental illness, though, and especially suicide are very serious matters and should not be taken lightly. Mental illness is real and can afflict anyone at anytime. People suffering from mental illness often are unable to recognize their symptoms. If you suspect that someone you know may be suffering from mental illness, encourage them to see a medical or mental health professional immediately. If you suspect that this mental illness poses an immediate threat, such as suicide, do not leave the person alone and call the National Suicide Prevention Lifeline (1-800-273-TALK) or 911 if necessary. For more information about mental illness, contact the local office of the National Alliance on Mental Illness at (907) 272-0227 or visit their website at www.nami.org/sites/alaska/.

The descriptions of the different mental illnesses contained in the expert affidavits (Carlson and Bruch) are substantially accurate, at least to the extent that I could research mental illnesses on the Web. Furthermore, the Mental Health Screening Test used as an exhibit to Pat Bernstein's affidavit was downloaded directly from the website of the Behavioral Health Division of the Department of Health and Social Services (www.hss.state.ak.us/dbh/). (In other words, it was their choice, not mine, to use the word "consumer" to describe the person being screened.) However, though I have tried to be reasonably accurate and educational in describing the different types of mental illness, none of what is contained in this problem should be taken as a medically reliable diagnosis of Allison Latham or be used to diagnose mental illness in anyone else. Go see a trained professional, which I definitely am not. The drug mentioned in the problem (Xantal) is fake, so don't ask your doctor if it is right for you.

The problem itself has essentially the same format as it has the past several years. In the past, different teams have all tended to present essentially the same case. In short, there has not been a great deal of variety in the case presentations. This cuts down on the spontaneity that is an unavoidable part of a real-life trial. I also want teams to make meaningful strategic choices in

how they present their cases and what legal arguments they choose to emphasize. Part of this is accomplished through providing four affidavits, but allowing a team to present only three witnesses. Each witness has strengths and weaknesses, and the choice of witnesses should be made in conjunction with the legal arguments that each side wants to present most convincingly. (I realize that this is a bit harder for the defense, which to a large extent is reacting to the plaintiff.) The plaintiff's team should keep in mind that the Complaint presents three possible arguments and that prevailing on any of the three will achieve the desired result of invalidating the will. It is not necessary that each argument be given equal weight during trial.

The other way I am trying to increase spontaneity is through giving the students the flexibility to craft the psychological analysis conducted by the experts. (Please note that it is not required that an expert be called to the stand, and I can see ways of prevailing in this problem that do not involve use of the expert. On the other hand, I have never witnessed a mock trial in which an expert witness was available and not called, so I am partially bowing to reality here.) I have provided the basic framework of the conclusions that the experts have reached, but it will be up to the students to figure out how the experts got there. (The alternative was to have me personally analyze each and every diary entry for both experts, which is something no one, especially me, wants to see.) This means that students should pick and choose the passages from Allison Latham's diary they believe best support the diagnoses and other conclusions reached by the expert witnesses. Students should feel free to "inform" their interpretations through outside knowledge, but are limited at trial to the case materials. So, if you want to engage in literary analysis or art criticism, be my guest, just don't pull out Derrida in court. And of course, all this is complicated by how the presiding judge might rule on the admissibility of the diary or other exhibits should they be challenged. Ultimately, I expect the direct examinations will remain relatively scripted (though they are more convincing if they come across as spontaneous – hint, hint), but this new approach should force attorneys doing cross-examination to think a lot more on their feet.

Let's see, what else? The paintings (see the exhibits) are in color, but trust me, you will not be missing much if you print them off in black and white. The Alaska Screening Tool for mental illness and the guidelines for scoring it are actual State documents available at http://dhss.alaska.gov/dbh/Documents/Resources/pdf/AST%20CSR%20Clinical%20Decision%20Making%202011%20slw%206%2030%2011.pdf (or just search for Alaska Mental Health Screening Tool). Also, I left in some statutes and case law from the 2005 version of the case. Originally, we did not have jury instructions, which I have now added, but rather expected students to derive legal principles from the source material. This did not go especially well. But I left the legal sources (for both contested wills and admitting diaries as evidence) in case it helps students build their arguments. You are by no means required to use them at trial. I guess that's it. If you have any questions or see any gross inconsistencies in the problem (some minor inconsistencies are intentional, and I am sure I missed a typo here and there), please do not hesitate to contact me at hrfortson@uaa.alaska.edu. Oh yes, and a special thanks to Chelsea Riekkola and Kristin Knudsen for assisting in reviewing and updating the problem.

Enjoy the problem!
Ryan Fortson

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Estate of ALLISON LATHAM, Deceased. TAYLOR MARKOVICH, Plaintiff, vs. SIDNEY WINSTON, Defendant.	Case No. 3AN-14-09999 CI

COMPLAINT AGAINST WILL OF ALLISON LATHAM

Comes now Taylor Markovich to challenge the validity of the Last Will and Testament of Allison Latham signed by her on October 8, 2014. Decedent died on October 27, 2014, leaving behind this Will as her only Will. For reasons that will be presented at trial, this Will should be invalidated on three grounds:

1) That Allison Latham was not mentally competent to sign her will at the time it was executed on October 8, 2014, thus rendering the Will invalid under AS 13.12.501;

2) That Sidney Winston exerted undue influence on Allison Latham by convincing her to sign a will that did not reflect her intentions for her Estate; and

3) That Sidney Winston took actions resulting in Allison's suicide, thus voiding under AS 13.12.803 the right of Sidney Winston to inherit under the Will.

In that no valid will exists for Allison Latham, and as the sole surviving heir at law of Allison Latham, by law as set forth in AS 13.12.103, I, Taylor Markovich, sibling of Allison Latham, should be granted inheritance of the entirety of her estate. I pray the Court effect this relief.

DATED this 18th day of December, 2014 at Anchorage, Alaska.

By: _____
Taylor Markovich

Certificate of Service -
The undersigned certifies that on the 18th day of December, 2014, a copy of the foregoing was served by U.S. Mail on the following:

Sidney Winston
P.O. Box 873562
Anchorage
Alaska 99511

_____
Certification Signature

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Estate of ALLISON LATHAM, Deceased. TAYLOR MARKOVICH, Plaintiff, vs. SIDNEY WINSTON, Defendant.	Case No. 3AN-14-09999 CI

STIPULATIONS

It is stipulated for purposes of this Mock Trial that the following facts have been properly introduced into evidence and may be relied upon by the parties in the presentation of their case:

I.

All facts asserted in the Statement of Facts are true and correct.

II.

Allison Latham was found dead by self-inflicted gunshot wound on the morning of October 28, 2014. Her time of death was placed by the coroner at approximately 11:00 p.m., October 27, 2014.

III.

All affidavits are considered part of the case materials and may be used during trial. The affidavits are to be considered as having been validly signed and otherwise properly executed.

IV.

All exhibits included in these case materials are authentic and, where appropriate, validly signed. No objections to the authenticity of the exhibits will be entertained. The diary is accepted as having been written entirely by Allison Latham. The "Lite Metal" paintings included as exhibits are accepted to have been painted solely by Allison Latham.

V.

The Last Will and Testament of Allison Latham, included as an exhibit, is to be considered as having already admitted into evidence before the court. It does not need to be separately introduced and identified by any witness. All signatures on the Will are those of the person attesting to them. No other Wills pertaining to Allison Latham are in existence.

VI.

The witnesses for the plaintiff are (in no particular order):

1. Taylor Markovich
2. Avery Martinez
3. Jesse Montgomery
4. Dr. Robin Carlson

VII.

The witnesses for the defense are (in no particular order):

1. Sidney Winston
2. Koren Andrews
3. Pat Bernstein
4. Dr. Kael Bruch

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Estate of ALLISON LATHAM, Deceased. TAYLOR MARKOVICH, Plaintiff, vs. SIDNEY WINSTON, Defendant.	Case No. 3AN-14-09999 CI

AFFIDAVIT OF TAYLOR MARKOVICH

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Taylor Markovich, being first duly sworn on oath, deposes and states as follows:

1. My name is Taylor Markovich. I am 35 years old, and Allison Latham was my sister. We grew up in the small town of Crisscross Pass, just off the Glenn Highway between Palmer and Glennallen. The population fluctuates, but is never really much over 100 people. The town was too small for what I wanted to accomplish with my life, so I left for college at the University of Washington and then moved to Anchorage to become an accountant.

2. Numbers and logic are my thing. I was always very different from Allison because of this. For that matter, I was also fairly different from my parents in this regard. I admit that I was frustrated with my family and eager to leave. I cannot say that I regret it, but this does not mean that I hated Ally or our parents. Most parents who have more than one child say they love all of them equally, but that is not true. It cannot be true. And in Ally's case, she needed more attention because of her mental instability. Growing up, we did not know that Allison was developing a mental illness, but it was always the case that she demanded more of our parents' time than I did. Then Allison started developing as a painter, which gave my parents an excuse to identify with her more than with me.

3. Do I resent Allison's success in the painting world? I suppose at first I did a bit, but I grew up and learned to accept that we were very different people and that the fact that she

was known around the world did not make me unsuccessful as a human being. I am happy with my life in Anchorage. I remain unmarried, but I have a solid career and many good friends. And the fact that this meant our parents cared for her more than for me is just one of those unfortunate facts of life.

4. It is true that Ally and I fought quite a bit growing up and that some of this tension continued on into adulthood. Some of this was simple sibling rivalry, and other tension was the result of various events that transpired in our lives.

5. I was very happy for Allison when she wed Tom Latham. I know that Tom is not the smartest guy in the world, but he is a genuinely nice guy who loved Allison very much. My hope was that Tom could be a stabilizing influence for Allison, who at that time was showing a few signs of being mentally unstable but for the most part was just "eccentric," to put it colloquially. But Allison would have none of it. To be honest, I am not sure why she agreed to marry Tom in the first place. I think she thought it might calm her down a bit and give her a sense of place in life. She was never able to accept Tom's company, though, because she considered him beneath her. I repeatedly tried to convince Ally to put forth an effort to make things work out, to realize that she did not need to be lonely all her life, but eventually they divorced and Tom felt he had no choice other than to leave Crisscross Pass. I was glad he came back for Allison's funeral — it was good to see him again.

6. I was greatly saddened by the death of my parents, Gloria and Hugh Markovich in an auto accident in March of 2011. Stray moose is just one of the dangers you face driving around on rural roads in Alaska. But while I was able to pick up the pieces and move on, Ally was absolutely distraught. In fact, I became quite worried about her. I tried to call her every day, just so she would have someone to talk to, but she was often gone for several days at a time. After a couple of months or so, I gave up trying and just hoped that she was working through things in her own way. I did, however, hire a doctor friend of mine, Dr. Connie Grainger, who also had experience in treating mental illnesses to go to Crisscross Pass and examine Allison. I even paid for the trip myself. I understand that the doctor concluded that Allison was suffering from acute stress disorder from the tragic death of our parents and prescribed some anti-depressants to help control Allison's anxiety and other symptoms. From what I could tell, these did not have much of an effect.

7. For years after it happened, Allison harbored great resentment toward me for revealing the identity of "Lite Metal" and hence damaging her privacy. This was not something I did intentionally. If I remember correctly, I think it happened at a party not too long after our parents died. I overheard someone talking about how he did not understand Lite Metal paintings and thought they were overrated, and I let it slip that the artist was my sister. I was still very emotional about the deaths of Mom and Dad, and I saw this as an attack on my whole family. I should not have done this, but it was certainly not anything malicious on my part. In fact, I was quite proud of my little sister and wanted to defend her. Well, a reporter happened to be at the party and word got out. I was the first person that was asked for the story of Lite Metal. I did not want to lie, and to be honest, it did

not really cross my mind that Ally would not like the attention. After all, if she was seeking personal validation through her art, this was the best way to get it. Television and magazine interviews soon followed. There was quite a bit of excitement for a while, but like all stories, the excitement eventually faded away.

8. The thing I feel worst about from all the media attention and interviews is telling the world about Allison's battle with mental illness. This must have appeared in all of the press stories, as it was a rather effective personal interest hook. It started out as my explanation for why she was so reclusive. Really, I do not think anyone had a full diagnosis at that time, so all I could say was that she was very introverted, almost pathologically so, and that she never left Crisscross Pass. This generally left much to the reporter's imagination. Thankfully, I did not know at that time about the "visions" Allison was having, otherwise I probably would have mentioned those as some sort of artistic inspiration. Allison's mental state is obviously something intensely personal and private, and I regret making it public knowledge. I do not blame Allison for resenting me for it, at least not at first. I just wish that it had not taken so long for us to reconcile.

9. I wanted to try to reach out to Allison, after the death of our parents and my error in judgment in revealing her "secret identity" to the world, but she would not let me. At times, Ally thought I only wanted her money, which is totally ridiculous. I am not rich by any means, but I make a decent living and certainly do not need hand-outs to survive. The thing is, Allison equated money with respect. She thought that if you did not respect her, then the only reason you would want to talk to her was to try to get her money. I guess I can understand why, but Allison incorrectly believed that I did not respect her. Hence, she believed that I was out to get her money. It is a shame she had an almost complete inability to trust people. I think she would have had a much better life if she had been able to get around this issue. For Allison, respect and trust were essentially the same as appreciating and understanding her art. The problem was that Allison's art was created out of a mind so detached from reality that really no one could understand it. Thus, she did not respect too many people. Personally, I think one of the great things about art is that different people can interpret it in different ways, but Allison believed she was creating her art to get a message across, and she could not stand it when others did not "get" that message. Of course, Allison never left Crisscross Pass, and getting people to "understand" your art when they are already predisposed to dislike you is an exercise in futility. To this day, I am not sure what the "message" was supposed to be, anyway.

10. I admit that I was a bit lax in keeping in touch with Ally after she withdrew from me following the death of our parents. Like I stated earlier, she was often gone for days at a time. And even when I did get ahold of her, she usually seemed not to want to talk to me. Eventually, I completely gave up on her. About a year and a half ago, though, I realized that she was the only family I had left, or at least the only family I cared about, so I decided to make a determined effort to reconcile with her. My first efforts were not very successful. I felt that going out to Crisscross Pass and cooking a Thanksgiving dinner fore Allison might patch up our relationship. I even stooped to inviting Koren Andrews to create more of a "family" atmosphere. Ally agreed to all of this, but when I served the

meal, she for some unknown reason snapped and yelled about me saying how much she hated me and how our parents only loved her and not me. She even started throwing food at me. All of this hurt my feelings greatly, and I quickly left.

11. But I did not give up. I kept calling Allison every Saturday morning at 10:00. In fact, I told her to expect my call. The first few times she hung up on me, but after a month or so we started talking again, brief conversations at first, but eventually longer and more meaningful conversations. It took a while, but I am happy to say that I was able to get Ally to trust me once again. I was even able to visit for Christmas without any major incidents occurring. We were finally siblings, perhaps closer than we had ever been since a really young age.

12. Because we were talking on a regular basis, I was able to observe the continual decline in Allison's mental health. This was greatly troubling to me. She even occasionally started babbling on about a blue moose and a green bear or something like that. I tuned all of this out, it was so incoherent. I realized, however, that she needed help. I thought about talking to my doctor friend again about her, but when I asked Allison if she wanted Dr. Grainger to visit again, she vehemently replied that she did not. So, I decided that maybe it was best to try a different approach. I did express how worried I was about her and explained why. She agreed to be examined as long as it was not Dr. Grainger. I do not know to this day if this was an acknowledgment that something was wrong with her or if she was just doing it to humor me. I knew that there are a variety of state programs to help the mentally ill, so I went to the Behavioral Health division of the Department of Health and Social Services to see if I could get a referral for Allison. This was in April of 2014; I cannot remember the exact date.

13. Pat Bernstein, the case worker I reached, explained to me that there were limits on what the State could do without a court proceeding to appoint a legal guardian for Allison. I knew that Ally had signed her power of attorney over to her art agent, Sidney Winston, so I was afraid what the result would be if formal court proceedings to commit Allison or get a guardian appointed for her were to be initiated. I was sure that Sidney would get complete legal control over Allison, more so than just over her art career. I did not tell Mr./Ms. Bernstein this, but begged her/him to conduct a mental health assessment anyway, and before too long s/he consented to do this. But after Mr./Ms. Bernstein conducted the assessment, s/he would not give me the results. Something about a concern over privacy. Mr./Ms. Bernstein said that if I got a power of attorney letter signed by Allison that I could get the results, but this would of course be impossible since Sidney already had Ally's power of attorney. Even more astonishing to me was that Mr./Ms. Bernstein told me that Ally did not need mental health treatment and that she could take care of herself. This floored me, since I knew it was absolutely not true. But there was nothing I could do about it, and I could not leave my job in Anchorage to go tend to Allison myself. I did not even bother trying to convince Allison to move to Anchorage because I knew this tactic had zero chance of success.

14. I did keep calling Ally on a regular basis. I suppose that I could have driven up to see her every now and then, but after a hard week at work I value my weekends, and visiting

Allison always seemed like work. Of course I loved my sister, but I had to live my own life and could not allow myself to be dragged down by her mental illness. I do think I was a good sibling — she was just so hard to reach that it was hard to tell at times. I tried the best I could. I fully realize that I am not perfect, but I tried to help Ally, I tried. If she was not willing to accept my help there was only so much I could do. I wish that she had lived longer because I do think we were becoming almost friends. Not quite there, but getting close. Then again, with her mental decline, I am not sure if it would have been possible to accomplish much more than I did. One way or the other, I ran out of time.

15. Yes, I remember the tragic day of October 28, 2014, the day I found out my sister killed herself. It was the State Troopers who notified me. Allison's friend Avery Martinez discovered her body while making one of her/his routine visits to check on Allison. Avery called in the State Troopers, who immediately notified me as the next of kin. I rushed to Crisscross Pass to positively identify the body, not that anyone had any question who it was. It was a gruesome sight — Allison had shot herself in the head with one of our father's pistols. I stayed in Crisscross Pass to make the funeral arrangements and dispose of her estate. It was by sorting through Allison's files — she was meticulous about keeping detailed financial records — that I discovered a copy of Allison's will. The next day I called Jesse Montgomery, the attorney who drafted the will, to confirm that the will had been validly executed. Sidney Winston may have deserved some portion of Allison's estate, but certainly not virtually all of it.

16. I did not meet Sidney Winston until s/he and her/his lawyers came to Crisscross Pass to see if Allison had any new paintings to be claimed. But then again, I never really paid much attention to the details of Ally's art dealings. I never even knew there was a will. I guess I always assumed that if something were to happen to Allison I would inherit everything. I am happy that the house will go to me and stay in the family, but I should get the rest of the estate as well. I knew that the will that was read could not be the will that Allison intended to leave. To Allison, money meant respect, and we had become closer again. She knew I respected her. It would be a major slap in the face for Allison to leave me out of her will, and I know that she would not do that to me. I earned her respect. I deserve to be a major beneficiary of her will. Not because I want the money, but because she was my sister.

17. I filed suit to challenge Allison's will because I knew this simply was not a valid will. I wish Allison would have told me about the will beforehand. I could have discussed it with her and made changes to reflect what I am sure she wanted. But she died so soon after signing the will. She must have been crazy when she signed her will. Her mental capacities were declining rapidly in the last few months of her life. I could tell this from talking to her regularly on the phone. I do remember calling Ally like usual on Saturday, October 9, 2014, but I did not talk to her then because Koren was there and told me that Allison was still sleeping. Koren assured me that everything was fine, so I decided that as long as Allison had Koren there I could forego talking to her for a week. I guess I was wrong.

18. In retrospect, I think Koren must have been in on Sidney's plan the whole time. Sidney must have known that there was no way Ally would have signed the will without a comforting presence such as a family member there. Koren provided this, and was paid handsomely for her/his role. Koren and Ally never had that great a relationship. Koren was not mean to Ally or anything, s/he was just hardly ever around, despite not living too far from Crisscross Pass. We had a few other cousins that did not get anything from the will, not to mention myself. It just does not make sense that Allison would leave money to only Koren. I do not know what role Koren played in convincing Allison to sign the will, but I just know in my heart that Koren and Sidney manipulated Allison into signing a will that she never would have signed if she had her wits about her.

WITNESS ADDENDUM

I have reviewed this affidavit, and I have nothing of significance to add. The material facts are true and correct.

_____
Taylor Markovich

SUBSCRIBED AND SWORN TO before me this 6th day of January, 2015.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Estate of ALLISON LATHAM, Deceased. TAYLOR MARKOVICH, Plaintiff, vs. SIDNEY WINSTON, Defendant.	Case No. 3AN-14-09999 CI

AFFIDAVIT OF AVERY MARTINEZ

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Avery Martinez, being first duly sworn on oath, deposes and states as follows:

1. My name is Avery Martinez. I am 46 years old, and I live in Crisscross Pass, where I own a bar. The bar is called the Golden Slipper because every Friday night I give patrons free beer so long as they drink it out of their shoe. You'd be surprised at how many people take me up on that offer. I've lived in Crisscross Pass all my life and babysat Allison and Taylor when I was a teenager. Allison and I were good friends ever since, and I have always been very impressed by and supportive of her paintings. I'd have to say that Allison was my best friend. Sometimes I think I may have been her only friend.

2. Allison could be a bit moody at times growing up. To be honest, she was a little stuck up and always seemed to think the townspeople were not quite worthy of her. I don't know why she never left. I think she might have been afraid of what life would be like in bigger cities. I'm not sure she liked people in general and especially didn't like big crowds. Plus, she loved the scenery around Crisscross Pass. But once she let you into her inner circle, she was very friendly. She has always been nice to me and my son Daniel.

3. Allison took an interest in drawing at an early age. Even then you could tell that Allison had talent. Of course, the early stuff was not anything you'd want to sell to a museum or fine art gallery — mostly unicorns and fairies, that kind of stuff. But she drew them really well. For her 15th birthday, Allison's parents bought her a set of oil paints and some

canvases, and that is when Allison really started to take off. It took her a couple of years to really figure out how to use the oil paints — she was entirely self taught — but once she did she was able to create some really fantastic imagery. She started branching out into landscapes and flowers and eventually portraiture.

4. It was in her early 20s that Allison started to really develop the style that has become her trademark. She combined her earlier love of fantasy themes with her interest in portraiture to create bizarre interpretations of the human face. It was also at about this time, when Allison was 23, that she married Tom Latham. I liked Tom and all, but it was clear that he and Allison were not well matched. I think Allison married Tom because she thought it was the kind of thing she was supposed to do. Tom was just not up to Allison's level intellectually, and as Allison's art progressed stylistically, it was like both she and her art were leaving Tom further and further behind. Well, the marriage only lasted about ten months. I don't blame Tom for getting out of it. Allison would call him a simpleton in public and other sorts of insults. Indeed, Tom came to symbolize the whole town of Crisscross Pass to Allison, which resulted in her directing her insults not just at Tom but at anyone else who happened to be in earshot. When Allison and Tom got divorced, it was a very emotional experience for both of them. Allison, having rejected Crisscross Pass essentially in its entirety, withdrew into her parents' house and devoted herself even more feverishly to her painting. She rarely emerged or went into town. She would go hiking in the woods around her place a fair bit, but always alone. Tom still loved Allison, even though he knew he could not remain with her. But he also couldn't stand the thought of being in the same place as Allison and not being able to be with her. So, he left town, never to return again. I don't approve of the way Allison treated Tom, especially not in public, but in the end it was best that they separated.

5. After the divorce, Allison developed her "Lite Metal" persona in her paintings. She turned from fantasy portraiture to portraits that contained elements of a technological critique of society. I'm not really sure why this change took place — it was as if Allison thought that all of humanity was becoming increasingly impersonal and that the reliance on technology symbolized that. At least, that is how Allison explained it to me once. Coming from a relative Luddite like Allison, this was not surprising to me. She came up with the name "Lite Metal" because she found it ironic. Since she didn't want to become personally known, she signed all of her paintings with this moniker instead of her real name. Of course, once she became famous everyone found out who she was, which was Taylor's fault really, Allison kept using the pseudonym anyway because that was how she could sell her paintings. But Taylor liked to brag about her/his sister, and word got out about the recluse painter in Alaska.

6. Allison's paintings were now very impressive and truly unique. Allison allowed her parents to take a couple of them to a gallery in Anchorage, and the proprietor there, Clark Davis, was immediately blow away not only by Allison's talent but also by her very expressive style. The gallery bought the paintings and sold them for over $1,000. Allison's parents, who were very smart but never very rich, realized the potential for a bigger market. Since basically all she did was paint, Allison was able to create lots of paintings in a relatively short time. You'd think this would depress the market for her

work, but instead it resulted in a quick growth of the market because her paintings were soon viewed in many different places all around the country. The gallery owner in Anchorage acted as sort of a *de facto* agent for Allison, selling her paintings around the country and earning Allison hundreds of thousands of dollars. Before you knew it, there were exhibits in museums of Lite Metal paintings in San Francisco and Chicago and other big cities. Things looked very promising for Allison's career.

7. Then tragedy struck. Allison was 29 when her parents were killed in a car accident after hitting a moose. They hit the moose straight on, didn't see it in the fog, and the moose fell through the windshield, killing Allison's father instantly. Allison's mother was evacuated by helicopter to a hospital in Anchorage, where she died a few days later. Going to visit her mother at the hospital was the only time in the past decade that Allison has left the immediate surroundings of Crisscross Pass.

8. Allison was absolutely devastated by her parents' deaths. She wouldn't leave the house and wouldn't let anyone visit to console her, not even me. Allison went on long hikes into the woods and wouldn't return for days or even weeks. Her parents had left her the house, so she always had a place to return to, but for all practical purposes she may as well not even have existed. Allison even completely stopped painting, which was a shock to everyone. This lasted for about six or seven months. Allison did eventually return to her normal life — well, normal for her — but she was even more moody than before. I was persistent, though, and eventually we were able to renew our friendship.

9. It was after Allison started painting again that Sidney Winston first appeared on the scene. I wish I had never given Sidney directions to Allison's house when s/he arrived in Crisscross Pass. The gallery owner in Anchorage was a perfectly good art distributor for Allison's works and always did well by her. He never pressured Allison into doing more paintings and did not charge an exorbitant commission for his services. The gallery owner also never exploited Allison and always protected her privacy. Sidney Winston, on the other hand, saw an opportunity to make a quick several bucks and could not pass it up. Sidney was a no-name wannabe art dealer from New York City. S/He had seen an exhibit of Lite Metal paintings in Cleveland and was very impressed. That part was fine. Sidney then did a little bit of research into the artist behind Lite Metal. This was not hard to do. When Lite Metal paintings started to become famous, Taylor Markovich did several interviews with local and national media. I have to admit that the story of a hermit painter in rural Alaska is rather fascinating, and I think that Taylor liked the attention that telling the story brought him/her. It was definitely a source of friction between Allison and Taylor, though.

10. So, Sidney did some reading and figured out how vulnerable Allison is. This was not too long after her parents' deaths. Sidney then makes a trip up to Crisscross Pass and pays a visit to Allison. Allison had just started to paint again, but was not inspired and had not finished any of the paintings. Sidney does two things: First of all, Sidney convinced Allison to start painting again in earnest. Convinced her it would be therapeutic. Secondly, and more importantly, Sidney talked Allison into letting her/him market all Lite Metal paintings. The thing was, Sidney did this not by promising money or fame, since

Sidney knew those things did not matter to Allison, but rather by explaining to Allison that this would be a chance to share her pain with the world. I wasn't there when all of this happened, but Allison told me about it afterwards and seemed very excited. Of course, this was Sidney's "big break," getting an established artist to sign on and push him or her into the stratosphere of the art world. Yes, Sidney Winston made Allison lots of money and more famous than she had ever been before, but Sidney did this at the expense of Allison's already fragile mental health.

11. After her parents' deaths, Allison started having these visions she would sometimes tell me about. I think it was something about a green moose and a blue bear. The stories were kind of hard to follow. Both animal figures would talk to Allison, but mostly the moose. The green moose would ask Allison for protection, tell Allison she was his only friend. I'm not sure if Allison ever talked back to the moose. Sometimes the green moose would come to Allison to warn her of impending danger, or just simply be a companion. The blue bear sounded like it appeared more rarely. It was sometimes a monster and at other times just a harsh critic of Allison. In some stories the bear was out to get her and in other stories the bear was out to get the green moose. It was all very weird.

12. These visions started when she was 29, soon after the death of her parents, and continued until her suicide at 32. Over time they got progressively more frequent. I attribute the visions to the increasing pressure that Sidney placed on Allison to paint. Sidney could tell Allison was getting more and more unstable and just should have laid off. Sidney visited every couple of months or so, protecting her/his investment and picking up new paintings to sell. I think the rest of the time s/he just partied worldwide living off of Allison's money. Who knows how much money Allison would have now if Sidney had not grafted so much of it. I mean, I'm sure her paintings fetched well over the $3.3 million in her estate, even taking Allison's meager living expenses into account. I tried to convince Allison to get a new art agent, but Sidney had some sort of spell over Allison. I don't know why Allison continued to let Sidney bully her. At some point, I think she was just too weak emotionally to put up much of a fight. I think Sidney even controlled Allison's medication. Taylor had paid one time to have a doctor come out and examine Allison. The doctor prescribed some anti-depressants for Allison and arranged to have the prescription filled via mail. The medication was supposed to help control Allison's symptoms — you know, reduce her visions and make her generally a calmer person. This would have been a big help. But Sidney kept telling Allison not to take them, told her it would stifle her creativity and that she would no longer be a great artist. Apparently this worked, because as far as I know, Allison kept refusing to take her medication. I could see the vials full of pills, unopened, in her medicine cabinet. she kept becoming more and more mentally unstable.

13. I tried to visit Allison every day around lunch time. On rare occasions, I could convince her to come back to the Golden Slipper with me, but that was pretty rare. Most of the time we would just sit around her house and chat. We talked about all sorts of things, from world politics to what was going on in our relatively mundane lives. Allison was more coherent at some time than others. Allison told me all sorts of secrets. I didn't know about her diary, though, so I guess there were some things she kept completely to herself.

Sometimes I would bring over leftovers, sometimes Daniel would come with me. It's tough being a single parent in a small town like Crisscross Pass and running a bar with a small clientele. Allison knew I was frequently in financial trouble and would write me checks for a thousand dollars here and there. This was a real help. I mean, I would have been her friend even if she had not given me any money, but I was not too proud to turn it down. In the town of Crisscross Pass, you learn not to turn your nose down at favors.

14. I do remember the visit of Koren Andrews on October 6–10, 2014. I don't trust that snake in the grass Koren one bit. Koren is the type of low life scum that is always mooching off of other people. S/He is too stupid to do anything else. Koren was no friend of Allison, but s/he was family, so I guess what could Allison do? I had no idea Koren was there to railroad Allison into signing a bogus will. If I had, I would have been much more forceful and not let Koren turn me away so easily. I would have found some way to put a stop to it! Allison was always paranoid that everyone was out to get her money, but this time she was actually right.

15. I know the will was bogus because Allison would tell me from time to time how she wanted to help Crisscross Pass by building a movie theater there and completely funding it so that people could have something to do. She was going to set up an endowment so that the theater would be free forever, which was the only way it would be able to survive financially. I think the idea was that it could also double as a community center. Despite her unwillingness to venture out into it all that much, Allison really did care about the town. I think deep in her heart Allison believed she could make Crisscross Pass more cultured. This was probably a fool's hope, but I appreciate the sentiment.

16. I also find it hard to believe that Allison would give only her personal effects to Taylor and not some or all of her fortune other than the house, which was already half Taylor's anyway. The two had started to reconcile over the past couple of years. It took a while, but I think both of them were starting to realize that they were the only family each of them had. Taylor would come up to visit four or five times a year. Sometimes things would go smoothly and sometimes not, but Taylor kept coming. I did definitely sense that things were getting better. Then again, this was partially overwhelmed by Allison's increasing mental instability. But I just can't believe that Allison would be so insensitive to Taylor if she really was creating a will that expressed her final desires for how she would be remembered.

17. I don't mind that Allison did not leave me any money. Again, I find it kind of weird, considering how much time we spent together and how well be got along, but I can live with it. I just wish she were still here. Allison gave me one of her paintings, which I have hanging above my bed. I will never sell it, no matter how poor I get.

18. I will never be able to get the image of Allison's suicide out of my mind. I was the one who discovered her body. Around noon on October 28, 2014, I went over to Allison's place like normal. I knocked, but Allison did not come to the door. It crossed my mind that Allison might have gone on one of her walks in the woods, but I figured not — she had become so afraid of everything that she was even afraid of the woods. No one in

Crisscross Pass locks their doors, so I quietly entered the house and called for Allison. No answer. I walked around a bit until I got to Allison's studio and there she was, lying on the floor lifeless. From what I could tell, she had taken one of her father's pistols, stood next to her easel, placed the gun in her mouth, and splattered her blood and brains on an otherwise white canvas. I ran out of the house sick to my stomach, continued running back to my bar, and called the State Troopers. They came in a couple of hours and took away the body. Found out from the coroner that Allison had shot herself sometime late the previous night.

19. I still blame Sidney for pushing Allison over the edge. After Allison signed the will, Sidney became more and more belligerent toward her. By this point, Allison was only painting infrequently and had not finished a painting for well over a month. I think Sidney was mad at Allison over this. Like I said earlier, Sidney used to come to Crisscross Pass only every couple of months, but now Sidney was there for days at a time, leave for a couple of days, and then come back again. When Sidney was there, I was not allowed to see Allison. But in those brief periods when Sidney was gone, Allison would tell me all these horrible things. Allison said that Sidney yelled at her all the time, calling her "incompetent," "crazy," and a "loser." Sidney told Allison that she was an awful painter and that no one ever liked her paintings. I can't believe that Allison thought s/he was telling her the truth, but that seemed to be the case. She would cry uncontrollably whenever she talked about Sidney and sob "Is it true? Is it true?" I tried to console her and tell her that I loved her and Taylor loved her and that she was still an icon in the art world, but I'm not sure I got through. I tried to be as forceful as I could manage to be and convince her that she needed to get rid of Sidney and tell her/him never to bother her again. She would mutter "I know, I know," but Sidney kept coming, and Allison kept spiraling downward.

20. Sidney was not in Crisscross Pass on October 28 when Allison took her life. Sidney never came back to Crisscross Pass; s/he didn't even come here for the funeral. Sidney took my best friend from me. I don't care who gets Allison's money as long as it is not Sidney.

WITNESS ADDENDUM

I have reviewed this affidavit, and I have nothing of significance to add. The material facts are true and correct.

_____
Avery Martinez

SUBSCRIBED AND SWORN TO before me this 8th day of January, 2015.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Estate of ALLISON LATHAM, Deceased. TAYLOR MARKOVICH, Plaintiff, vs. SIDNEY WINSTON, Defendant.	Case No. 3AN-14-09999 CI

AFFIDAVIT OF JESSE MONTGOMERY

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Jesse Montgomery, being first duly sworn on oath, deposes and states as follows:

1. My name is Jesse Montgomery. I am an attorney in Alaska and was admitted to the Alaska bar in 1997. I went to law school at the Seattle University School of Law. After graduating in 1997, I returned home to Fairbanks to begin practicing law. I worked for four years at a local general practice firm, then decided to hang out my own shingle, which had always been a dream of mine. I decided that estate planning was an underserved area of the law in Fairbanks and a place where I could make my mark. I not only draft wills and offer estate planning advice, I also litigate estates in probate, including those where no will exists.

2. It has been hard making a living doing just estate planning and probate, especially in a city the size of Fairbanks. I've done two things to try to broaden my practice. One is to take clients outside of Fairbanks. I consider myself the premier wills and estates lawyer for the Interior and Arctic Slope. I also reluctantly have agreed to take a few non-death related cases, mostly family law. I am a sole practitioner, but I call my firm "Montgomery & Associates" because it sounds more imposing.

3. I charge a flat fee of $2,000 for drafting and executing a will. My type of clients wouldn't understand billing by the hour, and I have found that $2,000 is about right for the type of work that I generally put in to drafting a will. Of course, you can now download a generic

will off of the Internet for $100 and fill in the blanks yourself. That is one of the reasons why my business is down from where I was hoping it would be when I started out. But, my experience has been that these generic wills are full of gaps, even before the testator starts to fill them out, and that in many cases the money saved by not hiring a real lawyer to draft the will is more than lost through a court dispute over a poorly drafted and confusing will. And of course, I do charge a lot more than $2,000 to litigate a will.

4. Because I charge a flat fee for wills, I sometimes make money off of drafting a will and sometimes lose money, depending on how complicated a will it is and how long it takes me to draft it. I do not accept payment until the testator agrees that the will is what he or she wants and is worth signing. After all, if a client is not happy with my work, he or she should not have to pay for it. I am a very strong believer in providing quality customer service, something not always emphasized in the legal profession. The last thing I need to do is encourage more lawyer jokes.

5. The Allison Latham will was definitely one of those that I made money off of. To be honest, she had so much money and was of such a state of mind that I probably could have charged more than my standard flat fee and gotten away with it, but that is not the type of person that I am. Even still, it was a relatively easy will to draft because she was unmarried and did not have any children. Those are the things that really complicate a will. Not that that's a bad thing — I like kids and all — but from a legal perspective there is a whole other set of laws you have to go through if there are spouses and children. In the interest of full disclosure, Allison was married in her early 20s, which is how she got her last name, but the marriage lasted only about a year — I guess something about her being a temperamental artist — and has absolutely no effect on the disposition of her will.

6. What made Allison's will so simple is that she left all of her money and possessions to only three people. Most of the money went to Sidney Winston. Sidney also got the residual rights to Allison's paintings, which makes sense considering Sidney is in the art business. I'm sure those rights can be worth hundreds of thousands of dollars if not millions. I mean, everyone knows how much the value of art goes up once the artist dies. Simple supply and demand — there won't be any more supply and the demand often increases because of the uniqueness of owning a one of a kind painting, especially from an artist as groundbreaking as Allison Latham.

7. Allison gave a small amount of money — well, small for her bank account, $50,000 — to her cousin Koren Andrews. Allison has three other cousins, so I don't know why Allison only chose to give money to Koren, but it is not my job to question these things. Maybe Allison thought that Koren was the only one who appreciated her. Who knows? That is just pure speculation on my part. It is probably an exercise in futility to try to figure out the intentions of a crazy person anyway. I thought about making a comment to Koren about the $50,000 when s/he witnessed the will signing, but I decided it would not be appropriate. I assumed that Koren knew about the inheritance beforehand, given his/her communications with Sidney Winston, but did not ask about it.

8. Somewhat surprisingly, Allison left to her sister/brother Taylor Markovich only her personal effects. Family photos, scrapbook stuff, a few heirlooms, those kinds of things. Well, and the house of course, which had been left to both Allison and Taylor by their parents and thus became Taylor's alone upon Allison's death. Actually, I shouldn't say that this is surprising. I see disputes all the time between family members that result in one basically cutting the other one out of his or her will. It is sad to see, but hey, dysfunctional families are a fact of life. And considering the close relationship between Allison and Sidney, and Sidney's obvious appreciation for her art, maybe Allison thought that all the proceeds from her art should go to a fellow art lover.

9. So like I was saying earlier, this was a relatively easy will to draft. I was contacted by Sidney Winston on September 27, 2014, asking me to draw up a will for Allison Latham. I did not at the time know who Sidney Winston was. I of course knew about Allison Latham, who paints under the name Lite Metal. Everyone in Alaska does — with the passing of Fred Machetanz, she is our most famous living painter. Well, she was before her unfortunate suicide. I also knew that Allison suffered from mental illness, though I was not exactly sure what kind. Still, I was not surprised to be contacted by someone on Ms. Latham's behalf.

10. Sidney explained to me that Allison's mental state was deteriorating rapidly, and s/he wanted to get a will for Allison while she was still mentally competent. Normally, the way I write wills is by first getting in contact with the testator and having a long conversation about his or her priorities and values and how these can translate into transfer of the estate upon death. Devising a will can be very taxing emotionally, so it is important to me that the person for whom I am drafting the will is comfortable with me. After all, one's will can go a long way toward how one is remembered.

11. In the present circumstances, though, it was apparent that I would probably not have enough time to follow my usual method. Consequently, I agreed to have Sidney dictate to me over the phone the general structure and content of the will, which I would then craft into a legal document that could be signed by Allison. Sidney then dictated to me a will along the lines I discussed above. I think I still have my notes in my file.

12. It took me a little over half a day to draft Ms. Latham's will. Sidney had suggested to me that Allison might need a little bit of encouragement to sign the will. Sidney explained that Allison was in denial of her own condition and would not necessarily understand the importance of having a will. I do not know much about mental illness, but this made sense to me. Sidney told me that Allison would have episodes where she would slip into a delusional state and start talking incoherently. Sidney also thought that depending on her state of mind Allison might resist signing the will, even though we both agreed it was clearly in her best interests to do so, and suggested that I do whatever I could to make sure things went off "without a hitch." So, I wrote a letter to Allison gently encouraging her to sign the will when I visited the following week. Sidney assured me that in one of her more lucid moments Allison had confided in him/her a realization of a need for a will, but that for whatever reason this realization had been fleeting. I know I am a bit biased in this because this is what I do for a living, but I cannot emphasize too much the importance of

having a will, especially for what Allison wanted to accomplish. Alaska statutes hold that if Allison did not have a valid will upon the time of her death, all of her estate would go to Taylor. My understanding from Sidney is that this is not what Allison wanted. Therefore, it was vital to get a valid will in place as soon as possible.

13. I drove down to Crisscross Pass the morning of Friday, October 8, 2014, and arrived shortly after 1:30. Crisscross Pass is a small town, so it was not hard to find Allison Latham's house, despite the fact that there aren't really any well defined streets. Sidney had given me directions to the house that were relatively easy to follow. You know you are in rural Alaska when the directions say to turn left at the rusted out airplane fuselage. When I got to Allison's house, I was surprised at how humble it was. I know it is rural Alaska and everything, but I would have expected someone worth $3.3 million to have some sort of grand estate. But that was not the case at all. It was a nice enough house, I suppose, but it seemed like an ordinary one-story ranch house that couldn't have had more than seven or eight rooms. I have no idea what Allison did with all of her money, but it certainly did not get poured into her living quarters.

14. I expected to meet Sidney Winston at Allison's house, but instead her cousin Koren Andrews met me at the door. I asked Koren where Sidney was, and Koren replied that Sidney was away on other business and that s/he was there to put Allison at ease and make sure there were no problems with signing the will. That was good enough for me. It certainly was not necessary for Sidney to be there, as long as we had two witnesses to attest to the will. In addition to Koren, the other witness was Peter Horseth, a resident of Crisscross Pass. Unfortunately, Peter died over the winter when his snowmachine broke down while he was out in the wilderness and he froze to death before anyone could find him.

15. Allison was very nice when I met her. Perhaps a little subdued, but that is understandable considering the gravity of signing a will. I mean, she said all of the standard pleasantries, asked me if I wanted something to drink, and thanked me when I told her how much I liked her paintings, but didn't really seem in the mood for small talk. Of course, this is the first time I had met her, so maybe she was always like that. She did not, however, show any signs of being mentally ill or of having one of her "episodes" that Sidney warned me about.

16. I would not have allowed Allison to sign her will if I thought she lacked testamentary capacity. It would have been an ethical violation of the lawyer's Code of Professional Responsibility for me to do so. Given what Sidney had described to me of Allison's behavior when she was suffering one of her episodes of mental illness, I concluded that this was not the case here. Allison did seem to understand what was going on, though it was hard to tell for sure since she was so quiet and never really spoke unless she was asked a question. But like I said, I would not have allowed the process to continue if I did not think that Allison was mentally competent to sign her own will. The requirements for having testamentary capacity are that someone knows (1) what stuff they have, (2) what they want to do with it, and (3) who the "natural" heirs of their bounty are. Allison met these requirements as far as I could tell.

17. The whole process only took about an hour or so. Allison said that she had not seen the will before, which sort of surprised me since I was sure I had sent her a copy. Maybe she had just forgotten. I made Allison read through the entire will, word for word, so that she would know exactly what its contents were and what would happen to her estate upon her death. She did this very calmly, seemed to be reading intently, and did not have any questions about or objections to any of the terms of the will. After reading carefully through her will, Allison signed it and then Koren and Peter signed as witnesses. And that was it. Koren then handed me a check for my $2,000 fee plus travel expenses. I remember looking at the check to see if I had an actual Allison Latham autograph. You see, she does sign her paintings, but since she paints under the pseudonym "Lite Metal" hardly anyone has a copy of her real signature. Sure enough, the signature on the check matched the signature on the will. I considered not cashing the check since I might be able to sell it on Ebay or to an art collector for more than its face value. But, I needed the money immediately, so I did cash it. It was early enough that I thought I could get back to Fairbanks that day, so I thanked Allison again and quickly departed.

18. I have not really played any part in the adjudication of Allison's will since her untimely death. Per the terms of the will, Sidney Winston was named the personal representative and executor of the will. I was not asked to represent Sidney, nor was I contacted for legal representation by Taylor. I now realize that I was somewhat duped by Sidney and feel a bit ashamed about my role in this whole deception. I don't think I did anything wrong given what I knew at the time, but I do wish I knew more about Sidney's history with Allison. I trusted Sidney and believed that his/her intentions were only for the preservation of Allison's legacy. I now am not so sure and think that Sidney may have just been in it for the money.

WITNESS ADDENDUM

I have reviewed this affidavit, and I have nothing of significance to add. The material facts are true and correct.

_____
Jesse Montgomery

SUBSCRIBED AND SWORN TO before me this 16th day of January, 2015.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Estate of ALLISON LATHAM, Deceased. TAYLOR MARKOVICH, Plaintiff, vs. SIDNEY WINSTON, Defendant.	Case No. 3AN-14-09999 CI

AFFIDAVIT OF DR. ROBIN CARLSON

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Dr. Robin Carlson, being first duly sworn on oath, deposes and states as follows:

1. My name is Dr. Robin Carlson, and I am a psychiatrist at the Lincoln Institute for Mental Wellness in Seattle. My specialty is diagnosing and treating severe personality disorders. I have been a psychiatrist for close to two decades and have had thousands of patients. I feel my success rate is generally quite good, though in this field it is sometimes hard to classify what counts as a "success." Often times, it is impossible to completely cure a patient. Rather, the best we can hope for is to control the symptoms, so that the patient can be integrated safely back into society.

2. I have testified in numerous trials. For my services I charge $500 per hour, plus travel and other expenses. This is higher than what I charge my patients, but it is also what the market will bear. This case is a little bit unusual for me in that I typically get the opportunity to examine the person about whom I am testifying. Most of the cases I testify in are criminal cases where the defendant is pleading the insanity defense. I have testified on both the prosecution and the defense side. This by no stretch of the imagination means that I am a hired gun. I have gotten to the point in my career where I do not need to take any particular case and can choose to testify only in those cases where the side I am aligned with I genuinely believe should prevail. In other words, if I testify, you had better believe I intend to win. Over the last five years, the side I have testified for has won

around 80 percent of the time, and several of the losses were due to bad legal representation, not to any errors in my testimony.

3. Of course, I never got the chance to treat Allison Latham, which is unfortunate, as it appears she never got any competent psychological treatment. It is impossible to predict if Allison's suicide could have been prevented, but I feel confident that with the right kind of attention there is a good chance it would have been. I just wish I had had the opportunity to try. However, the lack of an opportunity to examine Ms. Latham in person does not mean that I am unable to diagnose her condition. Would I feel more confident in my conclusions had I the opportunity to examine Ms. Latham in person? Yes, most definitely. But, I have enough experience to recognize that the signs exhibited by Ms. Latham provide a reliable basis for reaching a conclusive diagnosis.

4. I am basing my diagnosis and other analysis of Ms. Latham's psychological condition from reading her diary, reflecting on her paintings, and reviewing the affidavits submitted by the other witnesses in this case. It is my conclusion that Ms. Latham suffered from schizophrenia. I should clarify that schizophrenia does not mean that a patient has multiple personalities, which is the common misperception. This condition is called dissociative identity disorder, also known as multiple personality disorder. As the name suggests, this condition is characterized by a person having more than one discrete, separate identity. Each of these identities is unique, with its own memories, ideas, thoughts, and ways of thinking. For example, one identity may be the protector, while another may be a child. On average, a person with dissociative identity disorder has between 8 and 13 separate personalities. The genesis of dissociative identity disorder is often a severe traumatic experience during the early childhood years.

5. Schizophrenia, on the other hand, is characterized by two or more of the following: delusions, hallucinations (visual or auditory), disorganized speech (derailment of speech or incoherence), disorganized or catatonic behavior, or negative symptoms such as lack of motivation. Delusions may be grandiose, such as where the person believes he or she has special powers, or may be bizarre. It is also common for a schizophrenic person to have persecutory delusions. Hallucinations are reported by approximately 75% of schizophrenics, with 90% being auditory, and 40% visual. It is also possible for schizophrenics to have delusions that are both auditory and visual. Auditory hallucinations, the colloquial "voices in the head," may command the sufferer to do things, comment on his or her actions, or suggest courses of action. The voices can be from people known to the suffer, such as a dead relative, or from strangers. Visual hallucinations can be bizarre and frightening, even threatening. Sufferers may see things such as fantastic or mythical animals, blood dripping from people, or may believe that inanimate objects are actually alive. Occasionally, the schizophrenic may experience tactile hallucinations, such as where the sufferer believes that bugs are crawling over his or her skin. All in all, schizophrenia is much like the effect of some hallucinogenic illegal drugs, such as LSD, though usually less dramatic. The Nobel Prize winning mathematician John Nash, the subject of the movie "A Beautiful Mind," is an example of a well-known person who suffered from schizophrenia.

6. It is important to recognize that the person with schizophrenia firmly believes his or her delusions and hallucinations are real. After a time period in which the sufferer is very confused, he or she will often have a catharsis in which he or she comes upon an explanation that ties together the delusions and hallucination. Of course, this explanation may make sense only to the sufferer. With continued therapy and proper medication, it may be possible to control the hallucinations and delusions so that the schizophrenic dissociates himself or herself from them and appreciates that they are not real, or at the very least that it is a bad idea to give credence to the delusions and hallucinations. In effect, this is not a complete remission of the thoughts, but rather more of a "softening" of the delusions and hallucinations to make them more manageable.

7. Schizophrenia usually first manifests during adolescence or early adulthood, with about a quarter of sufferers having an abrupt, active onset. They experience a slow decline in functioning, which may include, in addition to delusions and hallucinations, social withdrawal, impaired functioning, lack of motivation, vague rambling speech, depersonalization, and poor hygiene. While schizophrenia is a brain disorder, possibly genetic, and thus not caused per se by traumatic events, the onset schizophrenia can be triggered by a traumatic event, such as a near-death experience or the death of a loved one.

8. Schizophrenia is characterized by periods of exacerbation and remission. Each episode of schizophrenia typically lasts for several days, though it is possible it could last for only an hour or so. Generally, the first years are the worst, with active symptoms predominating and possible multiple hospitalizations. Over time, however, a more non-psychotic state is usually reached, characterized instead by chronic symptoms of apathy, low energy levels, social withdrawal, and increased vulnerability to stress. Approximately 20% to 40% of schizophrenics attempt suicide, usually following a period of severe depression after an acute schizophrenic episode. Unfortunately, about 10% of people suffering from schizophrenia actually do succeed in committing suicide at some point in their life.

9. From what I can tell of Ms. Latham, primarily from her diary, it is clear to me that she suffered from schizophrenia. I would say that even in her teen years she exhibited some of the warning signs of schizophrenia, such as a withdrawal from society and her moodiness. Of course, this is consistent with the behavior of perfectly healthy teens, but in retrospect this behavior appears to signal the early stages of Ms. Latham's schizophrenia. Her brief marriage to Tom Latham, which seems to be characterized by periods in which she would be verbally abusive and unaccepting of Mr. Latham is also consistent with a person developing schizophrenia. While it does not appear from the evidence with which I have been presented that Ms. Latham at that time experienced delusions or hallucinations, she does appear to have exhibited exaggerated mood swings characteristic of a person with an unstable personality. I would suggest, then, that Ms. Latham was not at this time schizophrenic but instead that she suffered from bipolar disorder, a condition that sometime precedes and can develop into schizophrenia. Bipolar disorder is characterized by a person exhibiting brief periods of extreme behavior. What form this behavior takes can vary great deal from person to person, but it usually takes the same form within any given person.

10. In Ms. Latham's case, it certainly seems clear to me that her full blown schizophrenia was triggered by the tragic death of her parents. For one thing, it was only at this point that Ms. Latham decided to keep a record of her thoughts in the form of a diary. She was aware of the unusual and troubling dreams she was having and seems to have had a recognition that this might be a sign of a deeper problem. It is not uncommon for the visions associated with schizophrenia to first manifest through a person's dreams. These visions often have some vague association with real-world events in the sufferer's life. In Ms. Latham's case, I believe that the green moose represented her parents. The blue bear is a bit more complex. I believe the blue bear represented alternately society in general, Ms. Latham's creeping mental illness, and eventually morphed into Sidney Winston. I also find Ms. Latham's paintings to be instructive as to the course of her illness.

11. Ms. Latham's schizophrenia grew progressively worse over time. This much is clear from her diary. Not only did the hallucinations move from dreams to waking hallucinations, there are also signs of incoherence and disorganized thought in the diary. The severe depression, sense of worthlessness, and lack of motivation exhibited in the diary are also characteristic of accelerating schizophrenia. **[Note: Students are free to pick and choose passages from Allison Latham's diary and/or paintings to support the framework set forth in this affidavit. Great leniency will be granted so long as the arguments made are consistent with this affidavit. If a student wishes to reference a particular painting or passage from the diary, that painting or passage must be admitted into evidence, either specifically or as part of a collective admission into evidence of the paintings or diary. The attorneys for Sidney Winston have the option to object to such attempts to admit these items into evidence. Students are not required to delve into specifics and may prefer to restrict Dr. Carlson's testimony to the generalized conclusions expressed here.]**

12. I do not believe that Ms. Latham was of sound mind on October 8, 2014 when she signed her will. While it is true that a schizophrenic can experience periods of remission where he or she is for the most part sane, Ms. Latham's schizophrenia was rampant at this period in her life, so it is only logical to conclude that she was delusional and not possessed of her full senses when she signed her will. This is confirmed by the diary entries surrounding the October 8 date. It is not the case that the medication prescribed by Dr. Grainger would have brought sanity to Ms. Latham's mind. I do not believe that Dr. Grainger correctly diagnosed Ms. Latham. I do not really blame Dr. Grainger for this, as acute stress disorder is almost to be expected after what Ms. Latham had been through regarding her parents. Follow up visits might have led to a correct diagnosis of schizophrenia and more appropriate medication. The Xantal that Dr. Grainger prescribed is a powerful anti-depressant. It deadens the emotions and results in a sense of detachment in the patient, but it does not really eliminate or even modify the perceptions of the patient. In other words, Xantal did nothing to rid Ms. Latham of her delusions or hallucinations. If anything, the drug made her generally apathetic and reduced her ability to resist either her hallucinations or real human beings. In this state of mind, she would be very suggestible and easily manipulated.

13. It certainly appears that Sidney Winston had a great deal of influence over Ms. Latham. Not just during the will signing, but throughout the entirety of their professional relationship, Mr./Ms. Winston took steps to keep Ms. Latham under his/her coercive control. When Ms. Latham would show signs of independence, Ms./Mr. Winston made efforts to squelch them. Convincing Ms. Latham to sign a will giving all of her money to her/him was just the last step in this process. Someone suffering from schizophrenia can be very impressionable at times because they are so detached from reality that they lose the will or ability to resist those in positions of authority over them. Again, this impressionability would be furthered by the use of the Xantal that Ms. Latham had been prescribed. Sidney Winston certainly seemed to be in a position of authority over Ms. Latham, and this is reflected in her diary entries. For Ms. Latham, this problem was exacerbated by the strong sense of self-blame that she felt after the tragic death of her parents. She suffered a severe lack of personal worth. Her only outlet of personal expression was her art, but Ms./Mr. Winston was taking that art away from Ms. Latham and monetizing it, causing her to view herself – at those times when she was capable of self-reflection – as an extension of Sidney Winston's ambition and not as a self-actualizing human being with self-value independent of others. For someone such as Ms. Latham who suffered from depression, the sense of alienation caused by Ms./Mr. Winston would only exacerbate and deepen both her depression and her schizophrenia.

14. I also believe that Sidney Winston's actions resulted in Ms. Latham committing suicide. I of course cannot know what was in Mr./Ms. Winston's mind, even less so than Ms. Latham, but from what Ms. Latham wrote in her diary, I would have to conclude that after Allison Latham signed her will Ms./Mr. Winston made a conscious effort to exacerbate her mental illness to the point where Ms. Latham was driven to kill herself, thus executing the will. It certainly appears that Ms./Ms. Winston knows a great deal about mental illness and used this information to his/her advantage.

15. I have reviewed the screening form prepared by Pat Bernstein and consider it to be very poorly and unprofessionally done. I do not expect full diagnostic capabilities by someone without extensive medical and psychiatric training, but that is why the screening test sets out safeguards to ensure that follow-up efforts are conducted. By the procedures set forth in the test, Ms./Mr. Bernstein should have referred Ms. Latham to further psychological testing or at the very least informed Taylor Markovich that such testing was necessary. She clearly suffered from severe depression and clearly had disturbing delusions that were worth further inquiry by a mental health professional. Instead, Mr./Ms. Bernstein took matters into his/her own hands by ignoring clear indicators of mental illness and concluding that Ms. Latham was capable of living alone. This went beyond the boundaries of an otherwise excellent screening test and was very unprofessional.

16. I was extremely saddened and disappointed to see how Sidney Winston treated Ms. Latham. Unfortunately, in my line of work it is far too common to see people being taken advantage of because they are mentally ill. Ms. Latham's wealth and fame only served as perfume to attract a bigger rat. Most people think that the mentally ill usually end up as vagrants. This is sometimes true, but there are many, many people who suffer from mental illness but are still able to piece together some semblance of a private existence.

This, of course, does not mean that they do not need help. I cannot help but think that if Ms. Latham did not live in rural Alaska she might have been able to receive proper mental health treatment or at least a stronger support network. Because she did not, she was in a very vulnerable position. If you ask me, Mr./Ms. Winston should not only not be permitted to benefit from Ms. Latham's estate, s/he should be in jail.

WITNESS ADDENDUM

I have reviewed this affidavit, and I have nothing of significance to add. The material facts are true and correct.

_____
Dr. Robin Carlson

SUBSCRIBED AND SWORN TO before me this 11th day of February, 2015.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Estate of ALLISON LATHAM, Deceased. TAYLOR MARKOVICH, Plaintiff, vs. SIDNEY WINSTON, Defendant.	Case No. 3AN-14-09999 CI

AFFIDAVIT OF SIDNEY WINSTON

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Sidney Winston, being first duly sworn on oath, deposes and states as follows:

1. My name is Sidney Winston. I am 53 years old and my profession is as an art dealer. I have extensive experience in the art world. I trained in my early years as a painter myself, but unfortunately, my talent level was not up to the level of my ambition, and I was unable to succeed as a professional painter. I worked for a few years as a curator in an art museum in St. Louis before deciding that I wanted a more active role in shaping the art world. It was at that point that I decided to become an art dealer. This was when I was 42. I started out by moving back to my hometown of New York City, where I knew there would be a better selection of artists than I could find in St. Louis.

2. Initially, I had only a few small local artists in New York City as clients. None of them were very good, really, but since I was just starting out I couldn't expect too much. Allison was my first big break. I first saw her paintings about five years ago, in mid-2012, in an art exhibit in Chicago. I was immediately impressed with Allison's stunning critique of modernity and the way she was able to get that across in the form of a painting. I knew this was an artist who would change the course of art forever. At the same time, I realized she had not yet met her full potential.

3. If I may briefly digress, let me describe Allison Latham's, or should I say Lite Metal's, style and where it fits into the art world. For the past few decades — heck, since the turn

of the last century — painters and other artists have attempted to express the nihilism of modern existence through increasingly chaotic art. This spawned the minimalist movement, which sought peace through the simplicity of essence. Both of these are fine if you have studied art intensely like I have and can catch all of the hidden metaphors. However, both movements fail to reach a mass audience because on their surface they seem to say nothing at all. Lite Metal gets around this not through abstraction but rather through interpreting chaos as fluidity. By painting in a style that looks like it is almost etched in mercury, Lite Metal expresses the complete inability to freeze, to set in stone, individuality or human identity. Yet, she does this in a way that virtually anyone can understand. Hence, in an age where high class art is often seen as only being for snobs, Lite Metal paintings are high class art for the masses. And let me assure you of one thing — Lite Metal paintings make quite the impact when you see them in person. When you look at them from a distance, they can look like they are computer generated, but when you get closer you are blown away by the skill and artistry in manipulating the medium. Outstanding work!

4. So, it was clear from the start that Lite Metal had great talent. Furthermore, I remembered from one of my art magazines reading an interview with Lite Metal's sister/brother. I remembered that Lite Metal was a bit of a recluse living in remote Alaska. I couldn't immediately remember Lite Metal's real name or the name of her brother/sister, so when I got home I pawed through my archive of art magazines — I keep all of them because you never know when they are going to be a useful resource in identifying artists or art trends — and re-discovered Lite Metal's true identity. I read intently of Allison's isolated upbringing and the tragic recent death of her parents. The more I read the more I realized that she was in need of strong personal and professional guidance, the type that I could provide. Of course I knew that Allison would make me a great deal of money, but more importantly, I knew that she would be a major force in the art world and that this was my chance to have a real impact. I could not pass it up.

5. Before too long, I was on a plane to Alaska; I had never been here before. I have to say that it took me quite a while to get to Crisscross Pass, though at the same time it was a beautiful drive and traffic was less than minimal to a big city maven like me. And once I got there I had little idea how to find Allison. I stopped into the Glass Slipper to ask directions. Little did I know that I would be meeting my arch nemesis for the next several years — Avery Martinez. Avery was reluctant to tell me where Allison lived, but I explained that I was an art dealer interested in advancing Allison's career, and Avery relented.

6. Allison was reluctant at first to talk to me about selling her paintings. She already had an art agent in Anchorage, Clark Davis. Clark was fine, but clearly only useful locally. I wanted to make Lite Metal a national success, an international success. I hoped Allison would buy into my vision.

7. You see, art is a form of personal expression. It is clear that Allison had a lot of pain in her life, even before the tragic death of her parents. But art can be therapeutic not only for the viewer, but also for the artist. I truly believed that if Allison could express herself

more effectively through her art, it would be a way to overcome the pain in her life. I cared greatly about helping Allison not only as an artist but also as a person. Fortunately, Allison understood all of this and realized that my direction could help her achieve her goals as an artist. Allison soon agreed to drop Clark Davis as her agent and have me be the exclusive marketer and distributor of her paintings.

8. When I first started working with Allison, I knew she was often depressed, but I did not know that she had a mental illness. Sure, she was a bit socially awkward, but most artists are. I knew that, for her, painting was a way for her to express herself in an attempt to overcome her intense shyness. It was only natural, then, that I encourage her to take her art to a larger audience. Once Allison told me that her art was meant as a critique of personal identity in an increasingly impersonal world, I was even more sure of the correctness of the path I was suggesting. I remember telling Allison: "You paint not to tell yourself your critique. You already know the answers. No, you paint to tell your critique of modernity to others. This means you need to share your paintings with as many people as possible." It took a while, but Allison eventually saw the inherent logic of my statements.

9. With that, I was off and running, turning Allison into the international painting superstar she is today. I am quite confident that she never would have achieved this level of success without me. Still, I bristle when people say I pushed Allison too hard. I encouraged her; that is very different. Again, art was really her only way of expressing herself, so by encouraging her to paint I was in reality encouraging her to improve her mental health, to work through various issues she needed to resolve. I shudder to think how Allison's remaining few years would have been had she not had painting as an outlet for her emotions. I find it amazing that she was able to pull through like she did.

10. I would check in on Allison every now and then to pick up new paintings and make sure she was doing well, but mostly I was kept busy traveling to various locations promoting her artwork. I found Crisscross Pass to be quite boring and cannot understand how anyone would think anything different. While I was gone, Avery Martinez would consort with Allison. I did not and do not trust Avery, s/he is a small person from a small town with a small mind. Avery knows nothing of what it takes to be successful in the international art world. I think Avery might have believed that I was going to lead Allison away from Crisscross Pass. I wish I could have, but I knew that this was not possible. But Avery nonetheless tried, whenever I was away, to plant these bizarre ideas in Allison's head that I was evil and did not care about her. It used to take a great deal of work whenever I saw Allison again to regain her confidence, to remind her why she was a successful artist and what an impact she was having in the world. Avery was just jealous and could not accept the possibility that Allison could have any other friends. I even hear rumors that Allison even gave Avery a couple of Lite Metal paintings.

11. Over the course of a couple of years, I watched Allison's mental health steadily decline. This made me extremely worried — not as her agent but as her friend. I decided it was best that I get Allison to sign her power of attorney over to me so that I could effectively manage her career if she deteriorated further mentally. The notion that Avery is pushing

that I caused Allison's death is preposterous. I was only there occasionally. It was Avery who was there on an almost daily basis, except when I could fend him/her off. Maybe it was Avery that drove Allison to commit suicide. Or maybe Avery was just frustrated that she could not do anything to stop Allison's descent into madness. If there was anything that could have been done, I would have done it myself. At one point, Allison wanted to take a trip to see one of her exhibits in a museum. I knew this would have been very rewarding to her, but at the same time I fear the stress would have been too much for her to handle. Do you think I liked seeing my best client slowly slip away? Allison never told me about the Green Moose or the Blue Bear, but then again, I do not place much credence in the ramblings of someone suffering from mental illness.

12. Because I knew that Allison's sanity was unavoidably diminishing, I knew it was important that she have a will. I talked to Allison about this. It was not easy, confronting her with her eventual demise, but she knew what was coming. Allison adamantly pleaded with me not to let Taylor get any of her money. Allison said that Taylor never appreciated her art and did not deserve to benefit from its success. Allison also told me about how she never wanted her real identity to be revealed, how she wanted "Lite Metal" to be this mysterious pseudonym, but how Taylor ruined all of this for her. Allison said that I was the only good thing that ever came of Taylor's loose lips. I can't say I blame Allison for wanting to exclude Taylor from her will. We cannot control who our siblings are — it is just an accident of birth. It does not mean that we have to be friends with them for life. And when they betray us, it is that much more painful. I am surprised Allison left Taylor with the family mementos, but I suppose she had no one else to whom she could give them. And the house automatically transferred fully to Taylor upon Allison's death because they jointly owned it by virtue of inheriting it from their parents.

13. I knew that Allison would not herself be able to draft a will, nor would she be able to contact a lawyer to draft one. So, I carefully took notes on how Allison wanted her property divided up and called Jesse Montgomery, whom I found by looking in a legal directory under "estate planning." I explained the situation to Jesse, and s/he was gracious enough to be of assistance. I am very grateful for this. I was hoping to avoid the kind of court battle in which I now find myself enmeshed, but things do not always go as planned.

14. The idea that I could have pressured Allison into signing her will is ridiculous. I was not even there! I arranged for Koren Andrews to be there because I knew Allison would want a comforting presence in this emotionally stressful time. Because Allison had told me to leave a sizable sum of money to Koren, I figured she must enjoy having her/him around. I seem to have been vindicated in this, in that there were no problems in Allison signing her will. This is also why I recommended to Koren that s/he convince Allison to take her medication — so that she would not be unduly stressed out by a sobering event such as signing one's own will.

15. Despite what Avery may say, I did not yell at Allison or call her "incompetent." How could I do something like this? Again, I encouraged her to paint because I knew it was therapeutic for her. My efforts may ultimately have failed, but I knew that Allison was getting dramatically worse and did the only think I felt I could do. I begged Allison to

start painting again, hoping against hope to draw her out of the deep recesses of her mind. It was truly unfortunate that Allison ultimately chose to take her life. The art world lost one of its guiding lights that day.

16. I was not able to attend Allison's funeral because I knew there would be people at the funeral, namely Avery and Taylor, who did not want me there, and I did not want to cause any trouble. Plus, I was in Paris at the time arranging for an exhibit of Allison's paintings in the Louvre, and it would have been a real hassle to make it back in time.

WITNESS ADDENDUM

I have reviewed this affidavit, and I have nothing of significance to add. The material facts are true and correct.

_____
Sidney Winston

SUBSCRIBED AND SWORN TO before me this 22nd day of January, 2015.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Estate of ALLISON LATHAM, Deceased. TAYLOR MARKOVICH, Plaintiff, vs. SIDNEY WINSTON, Defendant.	Case No. 3AN-14-09999 CI

AFFIDAVIT OF KOREN ANDREWS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Koren Andrews, being first duly sworn on oath, deposes and states as follows:

1. My name is Koren Andrews. I am 28 years old and I live in Valdez, Alaska, where I work as a commercial fisher. I don't own my own boat or anything, so I work for hire as a deckhand. I enjoy going out on the water and all, but it is tough work. Unfortunately, the boat I have been working the past few years is not very successful. The captain's not going to see this affidavit is he, right? OK, well, he's not very good and always goes to the wrong places. I'd like to get on a better boat, but I kinda sometimes drink too much, so no one wants to hire me.

2. So, you can understand I was really excited when I learned that my cousin Allison had left me $50,000 in her will. I'm not surprised. Allison and I got along pretty well. I never really understood her art — I'm more of the dogs playing poker type — but hey, it made her a lot of money, so more power to her. But, you know, we were still buds and all. Crisscross Pass is only a couple hours' drive from Valdez, so I'd go up there every few months or so to visit with her. I don't think any of her other three cousins ever paid her a visit. Of course, they all live in the Lower 48, so it would be kind of hard for them to just drop in. And Allison was never really the type to invite people over.

3. I got a call on October 3, 2014 from Sidney Winston, who I guess is Allison's art agent. I wonder if s/he gets Allison's art? Anyway, Sidney said that Allison was going to sign her

will on October 8, but that s/he couldn't be there. So, Sidney asked if I could go up and be a witness on the will. I never actually read the will. I figured my only job was to make sure it was actually Allison signing the will. That was easy enough.

4. October is kind of a dead time in the fishing business. Heck, the whole winter is. I do some snow removal stuff to get by, but we hadn't had a major snowstorm yet. So, I was just sort of sitting around doing nothing, which meant I had plenty of time to go up and see Allison. I hadn't seen here in a while anyway, so this was as good a time as any. So, I hopped in my truck and off I went.

5. I went up there the afternoon of October 6, so that I could spend some time with Allison. I knew Allison had been having some mental problems, so I wasn't entirely sure what to expect. Sidney had told me that it was very important that Allison take her medication, otherwise she could go completely crazy. And she had to be sane for her will to be valid. Allison didn't want to take her medication, but I pleaded with her to do it for me, so she did.

6. Allison seemed fine the whole time I was there. She was usually somewhat difficult to deal with and could be temperamental at times, but she was pretty calm while I was there. I guess maybe the drugs were having an effect, which was fine with me. I did usually enjoy spending time with her because she could be quite the talker when she loosened up and usually had interesting social commentary, but having her be kind of quiet was, I admit, a bit of a relief and less stressful as well.

7. Avery Martinez tried to come over the next day to check in on Allison, but I told her/him that I could take care of things and that s/he wouldn't be needed. I told Avery I was planning on staying through the weekend and that I would prefer it if s/he didn't come over again. Avery and I don't get along too well. Avery kind of butts into family business a bit too much. I mean, I guess it's nice to have someone like Avery to check in on Allison and stuff, but Avery keeps saying how Allison and Taylor should reconcile. That's just none of Avery's business. Plus, when we were growing up and all and I would visit Crisscross Pass, Avery always teased me about not being very smart. What does s/he know?!

8. Boy did Allison and Taylor ever have some fights! I remember one Thanksgiving a couple years ago they got into a big food fight. I think Taylor was always sort of mad about the way Allison treated Tom Latham, to whom she was married for about a year oh, say, eight or nine years ago. Taylor thought that Allison should have stayed married to Tom, but Allison thought that Tom was too simple and didn't appreciate her art. Well, you know, the selection of eligible men in Crisscross Pass wasn't too great, and Allison didn't want to leave town, so what do you expect. It is a shame how Allison sort of ran Tom out of town. Tom was a good guy. I think he ended up going to work on the Alaska Pipeline and did right well for himself.

9. But Taylor never forgave Allison for it. I think Taylor also might have been a bit jealous of Allison. The Markoviches, Allison's and Taylor's parents, were very driven people and

always pushed their children to succeed. They both died about three years ago when their car hit a moose on the Glenn Highway. Such a shame — they were institutions in the town of Crisscross Pass. Allison was her parent's favorite because she was always a little "off," if you know what I mean, and needed special attention. I mean, she could be very emotional at times and would break out into screaming fits for no reason. Even still, it was clear from an early age that Allison had an amazing talent for painting, and her parents encouraged her to be experimental and express herself that way.

10. Taylor always resented the way his/her parents fawned over Allison. Taylor was pretty smart, but did not have any real creative talents, so the parents, while they tried to be supportive of Taylor, weren't quite sure what to do with him/her. Crisscross Pass is too small for there to be many outlets for a smart kid to shine. So, Taylor just sort of would sit around and do a lot of reading until s/he could go off to college. Allison, on the other hand, started out painting nice stuff like flowers and landscapes, but as she became a teenager and a young adult her art just started to become weirder and weirder until she developed the "Lite Metal" style she used until she died.

11. Once Allison started to become famous, Taylor saw the opportunity to get back at her. You see, Allison was always real big on privacy. That's why she signed her paintings with a fake name. So, Lite Metal paintings start catching on around the country and selling for big bucks, and Taylor goes to all the Anchorage newspapers and tells them the story of how it is his/her sister who had been doing all of the paintings and how she lived alone in Crisscross Pass. The papers sent out reporters to Crisscross Pass to confirm the story, and they go banging on Allison's door wanting to talk to her. This makes Allison really mad because she don't like strangers at all. And Taylor doesn't stop. Taylor does TV interviews and interviews with art magazines and basically just lives off of Allison's reputation for a while. And to rub salt in her wounds, Taylor sends copies of all of these articles to Allison. I don't blame Allison for hating Taylor.

12. But like I said, I had fun spending time with Allison. I didn't understand most of what she was saying about her art and frankly didn't really care. I think she just needed an outlet to talk to, especially after her parents died so suddenly. After the funeral, Allison supposedly went into this stretch where she didn't say a word for a whole week. Then she had some giant outburst at a town meeting; I don't really know the details. Then there was the Thanksgiving incident with Taylor. I don't think the two spent any holidays together after that. I guess this was sort of Allison getting back to her usual temperamental self.

13. All of which made me so surprised when Allison was so reserved during the time I was there. But it did mean that there weren't any problems with the will signing. The witnesses were myself and Pete Horseth. I don't know Pete all that well, he was just some guy who lived in Crisscross Pass and did what I have no idea. Peter told me that Sidney had agreed to pay him $1,000 to come witness the will and that they had reached this agreement the previous weekend when Sidney was in town. OK. I guess someone other than me had to witness the will, and if Sidney had to bribe someone else to do it, then so be it. Pete seemed like a nice enough sort — too bad about that snowmachine accident this past winter.

14. Allison seemed sane to me when she was signing her will. I had no problem believing she was mentally competent. I mean, she was a bit reserved and all that, which was fairly typical for her, but she seemed to understand what was going on and didn't ask too many questions. And she did sign the will without hesitation. I remember her saying "This will is just as I hoped it would be. I can finally put my soul to rest knowing that my artistic legacy will be protected in Sidney Winston's hands." The whole thing was over in under an hour, and then that lawyer, Jesse Montgomery, took off, promising to send back the original of the will once s/he made a copy for her/his records. Before s/he left, I gave the attorney the $4,000 check that Sidney had sent to me to pay for the will. I stayed the rest of the weekend, but nothing much happened. Allison kept taking her medicine and kept remaining quiet. I finally got bored and went hunting Saturday afternoon.

15. I was devastated when I heard about Allison's suicide. Once the will was read, I knew it would mean an end to my financial problems, but it wasn't like I was counting on that money any time soon. To be honest with you, Allison was a couple of years older than I am and I always kind of looked up to her, even though we were two very different people. I'll miss her.

WITNESS ADDENDUM

I have reviewed this affidavit, and I have nothing of significance to add. The material facts are true and correct.

_____
Koren Andrews

SUBSCRIBED AND SWORN TO before me this 13th day of January, 2015.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Estate of ALLISON LATHAM, Deceased. TAYLOR MARKOVICH, Plaintiff, vs. SIDNEY WINSTON, Defendant.	Case No. 3AN-14-09999 CI

AFFIDAVIT OF PAT BERNSTEIN

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Pat Bernstein, being first duly sworn on oath, deposes and states as follows:

1. My name is Pat Bernstein and I am a case analyst for the State of Alaska in the Behavioral Health division of the Department of Health and Social Services. I have been working there for the past four years and am based out of the Anchorage office. My typical caseload is around 400 cases a year, mostly in Southcentral Alaska.

2. I became involved in the case of Allison Latham due to a request by her brother/sister Taylor Markovich. Taylor, who also lives in Anchorage, set up an appointment with me on April 22, 2014, and requested that I conduct a mental health assessment of her/his sister Allison to determine if it was appropriate to appoint a guardian for her. A guardian would have the legal authority to make decisions for Allison in areas where a court determines that Allison was not capable of making her own decisions. Appointing a guardian is actually a more complicated procedure than I am usually involved in. There are a whole series of procedures established by statute. For starters, Taylor would need to file a Petition for Guardianship with a court. There would then be a formal investigation and a court hearing on the matter.

3. I explained all of this to Taylor, but s/he did not want to get the court system involved. Not sure why not. I then explained to Taylor that my agency had the authority to conduct mental health examinations and that if our screening process showed a need for it, I could

recommend mental health providers for Allison. I myself am just a screener and do not have the training to provide mental health treatment.

4. Upon hearing this, Taylor asked me if I would be willing to conduct a mental health screening of Allison to see if she would be suitable for state assistance in receiving mental health treatment. Well, I can tell you one thing for sure: with all of the money Allison Latham had, she would not be receiving money from the State. But, Taylor seemed genuinely concerned, so despite my heavy caseload, I agreed to perform an assessment on Allison the next time I was in the Crisscross Pass area. I figured there was no harm in providing the assessment. If it turned out that Allison was in need of treatment, I could inform Taylor of this and Taylor could apply for such treatment on behalf of Allison as her closest relative. Actually, it's not quite that simple. What Taylor could do on behalf of Allison depended on the extent to which Allison was incapacitated by her mental illness and whether Allison had signed over her power of attorney to Taylor. Regardless, if Allison ever did apply for aid, either directly or indirectly, she would be turned down. But at least she, and Taylor, would know that some sort of treatment was necessary and could arrange it in Anchorage or elsewhere.

5. As it turned out, I did not make a trip up to Crisscross Pass until May 13. I visited Allison at about 11:30 in the morning. Allison's close friend, Avery Martinez, was there, but I had to shoo her/him out because these assessments need to be made without the possible presence of outside influences. The whole assessment takes a little over 45 minutes, depending on how the patient answers and what kinds of follow up questions are necessary. Again, the purpose here is not to make a definitive diagnosis, but only to assess whether further treatment might be necessary.

6. The assessment test consists of a series of questions designed to trigger warning signals for a variety of common mental illnesses. The way it works is the screener first engages in a bit of small talk with the patient so that he or she feels comfortable and will give completely honest responses. The screener then goes down the list of questions, asking them in a casual or colloquial manner and gauging the responses to determine if follow-up questions are necessary. I have a print-off of the questionnaire with me during the screening, and as I am conversing with the patient I enter the number or check the corresponding box and maybe take a couple of notes if appropriate. Basically, if a patient answers "no" to a question then everything is fine, but if a patient answers "yes" then it is time to inquire further to see if there really is a problem there that is worth further investigation.

7. The assessment process with Allison went rather smoothly. She certainly seemed to be tracking my questions and had no problem understanding what I was asking. With many of my assessments, I need to ask questions several times or rephrase the questions or give examples. Not with Allison. Allison did ask me why I was there and what I was doing. I explained that Taylor was very worried about her and wanted to know if there was anything that could be done to help Allison feel better. Allison, without a hint of emotion, responded "Oh, well then, please proceed." I do think Allison comprehended that I was doing a mental health assessment and that there might be something wrong

with her. Depending on the illness, many people with mental illnesses do recognize that there is something wrong with them, though they do not always know what to do about it.

8. Allison stated that she drank alcohol only minimally and did not use any illegal substances. Allison did inform me that a couple of years ago she had gone to visit a doctor after suffering a serious bout of depression. Allison said the doctor had prescribed anti-depressants, but she refused to take them because she was afraid it would affect her painting. She said her art is born out of torment, and that she cannot imagine living without her art.

9. The first section of the assessment asks various question meant to assess whether the patient suffers from depression. The patient provides the number of days over the last two weeks that he or she has experienced any of several symptoms commonly associated with depression. Those numbers are then scored to provide an overall assessment of depression. Allison responded that she had lost interest in doing things about half of the time over the previous week. She did express more frequent problems with feeling hopeless and with disappointing her family. However, when I added up her scores, they indicated only mild depression, which is not a pressing concern.

10. The second section was meaningless since Allison has not lived with anyone other than her former husband Tom Latham, and he did not have any issues with alcohol or mental illness. The third section was also inapplicable to Allison. Allison did not give any positive responses in the fifth section, which deals with substance abuse issues. This does not necessarily mean that Allison never drinks, only that she did not feel like it was out of control.

11. In the fourth section, Allison gave "yes" responses to questions 26, 27, 31, and 32, all having to do with feelings of paranoia. I did ask follow-up questions on all of these. The unifying theme to Allison's fears seemed to be paranoia over people coming to try to get her money. The interesting thing is that Allison didn't appear to care all that much about having money — she certainly was not a lavish spender. At the same time, she did not want people to share in her wealth whom she felt had not treated her well and did not deserve it. It was as if Allison thought that her money and her talent was the only thing that gave her worth in this world, and she did not want other people taking advantage of it. Because these seemed like reasonable responses for someone with Allison's great wealth, especially considering that many of the people she associated had financial challenges, I did not feel the need for further assessment. Let me go into more detail.

12. The responses to questions 26 and 27 followed from Allison's paranoia. She stated that she was anxious because people were always out to get her and that this sometime made her feel trapped and alone. Allison did say that she sometimes felt like she was being chased, even when there was no one around, but that is a typical reaction to paranoia. I certainly wished that Allison did not suffer from paranoia, but when we got to question 28, Allison did state that she was satisfied with her life and thought that she had accomplished a great deal through her paintings and wanted to keep painting. If Allison had answered "yes" to question28, my overall assessment of her obviously would have

been different, but the fact that she gave what was essentially a "no" answer made me believe that her problems, at least at that time, were relatively minor and not in need of immediate treatment.

13. The response to the question 31 raised the most concern for me. In addition to the giant blue bear, Allison apparently has visions of a talking green moose. It was unclear what the relationship between the two was. I knew Allison was a famous painter, so I figured she must have meant it all metaphorically. Normally, these kind of visions would be a big red warning flag for me, but I was taken aback by how calmly Allison was able to discuss the bear and the moose, how sometimes the bear would chase the moose away or how the moose would ask for her protection. As if this was a common occurrence and not something Allison found objectionable. I really did not sense any excitement in Allison's voice, which made me believe that whatever visions she was having were not negatively impacting her ability to lead her life. Again, I am not qualified to speculate on what may have been going on in Allison's mind. My only job is to determine if referral to state-assisted mental health treatment is recommended. Given the limited resources available for mental health, this is often a very high threshold. Thus, while bizarre, I could not say that Allison's visions were in immediate need of treatment, especially given how well adjusted she seemed to be to them.

14. Question 32 provided the most insight into Allison's paranoia. This seemed to be the garden variety paranoia I see all the time. Allison believed that no one really cared about her with the exception of Taylor, Avery and Sidney, and that everyone else was out to get her money. This seemed almost reasonable for someone with as much money as Allison, especially in a small town like Crisscross Pass where most people have hardly any money at all. Not that I don't like money, but it must be hard to live like that.

15. My final assessment, then, was that while Allison might have been suffering from some mild form of a mental illness, it did not seem to overly affect her ability to lead a productive life. Indeed, given her profession, a little bit of mental illness might be a good thing. She seemed to think so. From what I could tell, she was doing fine living by herself in a small town, and I saw no reason why she could not continue in this fashion.

16. When I returned to Anchorage the following week, I called Taylor and told him/her that my general assessment was that Allison was not in need of referral for mental health treatment. Taylor asked for a copy of Allison's assessment, but I had to tell Taylor that unless s/he could provide me with a power of attorney letter for Allison it was illegal for me to give her this confidential assessment. I wish I could have been more helpful, but rules are rules.

17. I was greatly saddened when I heard that Allison chose to end her life. I suppose it is possible that her condition deteriorated rapidly from the time that I saw her, but I firmly stand behind my assessment given the information she provided to me during the interview.

18. I was not aware that Allison was maintaining a diary of her emotions and perceptions. I have not read this diary and do not want to speculate on if or how it might have altered my assessment of her mental health.

WITNESS ADDENDUM

I have reviewed this affidavit, and I have nothing of significance to add. The material facts are true and correct.

_____
Pat Bernstein

SUBSCRIBED AND SWORN TO before me this 29th day of January, 2015.

_____
Notary Public in and for Alaska
My Commission Expires:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Estate of ALLISON LATHAM, Deceased. TAYLOR MARKOVICH, Plaintiff, vs. SIDNEY WINSTON, Defendant.	Case No. 3AN-14-09999 CI

AFFIDAVIT OF DR. KAEL BRUCH

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Dr. Kael Bruch, being first duly sworn on oath, deposes and states as follows:

1. My name is Dr. Kael Bruch, and I am a psychiatrist at the Northwest Regional Mental Health Center in Portland, Oregon. I specialize in treating patients with psychoses that have been induced by traumas (either psychological or physical traumas). My job is to help patients learn to cope with traumatic events in their lives and move forward in a productive manner. I have been a psychiatrist for about four years now. This is the eighth trial in which I have testified, though the other seven were all criminal trials. In six of those cases I testified for the defense, whereas in the other one I testified for the prosecution. When testifying at trial, I charge $300 per hour plus expenses, which seems to be typical for someone with my level of experience.

2. I never had the opportunity to directly examine Allison Latham. This is too bad; I am a great admirer of her "Lite Metal" artwork. Since I did not have the chance to interview her in person, my diagnosis of Allison is based on her diary, her paintings, the screening test of Pat Bernstein, and the other affidavits that have been submitted in this case.

3. From these sources, I am able to conclude that Allison suffered from severe bipolar disorder accompanied by acute stress disorder following the death of her parents progressing into post-traumatic stress disorder. Bipolar disorder, which is sometimes referred to as manic depression, is an affective disorder that causes the patient to

experience periodic mood swings during which he or she cycles back and forth between depression and mania. The depression phase often includes a lack of motivation, difficulty doing tasks, short attention span, decreased appetite, crying spells, difficulty in getting to sleep or sleeping too much, and, in the more severe cases, thoughts of self-harm. Full blown bipolar disorder can result in decreased self-control, increased sexual activity, compulsive spending, irritability or rage, risk-taking behaviors, and sometimes even psychotic states. It is possible for the bipolar disorder sufferer to experience both states at the same time, which is known as a "mixed state." It is also possible for a patient to be both bipolar and schizophrenic, but that is not always the case.

4. Acute stress disorder is a transient but serious disorder that develops in an individual, with or without any other apparent mental illness, in response to exceptional physical and/or mental trauma. The cause of the stress is usually harm or a serious threat of harm either to the patient or a loved one of the patient. Occasionally, acute stress disorder can result from a natural catastrophe or some other mass harm to society at large. Individual vulnerabilities and abilities to cope can play a role in the occurrence and severity of acute stress reactions. In other words, if the patient was already suffering from some mental or emotional weakness, there is an increased chance of developing acute stress disorder from a traumatic event. The symptoms of acute stress disorder can vary greatly, but can include an initial state of being in a "daze," a narrowing of attention, restriction of the field of consciousness, an inability to comprehend stimuli accurately, and disorientation. This state may be followed either by further withdrawal from the situation that caused the trauma or by a high level of agitation.

5. The symptoms of acute stress disorder often disappear in a few days or weeks, but sometimes they morph into post-traumatic stress disorder. This disease arises as a protracted response to an exceptionally stressful event or situation. A previous history of mental illness may lower the threshold for the development of post-traumatic stress disorder. Typical symptoms include repeated reliving of the trauma through flashbacks or dreams. The sufferer also often experiences a persistent sense of emotional numbness, detachment from other people, unresponsiveness to surroundings, an inability to experience pleasure, and avoidance of activities and situations reminiscent of the trauma. Paranoia, depression, insomnia, and intense anxiety are also possible manifestations of post-traumatic stress disorder. In rare instances, there may be dramatic and sudden episodes of fear, panic or aggression, triggered by a recollection of the trauma. Recovery may take place naturally over the course of a few weeks or months and may be aided by therapy. In a small number of patients, though, the condition may last several years or result in a transition to permanent change in personality.

6. I believe that a diagnosis of bipolar disorder combined with acute stress disorder/post-traumatic stress disorder is a more accurate description of Allison's condition than schizophrenia. Schizophrenia is most often characterized by an incoherence of thought, and as I read her diary, I was struck by how thoughtful and well-written it was. A person with serious schizophrenia would not be capable of writing a diary so internally consistent that had thought strains covering a period of several months. **[Note: Students are free to pick and choose passages from Allison Latham's diary and/or paintings**

to support the framework set forth in this affidavit. Great leniency will be granted so long as the arguments made are consistent with this affidavit. If a student wishes to reference a particular painting or passage from the diary, that painting or passage must be admitted into evidence, either specifically or as part of a collective admission into evidence of the paintings or diary. The attorneys for Taylor Markovich have the option to object to such attempts to admit these items into evidence. Students are not required to delve into specifics and may prefer to restrict Dr. Bruch's testimony to the generalized conclusions expressed here.]

7. It is true that Allison was depressed in certain passages in her diary, but this supports my conclusion of bipolar and post-traumatic stress disorders. As for the green moose and blue bear, I agree with Dr. Carlson to the extent that these are projections from Allison's psyche. However, they are not necessarily indicative of schizophrenia. Rather, they were simply Allison's method of coping with an internal dialogue. Heck, they could have been meant metaphorically. Allison *was* an artist, after all. In my professional opinion, the green moose represented money. Hence the color. The blue bear represented the outside world chasing after Allison and her money. The blue bear could not have been Sidney Winston, since it appeared before Allison even met Sidney. Moose and bears are common prey and predators around Crisscross Pass, so it is not surprising that Allison would choose these animals to represent her inner demons. Look, there is no question that Allison had problems, but these problems were clearly internal and not caused by external forces, with the likely exception of the death of her parents as a triggering event.

8. In addition to the mental illnesses I have just been discussing, I should also say that I believe Allison suffered from severe sociophobia, which is an abnormal and persistent fear of people and society in general. It is characterized by an unwillingness to venture into public and an extreme discomfort in social gatherings. Allison showed clear signs of sociophobia, which likely exacerbated her other mental illnesses, especially her paranoia about people only liking her for her money and always being out to steal it. Xantal, in addition to being a powerful anti-depressant, can help control the anxiety associated with phobias such as sociophobia. This seems to be the reason why Sidney had Koren convince Allison to take her Xantal before the will signing, so that Allison would not be stressed by the appearance of a stranger such as Jesse Montgomery, the attorney who was bringing the will.

9. I agree with Dr. Carlson that Xantal does not alter the sanity or insanity of the patient. In other words, Allison's soundness of mind would be the same regardless of whether she had taken her Xantal or not. It certainly seems to me that Allison was of sound mind on October 8, 2014. All indications are that she was fully aware of what was going on and appreciated both the contents of her will and the implications of signing it.

10. Obviously, I agree with Dr. Grainger's assessment that Allison suffered from acute stress disorder following the death of her parents. Considering that Dr. Grainger was the only person with medical training that examined Allison regarding her mental state, I believe it important to place great importance on the conclusions of Dr. Grainger. I did reach my

own conclusions independently of Dr. Grainger's diagnosis, but it is comforting to have this independent confirmation. It would have been helpful to have Dr. Grainger participate in this trial, but about a year ago she moved to Turkey to counsel refugees from the Middle East, and no one has been able to contact her.

11. I also see little reason to question the screening test conducted by Pat Bernstein. As far as I can tell, s/he followed the appropriate procedures in eliciting responses from Allison. The guidelines do state that a certain number of a particular type of a response merits additional inquiry, but these are just guidelines, and the individual social worker has discretion to determine whether further inquiry is in fact necessary. As Dr. Carlson himself/herself stated, the ultimate test in psychiatry is whether the patient can function successfully in society. Now, in Allison's case, her sociophobia prevented an integration into society at large, but this was not the purpose of Pat's assessment. Instead, Pat was trying to determine whether Allison was in need of immediate institutionalization or mental health treatment, and Pat concluded that immediate treatment was not in fact necessary. In other words, the test served its purpose.

12. As for whether Allison was mentally competent to sign her will on October 8, 2014, I honestly cannot say for certain. Someone who suffers from bipolar disorder will have periods where he or she is fully aware of his or her surroundings and can fully participate in and understand complex discussions such as what one would expect when signing a will. And there are other periods when the person is detached from reality and not fully able to understand or respond to the immediate situation. The only way to know is to be there and make an assessment at the time of whether the person, in this case Allison, could communicate intelligently about whatever was being discussed, in this case here will. I would be more concerned if Allison had schizophrenia, as this would suggest a more persistent inability to adequately comprehend one's conversations with others.

13. Allison's diary does not indicate to me that she was overly influenced or driven to suicide by Sidney Winston. Allison clearly admired Sidney and considered her/him to be of great help to her artistic career. There may have been times when Sidney needed to encourage Allison to become a better painter, but Allison seems to have taken this advice to heart and been appreciative of it. If Allison was influenced by Sidney, it was only because she wanted to be.

WITNESS ADDENDUM

I have reviewed this affidavit, and I have nothing of significance to add. The material facts are true and correct.

_____

Dr. Kael Bruch

SUBSCRIBED AND SWORN TO before me this 24th day of February, 2015.

LAST WILL AND TESTAMENT

OF

ALLISON LATHAM

Dated: October 8, 2014

Prepared by:

Jesse Montgomery, Esq.
Montgomery & Associates
1054 Caperton Lane
Fairbanks, AK 99712

LAST WILL AND TESTAMENT

OF

ALLISON LATHAM

I, **Allison Latham**, a resident of the State of Alaska, make, publish and declare this to be my Last Will and Testament, revoking all wills and codicils at any time heretofore made by me.

FIRST: I direct that the expenses of my last illness and funeral, the expenses of the administration of my estate, and all estate, inheritance and similar taxes payable with respect to property included in my estate, whether or not passing under this will, and any interest or penalties thereon, shall be paid out of my residuary estate, without apportionment and with no right of reimbursement from any recipient of any such property.

SECOND: I give all personal effects owned by me at the time of my death, including without limitation, clothing, jewelry, photos, photo albums, and household goods, together with all insurance policies relating thereto, to Taylor Markovich, if Taylor Markovich survives me. As used in the foregoing sentence, personal effects does not include any works of art.

THIRD: I give the sum of Fifty Thousand Dollars ($50,000.00) to Koren Andrews, if s/he survives me.

FOURTH: I give all the rest, residue and remainder of my property and estate, both real and personal, of whatever kind and wherever located, that I own or to which I shall be in any manner entitled at the time of my death (collectively referred to as my "residuary estate"), to Sidney Winston.

FIFTH: I appoint Sidney Winston to be my personal representative. I direct that no personal representative shall be required to file or furnish any bond, surety or other security in any jurisdiction.

SIXTH: I grant to my personal representative all powers conferred on personal representatives and executors under Title 13 of the Alaska Statutes, as amended, or any successor thereto, and all powers conferred upon personal representatives and executors wherever my personal representative may act. I also grant to my personal representative power to retain, sell at public or private sale, exchange, grant options on, invest and reinvest, and otherwise deal with any kind of property, real or personal, for cash or on credit; to borrow money and encumber or pledge any property to secure loans; to hold property in bearer form or in the name of a nominee; to pay any legacy or distribute, divide or partition property in cash or in kind, or partly in kind, and to allocate different kinds of property, disproportionate amounts of property and undivided interests in property among any parts, funds or shares, and to determine the fair valuation of the property

so allocated, with or without regard to tax basis; to determine what property shall receive basis increases pursuant to Section 1022(b) and (c) of the Internal Revenue Code and the amount of such increases and to make such determinations without regard to any duty of impartiality as between different beneficiaries; to exercise all powers of an absolute owner of property; to incorporate any business and form limited liability companies and hold any interests in corporations and limited liability companies; to vote stock or securities, in person or by proxy; to exercise subscription and conversion rights, and to participate or refuse to participate in any reorganization, recapitalization, merger, consolidation, liquidation, dissolution or other action with respect to any corporation; to transfer any business or property to a partnership and to be a general or limited partner; to compromise and release claims with or without consideration; to execute and deliver instruments, including releases; and to employ attorneys, accountants and other persons for services or advice. The term "personal representative" wherever used herein shall mean the personal representatives, executors, executor, executrix or administrator in office from time to time.

EIGHTH: I direct that for purposes of this will a beneficiary shall be deemed to predecease me unless such beneficiary survives me by more than thirty days.

NINTH: If any person directly or indirectly attempts to contest or oppose the validity of my Will, (including any codicil to my Will), or commences, continues or prosecutes any legal proceedings to set my Will aside, then that person will forfeit his or her share, cease to have any right or interest in my estate, and will, for purposes of my Will, be deemed to have predeceased me.

IN WITNESS WHEREOF, I, Allison Latham, sign my name and publish and declare this instrument as my last will and testament this 8th day of October, 2014.

_____
Allison Latham

The foregoing instrument was signed, published and declared by Allison Latham, the above-named Testatrix, to be her last will and testament in our presence, all being present at the same time, and we, at her request and in her presence and in the presence of each other, have subscribed our names as witnesses on the date above written.

_____
Koren Andrews
having an address at:
Valdez, Alaska

_____
Peter Horseth
having an address at:
Crisscross Path, Alaska

AFFIDAVIT

STATE OF ALASKA, THIRD JUD. DIST., ss.

We, Allison Latham and Koren Andrews and Peter Horseth, the Testatrix and the witnesses respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the Testatrix, Allison Latham, signed and executed said instrument as her last will and testament in the presence and hearing of the witnesses, and that she had signed willingly, and that she executed it as her free and voluntary act and deed for the purposes therein expressed, and that each of the witnesses at the request of the Testatrix, in the presence and hearing of the Testatrix and each other, signed the will as witness, and that to the best of his or her knowledge the Testatrix was at the time at least eighteen years of age or emancipated, of sound mind and under no constraint, duress, fraud or undue influence.

_____

Allison Latham
Testatrix

_____

Koren Andrews
Witness

_____

Peter Horseth
Witness

Subscribed, sworn to and acknowledged before me by the said Allison Latham, Testatrix, and subscribed and sworn to before me by the said Koren Andrews and Peter Horseth as witnesses, this 8th day of October, 2014.

_____

Notary Public
My commission expires on _____

Representative "Lite Metal" Paintings

Sub-Urban Cowboy

Don't Look at Me,
I'm Too Beautiful

Trapped

The All Too
Well-Known Soldier

Self-Portrait

Oppression, Always
Oppression

Diary of Allison Latham (unabridged, transcribed):

March 23, 2011: I had a disturbing dream last night. I do not normally remember my dreams, and when I do they are typically rather mundane. So the dream last night took me rather by surprise. Hence, I have decided to keep a diary of my thoughts to see where this goes. My dream started off by visualizing my parents in the car the night they hit the moose. It has been almost two weeks since then, six days since the funeral. In the dream, it is dark, and slightly foggy, the type of night where you could see the beams of your headlights as they stretched out in front of you. I see myself in the back seat, watching as we barrel down the road mindless of our impending doom. As we round a curve, there is a moose in the road. Only, this is no ordinary moose. No, the moose is not the expected dark brown color but rather a bright, almost florescent green. Even its antlers are green, though more of a drab olive green than the bright green of its pelt. My father slams on the brakes, but there is a thin veneer of ice on the road and it is too late. As we careen into the moose, screaming, I wake up, probably screaming, though I could not tell for sure. I must leave for a while, go out into the woods, away from my bed.

July 9, 2011: I realize it has been a while since I last wrote — I only write when I have something to say. I have taken several trips into the woods the past couple of months. I do not take my diary with me. Last night I was in the house. I dreamt again of the green moose. On occasion I have had the "crash" dream, but always waking up when the crash occurs. This time, the dream starts off the instant after the crash. Neither of my parents are conscious, but both are bleeding profusely. I, somehow, am still alive and still conscious, perhaps because I was in the back seat. I could tell the car was crumpled up like a discarded piece of tin foil, but as I looked through the broken glass of the windshield and the smoke billowing from the engine, I could see the green moose standing there, completely unharmed. The moose looked into the car, casually. Its gaze was calming and yet at the same time pierced my soul. The moose then turned its head and walked off as if nothing had happened.

July 18, 2011:

I like a look of agony,
Because I know it 's true;
Men do not sham convulsion,
Nor simulate a throe.

The eyes glaze once, and that is death.
Impossible to feign
The beads upon the forehead
By homely anguish strung.

– Emily Dickinson, "I like a look of agony"

August 2, 2011: My painting offers me no comfort now. It all seems not to matter. My parents are dead.

August 7, 2011: The green moose spoke to me last night for the first time. When it looked at me this time it spoke to me in a voice not too unlike my father's and not too unlike what I imagine God's voice to sound like. It said to me, "You may ride me, if you wish. I will take you away, I will take you to safety." I found myself unable to respond. The green moose then walked away as before.

September 15, 2011: The green moose looks at me. I expect it to speak, as it has several times before, but instead it looks over its shoulder, becomes instantly frightened and runs off. I look around to see what has scared off the green moose, but it is too dart to tell. I wake up. It is dark outside as well. The days are getting shorter. I must remember to prepare for winter.

September 22, 2011: Taylor sent a doctor to see me, as if it were not acceptable to be depressed over the death of one's parents. The doctor was rude, asking me several very personal questions. How dare she! I know who I am and what I am going through. The doctor said she would prescribe some anti-depressants; they will arrive in about a week. I will not take them. What I am experiencing is completely natural, and I have no desire to deaden it.

November 8, 2011: I have started painting again. Not too much for now. Must not overdo it. Clark has been very kind and supportive of me during my trauma. I must reward him with my finest painting yet. I am working on a painting I call Sub-Urban Cowboy. All these people in their tract houses. They go west seeking adventure and become more bound by conformity than they could possibly imagine.

December 3, 2011: Clark appreciated Sub-Urban Cowboy. I am glad he did. He said he would submit it to a travelling art exhibit of modern painters along with a few other of my works. I do not care. Nobody will care. Nobody will understand. They will all think it is dainty or cute. They cannot help it.

December 24, 2011: I am alone. I must remember to take the green moose up on his offer if he speaks to me again. But the green moose keeps running away. I still do not know why. A week ago I heard the sound of a growl that sent chills down my spine. I tried to run too, to follow the green moose, as I am sure he knew where safety lay, but I was pinned down by the shattered car and the bodies of my dead parents.

January 5, 2012: Oh horror! The blue bear, the blue bear! It is he who scares the green moose! It is he who emerged from the forest, still growling. I tried to be quiet, to play dead. I hear this is what you are supposed to do with bears. But no matter how tightly I closed my eyelids, I could still see out of them. The bear reared up on its haunches, towering above me. Oh, it was a beautiful blue, like the ocean or the crisp morning of an Alaska spring day. I wake up and the blue bear is gone.

February 21, 2012: I take walks during the day to look for the green moose. If he will not come to me, I must go to him. It is cold outside, and I know better than to go very far. I expect that if I slept outside, the green moose would not run away from me, but it is

not the time of the year to do that yet. In the meantime, I will have to content myself with the Aurora and trust that the green moose is whispering away in the heavens.

February 27, 2012: I told Avery of the green moose and the blue bear. I told Avery because I needed to tell someone. Avery is a simple person, too simple to understand. But I do not understand either. Maybe I am too simple.

March 10, 2012: On the one-year anniversary of my parents' deaths, the green moose finally decides to speak to me again. The blue bear is nowhere to be found for the time being. I tell the green moose I want to ride away, to which the moose responds, in the same voice as before, "Then I grant you the power to rise. Come with me, into the woods." "Why did you kill Mom and Dad?" I ask the green moose. "I am a moose, I do what I do because I do it. There is no why." Befuddled, I asked a different question: "Will you kill again." "Undoubtedly I will," the green moose snorted, "but I will also grant life and ignore humanity altogether for long stretches of time. What is the question to which you seek an answer?" "Why did you kill my parents?" I pleaded. The moose paused, looked at me with his piercing and yet not at all fierce stare, and replied, "That is not a question, it is a demand. Now, ride on my back into the woods, and I will show you the way things are and always have been." With that, I gingerly stepped out of the wreckage of the car, not looking back so as not to see my parents, and climbed on top of the green moose. As we rode into the woods, off the road and away from civilization, I expected to see something fantastical. But the woods were, quite simply, just the woods.

May 1, 2012: The green moose and I have become friends, though he is no less cryptic than before. He explains to me the cycle of life and the glories of the coming spring. I am growing tired of this conversation.

May 12, 2012: It has come to my attention that Taylor has "let slip" my true name. For this there will be no forgiveness. I paint as Lite Metal because I do not want to paint as Allison Latham or Allison Markovich. If I wanted to be known, I would go places where I could be known. I do not even want to be known in Crisscross Pass. Now my face is everywhere on television and in magazines. I am just another person now.

July 14, 2012: I was paid a visit today by a Mr./Ms. Sidney Winston. This is all Taylor's doing, indirectly of course. Sidney is a nice wo/man, an art dealer. Finally, someone who truly understands my art! My art is my pain, and Sidney sees this. Sidney wants me to share my pain with the world, to break the bonds of Crisscross Pass emotionally if I cannot break them physically. There is an audience out there for my pain, I know it. The happiness of my life is over, but others can see my pain and overcome theirs. This is why art, at its heart, is created. Clark has been fine as an art dealer, but he has done nothing to comfort my pain. Sidney offers salvation, hope of a new dawn where I will rise above my own self-torture. Can it be? I must try.

August 22, 2012: The prattling of the green moose has become unbearable. He now comes to me while I am walking through the woods, wide awake. I should not expect otherwise — the unreal are not tied down by common sense. Always the same thing, more obfuscation. I ask the green moose if he has a name. "I have many names, which is

to say I have no name at all. You may call you whatever your heart desires." I have decided that the green moose is no different than the great masses who deceive themselves into believing they have individuality. But I can get back at the green moose. I will paint a picture of him as a human. This I know he will not like. I will call the painting "Don't Look at Me, I'm Too Beautiful."

August 31, 2012: The blue bear has not appeared for several months. But blue and green are not very different colors, really.

September 19, 2012: I do not tell Sidney the painting is of the green moose when s/he comes to pick it up. It would be too hard to explain. Sidney gushes that it is my best work yet, that it will cement my position in the vanguard of the art world. I ask if this means more people will see may painting, that is all I care about. Sidney says the painting has helped me grow as an artist and as a person. This is true. The green moose approached me at the window of my studio a few times and asked me to stop painting him, but I refused. He is jealous, or maybe fearful, of my ability to capture him, his innermost conceited essence, for posterity. Sidney encourages me to step up the pace of my painting, that growth will come more quickly. I will not be stopped as an artist now. I am my art, and this is how I travel the world.

November 3, 2012: Since completing the portrait, the green moose has not visited me. He must be mad at me. But he cannot be more mad than I was at him. In his stead, he sent the blue bear. Always, the blue bear appears when I am walking through the woods, though for now only in my dreams. The bear roars, I turn and run. I try to remember where the green moose took me, as I know that place is safety. I race around frantically. Sometimes the blue bear follows me, though never very far. I do not feel I am being hunted, only that I am getting too close to a place the blue bear does not want me to be. Oh, I wish I could ask the green moose for answers, but answers are the one thing the green moose has never provided me. Only more questions.

December 25, 2012: I am alone, so alone. Not even the blue bear visits me any more. Avery stops by regularly. Kind, sweet Avery. But Avery is monotony. S/he listens but does not hear me. I need someone to talk to me in a language we can both understand. I look forward to sleep and the hope my dreams will return.

The wild winds weep,
And the night is a-cold;
Come hither, Sleep,
And my griefs enfold! . . .
But lo! the morning peeps
Over the eastern steeps,
And the rustling beds of dawn
The earth do scorn.

Lo! to the vault
Of pavèd heaven,
With sorrow fraught,

My notes are driven:
They strike the ear of Night,
Make weak the eyes of Day;
They make mad the roaring winds,
And with the tempests play,

Like a fiend in a cloud,
With howling woe
After night I do crowd
And with night will go;
I turn my back to the east
From whence comforts have increased;
For light doth seize my brain
With frantic pain.

– William Blake, "Mad Song"

January 6, 2013: Sidney came to visit today. S/he even brought me a Christmas present of a new set of paints from an expensive store in New York. Several tubes worth, in all of my favorite colors. I used to order my paints from a store in Anchorage, who would mail them to me, but these are better. Sidney said that if I am going to paint a lot, I need the materials to do it with. Sidney has been so nice in helping promote my art; I do not want to disappoint her/him.

January 12, 2013: At long last, my dreams have returned! This is truly a happy day. The dreams themselves are not happy, as it is the blue bear that has decided to return, but I am of the sort that prefers company with my misery. The blue bear is angry and this anger has caused him to start speaking to me. I am in the woods again. The blue bear pops out from behind a tree. I start to turn to run, as usual, but I cannot, I am paralyzed. The blue bear walks closer, stands in front of me and starts speaking in a raspy voice but one which is that of a small child. "You think you can escape me, but no one can escape me. I will always be right behind you. I stopped you in your tracks to make sure you knew this, that no matter which way you run I can hunt you down." I was frightened both by the tone of the voice — from the loud snarling that had previously come from the blue bear, I was expecting a much more baritone voice — and by the content of the words. I always figured the blue bear would not leave me in peace, but at the same time I always thought that I would have a place I could run to for safety. I must make amends with the green moose.

March 10, 2013: The green moose returns! The blue bear has been relentless these past couple of months. He has even taken to looking over my shoulder as I paint and critiquing my art. What does the blue bear know? He lives on nuts and berries! He has not been to the fine art museums of the world. Neither have I, at least not physically. But my art has been there. The blue bear says I am becoming too repetitive in my artwork. Not true! I did not feel like painting today because I could not get my mind off my parents. In the early afternoon, I walked past my studio, half expecting to see the blue bear in there waiting for me. Instead, it was the green moose, standing there

admiring my most recent painting, "Trapped." The green moose said he saw my painting as a plea for help. How true, how true! I am putting more of myself into my paintings, less critique, more self-disclosure. This is the personal growth of which Sidney spoke. Only, I feel bound by my sociophobia. I pray that I will be allowed to break through it, but all around is darkness. Society is the ocean that surrounds me, into which I must assimilate if I am to be free. But if I am free I am nothing.

April 1, 2013: April Fools! I am not well. I realize I am the fool. I sat down yesterday for the first time and read what I have written in my diary so far. It is not the diary of a sane person. I do not know into what I am slipping, or who I am in the process of becoming. I may never have known. As I look back, I see the green moose and blue bear are metaphors. For what I am not sure. So long as I am able, I must try to figure out this riddle. It may be the only way to stop my visions.

June 6, 2013: Sidney visited to collect more paintings and have me sign a power of attorney form over to him/her regarding my artistic and financial affairs. I assumed that Sidney already had this power, so I had no objection to signing the form. I prefer not being troubled by these sorts of matters anyway. Sidney will protect my money from those who try to steal it.

August 8, 2013: Since reading my diary, I have not had any visions. It was like I was shocked back into consciousness. I have also finally been taking my medication, the pills that were prescribed by Dr. Grainger. They seem to be having an effect, as I am mentally clear for days on end. In many ways, this is the best I have felt in years. I have finished several paintings over the last few weeks, though none of any consequence. Still, they will make Sidney happy and that is important. S/he is coming tomorrow to retrieve them. I am encouraged by my recent burst of productivity, but cannot help but feel that the paintings are a tad lifeless. Then again, I have no other choice. I am afraid to delve back into the mental realm from which my earlier masterworks were created.

August 11, 2013: I was walking in the woods today and the green moose approached to warn me that the blue bear would soon be returning. The green moose said to confront the blue bear through my painting. The blue bear will not like my paintings because they are pedestrian.

September 14, 2013: Taylor called today, stressing the importance of family. I have no family anymore. Taylor is not my friend! Sidney told me so. Taylor unmasked me to the world. It should not have been this way. Now I am naked. Lite Metal was my armor. Taylor just wants fame and fortune at my expense. S/he just wants my money, just like everyone else. Taylor must not be permitted to return to my life.

October 2, 2013: I feel my sanity is escaping, so once again I must write. Why must it be this way? What did I do to deserve this life? This then too shall have been inevitable. I have come to fear the green moose as much as the blue bear and yet I cannot resist their presence. At times, like now, I can be self-reflective. But for the most part, I am unable to tell when I am sane and when I am delusional. Rather, I should say that

when they appear to me, the green moose and the blue bear are as real to me as the paper of this diary.

October 23, 2013: Sidney visited again. I told him/her about the blue bear and the green moose. This was hard for me to do, but Sidney is important to me and this had to be done. Sidney did not seem really to know how to respond, as it probably never occurred to her/him that I might not be well. I asked Sidney if s/he thought I should take the medication that Dr. Grainger prescribed for me. I have tried it on occasion, and it does seem to calm down my anxiety a bit. If I possess the mental clarity to take some of the medication while in the midst of one of my spell of visions, the visions go away. I relate this to Sidney. S/he responds by asking what the medication does to my art, that my art is the most important concern. Sidney is correct, of course. I am but a vessel for the Muses. I say the medication calms down my art, just as it calms down my soul. Without having to wait for Sidney to respond further, I know I cannot take my medication. I also told Sidney that Taylor keeps calling, which entreaties Sidney instructed I must ignore.

November 27, 2013: I relented and permitted Taylor to have Thanksgiving with me today. This was an error in judgment on my part. Koren was also there, who as a counterbalance against Taylor was ineffective but at the same time inoffensive. Taylor and I fought, as I knew would happen. Taylor does not understand the pain s/he has caused me. Siblings are supposed to be supportive, not destructive. Until Taylor suffers the same pain I have felt, we cannot reconcile. I drove Taylor out of the house, out of my house. My parents left it to me, they love me! Taylor is the outcast, the unartistic one. S/he has not soul and thus cannot speak to me.

December 2, 2013: I like cheese. I really like cheese! All kinds of cheese. Yellow cheese, white cheese, cheese with spots, cheese with holes. I think I will go have some now.

December 23, 2013: Taylor is coming tomorrow to spend Christmas with me. I regret the Thanksgiving incident, especially throwing the food Taylor brought on him/her. Seeing Taylor brings back a flood of memories of our parents that I have been working hard to forget. This is not Taylor's fault, and I realize that now. Whether I will realize this tomorrow remains to be seen. I hope I can sustain my Allison Latham identity through these next few days. I must remember to take my medication.

December 29, 2013: The green moose is happy with the way I behaved around Taylor, not causing a ruckus. He said he will keep trying to keep the blue bear away. The green moose tells me that I do not need to paint, that it is not a measure of my self-worth. But the green moose does not understand that an artist is all I have ever been and all I ever will be. It is not a choice, but a directive from outside of me.

January 3, 2014: The blue bear appears to me in a dream. He is choking me and threatens not to stop until I begin to paint again. I pick up my brush, and amazing images swirl in my head as lay possessed, pinned down in my bed and sweating profusely in the frigid temperatures — soldiers destroyed by the loving gaze of their enemy, starlets

confronted with their cannibalism of the spirit, politicians brought low by the smell of a rose. It is imperative that I get these images out of my head and onto canvas. I cannot be stopped, my art will reign supreme.

January 27, 2014: It has come to pass that I have completed all of the paintings that came to me thanks to the blue bear. Of these, I am most proud of "The All Too Well-Known Soldier," the first and most vivid image that popped into my head that night. To paraphrase FDR, the only thing I hate is hate itself. There is so much hate in the world; that is why I do not venture out into it. Sidney approves of the paintings as well and says that I am rounding back into form. Sidney tells me to whatever necessary to keep exploring my innate creativity. How can I not but listen to Sidney?

February 14, 2014: Oh Tom! The question was never whether to marry you but whether we must part. Know that I did not mean what I said. Other than Avery, you were the only person in Crisscross Pass to treat me with kindness and generosity. Why did I take that for granted? I wish I could start all over again, but life is nothing but a series of foreclosed opportunities. And I slammed that door shut long ago. I kept your last name in the hopes that some of who you are would rub off on me. It is only now, as I descend further away from myself, that harbor the belief that this may actually be happening. Crisscross Pass deserves you more than it deserves me. I must apologize, not just to you but to everyone. Do not forget that this is your home as well. Come home. I still love you too.

February 17, 2014:

There is this white wall, above which the sky creates itself —
Infinite, green, utterly untouchable.
Angels swim in it, and the stars, in indifference also.
They are my medium.
The sun dissolves on this wall, bleeding its lights.

A gray wall now, clawed and bloody.
Is there no way out of the mind?
Steps at my back spiral into a well.
There are no trees or birds in this world,
There is only sourness.

This red wall winces continually:
A red fist, opening and closing,
Two gray, papery bags —
This is what I am made of, this and a terror
Of being wheeled off under crosses and a rain of pietas.

On a black wall, unidentifiable birds
Swivel their heads and cry.
There is no talk of immortality among these!
Cold blanks approach us:

They move in a hurry.

– Sylvia Plath, “Apprehensions”

February 29, 2014: Taylor wants to help me. This sort of thing happens once every four years. S/he volunteers to arrange mental health treatment for me. Taylor even volunteers to pay for the treatment, but that does not matter to me, as I have plenty of money I do not use. Taylor asks if I will be willing to see Dr. Grainger again. This must not happen! She will ask why I have not been taking my medication. Only Sidney understands the importance to my art of me remaining unmedicated. Besides, what more would Dr. Grainger say that she did not say last time or that I do not already know? If Taylor wants to humor herself/himself, I can put up with that, but it must not be allowed to impact me or my art.

March 10, 2014: Yikes! It then having been said that I am guilty for my parents death! I did not kill them, I say! It was the green moose! Or the Blue Bear! Or someone other than me! I was not in the car, the car was in me. Going down that road I chose not two swerve, to follow the same path as always! Why, oh why must I remain trapped within my self-imposed prison?

March 12, 2014: Monkeys in India swarm their former captors, seeking revenge. Biting, clawing little children. Are they our cousins? Can families be so dysfunctional?

March 24, 2014: I talked to Avery about building a community center for Crisscross Pass that could also double as a movie theater. It is important to bring culture and happiness to this desert. This must be done soon — I am not myself anymore.

April 3, 2014: The green moose tells me to be myself, that that is all I can be. It is time for me to go forth into the world. I can no longer stand to be trapped. I love Crisscross Pass and always will, but it is not the only reality that exists. I begin to wonder whether my painting style is due more to my own narrow-mindedness than the narrow-mindedness of the world. My paintings now are coming both more easily and more difficulty. The speed with which I can finish my paintings amazes even me, but completing each painting is like giving birth to a horrible monster. I am afraid to see what else is inside me.

April 13, 2014: Sidney visits to retrieve my latest stash of paintings. I tell Sidney I want to go to one of the art exhibits of my paintings, so that I can see the public reaction and be redeemed. Sidney tells me that I cannot do this without revealing my identity. Sidney says that Taylor sent some childhood photographs to magazines and that people will recognize me. Sidney said that the success of “Lite Metal” would be destroyed if Allison Latham became a public figure. And, my money, all they will want is my money! Sidney asked if this is what I wanted, and I admitted that it was not. Sidney said that the best thing was for me to remain in Crisscross Pass and continue painting.

April 20, 2014: I am making dinner, fully awake I think but am not sure. I open the refrigerator to grab a soda, but crouching there taking up the entirety of the space is

the blue bear. It emerges from the ice box and grows to full size, towering above me. I try to back away but am frozen in place. The blue bear grumbles, "This is for your insolence!" and swipes at me. I feel an intense pain in my chest, as if my very heart has been pierced, but as I look down there is no gash, no blood drizzling from my wounds. This, like all my pain, is in my head but no less real. The blue bear dissolves into nothingness.

April 26, 2014: The moon is green tonight. This cannot be because of any atmospheric disturbance.

May 5, 2014: It is Cinco de Mayo, and nachos are on special at the Glass Slipper. People will be shocked to see me, but I refuse to drink free beer. Who knows where my feet have been recently?

May 13, 2014: Today brings a visit from Pat Bernstein, a social worker sent by Taylor. I gather that the purpose of this visit was for a mental health assessment. Fortunately, today I was calm and collected. I will not lie, but at the same time I must appear sane. I fear that if what I now consider my "true" self comes out I will be sent away. In this I manage to be successful. I do not know what the outcome of this "assessment" will be. Pat would have been better to look at my paintings than to look at me. This is the way things are now.

May 20, 2014: Glory, Gloria, Glory! The green moose wears sunglasses. The daylight is returning, it is getting bright, I do not blame him. His eyes were truth, anyway, so I do not mind them being covered. The green moose is also speaking to me in tongues I do not understand. I dare not try to repeat the words here. I have always tried in this diary to make as much sense as I am capable of.

May 29, 2014: Before Allison Latham disappears completely, there is one last painting I must do — a self-portrait. In my paintings I have never painted any specific person, only persons in the abstract. As a last parting act, I feel I should leave a memento of my increasing emptiness. This will be the most heartbreaking painting I have ever attempted.

June 2, 2014:

Somewhere over the rainbow
Way up high
There's a land that I heard of
Once in a lullaby

Somewhere over the rainbow
Skies are blue
And the dreams that you dare to dream
Really do come true

Some day I'll wish upon a star

And wake up where the clouds are far behind me
Where troubles melt like lemondrops
Away above the chimney tops
That's where you'll find me

Somewhere over the rainbow
Bluebirds fly
Birds fly over the rainbow
Why then, oh why can't I?
Some day I'll wish upon a star
And wake up where the clouds are far behind me
Where troubles melt like lemondrops
Away above the chimney tops
That's where you'll find me

Somewhere over the rainbow
Bluebirds fly
Birds fly over the rainbow
Why then, oh why can't I?

If happy little bluebirds fly
Beyond the rainbow
Why, oh why can't I?

– E.Y. Harburg, "Somewhere Over the Rainbow"

June 28, 2014: I have been working only on my self-portrait. It is all I can do to paint it a little bit at a time. This does not please Sidney. S/he came by a couple of days ago and for the first time I was not able to deliver a painting. Sidney asked how I am to overcome my illness if I do not paint. I cannot answer this. I fear that through my self-portrait I am signaling that I have given up to the madness that is inevitably overtaking me. Does Sidney see this or does s/he not? Many days I am not able to paint at all. I sit in a stupor on a tree stump in my back yard, which is to say the entire forest and maybe the entire world, and wait for the green moose or the blue bear to come forth and chastise me — the blue bear for being myself and the green moose for not being myself. I combine the two into a shade of aquamarine that is the backdrop for my visage. I portray myself as a decaying entity, slowly slipping away.

July 6, 2014: The self-portrait is finally finished.

July 8, 2014:

Lights go out and I can't be saved
Tides that I tried to swim against
Have bought me down upon my knees
Oh I beg, I beg and plead
Singing

Come out of things unsaid
Shoot an apple off my head
And a trouble that can't be named
A tiger's waiting to be tamed
Singing
You are
You are
Confusion that never stops
The closing walls and the ticking clocks
Gonna come back and take you home
I could not stop, that you now know
Singing come out upon my seas
Cursed missed opportunities
Am I part of the cure
Or am I part of the disease
Singing
You are, you are
You are, you are
You are, you are
You are, you are
And nothing else compares
And nothing else compares
And nothing else compares
And nothing else compares
You are, you are
Home, home, where I wanted to go
Home, home, where I wanted to go
Home, home, where I wanted to go (you are)
Home, home, where I wanted to go (you are)

– Coldplay, "Clocks"

July 19, 2014: I fear there is a great deal of good television that I have missed over the years. I try to watch as much as I can, but there is always more that can be viewed. Educational, entertaining, distressing, uplifting. Where will it all end?

August 3, 2014: Do fish feel pain when they are caught or only relief to be rid of their boring existence? I often wonder this when I see the many recreational fishers who make pit stops in the little village I call home. Water can be pretty, but only when you are above it. Being engulfed by the water is an entirely different experience. And yet, the fish struggle to be alive. Am I lower than the fish?

August 15, 2014: Avery is becoming more worried about me. S/he asks if she can help me, what can be done. Nothing, I fear. I am not worried, the green moose will take care of me. This I know in my heart. It will be soon, I hope, that the green moose takes off his sunglasses and I am one again with the truth.

August 20, 2014: Avery's concern for me is becoming annoying. Why do people care about me. What have I ever done for anyone else? I am just an artist. I do not help the poor. No one has ever eaten a painting. Avery reminds me of the community center for Crisscross Pass, which I renew my pledge to build. Someday.

September 6, 2014: Sidney comes by. I have been painting again, but it is all tripe and this is painfully obvious to everyone. Sidney says s/he will try to sell the paintings for whatever they will fetch, but that if I do not return to form soon I will have to find another agent. I do not blame Sidney for this. Sidney has been so supportive over the last couple of years, and I cannot expect him/her to be brought down by my own failures as a person. I tell this to Sidney, who responds "I'm sure things will get better. They'd better."

September 19, 2014: The blue bear returns to ask me why I believe these throwaway paintings to be any different from the rest of my artwork. I try to explain that I once had something to say but now am vacant. This does not please the blue bear, but it is the blue bear who did this to me, who tore down my soul and rent it asunder, casting my remaining shreds of humanity to the four winds. The blue bear is responsible for this, but adamantly refuses to admit fault. On occasion I have tried to confront the blue bear, but I am a person of imagery — my words are useless.

September 24, 2014: Sidney informs me that I am to have a will. This is done over the phone, which is odd since Sidney never calls except to tell me of an upcoming visit or to check on my productivity. This is as it should be. Why do I care? I am already dead. My paintings are all I have to give to the world, and once I die that gift-giving ability will be extinguished. The rest is material, and I have never cared about the material, only the medium. What not of my money? Let it plague others!

September 30, 2014: Sidney stops by to confirm, almost in disbelief, that I have stopped painting again. Sidney tells me that the will is being taken care of and will be ready to sign soon. There is a chill in the air. Coldness descends upon Crisscross Pass.

October 4, 2014: In the beginning there was the Night. And the Night said to the Moon: "I will let you shine your light upon me, though not at all times. There must be darkness as well. Darkness brings forgiveness for the sins of the light. Darkness is renewal, darkness is sleep." The Moon speaks to me now and warns me that the Night is lying, that all can be light. Is this why the green moose wears sunglasses?

October 6, 2014: It being the case that Cousin Koren has arisen from Valdez. Koren wishes that I take my medication, saying s/he does not want me to go crazy on her/him while s/he is there. Oh how little Koren knows! I am always crazy! It is just a matter of whether I act out or not.

October 8, 2014: There are many different definitions of the word "will." There is a "will" of the type that I signed today, directing how my estate is to be distributed upon my death. "Will" is also a promise — I *will* do this in the future. It is a pledge. In the case of a written will, I will not ("will": predicting the future) be able to carry out this

pledge. So, I am making a promise for others, as it were. But, "will" can also mean that part of the brain, that part of the psyche which establishes desires. I *will* this to happen. This can be either a noun (incorporeal) or a verb (not yet acted upon). My written will, then, establishes what my will wills will become of that which I am bound to leave behind. I have signed my own death warrant.

October 9, 2014: The green moose and the blue bear appear to me in a dream, standing side by side without a hint of animosity between them. The blue bear stands up, not in his usual menacing way but instead rather matter-of-factly, and says in a corresponding tone of voice, "My work is done here. We will not be visiting you again." The green moose is still wearing sunglasses, despite it being dusk, but behind them I can see tears trickling down. I never knew moose could cry.

October 12, 2014: Sidney comes by, wonders why I have not been painting for a while. Is this a mystery? I will show Sidney that I can still paint! I once painted the personification of the green moose. Now it is time that I paint the blue bear in human form. This will not please anyone, myself included. I know I have one good painting left in me, waiting to emerge.

October 17, 2014: Sidney pays another visit and yells at me for being "incompetent" and "insane." Can't Sidney see what I am accomplishing in my new painting? When Sidney leaves, I call Avery and ask her/him to come over. I never call anyone of my own initiative, but I am disconsolate and want to confirm that to myself. Through my tears, I tell Avery what Sidney said. Avery assures me none of it is true and begs of me to find another agent, one who will truly appreciate my art. I am only now beginning to understand who Sidney really is.

October 23, 2014: Why will not the green moose save me from Sidney! No more yelling; all I want is quiet. My Muse is a tornado, leaving nothing but destruction in its wake. Sidney says s/he will return at the end of the month to make a decision about whether I should be institutionalized for my mental illness. NO! I resist all efforts to assimilate me! Happiness is only a stroke of the brush away.

October 27, 2014: The blue bear is at long last vanquished — "Oppression, Always Oppression." But in battle I have been mortally wounded.

> TRUE! nervous, very, very dreadfully nervous I had been and am; but why WILL you say that I am mad? The disease had sharpened my senses, not destroyed, not dulled them. Above all was the sense of hearing acute. I heard all things in the heaven and in the earth. I heard many things in hell. How then am I mad? Hearken! and observe how healthily, how calmly, I can tell you the whole story.
>
> It is impossible to say how first the idea entered my brain, but, once conceived, it haunted me day and night. Object there was none. Passion there was none. I loved the old man. He had never wronged me. He had never given me insult. For his gold I had no desire. I think it was his eye!

Yes, it was this! One of his eyes resembled that of a vulture — a pale blue eye with a film over it. Whenever it fell upon me my blood ran cold, and so by degrees, very gradually, I made up my mind to take the life of the old man, and thus rid myself of the eye for ever.

Now this is the point. You fancy me mad. Madmen know nothing. But you should have seen me. You should have seen how wisely I proceeded — with what caution — with what foresight, with what dissimulation, I went to work! I was never kinder to the old man than during the whole week before I killed him. And every night about midnight I turned the latch of his door and opened it oh, so gently! And then, when I had made an opening sufficient for my head, I put in a dark lantern all closed, closed so that no light shone out, and then I thrust in my head. Oh, you would have laughed to see how cunningly I thrust it in! I moved it slowly, very, very slowly, so that I might not disturb the old man's sleep. It took me an hour to place my whole head within the opening so far that I could see him as he lay upon his bed. Ha! would a madman have been so wise as this? And then when my head was well in the room I undid the lantern cautiously — oh, so cautiously — cautiously (for the hinges creaked), I undid it just so much that a single thin ray fell upon the vulture eye. And this I did for seven long nights, every night just at midnight, but I found the eye always closed, and so it was impossible to do the work, for it was not the old man who vexed me but his Evil Eye. And every morning, when the day broke, I went boldly into the chamber and spoke courageously to him, calling him by name in a hearty tone, and inquiring how he had passed the night. So you see he would have been a very profound old man, indeed, to suspect that every night, just at twelve, I looked in upon him while he slept.

Upon the eighth night I was more than usually cautious in opening the door. A watch's minute hand moves more quickly than did mine. Never before that night had I felt the extent of my own powers, of my sagacity. I could scarcely contain my feelings of triumph. To think that there I was opening the door little by little, and he not even to dream of my secret deeds or thoughts. I fairly chuckled at the idea, and perhaps he heard me, for he moved on the bed suddenly as if startled. Now you may think that I drew back — but no. His room was as black as pitch with the thick darkness (for the shutters were close fastened through fear of robbers), and so I knew that he could not see the opening of the door, and I kept pushing it on steadily, steadily.

I had my head in, and was about to open the lantern, when my thumb slipped upon the tin fastening, and the old man sprang up in the bed, crying out, "Who's there?"

I kept quite still and said nothing. For a whole hour I did not move a muscle, and in the meantime I did not hear him lie down. He was still sitting up in

the bed, listening; just as I have done night after night hearkening to the death watches in the wall.

Presently, I heard a slight groan, and I knew it was the groan of mortal terror. It was not a groan of pain or of grief — oh, no! It was the low stifled sound that arises from the bottom of the soul when overcharged with awe. I knew the sound well. Many a night, just at midnight, when all the world slept, it has welled up from my own bosom, deepening, with its dreadful echo, the terrors that distracted me. I say I knew it well. I knew what the old man felt, and pitied him although I chuckled at heart. I knew that he had been lying awake ever since the first slight noise when he had turned in the bed. His fears had been ever since growing upon him. He had been trying to fancy them causeless, but could not. He had been saying to himself, "It is nothing but the wind in the chimney, it is only a mouse crossing the floor," or, "It is merely a cricket which has made a single chirp." Yes he has been trying to comfort himself with these suppositions; but he had found all in vain. ALL IN VAIN, because Death in approaching him had stalked with his black shadow before him and enveloped the victim. And it was the mournful influence of the unperceived shadow that caused him to feel, although he neither saw nor heard, to feel the presence of my head within the room.

When I had waited a long time very patiently without hearing him lie down, I resolved to open a little — a very, very little crevice in the lantern. So I opened it — you cannot imagine how stealthily, stealthily -- until at length a single dim ray like the thread of the spider shot out from the crevice and fell upon the vulture eye.

It was open, wide, wide open, and I grew furious as I gazed upon it. I saw it with perfect distinctness — all a dull blue with a hideous veil over it that chilled the very marrow in my bones, but I could see nothing else of the old man's face or person, for I had directed the ray as if by instinct precisely upon the damned spot.

And now have I not told you that what you mistake for madness is but over-acuteness of the senses? Now, I say, there came to my ears a low, dull, quick sound, such as a watch makes when enveloped in cotton. I knew that sound well too. It was the beating of the old man's heart. It increased my fury as the beating of a drum stimulates the soldier into courage.

But even yet I refrained and kept still. I scarcely breathed. I held the lantern motionless. I tried how steadily I could maintain the ray upon the eye. Meantime the hellish tattoo of the heart increased. It grew quicker and quicker, and louder and louder, every instant. The old man's terror must have been extreme! It grew louder, I say, louder every moment! — do you mark me well? I have told you that I am nervous: so I am. And now at the dead hour of the night, amid the dreadful silence of that old house, so

strange a noise as this excited me to uncontrollable terror. Yet, for some minutes longer I refrained and stood still. But the beating grew louder, louder! I thought the heart must burst. And now a new anxiety seized me — the sound would be heard by a neighbour! The old man's hour had come! With a loud yell, I threw open the lantern and leaped into the room. He shrieked once — once only. In an instant I dragged him to the floor, and pulled the heavy bed over him. I then smiled gaily, to find the deed so far done. But for many minutes the heart beat on with a muffled sound. This, however, did not vex me; it would not be heard through the wall. At length it ceased. The old man was dead. I removed the bed and examined the corpse. Yes, he was stone, stone dead. I placed my hand upon the heart and held it there many minutes. There was no pulsation. He was stone dead. His eye would trouble me no more.

If still you think me mad, you will think so no longer when I describe the wise precautions I took for the concealment of the body. The night waned, and I worked hastily, but in silence.

I took up three planks from the flooring of the chamber, and deposited all between the scantlings. I then replaced the boards so cleverly so cunningly, that no human eye — not even his — could have detected anything wrong. There was nothing to wash out — no stain of any kind — no blood-spot whatever. I had been too wary for that.

When I had made an end of these labours, it was four o'clock — still dark as midnight. As the bell sounded the hour, there came a knocking at the street door. I went down to open it with a light heart, — for what had I now to fear? There entered three men, who introduced themselves, with perfect suavity, as officers of the police. A shriek had been heard by a neighbour during the night; suspicion of foul play had been aroused; information had been lodged at the police office, and they (the officers) had been deputed to search the premises.

I smiled, — for what had I to fear? I bade the gentlemen welcome. The shriek, I said, was my own in a dream. The old man, I mentioned, was absent in the country. I took my visitors all over the house. I bade them search — search well. I led them, at length, to his chamber. I showed them his treasures, secure, undisturbed. In the enthusiasm of my confidence, I brought chairs into the room, and desired them here to rest from their fatigues, while I myself, in the wild audacity of my perfect triumph, placed my own seat upon the very spot beneath which reposed the corpse of the victim.

The officers were satisfied. My MANNER had convinced them. I was singularly at ease. They sat and while I answered cheerily, they chatted of familiar things. But, ere long, I felt myself getting pale and wished them gone. My head ached, and I fancied a ringing in my ears; but still they sat,

and still chatted. The ringing became more distinct: I talked more freely to get rid of the feeling: but it continued and gained definitiveness — until, at length, I found that the noise was NOT within my ears.

No doubt I now grew VERY pale; but I talked more fluently, and with a heightened voice. Yet the sound increased — and what could I do? It was A LOW, DULL, QUICK SOUND — MUCH SUCH A SOUND AS A WATCH MAKES WHEN ENVELOPED IN COTTON. I gasped for breath, and yet the officers heard it not. I talked more quickly, more vehemently but the noise steadily increased. I arose and argued about trifles, in a high key and with violent gesticulations; but the noise steadily increased. Why WOULD they not be gone? I paced the floor to and fro with heavy strides, as if excited to fury by the observations of the men, but the noise steadily increased. O God! what COULD I do? I foamed — I raved — I swore! I swung the chair upon which I had been sitting, and grated it upon the boards, but the noise arose over all and continually increased. It grew louder — louder — louder! And still the men chatted pleasantly, and smiled. Was it possible they heard not? Almighty God! — no, no? They heard! — they suspected! — they KNEW! — they were making a mockery of my horror! — this I thought, and this I think. But anything was better than this agony! Anything was more tolerable than this derision! I could bear those hypocritical smiles no longer! I felt that I must scream or die! — and now — again — hark! louder! louder! louder! LOUDER! —

"Villains!" I shrieked, "dissemble no more! I admit the deed! — tear up the planks! — here, here! — it is the beating of his hideous heart!"

– Edgar Allan Poe, "Tell-Tale Heart

Sidney is the blue bear.

GENERAL POWER OF ATTORNEY

I, Allison Latham, of Crisscross Pass, Alaska 99499, do hereby make, constitute, and appoint Sidney Winston of 666 42nd Ave, Apt. 817, New York City, New York 00001, as my true and lawful attorney, for me and in my name, place, and stead, with full power and authority to do, perform, and employ any and all acts (including but not limited to executing and delivering releases), things, or agents whatsoever necessary to be done as I might or could do if personally present and acting, with respect to all matters involving the promotion and sale of art created by myself and over all of my finances.

The period of time for this General Power of Attorney shall remain in effect until such time as I specifically revoke it.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of June, 2013.

_____
Allison Latham

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 6th day of June, 2013, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Allison Latham, known to me to be the individual described in and who executed the foregoing instrument, and she acknowledged to me that she signed and sealed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year first hereinabove written.

_____
Notary Public in and for Alaska
My Commission Expires:_____

Montgomery & Associates

Legal advice to die for.

Allison Latham
P.O. Box 12
Crisscross Pass
Alaska 99499

September 29, 2014

Dear Ms. Latham,

Sidney Winston has informed me that you might be in need of assistance in drafting a will. As I hope Sidney has informed you, I specialize in wills and estate planning. None of us likes to think about our own death, but even more so than taxes, it is inevitable. (I like to joke with my clients that because we have no sales or income tax in Alaska, the only thing inevitable here is death.) This is especially important for someone of your great wealth. You should know that I am a great admirer of your work — I think you truly capture the fluidity of individuality in an increasingly technological culture.

Over the phone last week, Sidney provided me with the manner in which you wish to divide your estate. I am enclosing a draft copy of the will for your review. My understanding is that you wish to leave the bulk of your estate to Sidney in appreciation for the magnanimous friendship that s/he has shown you. I think this is wise; one should always reward one's friends. Your personal and sentimental effects are best left to Tyler, as Sidney has no use for them. And, I think choosing Sidney as your personal representative to execute your will also sounds like a wise choice, considering the trust that you obviously place in him/her. You should take great comfort that should you suffer an unfortunate demise all that you have worked so hard to achieve will go to those who deserve it.

It is imperative that you sign this will as soon as possible. One never knows if the next day will be her last. By signing your will, you prevent costly court battles that could drain much of your estate. If any of my assumptions about your desires for your will or its distribution are incorrect, please let me know as soon as possible. Otherwise, I will see you on October 8 to sign your will. Sidney has told me that s/he will cover my fee for drafting your will and my travel expenses for coming to Crisscross Pass.

Sincerely,

Jesse Montgomery

Enclosure

Montgomery & Associates

Legal advice to die for.

Sidney Winston
P.O. Box 873562
Anchorage
Alaska 99511

September 30, 2014

Dear Sidney,

Per our phone conversation from last week, I have drafted Allison Latham's will as you directed. I am enclosing a copy with this letter for your review. Please let me know as soon as possible if any changes need to be made so that I can make the necessary revisions prior to travelling to Crisscross Pass on October 8 for Allison to sign it.

Normally, I would not draft a will without first personally talking with the person whose will it is. However, given that Allison is in and out of coherence, I agree that it is best to go on ahead and draft her will according to the terms that you provided to me. I trust in your assurances that this is what she would have wanted. Please be aware that if upon my visit to Crisscross Pass Allison does not seem to be of sound mind, I will not allow her to sign the will. I am willing to stay a couple of extra days in Crisscross Pass if necessary, until she is mentally sound and can sign her will, but I am sure you understand that I must return to work in Fairbanks on Monday, October 13.

I took your suggestion and yesterday sent a letter to Allison encouraging her to sign her will. Someone with her wealth and with a mental illness that seems to be getting worse by the day should not be without a will. As you recommended, I was a bit forceful with her. I agree that sometimes people do need a bit of encouragement to do something that is clearly in their best interests. I hope Allison sees things this way and does not cause any problems.

My base fee for drafting a will is $2,000. My understanding is that you will be covering this fee. In Ms. Latham's case, I will also require an additional $500 to cover travel expenses from Fairbanks to Crisscross Pass. Therefore, I will need from you a check for $2,500 upon signing the will.

I look forward to seeing you in Crisscross Pass,

Jesse Montgomery

Enclosure

1054 Caperton Lane
Fairbanks, AK 99712
(907) 555-DEAD (555-3323)

[attorney notes for Jesse Montgomery (transcribed)]

9/25/14 10:47 a.m.

received call from S-i-d-n-e-y W-i-n-s-t-o-n regarding drafting a will for A-l-l-i-s-o-n L-a-t-h-a-m (aka "Lite Metal")

Latham estate worth $3.3 million

Allison suffering from mental illness; has "episodes" of incoherence and delusions; mental state deteriorating

Sidney is Allison's agent; has sold her paintings worldwide; concerned that Allison will not be able to paint much longer and wants to secure her legacy

Sidney is the only person Allison will talk to who truly appreciates her art; Allison does not trust her sibling T-a-y-l-o-r M-a-r-k-o-v-i-c-h or any of her former friends in town; they all resent her wealth and success; open jealousy

need to move quickly to draft a will while Allison still mentally competent; Allison does not like to think about death and might need encouragement to sign the will; Sidney suggests I call Allison or write her a letter; Sidney will fax contact information and directions to Allison's house

will sign will on Oct. 8, so imperative that I draft quickly and get a copy to Allison

contents of will:

- K-o-r-e-n A-n-d-r-e-w-s, cousin of Allison, to receive $50,000 from estate
- Taylor Markovich to receive all household goods and physical possessions, including all family pictures, family heirlooms, and memorabilia collected by Allison; Tyler to receive full title to house; Taylor not to receive any finished or unfinished paintings by Allison in the house
- Sidney Winston to receive remainder of monetary estate and finished and unfinished paintings in the house; Sidney to receive residual rights to merchandising and other royalties from Allison's paintings

Sidney trusts me to draft will but wants to see copy before I get Allison to sign it

I tell Sidney it will take a couple of days to draft the will but that I should be able to send out a copy by the end of the week

ALASKA SCREENING TOOL

Client Name: Allison Latham Client Number: 123412

Staff Name: Pat Bernstein Date: May 13, 2014

Info received from: (include relationship to client) request by Taylor Markovich

Please answer these questions to make sure your needs are identified. Your answers are important to help us serve you better. If you are filling this out for someone else, please answer **from their view**. Parents or guardians usually complete the survey on behalf of children under age 13.

SECTION I – Please estimate the number of days in the **last 2 weeks** (enter a number from 0-14 days):	**0-14 days**
1. Over the last two weeks, how many days have you felt little interest or pleasure in doing things?	6
2. How many days have you felt down, depressed or hopeless?	11
3. Had trouble falling asleep or staying asleep or sleeping too much?	0
4. Felt tired or had little energy?	0
5. Had a poor appetite or ate too much?	0
6. Felt bad about yourself or that you were a failure or had let yourself or your family down?	14
7. Had trouble concentrating on things, such as reading the newspaper or watching TV?	0
8. Moved or spoken so slowly that other people could have noticed?	0
9. Been so fidgety or restless that you were moving around a lot more than usual?	0
10. Remembered things that were extremely unpleasant?	0
11. Were barely able to control your anger?	0
12. Felt numb, detached, or disconnected?	0
13. Felt distant or cut off from other people?	0

SECTION II – Please check the answer to the following questions based **on your lifetime.**		
14. I have lived where I often or very often felt like I didn't have enough to eat, had to wear dirty clothes, or was not safe	☐ Yes	☑ No
15. I have lived with someone who was a problem drinker or alcoholic, or who used street drugs	☐ Yes	☑ No
16. I have lived with someone who was seriously depressed or seriously mentally ill	☐ Yes	☑ No
17. I have lived with someone who attempted suicide or completed suicide	☐ Yes	☑ No
18. I have lived with someone who was sent to prison	☐ Yes	☑ No
19. I, or a close family member, was placed in foster care	☐ Yes	☑ No
20. I have lived with someone while they were physically mistreated or seriously threatened	☐ Yes	☑ No
21. I have been physically mistreated or seriously threatened	☐ Yes	☑ No
a. If you answered **"Yes"**, did this involve your intimate partner (spouse, girlfriend, or boyfriend)?	☐ Yes	☐ No

DHSS/Division of Behavioral Health Performance Management System Version Date: June 21, 2010

ALASKA SCREENING TOOL

SECTION III – Please answer the following questions based **on your lifetime.** (D/N = Don't Know)

22. I have had a blow to the head that was severe enough to make me lose consciousness ..... ☐ Yes ☑ No ☐ D/N
23. I have had a blow to the head that was severe enough to cause a concussion . ☐ Yes ☑ No ☐ D/N

If you answered "Yes" to 21 or 22, please answer a-c:

a. Did you receive treatment for the head injury? ..... ☐ Yes ☐ No
b. After the head injury, was there a permanent change in anything? ..... ☐ Yes ☐ No ☐ D/N
c. Did you receive treatment for anything that changed?..... ☐ Yes ☐ No

24. Did your mother ever consume alcohol? ..... ☐ Yes ☐ No ☐ D/N
    a. **If Yes**, did she continue to drink during her pregnancy with you? ..... ☐ Yes ☐ No ☐ D/N

SECTION IV – Please answer the following questions based on the **past 12 months.**

25. Have you had a major life change like death of a loved one, moving, or loss of a job? .... ☐ Yes ☑ No
26. Do you sometimes feel afraid, panicky, nervous or scared? ..... ☑ Yes ☐ No
27. Do you often find yourself in situations where your heart pounds and you feel anxious and want to get away? ..... ☑ Yes ☐ No
28. Have you tried to hurt yourself or commit suicide? ..... ☐ Yes ☑ No
29. Have you destroyed property or set a fire that caused damage?..... ☐ Yes ☑ No
30. Have you physically harmed or threatened to harm an animal or person on purpose? ... ☐ Yes ☑ No
31. Do you ever hear voices or see things that other people tell you they don't see or hear? ..... ☑ Yes ☐ No
32. Do you think people are out to get you and you have to watch your step?..... ☑ Yes ☐ No

SECTION V – Please answer the following questions based on the **past 12 months.**

33. Have you gotten into trouble at home, at school, or in the community, because of using alcohol, drugs, or inhalants? ..... ☐ Yes ☑ No
34. Have you missed school or work because of using alcohol, drugs, or inhalants? ..... ☐ Yes ☑ No
35. In the past year have you ever had 6 or more drinks at any one time? ..... ☐ Yes ☑ No
36. Does it make you angry if someone tells you that you drink or use drugs, or inhalants too much? ..... ☐ Yes ☑ No
37. Do you think you might have a problem with your drinking, drug or inhalant use? ..... ☐ Yes ☑ No

THANK YOU for providing this information! Your answers are important to help us serve you better.

Scoring in the AST

Screeners are urged to error on the side of referring for an assessment when they are not sure of the likelihood of a positive screen. This minimizes the likelihood that symptoms indicating someone needs treatment will go undetected.

Sections I and IV - Mental Health Client Scoring Instructions

The mental health screen includes Section I (#1-13) and Section IV (#25-32). The first eight questions in Section I (#1-8) make up a standardized depression scale. Other mental health questions contribute to screening directly.

If a consumer does not indicate current depression, and the consumer responds negatively to all other mental health questions, and the interviewer has not learned anything during the interview that is contradictory, the client is not considered as a potential mental health client.

If consumer responses indicate:

- current depression in Section I (#1-8)
- and/or the consumer responds positively (1 or more days) to any of the remaining mental health questions in Section I (#9-13)
- and/or "Yes" to any question in Section IV (#25-32), then the client should be asked for clarifying information and if the positive response is validated, this will trigger a referral for a mental health assessment.

Scoring depression severity takes three steps:

Step 1) Convert the number of days entered for each question 1-8 into a count between 0 and 3:

If a client enters:	**Then the Question Counts:**
0 to 1 days	=0
2 to 6 days	=1
7 to 11 days	=2
12 to 14 days	=3

Step 2) Sum the counts for all eight questions

Step 3) Convert the sum to a severity of depression:

Sum of counts for all eight questions:	**Severity of Depression:**
0 to 4 represents	No meaningful Depressive Symptoms
5 to 9	Mild Depression
10 to 14	Moderate Depression
15 to 19	Moderately Severe Depression
20 to 27	Severe Depression

Section V - Substance Abuse Scoring Instructions

If a consumer responds negatively to all questions, and the interviewer has not learned anything during the interview that is contradictory, the client is not considered as a potential substance abuse client. If a consumer responds positively (Yes) to any of the five questions (#33-37), the client should be asked for clarifying information about the question and if the positive response is validated, this will trigger a referral for a full substance abuse/dependence assessment.

Section III - Traumatic Brain Injury Scoring Instructions

If a consumer answers "Yes" to question #22 and/or #23 and has responded that they still have symptoms, the consumer needs to be assessed for traumatic brain injury or referred to someone who can conduct an assessment.

Section III - FASD Scoring Instructions

If a person responds positively to both questions #24 and #24 a, they should be referred for an FASD assessment.

Section II - Adverse Experiences

The Division is collecting information on difficulties that clients have experienced in their lifetimes. This information by itself does not trigger an assessment. The information is useful because research has found that people with three or more adverse experiences are more likely to have mental health and/or substance use conditions as well as complicating medical issues.

The number of adverse experiences is the count of "Yes" responses to the eight questions in Section II (#14- 21). Question #21 goes on to ask about intimate partner violence. A response of "Yes" to question #21a requires follow up during the screening about the personal safety of the respondent and other household members.

Dr. Robin Carlson

Section Head, Personality Disorders Section
Lincoln Institute for Mental Wellness
2469 Freud St., Seattle, WA 98189

Education:

- Harvard University, B.S., 1986
- University of Washington School of Medicine, M.D., 1992
- Internship, rotating, San Francisco General Hospital, San Francisco, 1992-1993
- Psychiatric Residency, Stanford Medical Center, Palo Alto, 1993-1996

Specialty Certification:

- American Board of Psychiatry & Neurology (psychiatry), 1996

Professional Experience:

- Program Chief, Mendocino County Department of Mental Health, 1997-2002
- Private Practice, Portland, Oregon, 2002-2005
- State of Oregon, Department of Corrections, Psychiatric Division, 2005-2011
- Section Head, Personality Disorders Section, Lincoln Institute for Mental Wellness, Seattle, 2011-present

Professional Memberships:

- American Psychiatric Association, 1994-present
- International Society for the Treatment of Personality Disorders, 1999-present (President, 2012-2013)
- American College of Forensic Examiners, 2005-2011
- Washington Psychiatric Association, 2011-present
- Oregon Psychiatric Association, 2002-2012

Recent Articles and Papers:

- "Indicators of Early Stage Schizophrenia," *Journal of Psychiatric Medicine*, June 2014, vol. 62, issue 6
- "Alternate Treatment Methods for Schizophrenia," *Psychology Quarterly*, Spring 2013, vol. 87
- "Trauma as a Trigger for Personality Disorders," *Journal of Personality Disorders*, Summer 2012, vol. 12
- "Traumatic Personality Disorders in Combat Zones," keynote address at the annual meeting of the International Society for the Treatment of Personality Disorders, January 26, 2012

Dr. Kael Bruch
Northwest Regional Mental Health Center
1 Psyche Circle
Portland, OR 97277

EDUCATION

Psychiatric residency, Mt. St. Albans Hospital, Las Vegas, NV, 2007-2010.

Rotating internship, Sisters of Guadalupe Medical Center, Phoenix, AZ, 2006-2007.

M.D. program, UCLA School of Medicine, Los Angeles, CA, 2002-2006.

B.A., Pomona College, 2002.

SPECIALTY CERTIFICATION

American Board of Psychiatry & Neurology (psychiatry), 2006

JOB EXPERIENCE

Staff psychiatrist, Northwest Regional Mental Health Center, Portland, OR, 2010-present.

ACADEMIC MEMBERSHIPS AND PRESENTATIONS

American Psychiatric Association, 2007-present.

"Trauma-Induced Psychoses," *Psychology Quarterly*, Fall 2012.

"Lingering Effects of Post-Traumatic Stress Disorder," paper presentation at Western Regionals of the American Psychiatric Association, June 14, 2009.

Legal Authority

Alaska Statutes

AS 11.41.100. Murder in the First Degree.
(a) A person commits the crime of murder in the first degree if
(1) with intent to cause the death of another person, the person
(A) causes the death of any person; or
(B) compels or induces any person to commit suicide through duress or deception;
. . . .

(b) Murder in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

AS 13.12.101. Intestate Estate.
(a) A part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed [herein], except as modified by the decedent's will.
(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the intestate share of the individual or member.

AS 13.12.103. Share of Heirs Other Than Surviving Spouse.
A part of the intestate estate not passing to the decedent's surviving spouse under AS 13.12.102 , or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:
(1) to the decedent's descendants by representation;
(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent;
(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;
(4) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.

AS 13.12.501. Who May Make Will.
An individual 18 or more years of age who is of sound mind may make a will.

AS 13.12.502. Execution; Witnessed Wills.
(a) … a will must be

(1) in writing;

(2) signed by the testator or in the testator's name by another individual in the testator's conscious presence and by the testator's direction; and

(3) signed by at least two individuals, each of whom signs within a reasonable time after the witness witnesses either the signing of the will as described in (2) of this subsection or the testator's acknowledgment of that signature or the will.

AS 13.12.505. Who May Witness.
(a) An individual generally competent to be a witness may act as a witness to a will.
(b) The signing of a will by an interested witness does not invalidate the will or a provision of it.

AS 13.12.803. Effect of Homicide On Intestate Succession, Wills, Trusts, Joint Assets, Life Insurance, and Beneficiary Designations.
(a) An individual who feloniously kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.
(b) The felonious killing of the decedent

(1) revokes a revocable

(A) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(B) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(C) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(2) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common.
(c) A severance under (b)(2) of this section does not affect a third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records that are appropriate to the kind and location of the property and that are relied upon, in the ordinary course of transactions involving the type of property, as evidence of ownership.
(d) Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.
(e) A wrongful acquisition of property or interest by a killer not covered by this section shall be treated in accordance with the principle that a killer may not profit from the killer's wrong.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Estate of ALLISON LATHAM, Deceased. TAYLOR MARKOVICH, Plaintiff, vs. SIDNEY WINSTON, Defendant.	**JURY INSTRUCTIONS** Case No. 3AN-14-09999 CI

FOUNDATIONAL INSTRUCTIONS

Introduction

Members of the jury, you have now heard and seen all of the evidence in the case and you have heard argument about the meaning of the evidence. We have reached the stage of the trial where I instruct you about the law to be applied.

It is important that each of you listen carefully to the instructions. Your duty as jurors does not end with your fair and impartial consideration of the evidence. Your duty also includes paying careful attention to the instructions so that the law will properly and justly be applied to the parties in this case. You will have a copy of my instructions with you when you go into the jury room to deliberate and to reach your verdict. But it is still absolutely necessary for you to pay careful attention to the instructions now. Sometimes the spoken word is clearer than the written word, and you should not miss the chance to hear the instructions. I will give them to you as clearly as I can in order to assist you as much as possible.

The order in which the instructions are given has no relation to their importance. The length of instructions also has no relation to importance. Some concepts require more explanation than others, but this does not make longer instructions more important than shorter ones. All of the instructions are important and all should be carefully considered. You should understand each instruction and see how it relates to the others given.

Direct and Circumstantial Evidence

Evidence is either direct or circumstantial. Direct evidence, if you accept it as true, proves a fact. Circumstantial evidence, if you accept it as true, proves a fact from which you may infer that another fact is also true.

Let me give you an example. Let us pretend that as a juror you are asked to decide the following question: Did snow fall during a particular night? Direct evidence would be a witness testifying that the witness awoke during that night, went to the window, and saw the snow falling. From this evidence you could conclude that snow fell during the night.

Circumstantial evidence would be a witness testifying that the ground was bare when the witness went to sleep at 10:00 p.m., but the next morning when the witness awoke and looked out the window, the witness saw that the ground was covered with snow. From this evidence you could also conclude that snow fell during the night.

Facts may be proved by either direct or circumstantial evidence. The law accepts each as a reasonable method of proof.

Witness Credibility

You have heard a number of witnesses testify in this case. You must decide how much weight to give the testimony of each witness.

In deciding whether to believe a witness and how much weight to give a witness's testimony, you may consider anything that reasonably helps you to evaluate the testimony. Among the things that you should consider are the following:

(1) the witness's appearance, attitude, and behavior on the stand and the way the witness testified;

(2) the witness's age, intelligence, and experience;

(3) the witness's opportunity and ability to see or hear the things the witness testified about;

(4) the accuracy of the witness's memory;

(5) any motive of the witness not to tell the truth;

(6) any interest that the witness has in the outcome of the case;

(7) any bias of the witness;

(8) any opinion or reputation evidence about the witness's truthfulness;

(9) any prior criminal convictions of the witness which relate to honesty or veracity;

(10) the consistency of the witness's testimony and whether it was supported or contradicted by other evidence.

You should bear in mind that inconsistencies and contradictions in a witness' testimony, or between a witness's testimony and that of others, do not necessarily mean that you should disbelieve the witness. It is not uncommon for people to forget or to remember things incorrectly and this may explain some inconsistencies and contradictions. It is also not uncommon for two honest people to witness the same event and see or hear things differently. It may be helpful when you evaluate inconsistencies and contradictions to consider whether they relate to important or unimportant facts.

If you believe that part of a witness's testimony is false, you may also choose to distrust other parts of that witness's testimony, but you are not required to do so. You may believe all, part, or none of the testimony of any witness. You need not believe a witness even if the witness's testimony is uncontradicted. However, you should act reasonably in deciding whether you believe a witness and how much weight to give to the witness's testimony.

You are not required to accept testimony as true simply because a number of witnesses agree with each other. You may decide that even the unanimous testimony of witnesses is erroneous. However, you should act reasonably in deciding whether to reject uncontradicted testimony.

When witnesses are in conflict, you need not accept the testimony of a majority of witnesses. You may find the testimony of one witness or of a few witnesses more persuasive than the testimony of a larger number.

Evaluation of Evidence

The weight to be given the evidence is for you to determine. You must examine the evidence carefully and decide how to evaluate it in light of the law that I have given you in these instructions. In your deliberations, you must not be governed by mere sentiment, unsupported conjecture, sympathy, passion, prejudice, public opinion, or public feeling. You should consider the evidence in light of your own common sense and observations and experiences in everyday life. But you may not consider other sources of information not presented to you in this court.

Your consideration of this case should be based solely on the evidence presented and the instructions I have given. The parties to this action are entitled to have a calm, careful,

conscientious appraisal of the issues presented to you. Sympathy, bias or prejudice should not have the slightest influence upon you in reaching your verdict.

Objections

There are rules of law that control what evidence you can consider. When a lawyer asks a question or offers an exhibit into evidence, and the lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, or the exhibit be received. Whenever I sustain an objection to a question addressed to a witness, you must disregard the question entirely, and must not draw any inference from the wording of it, nor speculate as to what the witness would have said if permitted to answer the question. If I sustain an objection to a question after an answer has been given, then you must disregard the question and the answer.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. In that case, you must not consider the evidence which I told you to disregard. You may wonder why some evidence must be excluded or disregarded when it appears to be of some interest to you. The rules that govern what evidence can be received are designed to do two things. First, they try to help you focus on important and reliable evidence by keeping out interesting but not very important or reliable information. Second, the rules help you decide the case objectively without being swayed by information that might cause you to respond emotionally.

Many of us have said to ourselves from time to time something like "I wish I never heard that about someone, because it makes it impossible for me to be unbiased now." The law tries to protect jurors from this natural human reaction. It is because the law protects what jurors hear that we have such confidence in the impartiality and integrity of the jury.

You should not be influenced by the fact that objections are made or that requests are made that I take certain actions; nor should you be influenced by the number of objections or requests that are made. Objections or requests are not evidence. Please remember that my rulings that exclude evidence or that bar questions are designed to help you decide the case fairly. When I allow testimony or other evidence to be introduced over the objection of a lawyer, I do not mean to suggest any opinion as to the weight or effect of such evidence.

SUBSTANTIVE INSTRUCTIONS

Testamentary Capacity

The Contestant (Taylor Markovich) claims that the will is invalid because the Maker (Allison Latham) was not of sound mind when the will was signed. For the Contestant to win on this claim, you must decide that at least one of the following things is more likely true than not true:

(1) the Maker lacked the mental capacity to understand the nature and extent of her property;

(2) the Maker lacked the mental capacity to understand that she was signing a will that would dispose of her property when she died;

(3) the Maker lacked the mental capacity to identify the persons or entities to whom someone in the Maker's position would naturally consider leaving property.

If you decide that the Maker lacked the mental capacity to understand any one of the three things I have described, then you must return a verdict for the Contestant. Otherwise, you must find that the Maker was of sound mind when she made the will and uphold the validity of the will.

Testamentary Capacity (Insane Delusions)

You may find that the Maker of the Will (Allison Latham) had the ability to do the three things that I outlined for you but is not of sound mind if she was the victim of an insane delusion. A delusion is a belief held by someone that certain facts are true when they are, in fact, not true.

The fact, if it be a fact, that Allison Latham was the victim of some delusion does not establish that she was not of sound mind if the delusion was founded on any facts, however insubstantial, or if the delusion did not bear directly upon and influence the creation and terms of the will.

In order to find that the will is invalid because Allison Latham was the victim of an insane delusion, you must find that it is more likely true than not true that at the time the will was signed: (1) She held a belief which had no basis in reason and (2) that belief could not be removed by any amount of reasoning or argument.

If you find that (1) and (2) above are more likely true than not true at the time the will was signed, you must then decide if it is more likely true than not true that: (3) the false belief bore

directly upon the creation and terms of the will, and (4) that but for the existence of the false belief, the Maker of the will would not have distributed her property in the way provided for in the will.

If you find (3) and (4) above are also more likely true than not true, you must find that the Maker of the will was the victim of an insane delusion that bore directly on and influenced the creation and terms of the will. This would render the will invalid.

If you find that any of the factors (1) through (4) just described *are not* more likely true than not true, you may not find that the Maker of the will was the victim of an insane delusion that bore directly on and influenced the creating and terms of the will. Even if you do not find that the Maker suffered from an insane delusion, you may still find that the Maker lacked testamentary capacity under the standards described in the previous instruction.

Undue Influence and the Presumption of Undue Influence

The Contestant (Taylor Markovich) claims the will is invalid because the Maker (Allison Latham) signed it when she was under the undue influence of the Influencer (Sidney Winston). You must decide whether it is more likely true than not true that:

(1) Sidney Winston was the principal or sole beneficiary of the will; and

(2) Sidney Winston and the Allison Latham had a confidential relationship; and

(3) Sidney Winston participated in the drafting of the will.

A "confidential relationship" existed between Sidney Winston and Allison Latham if Ms. Latham placed special trust and confidence in the integrity and fidelity of Mr./Ms. Winston so that Ms./Mr. Winston was, in fairness and good conscience, bound to act in good faith and with due regard to the interests of Ms. Latham. Examples of some relations that are confidential include that of attorney and client, doctor and patient, and a person holding a power of attorney over someone else's property.

If you decide that all three of these things are more likely true than not true, this creates a legal presumption that Ms. Latham made her will under the undue influence of Sidney Winston. This would shift the burden of proof to Ms./Mr. Winston to show by a preponderance of evidence that there was not any undue influence in the drafting of Ms. Latham's will.

If you decide that any of the above three factors is not present, then there is not a presumption of undue influence, and the burden of proof remains with the Contestant to show by a preponderance of evidence that undue influence was present in the drafting of Ms. Latham's will.

Undue influence exists if Ms. Latham was so influenced by Sidney Winston in making her will that she would not have agreed to the distribution of assets contained in the will if left to the free exercise of her own judgment and wishes. Mere general influence is not undue influence.

In determining whether or not undue influence existed, you should consider all of the surrounding circumstances, including such factors as:

(1) the Maker's age and mental condition;

(2) whether the relationship between the Maker and the Influencer was one in which the Maker put special confidence and trust in the Influencer;

(3) whether the Influencer was the dominant party in the relationship;

(4) the Influencer's opportunity to exercise undue influence;

(5) whether the Influencer participated in the drafting and signing of the will;

(6) whether the will seemed to have been executed for Influencer's benefit or profit; and

(7) whether the Influencer had possession of the will after its execution.

Voiding a Will by Virtue of Felonious Killing

Taylor Markovich has alleged that Sidney Winston took actions that caused Allison Latham's suicide. If you agree that Ms./Mr. Winston caused Ms. Latham's suicide, you must find that s/he cannot inherit under Ms. Latham's will. In order to find that Mr./Ms. Winston compelled or induced Ms. Latham to commit suicide through duress or deception.

Caselaw (citations usually omitted):

***In Re Estate of Kraft,* 374 P.2d 413 (Alaska 1962):**

Albert Kraft died on December 30, 1960, from alcoholism and cancer. A will purportedly executed by him the same day was offered for probate by the named executor, Emil Draft, brother of decedent and appellee on this appeal. One third of decedent's property was left to his wife, and the residue to a daughter by a previous marriage. The wife, Faye Kraft, filed a petition contesting the will. After a hearing, the court found she had failed to establish any grounds for contest, and ordered that the will be admitted to probate. Faye Kraft has appealed. There are three questions presented: (1) whether the statutory requirement of attestation of the will was complied with; (2) whether decedent possessed testamentary capacity at the time the will was executed; and (3) whether he had acted at that time under undue influence exercised by Emil Kraft or other members of the Kraft family.

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Bennett was a long time friend of the testator and spent a great deal of time with him at the hospital on the day of his death. He testified that the will was given to him to take to Kraft; that he promptly went into Kraft's room and read it to him; that later he asked Shannon, who was on the hospital floor, to act as a witness; that he told Kraft that Shannon (who was in the room at the time) was there to witness the signing of the will, whereupon Kraft acknowledged this by saying 'Yes, I knew'; and that Kraft then signed the will.

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2. Testamentary Capacity.

Appellant argues that because of Kraft's extreme illness and the sedation and whiskey which had been given to him on the day of his death, he did not have the physical capacity nor the mental apprehension to make a valid will.

Disease, great weakness, the use of alcohol and drugs, and approaching such do not alone render a testator incompetent to make a will. The question is always whether, in spite of these things, he had sufficient mental capacity to understand the nature and extent of his property, the natural or proper objects of his bounty, and the nature of his testamentary act. In discussing earlier in this opinion the point as to whether the will had been attested to in the testator's presence, we held there was evidence enough to support a finding that he was aware of the fact he was executing his will and that Bennett and Shannon were witnessing that act. If he had this much mental capacity, then since the will had been read to him and he appeared to understand it, it was reasonable for the court to conclude that he also had an awareness of the fact that he was making a final disposition of all his property, and that he was dividing it between his wife and daughter who were the natural objects of his bounty.

Appellant made an effort to establish lack of testamentary capacity by calling as witnesses two physicians who had attended Kraft during his illness. But neither was able to give a definite opinion on this issue one way or the other. Dr. Johnson was asked whether decedent would be competent, in the afternoon of his death, to make a decision how he wanted to dispose of his property. The doctor's answer was: 'I wish I could give you a straightforward answer on

that question, I honestly don't know.' Dr. Keers was asked if he had an opinion as to whether decedent was of sufficient mind and memory to understand the nature and extent of his property, the proper objects of his bounty, and the nature of his testamentary act. The doctor's reply was: "Yes, I have an opinion, I – I'd say it might be – the answer might be either he had or he hadn't – it would be – it would be difficult to say with any degree of assurance whether or not the man was able to understand."

Appellant also testified in her own behalf. She said that when she visited her husband in the hospital on the day prior to his death, he was being given oxygen because of difficulty in breathing, was unconscious, and was not lucid or rational. On the other hand, the witnesses Shannon and Bennett saw Kraft the following day when the will was signed, and their testimony was that he was conscious and knew what he was doing.

A decision of the issue as to testamentary capacity depended largely, if not entirely, on oral testimony given by witnesses seen and heard by the trial judge. It was his province to judge their credibility, and we may not reverse his decision unless we find it to be clearly erroneous. We cannot make such a finding on the record of this case.

3. Undue Influence.

Appellant contends that undue influence was exerted on the testator to make the will that he did. This charge is leveled principally against Walter Kraft, the testator's nephew, and also against other members of the Kraft family.

The judge found there was no evidence at all of undue influence. A review of the record convinces us that his determination was correct. Walter Kraft had drawn the will on the day of his uncle's death, in accordance with wishes the latter had expressed about two months previously. He testified that he had no personal interest in the matter, and was only interested in carrying out his uncle's desires. He was not a beneficiary under the will and was not present when it was executed. Emil Kraft, brother of the testator, did not benefit from the will and had nothing to do with its preparation or execution. The testator's daughter, Myrna Kelly, was a beneficiary. But she had nothing to do with the preparation or execution of the will and, in fact, was not in Kodiak, the place of her father's death, on the day that he died.

There is nothing here which indicates the existence of any undue influence. Appellant has failed to sustain her burden of proving that by reason of influence exercised by another, the testator was virtually compelled to make a will which he would not have made had he been left to the free exercise of his own judgment and wishes.

***Paskvan v. Mesich*, 455 P.2d 229 (Alaska 1969)**

This is a dispute among three parties over a dead man's property. Thomas Paskvan, Jr. claims the property as sole beneficiary under a will executed by decedent, Pete Mesich, on September 18, 1946. The probate master, after a hearing, found that this will was a product of undue influence exercised by Paskvan and was not entitled to probate, a finding which was concurred in by the superior court on appeal from the master's findings. Paskvan has appealed to this court from the superior court's order rejecting the 1946 will.

Paul Drazenovich claims the property as sole beneficiary under a will executed by decedent on August 25, 1952. The probate master found that decedent was incompetent at the time of the execution of this will and that it was not entitled to probate as decedent's last will and testament. The master's findings were rejected by the superior court. After a hearing at which evidence was introduced, the superior court found that decedent was competent to make the 1952

will, that there was no proof of undue influence in connection with its execution, and that it was entitled to be admitted to probate.

Certain relatives of decedent, consisting of five nieces and two grandnephews, claim the property as decedent's heirs, such claim being based on the contention that neither of the two wills was valid and that decedent died intestate. The heirs, Drago Mesich, et al, have appealed from the superior court's judgment recognizing as valid and admitting to probate the will of August 25, 1952.

The Paskvan Will.

The probate master found that a confidential relationship existed between Paskvan and Mesich, that the evidence raised an inference that Mesich's will of September 18, 1946 leaving all his property to Paskvan was a product of undue influence exercised by the latter, and that Paskvan had not produced evidence sufficient to overcome that inference. The superior court accepted and adopted these findings of the master.

In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous.

Since the findings of a master, to the extent that the superior court adopts them, are considered as findings of the court, Civil Rule 52(a) applies and we may not set aside such findings unless we determine them to be clearly erroneous. Clear error will not be found unless we are convinced on the whole record that a mistake has been committed.

A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence.

Mesich was the owner of the Arctic Hotel in Fairbanks. In the spring of 1946 he and Paskvan formed a partnership for the operation of the hotel, with Paskvan to get 50 percent of the revenue from the hotel. There is no evidence that Paskvan invested any money in this enterprise. On the same day the will was executed September 18, 1946, Mesich executed a general power of attorney in favor of Paskvan. Paskvan testified that the purpose of the power of attorney was to enable him to handle Mesich's affairs as to the Arctic Hotel-to 'act for him' and 'to speak for him and everything'. Paskvan was the managing partner.

Also in the spring of 1946 Paskvan and Mesich decided to develop some property on Second Avenue in Fairbanks where they built a combination restaurant and bar called the Elbow Room. Paskvan invested $10,000 in the venture which he had obtained as a loan from the Veteran's Administration. Mesich worked on the project and invested several thousand dollars in it. Mesich's contribution came in part from his share of the revenues from the operation of the Arctic Hotel.

Mesich's will, leaving all his estate to Paskvan, was executed in September 1946. Paskvan testified that the will was executed 'so that we could go ahead and develop this property (the Elbow Room property on Second Avenue) so that there would be * * * some basis for starting the the (sic) business partnership.' The property belonged to Mesich. Paskvan used the will as evidence of his interest in the property when he attempted to secure a veteran's loan with respect to the property, but he was told that the will was not the answer to being able to borrow money. He was told that he had to be a part owner of the property in order to borrow money on it. Paskvan then went to Mesich and had him convey to Paskvan a half interest in the property by deed. After this conveyance, Paskvan obtained a veteran's loan on the property.

In the light of these facts we cannot say that the probate master was mistaken in finding that a confidential relationship existed between Mesich and Paskvan. Mesich's actions in

making Paskvan the managing partner in the Arctic Hotel enterprise, in giving Paskvan his power of attorney so that Paskvan could act and speak for Mesich, in executing his will in favor of Paskvan so that there would be a basis for their partnership venture, and in conveying to Paskvan a one-half interest in the Elbow Room property shows quite clearly that Mesich trusted Paskvan and reposed confidence in him-that he relied upon Paskvan to act in Mesich's best interests in handling his affairs.

The remaining question is whether the probate master was clearly mistaken in finding that, because of the confidential relationship and other factors, the will was a product of undue influence exercised by Paskvan. The initial burden is on the contestant of a will to establish undue influence, and the existence of a confidential relationship alone does not suffice to raise a presumption that undue influence was present. But when the principal or sole beneficiary under a will, who had a confidential relationship with the testator, participated in the drafting of the will, then a presumption of undue influence arises. It requires the beneficiary to come forward with a satisfactory explanation for his actions. He must show that he did not take advantage of the confidential relationship in influencing the testator to execute the will in his favor.

Such a presumption arises in this case. A fiduciary or confidential relationship existed between Mesich and Paskvan, and the evidence shows that Paskvan participated in the execution of the will. Paskvan testified that the will was prepared by an attorney, the it took about three days conferring with the attorney to get the will prepared, that at several meetings in the attorney's office Paskvan was present with Mesich, and that Paskvan was present when the will was executed. Paskvan indicated his interest in having the will made at one point by saying, in answer to the question of why he had gone to the attorney's office with Mesich: 'Well, Pete (Mesich) was the one that uh wanted to draw this thing up, because we had planned on developing this property * * *.' (Emphasis added.) At another point in his testimony Paskvan said:

Well, I suppose we uh-I know we both went up there and uh told him exactly what uh we wanted, and Mr. Hurley took his notes down in-in longhand * * *. (Emphasis added.)

The presumption that undue influence existed is strengthened by other factors. Mesich was a Croatian who emigrated to the United States in 1902. At the time he executed the Paskvan will in 1946 he was 65 years old. He was unable to read or write the English language and spoke English with a heavy Slavic accent. In 1942 he was attacked by an unknown assailant who hit him on the head with a heavy instrument, inflicting serious wounds. He was required to be hospitalized for 42 days during much of which time he was unconscious or semiconscious. There was considerable testimony that after this blow to his head Mesich deteriorated mentally, had difficulty communicating with people, did not seem aware of what was going on around him, and was not competent to handle his business affairs.

Paskvan did not carry his burden of overcoming the presumption of undue influence. It is true that he testified that Mesich had made the will in his favor as a reward for Paskvan's willingness to help Mesich-because Mesich was happy with the way Paskvan did things and thought Paskvan was worthy of his consideration. But this was not enough. The presumption of undue influence was a strong one because of the age and mental condition of Mesich, the fiduciary or confidential relationship that existed between Mesich and Paskvan, Paskvan's opportunity to exercise undue influence because of his partner', the fact that Paskvan appeared to be the dominant party in their partner', the fact that Paskvan appeared relationship, Paskvan's participation in the procurement of the will, the fact that Paskvan became the sole beneficiary

under the will, Paskvan's possession of the will after its execution, and the fact that the will seemed to have been executed so that Paskvan could utilize it in order to obtain a real estate loan.

The totality of these circumstances points to a situation where Paskvan took advantage of a trust and confidence that Mesich had in him in order to acquire all of Mesich's property upon his death. Paskvan had no satisfactory explanation for his actions in this regard. He did not show that in regard to the confidential relationship between him and Mesich he had acted with entire good faith and with due regard to the interests of Mesich. In the absence of such a showing, the presumption of undue influence prevails, and therefore the probate master and the superior court were not clearly erroneous in finding that the 1946 will was a product of undue influence.

The only other time we have had occasion to consider the subject of undue influence as it pertains to the execution of a will was in 1962 when we decided the case of In re Estate of Kraft. We said there: "Appellant has failed to sustain her burden of proving that by reason of influence exercised by another, the testator was virtually compelled to make a will which he would not have made had he been left to the free exercise of his own judgment and wishes."
In that case we approached that problem from the standpoint of the testator's freedom of will. We thought in terms of coercion and duress which would act as a dominating power over the mind and act of a testator, because in that case it had been argued that the testator had been induced to execute a last will and testament which in reality was not his will but another person's will substituted for that of the testator. Here we are not concerned with whether there have been acts to overbear the will of a testator. Unlike the situation in Kraft, we are concerned here with whether the beneficiary under a will has by his conduct and his relationship with the testator taken advantage of the latter by means which reasonable and moral men would regard as improper, in order to obtain some benefit or profit. If he has, the will is a product of undue influence even in the absence of coercion and duress acting as a dominating power over the mind and act of the testator.

The Drazenovich Will.

On August 25, 1952 Mesich executed a will leaving all his property to Paul Drazenovich. The probate master found that Mesich was not competent to make this will. He based this holding on what he determined to be a presumption of incompetency arising from the appointment of a guardian of the estate and property of Mesich on April 9, 1951, which presumption the probate master held was not rebutted. The superior court rejected the master's findings and heard testimony regarding Mesich's competency to execute the 1952 will. The court found that at the time of execution Mesich knew the nature and extent of his property, was aware of the natural objects of his bounty, knew that he was making a will, and was aware of the nature and consequences of his act. The court also found that the will was executed voluntarily and was not the product of undue influence, and that it was entitled to probate.

In the case of In re Estate of Kraft we spoke on the subject of testamentary capacity as follows: "Disease, great weakness, the use of alcohol and drugs, and approaching death do not alone render a testator incompetent to make a will. The question is always whether, in spite of these things, he had sufficient mental capacity to understand the nature and extent of his property, the natural or proper objects of his bounty, and the nature of his testamentary act."

We also said in that case that the trial court's decision as to testamentary capacity would not be reversed unless we found it to be clearly erroneous. That is the question here-whether the superior court's finding that Mesich possessed testamentary capacity when he executed the 1952

will was or was not clearly erroneous. In order to make this determination, we must consider the evidence that touches upon the testamentary capacity of Mesich in 1952.

Mrs. Dorothy Clark, one of the two subscribing witnesses to the 1952 will, testified that she never had any difficulty communicating with Mesich before, at or after the witnessing of the will, that Mesich appeared to know what he was doing, and that she never had any reason to think that Mesich was not of sound mind. On the other hand, when Mrs. Clark was asked whether she could say that she had any reason to believe that Mesich was of sound mind in her limited relations with him, she answered: 'Well, I don't know why I should say whether he's sane or insane. I mean, who am I to judge?' Mrs. Clark described her relationship with Mesich as a casual acquaintance.

The other subscribing witness to the will, Charles Burtchin, who was then Mrs. Clark's husband, did not testify in person. In answer to interrogatories he said: 'The testator, Pete Mesich, as far as my recollection goes was quite normal and appeared to know what he was doing in signing the will.' Drazenovich owned the property where Mrs. Clark and Burtchin were living at the time.

Other witnesses who appeared on behalf of Drazenovich, most of whom had had business contacts with Mesich from time to time, testified varyingly that Mesich was 'probably as normal as most of us', that there was no trouble in understanding Mesich and that he appeared to be rational, that it was no more difficult to understand Mesich after 1942, the year he suffered the blow to his head, than it was before that year, that Mesich seemed rational, not abnormal and capable of carrying on his business, that there was no noticeable change in his personality, that in conversations with Mesich he appeared to understand what the other person was talking about, that Mesich engaged in conversations with people and recognized them, and that Mesich never performed any antisocial acts.

Of these witnesses for Drazenvoich, eight in number, one testified that he had 'very limited contact' with Mesich and that his memories were 'quite vague' about the business relationships he had had with Mesich. Another testified that she did not recall Mesich very clearly, and that her relationship with Mesich ended in 1948-four years prior to the execution of the Drazenovich will. Another testified that he never saw Mesich after 1951. Another testified that she saw Mesich only once or twice a year and that the conversations with him were very casual. Another witness admitted that her acquaintance with Mesich was a very casual one, and another said that she really could not have a conversation with Mesich because of his broken English.

Dr. Jack Petajan, a neurologist, testified on behalf of Drazenovich. He had not examined Mesich. But he testified, on the basis of certain assumptions posed in a hypothetical question, that recent memory loss alone would not be a sufficient basis to say that judgment was impaired, that he thought that Mesich would know his relatives and whom he wished to favor, that Mesich could probably have remembered what property he had owned for a long time prior to his memory loss, and that Mesich probably would have had at least an understanding that a will conveyed away property.

However, Dr. Petajan did not have an opinion to a reasonable medical certainty as to whether Mesich had been competent at the time he executed the will. In addition, it is questionable as to whether all of the assumptions in the hypothetical question were supported by the evidence. For example, one of the assumptions made in the hypothetical question was that in 1951 a guardian had been appointed for Mesich on the ground that he could not read and write the English language. There is nothing in the record to show whether a guardian had been

appointed for that reason or because Mesich simply was not competent to handle his own affairs. Another assumption was that Mesich had properly executed the 1952 will 'before witnesses of his own choice.' The evidence shows that the witnesses to the execution of his will were chosen by Drazenovich. Another assumption was that Mesich had had no record of unusual social responses or an unsteady course of behavior. There was evidence, which we shall refer to in more detail, from witnesses who appeared on behalf of Mesich's heirs who were contesting the will, that Mesich's course of behavior may well have been unsteady and his social responses unusual. Finally, although Dr. Petajan testified that Mesich would have been able to remember property he had owned for a long time prior to his memory loss, he probably would not be able to give a detailed account of property he had acquired recently after the memory loss.

There was other evidence relating to Mesich's competency to make the 1952 will. Blazo Bigovich was appointed guardian of Mesich's estate in 1951. Bigovich testified that Mesich could not talk about any business matters, that he 'didn't understand' even when Bigovich spoke to Mesich in his own Slavic language, that Mesich did not know what property he had 'deeded away', that 'he would sign his own death certificate, he didn't know any different', that Bigovich tried to explain business matters to Mesich but he could not figure out how things had happened, that Mesich seemed to have very little understanding about things if any, that during a law suit where Mesich was involved 'he didn't know what was happening any more than the man in the moon', and that this was Mesich's condition from the time Bigovich was appointed his guardian until about 1953 when Mesich had a stroke.

A Fairbanks attorney, Warren Taylor, had done legal work for Mesich from 1945 up to the 1950's. Taylor testified that he never could get a lucid story out of Mesich at an interview or on the witness stand in court, that during most of the time he knew Mesich his mind was so confused that he could not grasp the significance of questions even when put to him in his native language, and that in a law suit involving some of Mesich's property, Mesich was almost of no help in determining how much property he owned.

Andrew Miscovich testified that after the 1942 blow to Mesich's head, he could not remember present things, could not carry on a conversation, was unable to carry on his business, and was easily influenced. However, Miscovich on cross-examination stated that his conclusions about Mesich being easily influenced were based on things he had been told. In addition, Miscovich said that he had only seen Mesich during the winters about once a month.

George Bojanich testified that he first met Mesich in 1912 and maintained contact until 1915, and then did not renew the acquaintance again until 1941. He said that in 1945 he was called to be an interpreter in a law suit where Mesich was the defendant. Bojanich attempted to speak Slav to Mesich but was unable to even make Mesich understand the questions. This witness was not cross-examined.

Arthur Nerland testified that he knew Mesich because he supplied paint and other materials for him. He described Mesich as being a quiet kind of man prior to 1942. He said that after 1942 Mesich became even more quiet, impossible to communicate with, and he seemed to get worse over the years. Nerland testified that he did not think that Mesich was competent to handle his business affairs, and based his testimony on seeing Mesich about once a month over the years.

Everett Russell testified that he first met Mesich in 1937, saw him until 1941, and that after he had come back from the service in 1947 he saw Mesich occasionally until 1951. Russell said that after 1947 Mesich appeared irrational, that he did not recognize Russell, and that Russell had been unable to conduct a conversation with Mesich. Russell also testified that in

May or June of 1952 he saw Mesich six or eight times, and that Mesich was not aware of what was transpiring in the conversations around him. Russell also said that Mesich would always say 'hello' if anyone else said 'hello', but in Russell's opinion Mesich did not recognize anybody.

John Butrovich testified that he first met Mesich in 1941. He said that after the 1942 blow to Mesich's head he slowed down and that he shuffled around after that time. Butrovich said that he was unable to communicate with Mesich after he had suffered the blow to his head and he described Mesich as a 'vegetable'. Butrovich did not feel that Mesich was competent to handle his business after 1942. Finally Butrovich testified that he felt that Mesich did not know what was going on when he spoke to him in English after that time. The cross-examination of Butrovich was very brief.

Robert Lavery first met Mesich in the late 1930's when Mesich came into his grocery and meat market. Lavery testified that after 1942 he did not think that Mesich recognized anybody, and that he just said 'hello', 'hi', or made a grunting sound. Lavery did not think that Mesich was capable of handling his business affairs after 1942. He said that he made many attempts to engage Mesich in conversation from the period 1943 to 1954 but was unable to do so.

Louis Krize said that he first met Mesich in 1940 and that at that time Mesich was asked many questions which he handled very well. Krize contacted Mesich again in 1943 and described him then as changed, unable to carry on a conversation, and unable to recognize Krize. Krize stressed the fact that from 1940 to 1943 the mental condition of Mesich continued to get worse. Krize was asked only one question on cross-examination.

Dr. Arthur Schaible treated Mesich for the 1942 blow to his head. Dr. Schaible described Mesich's injury and condition. He said that he had opportunities to observe Mesich over a 10 year period from 1942 to 1953, and that he thought that Mesich's mental condition deteriorated during that time. He noticed disorientation and lapse of memory at times. It was Dr. Schaible's impression that Mesich was incompetent and that he would have a hard time taking care of his daily affairs. He said that by 'certain standards' Mesich was not mentally competent.

Dr. Paul Haggland also treated Mesich for the 1942 injury. Dr. Haggland said he saw Mesich again in 1951 when he was brought in to have his competency determined. The doctor read into evidence the report he made at the time. In this report he stated that Mesich could not supply him with a satisfactory history of himself, that he had a definite pathology in his brain, resulting from the 1942 injury to his head, and that his memory for old events was good but for recent events was poor. Dr. Haggland testified that it was his belief at the time he examined Mesich that he should have a guardian.

Paul Drazenovich, the proponent of and beneficiary under the 1952 will, testified at the master's hearing but not at the hearing held by the superior court. On the issue of testamentary capacity Drazenovich said that Mesich knew what he was doing when he executed the will, that Mesich was 'all right in (the) mind', that there was never a time when Mesich did not recognize Drazenovich, that Mesich's '(m)ind was perfect', and that when he and Mesich went to see an attorney to have the will drawn up Mesich did most of the talking.

Drazenovich's testimony is of questionable value. Under cross-examination it was brought out that in 1953 Drazenovich had appeared as a witness in the suit brought in the Territorial District Court by Mesich, through his guardian, against the father of Thomas Paskvan, Jr. Drazenovich had testified as a witness for the plaintiff, Mesich. It is apparent from *238 the following excerpts from Drazenovich's 1953 testimony in the district court that he did not at that time believe that Mesich was mentally competent. He was asked for his opinion of Mesich's condition after he had suffered the blow to his head in 1942:

Q. How was Pete's condition after he got out of the hospital? How has it been since then?

A. Sometimes he don't hardly recognize me. Sometimes he comes to see me at my cabin and sometimes when I go to see him in the cabin he said, 'Get out.' I say, 'What is the matter, Pete?' Then he comes and starts kissing me. 'I am sorry,' he said. 'I thought it was somebody else.' He does that right along, so far as I know.

Q. How does he talk?

A. Talk, sometimes tells what was happening most in childhood. He can stay all night telling me the same story over and over, but whatever is happening now he can tell me nothing.

Q. Do you know whether he is mentally competent?

A. I know he isn't.

Q. You know he isn't?

A. Sure.

Q. Did you see Pete in the summer or fall of 1949?

A. I seen him, sure.

Q. Did he know what he was talking about then? Did he act rationally in 1949?

A. He didn't act right no time since he got hurt. So far as I know, he didn't act right.

Q. Didn't you say sometimes his mind is clear and sometimes it isn't? Isn't that the way it is?

A. No, so far as I can see I would ask him something and he can't remember nothing and then he tries to tell me old story over and over what happened in childhood.

Q. Don't ramble. Isn't it true that sometimes his mind is working all right and sometimes it isn't?

A. Not very much of the time.

Q. Not very much?

A. So far as I can see, no. I feel so because I know him pretty well, before he talk nice to me, advice and everything, but now it is different entirely.

Q. He give you advice?

A. Before he got hurt he gave me advice but now he doesn't know nothing * * *.

In that case the district court made a specific finding that at all time since the 1942 injury to Mesich's head he was mentally incompetent to attend to his business affairs.

Finally, on the issue of testamentary capacity, there was the appointment of a guardian for Mesich in 1951. Since the proceedings relating to the appointment of the guardian were not included in the record on appeal, we do not know specifically on what basis the guardian was appointed. But we do know, from the statute relating to the appointment of guardians, that at least it must have been found that Mesich was 'incapable of conducting his affairs.' We recognize the rule that incompetency to make a will is not necessarily established by the fact that one has been adjudged an incompetent in a guardianship proceeding. But this fact is evidence to be considered, along with other evidence, on the issue of testamentary capacity.

As to the burden of proof on testamentary capacity there is divergence of authority. Some courts hold that the proponent of the will has the burden of establishing that the testator possessed testamentary capacity at the time he executed his will. Other courts, and apparently the majority, hold that the contestant of a will has the burden of showing lack of testamentary capacity. We adopt this latter view.

Along with the petition for probate of the 1952 will Drazenovich filed the affidavit of Mrs. Clark, one of the subscribing witnesses to the will. This witness stated under oath that the will was signed by Mesich in her presence and the presence of the other subscribing witness, the Mesich then declared that the instrument was his last will and testament, and that at the time of execution of the will Mesich was of sound and disposing mind and was not acting under duress, menace, fraud, undue influence or misrepresentation. This was evidence that established a prima facie case of testamentary capacity; the burden was then cast upon the contestants of the will to show that testamentary capacity was lacking. The question here is whether Mesich's heirs, as contestants of the 1952 will, met that burden.

Most of the witnesses testifying both for and against testamentary capacity, who were seen and heard by the superior court, had only casual contacts with Mesich and had not been associated with him on any sustained basis. If the testimony of these witnesses were all that had to be considered, we would not reverse the court's determination that Mesich possessed testamentary capacity because of our duty to give due regard to the court's function in determining the credibility of witnesses. As we said in In re Estate of Kraft: "A decision of the issue as to testamentary capacity depended largely, if not entirely, on oral testimony given by witnesses seen and heard by the trial judge. It was his province to judge their credibility, and we may not reverse his decision unless we find it to be clearly erroneous."

But there were other witnesses, not seen and heard by the trial judge, whose testimony on the issue of testamentary capacity was of greater value because of the nature and extent of their association with Mesich. Attorney Taylor, who had done legal work for Mesich from 1945 up to the 1950's, testified that he never could get a lucid story out of Mesich at an interview or on the witness stand in court, that during most of the time he knew Mesich the latter's mind was so confused that he could not grasp the significance of questions even when put to him in his native language, and that in a law suit involving some of Mesich's property, Mesich was almost of no help in determining how much property he owned.

Blazo Bigovich, who was appointed guardian of Mesich's estate in 1951, testified that Mesich could not talk about any business matters, that he did not understand even when Bigovich spoke to him in his own Slavic language, the Mesich did not know what property he had deeded away, that Mesich could not figure out how things had happened, that he seemed to have very little understanding about things, that during a law suit where Mesich was involved Mesich 'didn't know what was happening any more than the man in the moon', and that this was Mesich's condition from the time Bigovich was appointed guardian in 1951 until about 1953 when Mesich had a stroke.

Dr. Schaible, who had treated Mesich for the 1942 injury to his head, and who had observed Misich over a 10 year period from 1942 to 1953, said that he thought that Mesich's mental condition deteriorated during that time, that he had lapses of memory and was disoriented, and that he was not mentally competent.

George Bojanich, who was called to be an interpreter for Mesich in a law suit where Mesich was the defendant, said that he attempted to speak the Slavic language to Mesich, but was unable to make Mesich understand the questions.

Finally, there was the testimony of Drazenovich in the 1953 suit in the Territorial District Court, which we have already referred to, where Drazenovich made it clear that in his opinion Mesich was mentally incompetent after he suffered the 1942 injury to his head.

None of these witnesses were seen or heard by the trial judge. They had testified only before the probate master and not at the hearing held by the superior court. The superior court

judge had no greater opportunity than we to judge their credibility, since his only contacts with these witnesses was through the typed transcript of their testimony before the probate master. In this situation we are in as good a position as the trial judge to make a determination of fact based upon such testimony.

We consider this evidence more important than the testimony of the other witnesses that the trial judge did see and hear. From such evidence in particular, and along with other evidence in the record, we are left with the definite and firm conviction that the trial judge was mistaken in finding that Mesich possessed testamentary capacity at the time of the execution of the 1952 will. It is our determination that at that time Mesich did not have sufficient mental capacity to understand the nature and extent of his property, the natural or proper objects of his bounty, and the nature of his testamentary act. Our conviction that such a mistake has been made means that the trial judge's finding that the testamentary capacity existed in 1952 is clearly erroneous. In view of this determination it is unnecessary for us to pass upon the court's finding that this will was not the product of undue influence.

The judgment of the superior court rejecting and denying probate of the Paskvan will of September 18, 1946 is affirmed. The judgment admitting to probate the Drazenovich will of August 25, 1952 is reversed. The case is remanded to the superior court for further proceedings not inconsistent with the views expressed in this opinion.

***United Services Automobile Association v. Werley*, 526 P.2d 28 (Alaska 1974):**

This court has on numerous occasions expressed the view that Alaska's discovery rules should be given a liberal construction. As expressed in Civil Rule 26(b), one of the limitations on discovery concerns matters that are privileged. Among the privileges recognized in Alaska is the attorney-client privilege. Civil Rule 43(h)(2) provides as follows: "An attorney shall not, without the consent of his client, be examined as to any communication made by his client to him, nor as to the attorney's advice given thereon, in the course of the attorney's professional employment."

The purpose of the attorney-client privilege is to promote the freedom of consultation of legal advisors by clients by removing the apprehension of compelled disclosure by the legal advisors. Given our commitment to liberal pre-trial discovery, it follows that the scope of the attorney-client privilege should be strictly construed in accordance with its purpose.

One of the widely recognized exceptions to utilization of the attorney-client privilege is that the privilege cannot be used to protect a client in the perpetration of a crime or other evil enterprise in concert with the attorney. Wigmore notes that this exception is for the logically sufficient reason that no such enterprise falls within the just scope of the relation between legal advisor and client.

Wigmore concludes that the communications between advisor and client must pertain to ongoing or future, rather than prior, wrongdoing before the privilege ceases to operate. In addition, the advice sought must be for a knowingly unlawful end, and there is generally a restriction of the exception to cases involving a crime or civil fraud.

The mere allegation of a crime or civil fraud will generally not suffice to defeat the attorney-client privilege. . . The general rule is that there must be a prima facie showing of fraud before the attorney-client privilege is deemed defeated. We think the requirement of prima facie evidence of fraud as opposed to a mere allegation of fraud seems particularly meritorious in the circumstance where a party is seeking to discover all the attorney-client communications relating to the defense of an insurance claim by an insurer. Once a litigant has presented prima facie

evidence of the perpetration of a fraud or crime in the attorney-client relationship, the other party may not then claim the privilege as a bar to the discovery of relevant communications and documents.

***Harris v. Keys*, 948 P.2d 460 (Alaska 1997):**

In August 1992, Robert Keys and Barbara Meyers, d/b/a Homer Cabins (Keys), contracted to remove discarded wood from a site they leased near Ninilchik, Alaska. After a log splitter was stolen from the site, Keys parked at the site a motor home he owned, and asked Bobbie Satterwhite to stay there to discourage further theft. Satterwhite agreed to live in the motor home, and moved in with his friend Elizabeth. The parties dispute whether Satterwhite had any duties beyond living in the motor home at the site, as well as Satterwhite's compensation for such duties. The motor home had a built-in furnace and two portable heaters. All three were missing or destroyed by December, although Keys testified that he was never told the furnace was inoperable. Satterwhite heated the motor home with a propane stove, which vented carbon monoxide into the motor home.

On December 25, Harris and Satterwhite visited a nearby bar. Harris displayed signs of frostbite. Later that day, Keys received a call stating that Elizabeth was dead or seriously ill. Keys and Moore accompanied paramedics and police to the motor home. At the site, they found Elizabeth dead from an infection, and Harris frost-bitten and incoherent. Tests revealed high levels of carbon monoxide in Harris, but negligible levels in Elizabeth. Harris lost both feet to frostbite and suffered neural damage from shock.

Harris and Moore brought suit against Keys. Prior to trial, Harris and Moore attempted to shift the burden of proof regarding Satterwhite's negligence as a cause of injury, on the ground that Keys had cleaned the motor home and destroyed evidence relevant to that issue. The superior court denied this motion. In addition, the court refused to admit Elizabeth's diaries, which contained records of Satterwhite's work. The court also refused to allow late addition of several witnesses, or to admit their hearsay testimony.

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C. The Superior Court Did Not Err by Excluding Elizabeth's Diaries.

Harris and Moore contend that the superior court wrongly excluded Elizabeth's diaries, which supported Satterwhite's claim that he worked for Keys. "This court reviews the superior court's decisions on the admissibility of evidence for an abuse of discretion." An abuse of discretion exists only if the reviewing court is "left with a definite and firm conviction, after reviewing the whole record, that the trial court erred in its ruling." The diaries are hearsay,[FN13] and the hearsay exceptions which Harris and Moore cite do not apply. This claim therefore fails.

FN13. "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Alaska R. Evid. 801(c).

Harris and Moore base their first argument for admission of the diaries on Alaska Rule of Evidence 803(6), the "business records" exception to the hearsay rule. This exception allows admission of a record made "from information transmitted by[ ] a person with knowledge acquired of a regularly conducted business activity ... if it was the regular practice of that business activity to make and keep the memorandum ... unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness." The accuracy of the diaries, the significance of the entries, and whether the entries were made routinely were subject to much dispute and conflicting evidence. In light of the evidence that the diaries were inaccurate and were not regularly kept and the dispute concerning the significance of those

entries that were made, we conclude that the superior court did not abuse its discretion in excluding them.

Harris and Moore also cite Alaska Rule of Evidence 803(5), which allows admission of a "record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly." While Keys questioned the accuracy of Satterwhite's memory, Satterwhite never expressed any difficulty recalling whether he cut wood at the site. The entries therefore do not concern "a matter about which a witness once had knowledge but now has insufficient recollection" to discuss accurately. Alaska R. Evid. 803(5). As a result, the superior court's refusal to apply this exception was not an abuse of discretion.

***L.C.H. v. T.S.*, 28 P.3d 915 (Alaska 2001):**

Lance H. is Tabitha S.'s step-grandfather; he married Tabitha's maternal grandmother before Tabitha was born. Tabitha never lived with Lance and his wife, but she did visit with them on five occasions, when she was between ages three and fourteen. Tabitha claimed that Lance sexually abused her during each of these visits.

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Lance denies that he committed any of the above acts. In support of his innocence, Lance points to Tabitha's extensive diary entries as evidence that the memories to which she testified were actually based on false memories that she had recovered with the aid of counselors, either in person or through self-help books.

The first reference in Tabitha's diaries to her belief that she had been sexually assaulted was July 15, 1993, after her final visit with Lance and his wife in Canada. Tabitha was fourteen years of age when she wrote the diary entry. Other diary entries between July and November 1993 reflect dreams about rape, statements that she realized that she had been molested, and references to these events in a draft letter to her mother. In November 1993 Tabitha purchased the book *The Courage to Heal*, a book about recovering from childhood sexual abuse, at the suggestion of an aunt with whom she had discussed her concerns about abuse. Thereafter, the diary entries through 1997 reflect Tabitha's internal dialogue about what she thought had happened-including her own difficulties believing what she thought she remembered.

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3. Tabitha's testimony was admissible under Evidence Rule 403.

Even otherwise admissible evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice. Lance argues that Tabitha's testimony is "inherently unreliable" and that the trial court should have excluded it under Rule 403 because her memory was "subject to the risk of confabulation through suggestibility from other sources." Lance contends that Tabitha's diaries reveal a slow, four-year evolution of her beliefs as to the abuse to which she thought she had been subjected, which could only be the result of the influence of the book *The Courage to Heal* and of her support group. He points to the continued uncertainty reflected in her diaries into mid 1997 as evidence of the distortion of her memories. Lance further argues that Tabitha's testimony is tainted because it is impossible to distinguish a true memory from a false one without other corroborative evidence. He then argues that there is no corroborative evidence because the only evidence is Tabitha's own statements of abuse. Lance argues that the prejudice from the "mere stigma of the accusation" of sexual abuse is disproportionate and contends that the concern here is the suggestibility of human memory.

Tabitha contends that the prejudice from her testimony is not the kind of "unfair" prejudice Rule 403 is designed to guard against. As to Lance's argument that corroborative evidence is required, Tabitha argues that corroboration was not required in this case and notes that it is common that there are no eyewitnesses to sexual abuse. But even if corroboration were required, Tabitha argues that her testimony was corroborated by the following: (1) her mother's testimony regarding change in Tabitha's behavior after visits with Lance and his wife; (2) the testimony of an employee of Lance that Tabitha looked sad and lonely; (3) Tabitha's sister's testimony about Tabitha's protective conduct during their visit with Lance and his wife; and (4) the testimony by Tabitha's girlfriend about her conversation with Tabitha, just days after Tabitha's last visit to Pitt Meadows, in which Tabitha made reference to concerns about abuse.

We conclude that prejudice from the risk of suggestibility does not outweigh the probative value of the testimony in this case. Tabitha's testimony was certainly prejudicial, but it was not unfairly so. The risk of suggestibility here is not the influence or suggestions of ongoing one-on-one therapy or hypnosis; instead, it stems from Tabitha purchasing and reading a book (at the recommendation of an aunt after discussions about Tabitha's concerns about abuse) and from attending counseling and support group sessions. This is no different from the suggestibility to which people are subject in their everyday lives. Lance is correct that allegations of sexual abuse are stigmatizing, but in a case where sexual abuse is the basis for the claim, evidence of such abuse that otherwise meets the requirements of the evidence rules cannot be kept out merely because it has a stigmatizing effect.

***Helgason v. Merriman*, 36 P.3d 703 (Alaska 2001):**

Clara Helgason died in Kodiak on September 20, 1998, at the age of ninety, leaving two heirs, her sons Leonard Helgason and Ken Wood. Clara Helgason left a series of wills, and the last of these, dated November 5, 1996, was apparently admitted into probate in the superior court. In that will, Clara Helgason nominated a friend, Thomas Merriman, as the personal representative of her estate.

Clara Helgason and Thomas Merriman had a friendship that began in July 1989, when Merriman flew with his wife and some friends to Terror Bay, where Clara Helgason lived at the time. Merriman and Helgason thereafter maintained a personal friendship. The Merrimans ran errands for Helgason and socialized with her from 1989 until her death.

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The plaintiffs also claim that Merriman's influence over Helgason gives rise to a cause of action because his conduct constituted undue influence. Two other courts have affirmed removals of personal representatives at least partially on this basis.

In *Paskvan v. Mesich* and *In re Estate of Kraft*, we discussed the circumstances under which a finding of "undue influence" may be found. In situations in which the defendant is the "principal or sole beneficiary," had a "confidential relationship" with the testator, and "participated in the drafting of the will," the defendant is presumed to have exercised undue influence, and must prove otherwise. If those circumstances do not apply, to show undue influence the plaintiff must show that "by reason of influence exercised by [the defendant], the testator was virtually compelled to make a will which he would not have made had he been left to the free exercise of his own judgment and wishes."

The plaintiffs argue that, under Kraft, there was undue influence because Merriman was involved in the drafting of the will and ingratiated himself with Clara Helgason to such an extent

that Helgason made a will that she would not have made if left to the free exercise of her judgment and wishes. The plaintiffs also argue that, under Paskvan, Merriman took advantage of Helgason's advanced age, unsophistication, and medical condition to gain an "improper" advantage.

Merriman responds to these arguments by claiming that only Kraft is relevant to this appeal, and that there is no evidence that Helgason wrote the will in a way that was compelled. Merriman relies primarily on the terms of the will and testimony showing the friendship between the Merrimans and Helgason, noting that the will includes only a modest gift for Merriman and vests him with some powers and discretion over the trusts created by the will; Merriman implies that this is easily explained by the friendship, and that the evidence shows that the Merrimans did not actively seek these gifts.

The superior court noted summarily that "[the plaintiffs] have not presented any evidence of wrong doing or undue influence."

Our decision in Paskvan is not relevant to the circumstances of this appeal. Merriman is not the "principal or sole beneficiary" of the will, since he receives only $15,000 and the power to administer trusts and distribute items of personal property unwanted by Helgason's sons. There is no evidence in the record that Merriman's relationship with Helgason was "confidential," even though the two were friends; and the only evidence that Merriman "participated" in drafting the will was that Merriman and Helgason spoke about the will before she drafted the first version, and that Helgason sometimes spoke to her lawyer, Matt Jamin, with Merriman present.

Also, there is no evidence of undue influence under the standard we announced in Kraft. [FN23] There is some evidence in the record that tends to show that Merriman had some influence on Helgason, and the will does confer some benefits on Merriman. Merriman was apparently a friend of Helgason's, and the two of them did, on occasion, drink wine that Merriman supplied. Also, Merriman received some benefits from Helgason, apparently as the result of their friendship. Foremost among these was the $100,000 loan and its forgiveness, which has already been discussed. However, under the will, Merriman received only the $15,000 gift along with the trustee powers granted by the will.

FN23. Under Kraft, undue influence is shown if "by reason of influence ... the testator was virtually compelled to make a will which he would not have made had he been left to the free exercise of his own judgment and wishes." 374 P.2d at 417.

In our undue influence analysis in Kraft, we were primarily concerned with whether the defendants benefitted from the will. In rejecting the undue influence claim in that case, we noted that the defendants who were involved in the preparation and execution of the will were not beneficiaries of the will. Even though Merriman is a minor beneficiary under the will, the plaintiffs do not present any evidence to support the inference that Merriman exercised his influence to receive any benefits under the will or exercised his influence to otherwise shape the will. On this point, plaintiffs seem to complain that any such evidence of undue influence, if it existed, would probably only be held by Merriman himself, since no one else was present during the episodes in which Merriman allegedly exercised undue influence over Helgason. However, the plaintiffs failed to conduct any discovery on this issue; they took no depositions and presented no interrogatories or requests for admissions, despite the fact that they had ample time to do so, since Merriman was appointed as personal representative in September 1998, and the hearing took place in October 1999. Therefore, it was not an abuse of discretion to hold that the plaintiffs have failed to raise a real issue of a substantial conflict of interest caused by undue influence in this case.

***Copeland v. State*, 70 P.3d 1118 (Alaska Ct. App. 2003):**

In the summer of 1996, Mark E. Copeland began a sexual relationship with a thirteen-year-old girl, J.S. Copeland was thirty-nine years old at the time. Sometime that fall, J.S.'s parents began to suspect that something was amiss. When they searched J.S.'s room and read her diary, their fears were confirmed. They then forbade J.S. to see Copeland.

J.S. secretly continued her relationship with Copeland, skipping classes and leaving school to engage in trysts with him. In December 1996, frustrated by the restrictions that her parents were placing on her, J.S. ran away from home. Copeland arranged for J.S. to stay at a series of residences, all owned by acquaintances of his. Then, in March, Copeland (using an assumed name) rented an apartment for J.S. J.S. lived in this apartment for six months (and continued her sexual relationship with Copeland when he visited her). Finally, in September 1997, the apartment manager contacted the police.

Copeland was indicted for kidnapping and eleven counts of second-degree sexual abuse of a minor (i.e., engaging in sexual penetration with a child between the age of thirteen and sixteen). Copeland's first trial ended in a hung jury on all counts except one count of sexual abuse of a minor. (Copeland was acquitted of this count.) At his second trial, Copeland was acquitted of kidnapping but convicted of the lesser offense of contributing to the delinquency of a minor. Of the ten remaining counts of second-degree sexual abuse of a minor, Copeland was convicted of nine and acquitted of one. For these crimes, Copeland received a composite sentence of 11 years' imprisonment with 3 years suspended--8 years to serve.

In this appeal, Copeland challenges five different evidentiary rulings made at his trial. He also contends that his sentence is excessive. For the reasons explained here, we affirm Copeland's convictions and his sentence.

The partial disclosure of J.S.'s diary to the defense

When J.S.'s parents read her diary and discovered that it contained evidence that their daughter was engaging in sexual relations with Copeland, they turned the diary over to the police. The police perused the diary, identified what they believed to be the relevant portions, and turned those portions over to the district attorney's office. Following Copeland's indictment, the district attorney's office provided Copeland's defense attorney with a copy of what they had.

Suspecting that other portions of the diary might contain exculpatory or explanatory material, Copeland's attorney asked the superior court to compel production of the entire diary. Before Copeland's first trial, Superior Court Judge Niesje J. Steinkruger examined a photocopy of the complete diary. Based on her in camera examination, Judge Steinkruger ordered additional pages of the diary to be produced to the defense, but she declined to order production of the diary in its entirety.

During Copeland's second trial, his attorney renewed his request for production of the complete diary. This issue arose because J.S. testified that she had altered certain portions of the diary at Copeland's instruction. Copeland's attorney asserted that, if a document expert examined the diary, the examination would prove that J.S. was lying about altering the diary. Superior Court Judge pro tem Sigurd E. Murphy ruled that a document examiner would be allowed to examine the diary for physical alteration (or lack of physical alteration), but the expert would be ordered not to disclose the contents of any pages that the court had not released. (The record contains no indication that Copeland's attorney ever pursued this opportunity to have a document expert examine the diary.)

Copeland's attorney also asked the court to compel production of anything in the diary relating to J.S.'s dissatisfaction with her life at home; the defense attorney argued that these

passages might be relevant to the kidnapping charge. Judge Murphy subsequently ordered production of several other pages, but still not the entire diary.

On appeal, Copeland argues that more of the diary should have been disclosed to him. He notes that, on one of the diary pages he received, J.S. wrote: "I keep telling people that things happened with him and me when I was down there, but nothing did happen. I need to stop lying." Copeland suggests that there must be other pages that contain similar statements relevant to J.S.'s credibility. However, we have examined the diary and we agree with Judges Steinkruger and Murphy that there are no other portions that bear on this issue.

Copeland also argues that Judges Steinkruger and Murphy had no authority to bar him from seeing any portion of the diary because J.S. (the author of the diary) never personally asserted a right to privacy in the diary. Rather, it was the district attorney's office that invoked J.S.'s right to privacy. Copeland contends that, absent a personal request for privacy from J.S. herself, the superior court had no authority to prevent Copeland from obtaining the diary.

But this argument works both ways. It was obvious that J.S. could claim a right of privacy in her diary, and Copeland's attorney never asserted that J.S. was willing to waive that right of privacy, nor did he ask the superior court to pose this question to J.S.

In any event, we conclude that this issue is moot. In *Spencer v. State*, 642 P.2d 1371 (Alaska App.1982), this Court confronted this same argument: that a trial judge committed error by invoking a victim's right to privacy when the victim had not personally asserted that right. In Spencer, we concluded that any arguable error was harmless, since the trial judge had correctly concluded that the excluded information was not relevant. Id. at 1376.

We reach the same conclusion in Copeland's case. When the superior court declined to give Copeland access to the complete diary, the court did not rely on the theory that, even though the excluded portions were relevant, they were protected by an overriding right of privacy. Rather, the superior court concluded that these portions were not relevant. Having examined these portions of J.S.'s diary, we agree.

Next, Copeland argues that, given J.S.'s testimony that she altered certain portions of the diary, both the defense attorney and the jury were entitled to inspect the entire physical document to see if there was evidence of physical tampering. But as we explained above, when this issue surfaced at Copeland's trial, Judge Murphy offered to let a document examiner (chosen by the defense) examine the entire diary. This was a reasonable way of reconciling the competing interests--allowing the defense to investigate the possibility of physical alteration while at the same time preserving J.S.'s privacy in the content of the diary, to the extent that this content was irrelevant. Copeland chose not to pursue Judge Murphy's offer.

We therefore conclude that Judge Murphy committed no error when he revealed only parts of J.S.'s diary to the defense.

RULES GOVERNING THE ALASKA HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP COMPETITION

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I. RULES OF COMPETITION

A. GOVERNING RULES

Rule 1. Competition Coordinators

The Alaska High School Mock Trial Championship is sponsored by the Anchorage Bar Association, Young Lawyers Section. A committee comprised of interested members of that organization and other persons, as appropriate, shall organize and oversee all aspects of the competition, and shall be referenced as the competition coordinators. All correspondence with the competition coordinators should be addressed to:

ANCHORAGE BAR ASSOCIATION
P.O. BOX 100362
ANCHORAGE, AK 99510-0362
Attn: MOCK TRIAL

You are also welcome to e-mail the organizers at alaskamocktrial@gmail.com.

Rule 2. Interpretation of the Rules

All trials will be governed by the current Alaska High School Mock Trial Championship's Rules of Competition and Rules of Procedure and by the Federal Rules of Evidence (Mock Trial Version). Interpretation of the rules is within the discretion of the competition coordinators, whose decisions are final. Any clarification of rules will be issued in writing to all participating teams. Teams who believe that clarification is needed should request clarification in writing. Any situations that arise that are not addressed in these rules may be resolved at the sole discretion of the competition coordinators.

Rule 3. Code of Conduct

The Competition rules, as well as proper rules of courthouse and courtroom decorum and security must be followed. The competition coordinators will have discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations, or breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program.

Rule 4. Emergencies

During a trial, the presiding judge or the competition coordinators shall have discretion to declare an emergency and adjourn the trial for the period of time necessary to address the emergency. If an emergency arises which would cause a team to be unable to continue a trial, or require it to participate with less than six members, the competition coordinators shall have the discretion to determine how to proceed.

Rule 4.5. Food and Beverages in the Courtrooms

Food and beverages – other than water – are NOT ALLOWED in the courtroom at any time. After receiving a warning, teams that fail to follow this rule are subject to forfeiture of rounds and/or disqualification. Competition organizers will do their best to make water available during

the trial for the participating lawyers and witnesses, but teams may want to consider bringing their own bottled water.

B. THE PROBLEM

Rule 5. Case Materials

The problem will be an original fact pattern which may contain any or all of the following: statement of facts, indictment or complaint, stipulations, witness statements/affidavits, jury charges, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

Teams who believe that errors exist in the case materials should bring such errors to the attention of the competition coordinators in writing prior to the start of the competition. Any clarification of case materials will be issued in writing to all participating teams. In preparing and participating in the Competition, students are limited to the supplied case materials, the Governing Rules and the Modified Rules of Evidence.

Participants are not allowed to introduce at trial cases or exhibits not included in the case materials. Reasonable extrapolation will be allowed as explained in Rule 7.

Rule 6. Witness Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement or affidavit, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' affidavit or as explicitly allowed by the case materials. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 7, outside the scope of the problem. In such a situation, the witness should respond that he or she does not have sufficient information to answer the question.

If, in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' affidavit or as explicitly allowed by the case materials.

A witness is not bound by the facts contained in other witness statements.

Rule 7. Unfair Extrapolation

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. An unfair extrapolation is a statement by a witness at trial that creates a sense of bias for or against a party and which is not supported by the materials provided. A fair extrapolation is one that is neutral toward the outcome of the trial and either based on common knowledge or reasonably inferred from the witness's statement and pertinent exhibits.

Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation. If a witness is asked for information not contained in the witness's affidavit, the answer must be consistent with the statement and may not materially affect the witness's testimony or any substantive issue of the case.

Consistent with the obligation to attack unfair extrapolations through impeachment and closing arguments, attorneys for the opposing team may refer to Rule 7 in a special objection, such

as "unfair extrapolation" or "information is beyond the scope of the statement of facts." The attorney examining the witness may defend the witness' statement by directing the judge to a passage in that witness' affidavit, or to other applicable materials, that support the statement or conclusion made by the witness.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings. Possible rulings by a judge include: (a) no extrapolation has occurred; (b) an unfair extrapolation has occurred; (c) the extrapolation was fair; or (d) ruling is taken under advisement. The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

Rule 8. Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any team member may portray the role of any witness of either gender. Please try to be mindful of the genders of the witnesses portrayed by the opposing team.

Rule 9. Voir Dire

Voir dire examination of a witness is not permitted. Expert witnesses may be challenged on their qualifications as an expert.

C. THE TRIAL

Rule 10. Team Eligibility

Any Alaska high school may assemble one or more teams and become eligible to compete in the Alaska High School Mock Trial Championship Competition. Two or more Alaska high schools may jointly form a team if each school participating in the formation of a joint team would otherwise be unable to participate in the Alaska High School Mock Trial Championship Competition. Educational and civic organizations which are 1) independent of any Alaska high school, 2) not formed primarily for the purpose of competing in the Alaska High School Mock Trial Championship Competition, and 3) comprised of high school students residing in Alaska, may assemble one or more teams and become eligible to compete in the Competition. Alaska high schools wishing to form a team but not qualifying under this Rule may timely request that an exception to this Rule be granted by the competition coordinators. A decision by the competition coordinators as to eligibility under this Rule or an exception to this Rule shall be final. Any team wishing to participate in the Alaska High School Mock Trial Championship Competition must properly register with the competition coordinators in advance of the competition. The competition coordinators will attempt to accommodate all registrants. Any school or other organization wishing to enter multiple teams must designate a "first" team. In the unlikely event that registration must be limited as a result of too many teams attempting to participate, priority will be given to the "first" team over other teams from the same school or organization. In all other aspects, registration will be permitted on a first come, first served basis. Registration will only be limited if the number of teams registered exceeds the capacity of the facilities where the competition is held.

The team that wins the Alaska High School Mock Trial Championship Competition will be deemed the current Alaska State Mock Trial Championship Team and is eligible to participate and compete in the National High School Mock Trial Championship. Any team representing Alaska in the National High School Mock Trial Championship must be comprised of students who

participated on the Alaska State Mock Trial Championship team. A team intending to compete in the National High School Mock Trial Championship *must* bring at least nine members to the National Championship. Teams eligible for the National Championship may decline to participate, in which case eligibility will pass to the next highest finishing team in the Alaska Competition. The Alaska State Mock Trial Championship Team is responsible for its own expenses in attending the National High School Mock Trial Championship Competition. Registration fees (estimated at $300) incurred by the Alaska State Mock Trial Championship Team in conjunction with participation in the National High School Mock Trial Championship Competition may be paid by the competition sponsors to the extent that budgetary constraints will permit. The Anchorage Bar Association, Young Lawyers Section, may be prohibited from contributing any funds for travel and related expenses.

Rule 11. Team Competition

Teams consist of no less than **six** members and no more than **nine** members, including alternates. Team members are assigned to attorney and witness roles representing the Prosecution/Plaintiff and Defense/Defendant sides in each round of the competition. For each match, a team is required to provide three attorneys and three witnesses, as described below in Rule 12. Teams may rotate participants between rounds at their discretion.

Rule 12. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members. Different sides will be assigned to teams for different rounds. Only in the case of an emergency may a team participate with less than six members. In such a case, a team may continue in the competition by making substitutions to achieve a two attorney/three witness composition. If an emergency causes a team to use less than three attorneys, the team may be penalized by a reduction of points for that round or may be caused to forfeit the round, depending on the nature of the emergency. Final determinations of emergency, forfeiture, or scoring record will be made by the competition coordinators and are solely at their discretion. If a coach knows his or her team might not be able to field the required six members for a given round, the coach should notify the competition coordinators as soon as possible.

Rule 13. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct examination and one cross examination; in addition, one will present the opening statement and a different student will present a closing argument. The principal attorney duties for each team will be as follows:

1. Opening Statement
2. Direct Examination of Witness #1
3. Direct Examination of Witness #2
4. Direct Examination of Witness #3
5. Cross Examination of Opposing Witness #1
6. Cross Examination of Opposing Witness #2
7. Cross Examination of Opposing Witness #3
8. Closing Argument

Opening Statements must be given by both sides at the beginning of the trial. The defense does not have the option to reserve their opening statement for the beginning of the presentation of their case.

The attorney who will examine a particular witness on direct examination is the only person who may make objections to the opposing attorney's questions of that witness's cross-examination, and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness.

Each team must call three witnesses. Witnesses must be called only by their own team and examined by both sides. Although re-direct and re-cross are permissible, witnesses may not be recalled to the stand after their testimony is complete. Thus, once a witness is excused and steps down, neither team may recall the witness for further questioning even if no re-direct or re-cross was previously conducted. A presiding judge may elect not to allow re-cross examination.

Attorneys are not permitted to ask leading questions on direct or re-direct examination, but may ask leading questions on cross or re-cross examination if they so choose. The scope of cross examination is not limited to the scope of issues raised during direct examination. However, the scope of re-direct examination is limited to issues raised during cross examination, and the scope of re-cross examination, if allowed by the presiding judge, is limited to issues raised during the re-direct examination.

Rule 14. Swearing of Witnesses

The following oath, or a similar oath permitted by the presiding judge, may be used before questioning begins:

> "Do you promise that the testimony you are about to give faithfully and truthfully conforms to the facts and rules of the mock trial competition?"

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate that all witnesses are to be sworn in collectively at the start of the competition, or the above oath will be conducted by the presiding judge upon the calling of each witness. The presiding judge shall indicate which method will be used during any given round of the Mock Trial Competition. Witnesses must stand during the oath unless physically unable to do so.

Rule 15. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and (optional) Re-direct Exam (20 minutes total per side)
3. Cross and (optional) Re-cross Exam (15 minutes total per side)
4. Closing Argument (5 minutes per side)

The Prosecution/Plaintiff is the first to present the opening statement and give the closing argument. The Prosecution/Plaintiff may reserve a portion of the time allotted for closing argument to present a rebuttal. Rebuttal is limited to the scope of the opposing side's argument. The Defendant shall not be permitted rebuttal during closing argument.

The time allotted for examination of the witnesses is the combined time for all three witnesses. Teams may allocate their available time between each witness and between direct/re-

direct or cross/re-cross examination as they choose. Extensions of time may be granted as set forth in Rule 17. If a team fails to present direct examination of a witness, that team will receive zero (0) points for that round for both the attorney and the witness; the cross-examining attorney will receive the average score of the other cross-examining attorneys. If a team fails to present a cross-examination because their time for cross-examination has expired, that team will receive zero (0) points for that attorney.

Rule 16. Timekeeping

Time limits are mandatory and will be enforced. Where possible, teams will be permitted to have one additional student at the table with the attorneys. This student must be a team member but need not be a witness in that particular match. This person may serve as a student timekeeper, but may not consult with the student attorneys other than to convey available time. Student timekeepers are not considered "official timekeepers" in the tournament. In criminal trials, the timekeeper may be the Defendant if the team so chooses, but teams will not be allowed an additional timekeeper at the table in addition to the Defendant. Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements. Time does not stop for the introduction of exhibits.

Rule 17. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. Teams will not be given additional time during opening or closing arguments for failure to budget time properly, though the attorney will be allowed to conclude his or her argument. A team that runs out of time during either direct or cross examination of witnesses may request a two minute extension of time. Extensions of time will be granted only in two-minute increments and are at the discretion of the presiding judge. A team requesting an extension of time will be assessed a penalty of three (3) points against that team's overall score for each extension of time granted; the penalty will be recorded in the "penalty" section of each judge's score sheet. There is no limit to the number of extensions that may be requested; however, a three (3) point penalty will be assessed for each extension granted.

Rule 18. Prohibited Motions

Except as provided in these Rules, no motions may be made. (A motion for directed verdict, acquittal, or dismissal of the case at the end of the Prosecution's case, for example, may not be used.) A motion for a recess may be used in the event of an emergency (e.g., health emergency). To the greatest extent possible, team members are to remain in place. Should a recess by called by the court, teams are not to communicate with any observers, timekeepers, coaches, or instructors during the recess.

Rule 19. Sequestration

Teams may not sequester or exclude witnesses belonging to the other team.

Rule 20. Bench Conferences

Bench conferences may be granted at the discretion of the presiding judge, but should normally be conducted in such a manner that all participants, scoring judges, instructors, alternates, and other courtroom observers can hear the arguments and discussions in their entirety. This Rule

is designed to further the educational interests of the Alaska High School Mock Trial Competition. Bench conference time shall not be counted against the time allotted to either team.

Rule 21. Supplemental Materials/Illustrations/Demonstrative Displays

Teams may refer to and use as exhibits only the materials included in the trial packet. No illustrations of any kind may be used, unless provided in the case packet. Absolutely no props or costumes are permitted unless authorized specifically in the case materials.

Students will be permitted to make enlargements of the materials in the case packet, including the provided exhibits, for use at trial. Students may also create for use at trial demonstrative displays containing timelines or quotations from affidavits or case exhibits, provided these demonstrative displays quote exactly the source material or are directly supported by the case materials. Demonstrative displays may be objected to as to their accuracy. Demonstrative displays may not be admitted as exhibits. If an enlargement of an exhibit or demonstrative display is used, it must be displayed in a manner easily observable to all trial participants and must remain so displayed for the duration of its use.

Rule 22. Trial Communication

Instructors, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This Rule remains in force during any recess time that may occur during the course of the trial. Team attorneys may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' own timekeepers shall not be considered a violation of this Rule. Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Witnesses must remain outside the bar except when called to the stand. Only team attorneys participating in a round and a designated timekeeper may sit inside the bar during that round.

Rule 23. Viewing a Trial

Each team is responsible for the conduct of its members and persons associated with the team throughout the duration of the mock trial competition. Team members, alternates, attorney-coaches, teacher-sponsors, parents, and any other persons directly associated with a mock trial team may view their team competition, but otherwise, except when specifically authorized by the competition coordinators, are not allowed to view other teams in the competition.

Nothing may be brought into the courtroom which would tend to reveal the identity of the participating teams. Spectators should be cautioned that they may not wear school logos or insignias. School-owned equipment should have all identifying marks covered.

Viewing of the competition by members of the public shall be allowed so long as it does not disrupt the conduct of the trial. All persons in the courtroom shall show respect for the conduct of the proceedings.

Rule 24. Videotaping/Photography/Audiotaping

Any team may videotape or audiotape a competition round in which it participates for its own educational purposes only. With the consent of an opposing team, any team may videotape or audiotape a competition round for any other purpose. Bright camera lights, flash bulbs and equipment tending to distract the competitors may be barred in the discretion of the presiding judge. Disruptive conduct in the course of taping, filming, or taking photographs is prohibited, and

may result in a penalty against the team responsible for the conduct of the offending photographer.

If school owned equipment is employed for video or audiotaping, identifying information must not be visible on such equipment that might be seen by a judge.

Media coverage will be allowed in accordance with the policies of the competition coordinators. Competition coordinators will be permitted to photograph or otherwise record the competition for promotional purposes. Students may be provided releases so that images can be used in public display.

D. JUDGING

Rule 25. Decisions

All decisions of the judges regarding scoring are FINAL.

Rule 26. Composition of the Judging Panel

The judging panel will consist of individuals determined to be eligible by the competition coordinators. Generally, the competition judges are members of the Alaska judiciary (including law clerks) or attorneys practicing in Alaska. Qualified educators, paralegals, and other persons may also be invited by the competition coordinators to participate as Mock Trial judges. The composition of the judging panel and the role of the presiding judge will be at the discretion of the competition coordinators. For preliminary rounds, one presiding judge and two additional scoring judge will be appointed by the competition coordinators to judge the round. The final (championship) round may have a larger judging panel than preliminary rounds, at the discretion of the competition coordinators. If possible, the judging panel will include a separate timekeeper. This timekeeper will be the official timekeeper for the round. The presiding judge will identify the timekeeper prior to the round beginning.

All presiding and scoring judges receive the mock trial manual, a memorandum outlining the case, orientation materials, and a briefing as to the case, the role of judges, and the standards to be applied. These materials will not be available to the team members.

Rule 27. Scoresheets

The presiding judge and each additional scoring judge shall complete a "scoresheet" for each trial conducted in each round of the competition. Judges' score sheets will be substantially like the sample provided by the competition coordinators to each team. When evaluating the teams that each judge observes in the competition, the judges will reference the teams only by their assigned identification codes.

Scoresheets are to be completed individually by the judges and without consultation with the other judges. Scoring judges are not bound by the rulings of the presiding judge. While the judging panel may confer within guidelines established by the competition coordinators, the judging panel should not deliberate on individual scores. Judges are to evaluate students on the basis of the criteria contained in these Rules and the guidelines printed on the back of the scoresheet.

There will be a space on the scoresheet for judges to deduct points at their discretion if a team exhibits poor courtroom etiquette or makes excessive unwarranted objections. At the option of the competition coordinators, there may be a mechanism for awarding certificates of recognition based on individual performance.

Rule 28. Completion of Scoresheets

Score sheets are completed by the judges as follows:

1. Trial Points:
   Each judge will award and record a number of points for each aspect of the trial. Points will be awarded from a scale of 1 to 10, with 10 being the highest. Judges are required to complete the ballots in their entirety.
2. Final Point Total:
   A team is determined to be the winner of a round when that team wins a majority of the points cast by the judges scoring a given trial. If the opposing teams for a given round each receive the same number of points for that trial, the competition coordinators shall consider the judges' determinations of tiebreaker points, as provided in the tiebreaker box on each score sheet.
3. Bonus Points:
   The Mock Trial Committee may decide to award a bonus per score sheet to the team that wins that score sheet. The Committee will announce well in advance of the Competition whether a bonus will be awarded, and if so what the amount of the bonus will be.

A forfeiting team will receive a loss for purposes of ranking. If a trial cannot continue due to forfeiture, the non-forfeiting team shall be considered to have won by default. A non-forfeiting team will not be penalized in ranking by any inability to receive points from scoring judges. The non-forfeiting team will be awarded the average number of points from its remaining rounds.

Rule 29. Team Advancement

Teams will be ranked based on the total number of points received for all rounds. If a semi-final round is to be held, the team with the most points will face the team with the fourth most points, and the team with the second most points will face the team with the second most points. In the semi-final round, the team with the greater number of points in the preliminary round will get the choice of which side to represent.

If no semi-final round is held, the two teams emerging with the greatest number of points from the preliminary rounds will advance to the final round. If a semi-final round is held, the two teams who emerge victorious from their respective match-ups will face off in the final round. Sides in the final round, regardless of how the teams are selected, will be determined based upon the number of points the teams received during the preliminary rounds. The team that received the higher number of points during the preliminary rounds will be permitted to choose the side it wants to present during the final round.

In the unlikely event of a tie in determining placement, the advancing team(s) will be determined by the overall win-loss record in the preliminary rounds, then if necessary by head-to-head competition (if any) between the tied teams, and finally by the total number of highest scores (10 out of 10) on all score sheets combined.

Scoresheets from only the championship round will determine the Alaska State Mock Trial Championship Team. In the final round, and only in the final round, each scoresheet will count as one vote, with the team that receives the higher score for that scoresheet being awarded that judge's vote. The team that receives the most votes will be declared the Alaska State Mock Trial Championship Team. If an even number of judges score the final round and the votes of the judges

are split, only then will the scores of the judges be combined to determine the winner of the competition.

Rule 30. Selection of Opponents for Each Round

A random lottery will be conducted prior to the competition for the purpose of assigning team identification designations. The schedule governing the assignment of opponents will designate which team is to present the Prosecution/Plaintiff's case and which is to present the Defense/Defendant's in each round. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. Every effort will be made to ensure that each team will present each side twice, but all teams will be scheduled to present each side of the case at least once. Individual teams will be sent their schedule by the Tuesday before the competition. Coaches should immediately notify the competition coordinators of any scheduling conflicts.

Rule 31. Merit Decisions

Judges will make a ruling on the legal merits of the trial, after deliberating. This determination shall be made independent of the scores awarded to each team. During the debriefing process, judges may inform students of the verdict on the merits of the case. Judges may not inform the students of scoresheet results.

Rule 32. Effect of Bye

A "bye" becomes necessary when an odd number of teams are present for the tournament or if necessitated by scheduling conflicts. If it becomes necessary to schedule a team for a bye, an additional round will be scheduled, during which those teams receiving a bye will compete against each other. Any team receiving a bye must not observe other teams competing during the round in which the bye was drawn.

E. DISPUTE SETTLEMENT

Rule 33. Reporting a Rules Violation

Disputes which (a) involve students competing in a competition round and (b) occur during the course of a trial must be filed immediately upon conclusion of the trial. Disputes may be brought exclusively by a team's official faculty advisor or attorney coach. Such disputes must be made promptly to the competition coordinators, who may ask the complaining party to state the complaint in writing. The competition coordinators will investigate the complaint and seek a response from the advisor or attorney coach of the team against which the violation is alleged. If a rules violation is found to have occurred, the competition committee will determine the appropriate remedy or punishment. These remedies include, but are not limited to, a warning to the offending team, the deduction of points from the offending team's score, or disqualification from the round in which the offense occurred.

Rule 34. Reporting Rule Violations During Trial

Rule 33 does not preclude students from identifying potential rule violations to the presiding judge during the trial in an attempt to prevent a violation from arising. In such instances, the presiding judge shall consult the consult the competition rules and issue a warning to the offending team if it is determined that a rule violation is occurring. If the violation persists or if it is of such a serious nature as to substantially affect the conduct of the trial, the presiding judge and

scoring judges may assess penalty points against the offending team in an amount at their discretion. Except in cases where the rules violation will substantially affect the conduct of the trial, students are encouraged to allow faculty advisors and attorney coaches to address rule violations per Rule 33 as opposed to addressing them at trial.

F. CONDUCT INITIATING THE TRIAL

Rule 35. Team Roster

Copies of the team roster must be completed and duplicated by each team prior to arrival for trial. Teams must be identified ONLY by the code assigned at registration. No information identifying a team's city or school of origin should appear on the form or any materials brought into the courtroom. Before beginning a trial, the teams must exchange copies of the Team Roster Form. Copies of the Team Roster Form should also be made available to the judging panel before each round. Teams should provide copies for all three judges.

Rule 36. Stipulations

When the Court asks the Prosecution/Plaintiff if it is ready to proceed with opening statements, the attorney assigned the opening statement should offer the stipulations into evidence.

Rule 37. The Record

The stipulations, indictment, and jury instructions, if any, will not be read into the record at trial. However, all such documents will be considered as part of the record and as governing the legal framework of the case. Students should assume that the judges are familiar with these documents.

Rule 38. Jury Trial

The case will be tried to a jury consisting of the scoring judge(s), who shall serve as the official timekeeper(s). Arguments are to be made to the judge and jury. Teams may address the scoring judges and any other persons permitted by the presiding judge to sit in the jury box as the jury. However, students may at any time also inquire of the jury member in his or her role as timekeeper of the remaining available time for that portion of the trial.

Rule 39. Standing During Trial

Unless excused by the presiding judge or physically unable to do so, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections. Attorneys may request permission of the presiding judge to walk around the courtroom during their presentation but may not do so until permitted.

Rule 40. Objection During Opening Statement/Closing Argument

No objections may be raised during opening statements or during closing arguments. If a team believes an objection would have been necessary during the opposing team's closing argument, a student attorney, following the arguments, may seek to be recognized by the presiding judge and may say "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that _____." The presiding judge need not rule on this "objection." Presiding and scoring judges will weigh the "objection" individually. No rebuttal

by the opposing team will be heard. It is recommended that students cite Mock Trial Rule 40 if making an objection to an opening statement or closing argument.

G. PRESENTING EVIDENCE

Rule 41. Argumentative Questions

An attorney shall not ask argumentative questions, except that the Court, may, in its discretion, allow limited use of argumentative questions on cross-examination.

Rule 42. Establishing Proper Predicate/Foundation

Attorneys shall lay a proper foundation prior to moving for the admission of evidence. After motion has been made, the exhibits may still be objected to on other grounds. Objections not made upon an attempt to admit evidence as an exhibit will be considered waived. All exhibits contained in the problem materials are to be considered accurate reproductions of the item or document in question and may not be challenged on the basis of authenticity. Other grounds for challenging admission of exhibits are permissible.

Rule 43. Procedure for Introduction of Exhibits

The following steps are *examples* by which evidence may be effectively introduced:

1. All evidence will be pre-marked as exhibits. For the sake of the presiding judge and jury, the students should identify the page in the problem materials on which the exhibit appears.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No. ___?"
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness.
5. "I now hand you what has been marked as Exhibit No. ____ for identification."
6. Ask the witness to identify the exhibit. "Would you identify it please?"
7. Witness answers with identification only.
8. Offer the exhibit into evidence.
9. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
10. Opposing Counsel: "No, your Honor," or "Yes, your Honor." If the response is "yes", the objection will be stated on the record. Court: "Is there any response to the objection?"
11. Court: "Exhibit No. ____ is/is not admitted."

Rule 44. Admission of Expert Witnesses

If a team wishes to admit a witness as an expert in a particular area of knowledge, the attorney performing the direct examination must establish foundation to the satisfaction of the presiding judge for admission as an expert. Voir dire by the opposing attorney will not be allowed, but the opposing attorney may object that insufficient foundation has been laid to qualify the witness as an expert in the field asserted.

Rule 45. Use of Affidavits

Affidavits may not be independently introduced as evidence, but may be used for impeachment purposes or to refresh a witness's memory. Affidavits for witnesses not called to testify may not be introduced to the court except as necessary to demonstrate foundation for the statements of a different witness. Quotations from affidavits may be used as part of a demonstrative display, but are not by this use admissible as evidence.

Rule 46. Use of Notes

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally (in a volume that does not disturb the conduct of the trial) or through the use of notes.

Rule 47. Use of Exhibits in Examining Witnesses

All examinations of witnesses, including re-direct and re-cross examinations are permitted to use exhibits previously introduced by the other party or introduced by the examination of other witnesses, provided that any examinations conform to the restrictions in Rule 611(d) in the Modified Rules of Evidence (Mock Trial Version).

H. CLOSING ARGUMENTS

Rule 48. Scope of Closing Arguments

Closing arguments must be based on the actual evidence and testimony presented during the trial. Students in closing arguments should address the applicable legal standards necessary to prevail at trial. Attorneys may not cite to affidavits of witnesses not called at trial.

I. CRITIQUE

Rule 49. The Critique

The judging panel is allowed time for debriefing at their option and time permitting. Judges will not reveal the scores attributed by them to individual performances, nor will they reveal which team was the winner of the round on the score sheets. The judges may announce the winner of the case on the merits and may discuss or comment upon the presentations in furtherance of the educational interests of the Alaska High School Mock Trial Competition.

III. MODIFIED RULES OF EVIDENCE
(Alaska Mock Trial Version)

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the mock trial team to know the Rules of Evidence (Alaska Mock Trial Version) and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses. For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Alaska and Federal Rules of Evidence and their (shared) numbering system. When rule numbers or letters are skipped, those rules were deemed not applicable to mock trial procedure. Text in italics represents simplified or modified language from the Alaska and Federal Rules of Evidence. Departures from the actual Federal Rules of Evidence are for informational purposes only. These Rules of Evidence are to be interpreted as written.

Not all judges will interpret the Rules of Evidence (or procedure) the same way, and mock trial attorneys should be prepared to point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate. The Mock Trial Rules of Competition and these Rules of Evidence (Alaska Mock Trial Version) govern the Alaska High School Mock Trial Championship.

Article I. General Provisions

Rule 101. Scope

These Rules of Evidence (Alaska Mock Trial Version) govern the trial proceedings of the National Mock Trial Championship.

Rule 102. Purpose and Construction

The Rules are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.

ARTICLE II. Judicial Notice –

Rule 201. Judicial Notice of Fact

(a) Scope of Rule. This rule governs only judicial notice of facts. Judicial notice of a fact as used in this rule means a court's on-the-record declaration of the existence of a fact normally decided by the trier of fact, without requiring proof of that fact.

(b) General Rule. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within this state or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice as specified in subdivision (b), whether requested or not.

Rule 202. Judicial Notice of Law

(a) Scope of Rule. This rule governs only judicial notice of law.

(b) Without request by a party, the court shall take judicial notice of the common law, the Constitution of the United States and of this state, the public statutes of the United States and this state, the provisions of the Alaska Administrative Code, and all rules adopted by the Alaska Supreme Court.

ARTICLE III. Presumptions in Civil Actions and Proceedings

Rule 301. Presumptions in General in Civil Actions and Proceedings

(a) *Effect*. In all civil actions and proceedings when not otherwise provided for by statute, by judicial decision or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. The burden of going forward is satisfied by the introduction of evidence sufficient to permit reasonable minds to conclude that the presumed fact does not exist. If the party against whom a presumption operates fails to meet the burden of producing evidence, the presumed fact shall be deemed proven, and the court shall instruct the jury accordingly. When the burden of producing evidence to meet a presumption is satisfied, the court must instruct the jury that it may, but is not required to, infer the existence of the presumed fact from the proven fact, but no mention of the word "presumption" may be made to the jury.

(b) *Prima Facie Evidence*. A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this rule.

(c) *Inconsistent Presumption*. If two presumptions arise that conflict with each other, the court shall apply the presumption that is founded on the weightier considerations of policy and logic. If there is no such preponderance, both presumptions shall be disregarded.

Rule 303. Presumptions in General in Criminal Cases.

(a) *Effect.*

(1) *Presumptions Directed Against an Accused.* In all criminal cases when not otherwise provided for by statute, by these rules or by judicial decision, a presumption directed against the accused imposes no burden of going forward with evidence to rebut or meet the presumption and does not shift to the accused the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. However, if the accused fails to offer evidence to rebut or meet the presumption, the court must instruct the jury that it may, but is not required to, infer the existence of the presumed fact from the proven fact, but no mention of the word "presumption" shall be made to the jury. If the accused offers evidence to rebut or meet the presumption, the court may instruct the jury that it may, but is not required to, infer the existence of the presumed fact from the proven fact, but no mention of the word "presumption" shall be made to the jury.

(2) *Presumptions Directed Against the Government.* In all criminal cases when not otherwise provided for by statute, by these rules, or by judicial decision, a presumption directed against the government shall be treated in the same manner as a presumption in a civil case under Rule 301.

(b) *Prima Facie Evidence.* A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this rule.

(c) *Inconsistent Presumptions.* If two presumptions arise that conflict with each other, the *court* shall apply the presumption that is founded on the weightier considerations of policy and logic. If there is no such preponderance, both presumptions shall be disregarded.

ARTICLE IV. Relevancy and its Limits

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

Relevant evidence is admissible, except as otherwise provided *in these Rules. Irrelevant evidence is not admissible.*

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, *if it confuses the issues, if it is misleading, or if it causes undue delay, wastes time, or is a needless presentation of cumulative evidence.*

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) *Character Evidence* – Evidence of a person's character or a *character trait*, is not admissible to prove *action regarding* a particular occasion, except:

(1) Character of Accused – Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;

(2) Character of Victim – Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;

(3) Character of witness – Evidence of the character of a witness as provided in Rules 607, 608, and 609.

(b) *Other crimes, wrongs, or acts* – Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

(a) *Reputation or opinion* – In all cases in which evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, *questions may be asked regarding* relevant specific instances of conduct.

(b) *Specific instances of conduct* – In cases in which character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of

that person's conduct.

Rule 406. Habit; Routine Practice

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization, on a particular occasion, was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures

When measures are taken after an event which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose; such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 410. Inadmissibility of Pleas, Pleas Discussions, and Related Statements

Except as provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against a defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;
(2) a plea of *nolo contendere*;
(3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in presence of counsel.

Rule 411. Liability Insurance (civil case only)

Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias, or prejudice of a witness.

Article V. Privileges

Rule 501. General Rule

There are certain admissions and communications excluded from evidence on grounds of public policy. Among these are:

(1) communications between husband and wife;
(2) communications between attorney and client;

(3) communications between grand jurors;
(4) communications between psychiatrist and patient.

Rule 503. Attorney-Client Privilege

(a) Definitions. As used in this rule:

(1) A client is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services.

(2) A representative of the client is one having authority to obtain professional legal services and to act on advice rendered pursuant thereto, on behalf of the client.

(3) A lawyer is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(4) A representative of the lawyer is one employed to assist the lawyer in the rendition of professional legal services.

(5) A communication is confidential if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) General Rule of Privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client, (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, or (2) between the client's lawyer and the lawyer's representative, or (3) by the client or the client's lawyer to a lawyer representing another in a matter of common interest, or (4) between representatives of the client or between the client and a representative of the client, or (5) between lawyers representing the client.

(c) Who May Claim the Privilege. The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer at the time of the communication may claim the privilege but only on behalf of the client. The authority to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) Furtherance of Crime or Fraud. If the services of the lawyer were sought, obtained or used to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud; or

(2) Claimants Through Same Deceased Client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate of intestate succession or by inter vivos transaction; or

(3) Breach of Duty by Lawyer or Client. As to a communication relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer; or …

[Evidence Rule 503 (d)(2) Commentary: Normally the privilege survives the death of the client and may be asserted by his representative. When, however, the identity of the person who steps into the client's shoes is in issue, as in a will contest, the identity of the person entitled to claim the privilege remains undetermined until the conclusion of the litigation. The choice is thus

between allowing both sides or neither to assert the privilege, with authority and reason favoring the latter view.]

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless *the witness has personal knowledge of the matter*. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses.

Rule 607. Who may Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.

Rule 608. Evidence of Character and Conduct of Witness

1.(a) *Opinion and reputation evidence of character* – The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) *Specific instances of conduct* – Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proven by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination with respect to matters related only to credibility.

Rule 609. Impeachment by Evidence of Conviction of Crime (this rule applies only to witnesses with prior convictions)

(a) *General Rule* – For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused had been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) *Time Limit* – Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein is not admissible unless *the Court determines that probative value of the conviction outweighs its prejudicial effect*.

(c) *Effect of pardon, annulment, or certificate of rehabilitation* – Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

Rule 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

Rule 611. Mode and Order of Interrogation and Presentation

(a) *Control by Court* – The Court shall exercise reasonable control over *questioning* of witnesses and presenting evidence so as to (1) make the *questioning* and presentation effective for ascertaining the truth, (2) avoid needless use of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of cross-examination – The scope of cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement or affidavit, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement or affidavit that are otherwise material and admissible.*

(c) *Leading Questions* – Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.

(d) *Redirect/Recross – After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on recross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.*

Rule 612. Writing Used to Refresh Memory

If a written statement is used to refresh the memory of a witness either while or before testifying, the Court shall determine that the adverse party is entitled to have the writing produced for inspection. The adverse party may cross examine the witness on the material and introduce into evidence those portions which relate to the testimony of the witness.

Rule 613. Prior Statement of Witnesses

Examining witness concerning prior statement – In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

Extrinsic evidence of prior inconsistent statement of witness – Extrinsic evidence of prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.

Rule 704. Opinion on Ultimate Issue

(a) *Opinion or inference testimony* otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.

(b) In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or date, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

(a) *Statement* – A "statement" is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant* – A "declarant" is a person who makes a statement.

(c) *Hearsay* – "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) *Statements that are not hearsay* – A statement is not hearsay if:

(1) *Prior statement by witness* – The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) *Admission by a party-opponent* – The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by *these rules*.

Rule 803. Hearsay Exceptions – Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) *Present sense impression* – A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) *Excited utterance* – A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) *Then existing mental, emotional, or physical conditions* – A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) *Statements for purpose of medical diagnosis or treatment* – Statements made for the purpose of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) *Recorded Recollection* – A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.

(6) *Business Records* – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) *Absence of Record* **–** Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of subdivision (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) *Public Records and Reports* –Records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law.

(9) *Records of Vital Statistics* – Records or data compilations, in any form, of birth, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) *Absence of Public Record or Entry* – To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, … that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) *Records of Religious Organizations* – Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Marriage, Baptismal, and Similar Certificates* – Statements of facts contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) *Family Records* – Statements of fact concerning personal or family history contained in family bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings and urns, crypts, or tombstones, or the like.

(14) *Records of Documents Affecting an Interest in Property* – The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it

purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) *Statements in Documents Affecting an Interest in Property* – A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in Ancient Documents* – Statements in a document in existence twenty years or more the authenticity of which is established.

(17) *Market Reports, Commercial Publications* – Market quotations, tabulations, lists, directories, codes, standards, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) *Learned treatises* – To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.

(21) *Reputation as to character* – Reputation of a person's character among associates or in the community.

(22) *Judgment of previous conviction* – Evidence of a judgment *finding* a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

(23) *Other exceptions* – A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (a) the statement is offered as evidence of a material fact; (b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (c) the general purposes of these rules and the interest of justice will best be served by admission of the statement into evidence.

Rule 804. Hearsay Exceptions–Declarant Unavailable.

(a) *Definition of Unavailability*. Unavailability as a witness includes situations in which the declarant

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) establishes a lack of memory of the subject matter of his statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b) (2),

(3), (4), or (5), of this rule, his attendance or testimony) by reasonable means including process.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) *Hearsay Exceptions*. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former Testimony*. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) *Statement Under Belief of Impending Death*. A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be his impending death.

(3) *Statement Against Interest*. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of Personal or Family History*. (A) A statement concerning the declarant's own birth, adoption, marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) *Other Exceptions*. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

EVALUATION GUIDELINES

The competition judges are given instructions on how to evaluate the performance of participating teams and individuals. The following guidelines, as well as additional instructions that are not included here, are included in the material provided to the competition judges. Participating teams may assume that the winning team will excel in the following ways:

ATTORNEYS: **DEMONSTRATED SPONTANEITY:**

- in response to witnesses and/or the court;
- in the overall presentation of the case; and
- in making and responding to objections, capitalizing on opportunities which arise during trial.

DEMONSTRATED COMMAND OF THE FACTS AND ISSUES in the case and attorney's understanding of the relevant points of law.

When examining witnesses, attorney **PHRASED QUESTIONS PROPERLY** and demonstrated a clear understanding of trial procedure and the simplified rules of evidence used for the mock trial competition.

The attorney's questions:

- were clearly stated, concise, and to the point;
- resulted in straightforward answers from the witness;
- brought out information important to the case; and
- brought out contradictions in testimony.

Opening statements and closing arguments were **ORGANIZED AND WELL-REASONED** presentations, with the closing argument emphasizing the strengths of the attorney's own side and addressing the flaws exposed by the opposing attorneys during trial.

WITNESSES: Testimony was **CONVINCING** and characterizations were **BELIEVABLE** and **CONSISTENT** with the affidavits**. PREPARATION** and **SPONTANEITY** were evident in the manner witnesses handled questions posed to them by the attorneys.

TEAMS: Courtroom **DECORUM AND COURTESY** by all team members and coaches were observed. Affiliated observers were not disruptive. All participants were **ACTIVE** in the presentation of the case.

2015 ALASKA HIGH SCHOOL
MOCK TRIAL CHAMPIONSHIP COMPETITION
(Anchorage, March 26-28, 2015)

TEAM REGISTRATION FORM
(Please CLEARLY print name and contact information)

School (Organization) Name: _____

Team Mailing Address: _____

_____

Teacher or other School Advisor: _____ T-Shirt Size: _____

Advisor Contact Phone: _____ Message Phone: _____

Advisor FAX Number: _____ **E-Mail: _____**

Attorney Coach: _____ T-Shirt Size: _____

Coach Contact Phone: _____ Message Phone: _____

Coach FAX Number: _____ **E-Mail: _____**

Student Team Members (Please print names in block lettering)

	(T-Shirt Size)		(T-Shirt Size)
_____	( )	_____	( )
_____	( )	_____	( )
_____	( )	_____	( )
_____	( )	_____	( )
_____	( )	THIS IS TEAM NUMBER _____	

Each team must have a minimum of six students members. No team may have more than nine members, including alternates. The assistance of attorney coaches is recommended, but not mandatory. Schools wishing to register more than one team may designate the same teacher or other school sponsor as the official school advisor. Any school wising to register multiple teams MUST indicate which team is the "First Team," "Second Team," etc. **All teams must be registered *no later than March 16, 2015*.**

TO REGISTER A TEAM, PLEASE RETURN THIS FORM WITH THE REGISTRATION FEE OF $150 PER TEAM TO:

ANCHORAGE BAR ASSOCIATION
YOUNG LAWYERS SECTION
P.O. BOX 100844
ANCHORAGE, ALASKA 99510-0844