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**2010**

**ALASKA HIGH SCHOOL**

**MOCK TRIAL COMPETITION**

Anchorage, April 2-3, 2010

Boney Courthouse

**State of Alaska v. Avery Armstrong**

Case No. 5MV-09-9999 CR

**OFFICIAL CASE MATERIALS & COMPETITION RULES**

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**TEAM MEMBER'S PACKET**

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

**Sponsored by the Anchorage Bar Association,  
Young Lawyers Section**

## TABLE OF CONTENTS

Author's Note .....	1
<b>I. Legal Documents .....</b>	<b>3</b>
Indictment .....	4
Stipulations.....	6
Jury Instructions.....	9
<b>II. Affidavits .....</b>	<b>14</b>
<b>For the State:</b>	
Affidavit of Drew Parsons.....	15
Affidavit of Officer Riley Smith .....	20
Affidavit of Detective Alexi Franklin .....	25
Affidavit of Dr. Jan Kowalski .....	28
<b>For the Defendant:</b>	
Affidavit of Avery Armstrong.....	33
Affidavit of Jordan Walker.....	40
Affidavit of Dr. Quinn Leslie .....	44
Affidavit of Detective Pat Garcia .....	49
<b>III. Exhibits .....</b>	<b>52</b>
Last Will and Testament of Mary Armstrong.....	53
Gun found in Grace Armstrong's hand at crime scene .....	57
Sketches of pictures taken at crime scene.....	58
Officer Smith crime scene sketch .....	62
Investigation Report of Det. Franklin .....	63
<b>IV. Competition Rules and Forms .....</b>	<b>66</b>
Contents .....	67
Rules of Competition .....	70

Modified Rules of Evidence .....	83
Evaluation Guidelines .....	95
Team Registration Form .....	96

### Author's Note

Robert and Mary Armstrong were the patrons of the arts in the university city of Moose Valley, Alaska. When they died tragically in a plane crash, the fortune fell to their daughter Grace Armstrong to manage. On the evening of October 13, 2009, a shot rang out in the Armstrong house. A neighbor, Drew Parsons called the police, and when Officer Riley Smith arrived Grace Armstrong was found dead inside, a gunshot wound to her head. Avery Armstrong, Grace's brother/sister, was called to identify the body. Following an investigation by Detective Alexi Franklin, Avery was arrested for the murder of Grace. Dr. Quinn Leslie, a forensic psychologist, suggests that Grace may have committed suicide, but the report of the coroner, Dr. Jan Kowalski, discounts this theory. Retired detective Pat Garcia, on the other hand, believes that Grace may have been murdered by an intruder other than Avery Armstrong.

\* \* \* \* \*

This year's problem tries a slightly new approach compared to past mock trial problems. Rather than have the witnesses offer elaborate theories about what happened the night Grace Armstrong died, the students themselves will have the opportunity to derive their own theories based upon the plethora of factual information provided in the affidavits and exhibits. This will hopefully give the students more freedom in how they craft their arguments. It should also make the competition rounds more unpredictable and therefore require students to think more on their feet. One of the goals of Alaska Mock Trial is to encourage high school students to become independent thinkers and confident public speakers. It is hoped that the more open structure of the problem will contribute to the achievement of these goals.

One of the ways to structure the problem more openly was to create an exhibit out of the investigation report of Det. Alexi Franklin. This report, which may or may not be independently admissible, is not meant to resemble an actual police investigation report but rather is structured so as to provide details from the investigation from which students can draw their own conclusions. To this end, it will be noticed that the "conclusions" section of the report is left effectively blank. Similarly, the affidavit of Det. Pat Garcia leaves a great deal of freedom to students to develop critiques of Det. Franklin's report and conclusions. As with all mock trial problems, teams will need to make strategic decisions about which witnesses to call and how that witness can contribute to the team's overall theory of the case.

Efforts have been made to ensure that the forensic methods and statistics provided in the affidavits and exhibits are relatively accurate, though some of the finer details have been glossed over. There are limits to what can be presented in the mock trial materials, and students will inevitably wonder why a certain line of inquiry was not pursued by one of the witnesses. The lack of this pursuit may be used to impeach the witness in question, but students of course cannot create the answers themselves. A witness who is asked why he or she did not pursue a particular line of inquiry can only answer that they did not.

Because of the heavy emphasis on introducing evidence, be it in the form of exhibits or witness testimony, students and teachers are encouraged to consult the Introduction to the Rules of Evidence found at the Alaska Mock Trial website –[www.alaskamocktrial.org](http://www.alaskamocktrial.org). This resource,

along with the Introduction to Trial Practice document found on the same website, is drafted by Matt Block and serves as an excellent tool for Mock Trial teachers and coaches, even for those who have prior experience with Mock Trial. There are many layers to the evidence in this year's problem, some of them quite subtle and which will require attention to detail by the students. Teams should be open to re-crafting their theories of the case as they become more familiar with the case materials.

Also, for the first time students will be allowed to bring demonstrative displays into the courtroom. These were previously excluded out of a fear that it might give some teams an unfair advantage. This rule has been relaxed in the belief that printing technology is widespread enough that every team can take advantage of it with minimal effort and expense. This change is described in more detail in Competition Rule 21. While the rule has been relaxed, I would caution teams not to go overboard. Courtroom displays are often most persuasive when they are used sparingly.

The 2010 Alaska High School Mock Trial Competition is organized and sponsored by the Young Lawyers Section of the Anchorage Bar Association, and the efforts of its members are greatly appreciated in staffing the competition. Additionally, for their assistance in helping to develop this problem, I would like to thank Bill Pearson for drafting the Will of Mary Armstrong, Amy Doogan for proofreading the case materials, and Carrie Rosenberg for drawing the picture used as exhibits. The copyright to the characters and story contained in this problem is retained by Ryan Fortson, with unrestricted non-monetary use granted to the Young Lawyers Section of the Anchorage Bar Association for use in the 2010 Alaska High School Mock Trial Competition.

Finally, a huge thank you to all of those teachers, attorneys, and parents who volunteer their time to coach mock trial teams. The competition would not be possible without you. If you have any questions about the problem or about forming a team for the competition, please feel free to contact me at [fortson@gci.net](mailto:fortson@gci.net). As always, I have greatly enjoyed drafting the case materials and hope that students and teachers find them equally enjoyable and educational.

Thank you,  
Ryan Fortson

# **I. Legal Documents**

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIFTH JUDICIAL DISTRICT AT MOOSE VALLEY**

STATE OF ALASKA,

Plaintiff,

vs.

AVERY ARMSTRONG,

DOB: 9/12/1985

APSIN ID: 7654321

SSN: 574-00-1234

ATN: 107-907-000,

Defendant.

Case No. 5MV-09-9999 CR

**INDICTMENT**

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

The following counts charge a crime involving DOMESTIC VIOLENCE as defined in AS 18.66.990: NONE.

**THE GRAND JURY CHARGES:**

**Count I**

AS 11.41.100(a)(1)

**Murder in the First Degree**

That on or about the evening of October 13, 2009, in the city of Moose Valley in the Fifth Judicial District, State of Alaska, AVERY ARMSTRONG did commit murder in the first degree by (1) intending to cause the death of Grace Armstrong; and (2) either (a) directly causing the death of Grace Armstrong or (b) compelling or inducing Grace Armstrong to commit suicide through duress or deception.

All of which is an unclassified felony being contrary to and in violation of Alaska Statute 11.41.100(a)(1) and against the peace and dignity of the State of Alaska.

DATED this 16<sup>th</sup> day of December, 2009 at Alaskopolis, Alaska.

A true bill

\_\_\_\_\_  
Grand Jury Foreperson

\_\_\_\_\_  
Assistant District Attorney  
Bar No. \_\_\_\_\_

WITNESSES EXAMINED BEFORE THE GRAND JURY:

Officer Riley Smith  
Detective Alexi Franklin  
Drew Parsons

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Defendant.

Case No. 5MV-09-9999 CR

**STIPULATIONS**

It is stipulated for purposes of this Mock Trial that the following facts and statements have been agreed upon by the parties and may be relied upon at trial:

I.

Moose Valley is a city of approximately 30,000 residents and is the home of the University of Alaska Moose Valley. Moose Valley is located in the Fifth Judicial District of Alaska. Jurisdiction for this trial is properly located in the Fifth Judicial District in Moose Valley.

II.

The Estate of Robert and Mary Armstrong is controlled by the Will of Mary Armstrong. The will of Robert Armstrong bequeathed his interests in the Estate in the same manner set forth in the Will of Mary Armstrong. Grace Armstrong died without a will. By law, all money and possessions not otherwise assigned are to go to Avery Armstrong upon Grace Armstrong's death, provided that Avery did not cause Grace's death.

### III.

All pleadings have been properly filed and served to all other parties. All procedural matters have been properly conducted. Avery Armstrong has pled “Not Guilty” to all counts contained in the Indictment.

### IV.

All affidavits are considered part of the case materials and may be used during trial for impeachment purposes and to refresh the memory of that particular witness. The affidavits have been validly signed and notarized.

### V.

All exhibits included in these case materials are authentic and, where appropriate, validly signed. All photographs are accurate representations of the objects or scenes they are identified as portraying. No objections to the authenticity of the exhibits will be entertained. Exhibits may otherwise be challenged for admissibility. There are no exhibits admissible at trial that are not contained in the case materials.

### VI.

A Civil Rule 403 motion regarding the introduction of crime scene photographs has been filed and adjudicated by the Court. The Court has determined that the pictures at issue are so graphic that their prejudicial effect is outweighed by their probative value in their current form. Instead, sketches of the photographs will be substituted for the actual photographs. These sketches are stipulated to be accurate depictions of the representations in the photographs.

### VII.

The parties stipulate that proper procedures were followed in collecting all evidence at the crime scene and that evidence cannot be challenged on the grounds that it was improperly collected or processed by any law enforcement officials, private investigators, or lab technicians.

VIII.

To the extent that the therapist-patient privilege applies to Dr. Quinn Leslie, it has been waived by all parties and witnesses.

IX.

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

1. Drew Parsons
2. Officer Riley Smith
3. Detective Alexi Franklin
4. Dr. Jan Kowalski

X.

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

1. Avery Armstrong
2. Jordan Walker
3. Dr. Quinn Leslie
4. Detective Pat Garcia (retired)

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
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Plaintiff,

vs.

AVERY ARMSTRONG,

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APSIN ID: 7654321

SSN: 574-00-1234

ATN: 107-907-000,

Defendant.

Case No. 5MV-09-9999 CR

**JURY INSTRUCTIONS**

**General Instructions**

**1.06: Presumption of Innocence, Burden of Proof, Proof Beyond a Reasonable Doubt**

The distinguishing features of a criminal trial are what are known in the language of the law as the presumption of innocence and the burden of proof beyond a reasonable doubt. The law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a clean slate – with no evidence favoring conviction. The presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

This last-mentioned requirement, that you be satisfied beyond a reasonable doubt of the defendant's guilt, is what is called the burden of proof. It is not required that the prosecution prove guilt beyond all possible doubt, for it is rarely possible to prove anything to an absolute certainty. Rather, the test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense. Proof beyond a reasonable doubt must be proof of such a convincing character that, after consideration, you would be willing to rely and act upon it without hesitation in your important affairs. A defendant is never to be convicted on mere suspicion or conjecture.

The burden of proving the defendant guilty beyond a reasonable doubt always rests upon the prosecution. This burden never shifts throughout the trial, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant has the absolute right not to testify, and you must not draw any inference against the defendant for not testifying. Thus a reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove every essential element of the crime charged, beyond a reasonable doubt, a defendant has the right to rely upon the failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution.

### **1.07: Evaluation of Evidence**

You are about to hear the evidence in this case. The evidence consists of the sworn testimony of witnesses and any exhibits that may be admitted. While you may consider the evidence in light of your own observations and experience in life, you should not consider any other source of information not presented to you in this court. At the end of the trial, it will be your job to decide how much weight to give to the evidence and evaluate the evidence according to the instructions that the court will give you. These instructions contain the law that must be applied in this case. That law is based on State statutes and court decisions.

When you evaluate the evidence and determine the facts, it is important that you not be influenced by sentiment, prejudice, passion or public opinion. You must base your verdict upon a fair consideration of the evidence.

### **1.09: 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.

### **1.10: Witness Credibility**

You may believe all, part, or none of the testimony of any witness. You need not believe a witness even though the witness' testimony is uncontradicted. You should act reasonably in deciding whether or not you believe a witness and how much weight to give to the witness' testimony.

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

- (1) the witness' attitude, behavior and appearance on the stand and the way the witness testifies;
- (2) the witness' intelligence;
- (3) the witness' opportunity and ability to see or hear the things about which the witness testifies;
- (4) the accuracy of the witness' 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' truthfulness;
- (9) any prior criminal convictions of the witness relating to honesty or veracity;
- (10) the reasonableness or unreasonableness of the witness' testimony; and
- (11) the consistency of the witness' testimony and whether it is supported or contradicted by other evidence.

### **1.11: Expert Witnesses**

A witness who has scientific, technical or other specialized knowledge or experience may be qualified as an expert and may express an opinion in addition to giving testimony as to facts.

In determining whether to believe an expert witness and the weight to be given to his or her opinion, you may consider the expert's qualifications and knowledge, the reasons given for the opinion, how the expert got the information he or she testified about, in addition to the factors given you for evaluating the testimony of any other witness.

As with other witnesses, you must decide whether or not to believe an expert witness and how much weight to give his or her testimony. You may believe all, part or none of the testimony of an expert witness.

### **1.12: Opinion Testimony of Non-Experts**

A non-expert witness may testify to his or her opinion if it is rationally based on the

witness' perceptions and helpful to a clear understanding of the testimony or the determination of a fact in issue.

In determining the weight to be given to an opinion expressed by a non-expert witness, you should consider the witness' credibility, the extent of the witness' opportunity to perceive the matters upon which the opinion is based and the reasons, if any, given for it. You are not required to accept such an opinion but should give it the weight, if any, to which you find it entitled.

You are not to decide any issue by the simple process of counting the number of witnesses who have testified on the opposing sides. The final test is not number of witness, but whether, considering all the evidence, the state has proved every element of each charge beyond a reasonable doubt.

#### **1.14: Direct/Circumstantial Evidence**

A fact may be proved by direct evidence, by circumstantial evidence, or by both.

Direct evidence is given when a witness testifies about an event which the witness personally saw or heard.

Circumstantial evidence is given when a witness did not personally see or hear an event but saw or heard something which, standing alone or taken together with other evidence, may lead a juror to conclude that the event occurred.

Both types of evidence are admissible and may be considered by you. Neither is entitled to any greater weight than the other.

#### **1.15: State of Mind**

State of mind may be shown by circumstantial evidence. It can rarely be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what another person does or fails to do, no one can see or hear the state of mind with which another person's acts were done or omitted. But what a person does or fails to do may indicate that person's state of mind.

In determining issues of state of mind, the jury is entitled to consider any statements made and acts done or omitted by the person, and all facts and circumstances in evidence which may aid determination of state of mind.

#### **1.35A: Arriving at a Verdict**

If you find that the state has proved each element of this offense beyond a reasonable doubt, then you must find the defendant guilty. If, however, you find that the state has not proved each element of this offense beyond a reasonable doubt, then you must find the defendant not guilty. To return a verdict of guilty or not guilty, each of you must agree with that verdict.

## **Specific Instructions**

### **Murder – First Degree (AS 11.41.100(a)(1))**

Avery Armstrong, the defendant in this case, has been charged with the crime of murder in the first degree.

To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt each of the following elements:

- (1) the defendant intended to cause the death of another person; and
- (2) the defendant either (a) caused the death of any person or (b) compelled or induced a person to commit suicide through duress or deception.

### **Definitions (AS 11.81.900)**

The following definitions shall be used in this trial:

A person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result. When intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective.

## **II. Affidavits**

## **AFFIDAVIT OF DREW PARSONS**

1. My name is Drew Parsons. I am 56 years old and work as a high school English teacher in Moose Valley. I live in the house next door to the house where first Robert and Mary Armstrong and then Grace Armstrong lived. My husband/wife died five years ago in a car accident, and I currently live alone.

2. I always found Grace to be a very intelligent and considerate person. Grace was a student of mine and one of my best. Taking after her father, she liked to write poetry. She had some skill at poetry, but not as much as her father. But where she really impressed me was with her ability to retain minute details about novels she had read. I think Grace would have made an excellent English teacher herself, but she was far too shy to want to be in front of a classroom. In fact, I think her shyness prevented her from accomplishing a great many things in her short life. Not that there is anything wrong with running a bookstore.

3. Grace frequently confided in me, especially after the deaths of her parents. Because my wife/husband Leigh also died so tragically and too soon, Grace and I could share this bond in a way that others could not. Grace was certainly distraught after her parents' deaths, but I'd like to think that I helped her work through that pain and sorrow, at least to some small degree. Grace frequently called me up after dinner to ask if she could come over for tea. I was always happy to have Grace visit. Even with her sadness, Grace was a wonderful conversationalist and always left you with the feeling that you gained something from her presence.

4. It was certainly a tragedy for Moose Valley when Mary and Robert Armstrong died in that plane crash. The Armstrongs could have left Moose Valley when Mary made her fortune, but they both saw the value and potential in remaining in Moose Valley and fostering the local arts scene. Fortunately, Grace shared their vision for the potential that lies in Moose Valley to be a cultural enclave in an otherwise harsh wilderness. I fear for what will happen to the Armstrong fortune now that Grace is no longer around. Grace appreciated finer culture and knew what was possible and what was not for a city the size of Moose Valley. Indeed, after her parents died, Grace really poured her passion into running the Arts Resource Foundation. I hate to say it, but the arts scene in Moose Valley actually benefitted from Grace's concerted efforts in a way that was not possible with her parents, who also had to manage full teaching loads at the University.

5. I think it unfortunate that Avery could not be more like Grace and share Grace's love of learning. Grace did feel a strong obligation to try to nurture a sibling bond with Avery, but I feel this was more of a burden than a blessing. I do believe that Grace truly tried to befriend Avery, but Avery was too boorish to appreciate it. Take Avery's misguided attempt to buy that CD store Flash Trax. Grace knew that Avery by no means had the ability to run a small business, especially one that was behind the times technologically. Part of Grace was inclined to let Avery purchase the store, but I told her there were far

better uses within the Arts Resource Foundation for her parents' money than to waste it on a failed business venture for Avery's folly.

6. Grace told me that Avery became verbally abusive toward her after she refused to give him/her money in September to buy Flash Trax. The two had always had a strained relationship, but Grace said that Avery took an increasingly aggressive tone toward her. Grace tried to tell Avery that this was for his/her own good, that Flash Trax was bound to fail, but Avery wouldn't listen. According to Grace, Avery yelled back on one occasion: "It's my money too! Mom and Dad would have given me the money. Why do you always have to be in my way. If you thwart me again, you'll regret it!" Grace retold this story so vividly, I can remember her recitation of events to this day.

7. After this, Grace became increasingly afraid of Avery. Grace was very nervous. She told me she wasn't sure when Avery would explode again. To this day, I'm not sure if Avery hit or choked Grace that night s/he made those threats. I suggested to Grace that she get a protective order against Avery, but she said she couldn't do something like that against her own flesh and blood. Oh how I wish Grace had listened to me. Then again, with a person as hot-headed as Avery, I'm not sure a piece of paper would have done all that much good.

8. Avery is well known around town for getting drunk and into bar fights. It is amazing that s/he was only arrested once. I tried to limit my interactions with Avery, but I did have her/him as a student of mine. Avery was very impulsive and poor mannered in class – always talking, always disruptive, always disrespectful of authority. This pattern continued when Avery became an adult. To be honest, even before his/her arrest for the murder of Grace, I'm not sure if anyone in town had a high opinion of Avery, and many had a very low one. Avery has a way of lashing out at and driving off those who tried to become his/her friend and ended up very much the loner.

9. I think it is fair to say, from what Grace told me of their conversations, that Avery was desperate to have Grace as a friend. But, Avery couldn't appreciate all that Grace tried to do to help her/him help herself/himself. Yes, Grace refused to give Avery the money to buy Flash Trax, but this would have been money down the drain. Grace did, though, offer to pay for Avery to take business classes at the University so that when a good business opportunity did arise, Avery would be ready for it. Grace let me know that Avery had free reign to take any book from Faust's Attic, the bookstore Grace ran, but Avery never took advantage of this offer. Avery was always looking for the easy way out, and that Grace would not provide.

10. When Grace mentioned to me that she was thinking about selling the cabin and lake, I knew this would not go over well with Avery. Of all the Armstrongs, perhaps Avery loved the cabin the most. Grace, on the other hand, was not much of one for the outdoors. Grace knew that she herself would rarely if ever use the cabin and felt that Avery could not be trusted to be at the cabin by himself/herself. In talking to her about her decision, I could tell that Grace had thought through all of this carefully and that selling the cabin would indeed be the best decision, even if it angered Avery. I don't think it occurred to either of us that Avery might kill Grace. I did suggest to Grace that she be careful in how she broke

the news to Avery and that she should be prepared for Avery to yell at her again, probably more fiercely than before. But I also told Grace that it was her duty to manage her parents' estate in a manner that most benefitted Moose Valley and that selling the cabin would add significantly to the money that the Arts Resource Foundation had at its disposal. My understanding from Grace is that there was about \$4 million in the Foundation, and that selling the cabin would increase that amount by ten percent. I wouldn't so much say that I convinced Grace to sell the cabin as that I encouraged Grace to follow through with what she had already made up her mind to do.

11. Grace sold the cabin to the Barkers on the morning of October 8. She called me that afternoon to ask my thoughts on what she should say to Avery. I must admit that I could not think of any way to relay the news that wouldn't risk a harsh backlash from Avery. I told to Grace that all she could do was come straight out and tell Avery, but that to make sure she did so in a safe environment. Grace assured me that Avery did not have a key to the house and could only come in if she let him/her in. With that in mind, I suggested to Grace that she tell Avery about the cabin over the phone and not to let Avery come over until at least a full day had passed. I felt that this was the best way to address Avery's problems with anger management. I could tell from Grace's voice that she was reluctant to do even this, but I tried to persuade her that this was the best way to handle the situation and to call me if there were any problems.

12. October 8 was a Thursday. I called Grace on Sunday, October 11 hoping that she had taken advantage of the weekend to tell Avery about selling the cabin. She said that Avery was coming over for dinner that evening and that she would tell her/him then. I warned Grace that the only way she could control the way in which Avery found out about the cabin was if she were the one to tell her/him. Moose Valley is a small city, and I was afraid it would not be too long before Avery heard about the sale from someone else. Grace told me that she had called her cousin Jordan Walker to ask his/her advice on what to do. According to Grace, Jordan had suggested telling Avery in person, that these kind of things were always better handled face to face. Given Avery's propensity toward violence, I thought this was a bad idea and that the matter should be handled over the phone. I urged Grace to call Avery immediately, cancel the dinner, and tell Avery about the sale of the cabin. Grace said she knew she had to do this, but it was one of those acknowledgements where you knew she would not follow through. Grace was clearly very stressed out about the situation. I don't know, maybe Grace realized she had made a mistake by selling the cabin. I thought about perhaps telling Avery myself about the cabin and trying to take some of the blame, but I decided it was not my place to do this.

13. Grace called me on Monday evening to say that she had received a very angry phone message from Avery about the Flash Trax property having been sold. I asked Grace if she had told Avery about the sale of the cabin, and she said she had not. I asked Grace if she was afraid Avery would actually come over that evening, and she said she didn't think s/he would. I offered to have Grace come and spend the night in my house. We are neighbors, and I have plenty of room, so it would not have been an imposition. Grace thanked me for the offer but said that she was too stressed out to be around other people. I tried to convince Grace that when you are stressed, that is the most important time to be with

others. Grace, though, replied that she just needed to be alone. We talked for a little bit, and Grace promised she would not let Avery into the house, but she said that this was something she would have to deal with herself.

14. I remember the evening of October 13 like it was yesterday. At about 7:30 p.m. I received a frantic phone call from Grace. In a very panic stricken voice, Grace said "It's Avery! Avery is coming over. S/He sounds angry at me. I think s/he must know about the cabin! What do I do?" I told Grace to calm down and to come over to my house where it would be safer. Grace reminded me that she had a gun in the drawer of the nightstand next to her bed that she could use for protection if necessary. I urged Grace not to let it come to this and to please come over to my house for the evening. Grace replied, "No, I have to take care of this now. Avery will find me eventually. I have to put a stop to this." I didn't know what Grace meant by this last statement, but before I could ask, Grace hung up the phone.

15. I watched intently for Avery's car. Avery drives a green Subaru Outback. Of course, about half of Moose Valley drives a green Subaru Outback. I have one myself. I watched as Avery got out of the car and stormed toward the front door. Avery was wearing a bright yellow fleece jacket and blue jeans. I was hoping that Grace wouldn't let Avery in, but she did. I waited about 10 minutes to see if anything happened, but when it didn't I went to my dining room to eat my supper. By the time I returned, the outdoor lights were off, and I could not see whether Avery's car was still there. There were still lights on in the house, but I could not tell if there was any activity going on, as there were no shadows moving behind the curtains or anything like that.

16. My house is about twenty yards from the Armstrong house. Although there are several trees between the two houses, I can see their house and driveway quite clearly through my kitchen window. My kitchen window looks toward the living room windows of the Armstrong house. For as wealthy as they were, the Armstrong house was not ostentatious in the least. This followed from their overall modesty. Because of the dark Alaska winters, the house had automatic outdoor lighting that clearly illuminated the driveway. This was necessary for all of the parties and guests the Armstrongs had when they were alive. I think the lights stayed on for about 15 minutes after being activated by the motion sensors before shutting off automatically.

17. After doing the dishes, I retired into the living room, which is on the opposite side of my house from the kitchen, to grade some high school English essays. It was at 10:12 that I heard a gunshot ringing out from the direction of the Armstrong house. I know what time it was because when I heard the gunshot I instinctively looked at my clock. I immediately rushed into my kitchen to look out the window toward the Armstrong house. Just as I got to the window, I could see the outdoor lights go on and Avery emerge from the house and rush to her/his car, which was still parked in the driveway. I also noticed that the curtains to the Armstrongs' living room were closed, whereas I recall them being open when I looked toward the house earlier in the evening.

18. I am sure it was Avery that I saw. I have seen Avery many times around town and coming and going from the Armstrong house. There is no question in my mind that I saw

Avery leave the Armstrong house after that gunshot was fired. Avery was wearing the same yellow fleece s/he had on earlier in the evening. This time Avery had the hood pulled over his/her head, so I could not clearly see her/his face, but it was still definitely Avery – same height, same weight, and same car. [Note: If the defense has a student playing Avery, it is permissible for the witness to identify that student as the person he or she saw that night.] Avery also appeared to be wearing some black gloves, which I had not noticed earlier in the evening. It was not raining, only a little windy, and there was nothing blocking my view of the Armstrong house and driveway. Avery quickly walked the short distance to her/his car and sped off back toward town.

19. I immediately called 911 to report that I had heard a gunshot at the Armstrong house and that I had seen Avery Armstrong leave the house immediately after. The dispatcher said that an officer would be sent and that I should remain in my house until then. I didn't think Avery would return, but at the same time I certainly had no intention to go outside. When Officer Smith arrived, I went out to meet her/him and told her/him everything I had seen and heard. Officer Smith thanked me for the information and instructed me not to enter the Armstrong house so as not to contaminate the crime scene. I said that I needed to know whether Grace was dead. Officer Smith said s/he would let me know once the scene had been secured. I went back inside my house and waited nervously, unable to go to sleep. About an hour and a half later Officer Smith knocked on my door to inform me that Grace Armstrong was indeed dead.

20. I knew Grace was dead even before Officer Smith told me. As fearful as Grace was of Avery, I knew after hearing the gunshot what had happened. I had tried to warn Grace on multiple occasions to be more careful of Avery. But Grace was far too trusting and caring. Grace was such a good person. It is just such a shame that Avery took her from us.

## AFFIDAVIT OF OFFICER RILEY SMITH

1. My name is Officer Riley Smith. I am thirty-eight years old. I am an officer with the Moose Valley Police Department; I've been with the MVPD for ten years. I enjoy my work, but it does at times come with elements of tragedy and sadness. Moose Valley, not counting the parties that go on at the University, is a relatively quiet city of about 30,000 people. I've lived here all my life, and I know a fair number of the people who live here. In all my time in Moose Valley, and with all I've seen, I'd say that probably the biggest tragedy I've encountered is the death of Grace Armstrong.

2. There are several reasons why I say this. There have been other murders in Moose Valley – not many, maybe an average of one a year. But, and I don't mean to sound elitist, most of the murders are of people on the lower end of the social spectrum. Grace resided at the highest level of Moose Valley society. She inherited this ole following the unfortunate death of her parents. Robert and Mary Armstrong were loved by all in Moose Valley. Not just because of the contributions they made to the city, but because of what wonderful people they were. Grace was equally wonderful, though more reserved and withdrawn from the community than were her parents.

3. The other tragedy of Grace's death came from how she died. I have seen deaths from drug deals and gang violence. I have seen random crime-related killings. I have seen deaths from domestic violence. But murdering your own sister out of jealousy and contempt is to me the saddest murder of all. There is no question in my mind that Avery Armstrong killed his/her sister Grace. I wish this were not the case, but I say this based on my own observations.

4. I was the officer on duty the night of October 13 when Grace Armstrong died. It was 10:17 when I was contacted by the dispatcher telling me that a gunshot had been heard in the Armstrong house and that a neighbor, Drew Parsons, saw Avery Armstrong emerge from the house immediately afterwards. It took me about twelve minutes to drive from the police station to the Armstrong house. Unless there is an immediate threat of harm, officers usually investigate crime scenes alone. That was the case this night. I suppose, being that a gun had been fired and all, that I should have brought backup. But I decided that time was of the essence and that I needed to respond quickly. Being a weeknight, I was the only officer on duty, and it would have taken at least half an hour to roust another officer to join me.

5. The driveway lights were still on when I arrived. I was careful not to park in the driveway so as not to compromise any tire tracks that may be there. I did notice some tire tracks on the cement driveway. It had rained the day before, so traces of mud left faint but clearly defined tracks. Not too long after I arrived, Drew Parsons came out from her/his house and approached me. Drew told me about hearing a gunshot at 10:12, going to his/her kitchen window, and seeing Avery Armstrong walk out the front door and speed off in his/her car. Drew was obviously shaken but s/he sounded credible. Indeed, I cannot think of a reason why s/he would lie. Drew asked me if s/he could go into the house to see

if Grace Armstrong was dead. I told Drew that the crime scene needed to be secured and that I would go in and then let him/her know what I found out.

6. The front door was closed but unlocked. The entryway and living room lights were still on. When I walked into the living room, I saw Grace Armstrong's body lying in the middle of the floor. I thought there was a chance that the killer might still be in the house, so I did a quick search of the other rooms with my gun drawn. The only other lights that were on were down the hallway in the master bedroom. That was the first place I searched. I opened up all the closet doors and inspected the master bathroom, but did not see anyone. I then quickly went through the other rooms in the house, including the upstairs bedrooms. I did not see anything unusual and certainly did not find anyone else in the house.

7. After securing the house, I returned to Grace's body. Grace was lying in an awkward position, slightly on her side but mostly on her back. There was an entry bullet wound at Grace's left temple and a large exit wound toward the back-right side of Grace's head. Grace had a .38 caliber revolver in her left hand, with her arm positioned toward her head and the gun pointing slightly above her head. There was a significant amount of blood splattered on the floor about a foot away from where the body lay. In addition, there was a large pool of blood immediately under Grace's head. The flow of blood seemed to have stopped. Grace was dressed in blue jeans and a green long-sleeved turtleneck sweater. I took multiple pictures of the gruesome scene, as I knew I would be needing to show them to the coroner and detective. [Note: Some of the pictures have been reproduced as drawings.] Later on I also drew a sketch of the Armstrong house as it was that evening.

8. I took a closer look at Grace and realized that she had some patches of redness and abrasions on her neck, as if she had been strangled. I also noticed some strange red spots on the lower eyelids, just under the eye sockets. Fortunately, Grace's eyes were both closed. I hate it when I come across a dead body and it is just laying there staring at me. Still, because of the angle of the gunshot, most of Grace's face remained intact. It appeared that Grace was in anguish and crying immediately before her death. Whatever tears had been there had long since dried up, but Grace's mascara or eyeliner had run a bit down her face. Grace's hands, the only other exposed part of her body, did not have any noticeable abrasions on them.

9. I certainly recognized Grace, but protocol required me to have someone from outside the police department identify the body. I figured that Avery Armstrong should be informed about his/her sister's death anyway and could help identify the body. I called Avery and told her/him that I had some very bad news – that Grace was dead. I asked Avery if s/he could come over and identify the body. I wanted Avery to come over so that I could gauge her/his reaction. Most everyone in town knew that Avery was displeased that Grace had received control over the family fortune. I would not say that Avery was a suspect at this point, but I think it is fair to say that Avery was, to use police lingo, a "person of interest." While waiting for Avery, I went outside and informed Drew Parsons that Grace was indeed dead. I then told Drew that s/he should go back into his/her house so as not to interfere with the police investigation.

10. When Avery arrived about fifteen minutes later s/he was almost eerily calm. This doesn't necessarily mean anything, as everyone reacts differently to the death of a loved one. But given the apparent suddenness of Grace's death, I would have expected a bit more emotion than Avery initially showed. Avery was wearing a black leather jacket covering a light blue dress shirt, and blue jeans. I did not notice any blood stains on Avery. I took Avery into the living room. Without any prompting from me, Avery said "Yes, that's my sister. I can't believe she actually shot herself." Avery then sat in a nearby chair, buried his/her head in her hands and started sobbing, slowly at first but gradually increasing in intensity until Avery was totally consumed by emotion. After Avery had cried for about ten minutes, I asked Avery if s/he wanted me to call another officer to come take her/him home. Avery responded that s/he'd be "fine" and could make it home safely. Avery then somberly got out of the chair, walked out of the door, and drove away in his/her green Subaru Outback. It seems like everyone in Moose Valley has a green Subaru Outback.

11. After Avery departed, I called the Moose Valley coroner, Dr. Jan Kowalski, and informed him/her of Grace's death. Dr. Kowalski responded that s/he would call an ambulance immediately and would head on over to the house. I then continued my inspection of the house. I started back in the master bedroom, as that was the other room in which the lights were on. The room was very neat, and the bed impeccably made. But one thing I had missed before was that one corner of the rug in front of the bed was folded back over the top of the rug. For a room that was otherwise so orderly, this struck me as odd. Upon further inspection, one other thing I noticed was that a top drawer in the bedside table to the left of the bed was half-open. I looked inside the drawer. The bottom of the drawer was lined with green velvet, but there was nothing in the drawer itself. I looked around the bedroom some more to see if there was anything else unusual. Then I also noticed that a middle drawer in the dresser in the room was also ajar. I looked inside that drawer, and it was filled with neatly folded underwear and socks.

12. I then went into the master bathroom, just off the master bedroom. I did not notice anything particularly unusual there. There was some soap scum on the sink, but it was dried and looked like it had been there a while. I did not notice any residual water on the sink. There was also a half-used tube of toothpaste on the counter with its cap off. The toilet and shower appeared to be relatively clean. Then again, I can be a bit of a slob at times, so it does not take much for a room to look clean to me.

13. I walked back down the hallway and into the dining room. There were no plates on the dining room table, and nothing in general to suggest that there had been any recent activity in the room. In the den, there were several books and literary magazines strewn on the coffee table and nearby couch. I went over and touched the television screen to see if it was still warm, but it was not. I next went back to the kitchen, which was on the other side of the house from the master bedroom. I noticed that there were several empty 12-oz beer bottles on the counter. I counted the bottles and determined there were nine of them. The bottles were mostly empty, but a couple still had a small amount of beer in them. Other than the beer bottles, there was nothing else that seemed out of place in the kitchen – no dirty dishes or glasses and no food lying around. I looked in the refrigerator and noticed

that there were three unopened bottles of beer there, among the milk, orange juice, apples, and other food items you might typically see in a refrigerator.

14. After I finished inspecting the downstairs of the house, I went upstairs. The upstairs rooms consisted of a large second den with another television, an office/study, and three bedrooms. All of the bedroom doors were closed, but the office door was open; the den was an open area right off the stairway. I went into all of the rooms. Two of the bedrooms still had silly teen posters, high school trophies – well, what I imagine was Grace’s room had trophies; there were no trophies in what must have been Avery’s room to go along with all of the heavy metal rock band posters – and other general accoutrements of a teenager’s room. I doubt those rooms had changed much since Grace and Avery moved out of them. The third bedroom appeared to be a guest bedroom, and it was very neat and tidy. The den was also quite clean and well-organized. In the office, there were several stacks of papers, but they appeared to be in orderly piles. From a quick glance at the piles, I could see that they were mostly grant applications and status reports having to do with the Armstrong’s Arts Resource Foundation – the ARF as it was called around town. On the office desk was an open checkbook for the Foundation. I never found a suicide note anywhere in the house.

15. By the time I finished my investigation, Dr. Kowalski and the ambulance had arrived and were examining Grace Armstrong’s body. I stayed until they were finished and had removed the body and then secured the premises with police tape. I went back to my office and sent an email to Det. Alexi Franklin, informing him/her that we would be needing assistance with a murder investigation. Because of budget cuts and the relatively low rate of crime, Moose Valley does not have a detective with enough experience or training to handle murder investigations. Instead, we have been placed in the jurisdiction of Det. Franklin, who is based in Alaskopolis. Det. Franklin arrived at approximately 2:00 on October 14 on a flight from Alaskopolis. I picked her/him up at the airport and we immediately went to the Armstrong house. Time can be of the essence in criminal investigations.

16. On October 16, Det. Franklin contacted me to say that her/his preliminary conclusion was that Avery Armstrong had killed Grace Armstrong. With the assistance of Det. Franklin, I went that afternoon to court to obtain an arrest warrant for Avery Armstrong and arrested Avery at his/her apartment at approximately 4:15. Avery answered when I knocked on the door and identified myself. Avery did not in any way resist arrest or try to escape. In fact, Avery seemed rather smug about what was happening. The first thing that Avery said to me after s/he answered the door, before I even said why I was there, was “What took you so long?” The tone in Avery’s voice was very nonchalant, as if Avery knew s/he was guilty of murder and was surprised it had taken so long to be arrested.

17. This was not the first time I had had to arrest Avery Armstrong. On February 21, 2008, I arrested Avery for assaulting Sam Marcus at a party. I was called to the party at approximately 11:15 that evening. When I arrived at the party, I interviewed several attendees, including both Avery Armstrong and Sam Marcus. Avery appeared to be quite

drunk. I gave Avery a breathalyzer test, and s/he registered a .26; the legal limit for drunk driving is .08 blood alcohol content. Sam complained of having been choked and punched, though s/he said the s/he never lost consciousness from the strangulation. I looked at Sam's neck, and s/he did have several red abrasions on her/his neck. Several other party attendees said confirmed Sam's story. In fact, a couple said that if Avery had not been pulled off of Sam, they were afraid that Avery would have killed Sam. A couple of attendees stated that Sam had provoked Avery, but no one denied that Avery had strangled Sam. Based on my interviews and observations, I concluded that Avery had assaulted Sam and arrested Avery. Avery eventually agreed to a plea agreement in which s/he pled guilty to fourth degree assault. Avery did twenty days in jail, with the remaining one hundred days suspended. Avery also agreed to take anger management courses, which it is my understanding s/he did.

18. I recalled this prior incident when I was arrived at the Armstrong house. I know from my police training that there is a high correlation between a prior incident of strangulation and future domestic violence. Indeed, where there is a prior history of strangulation, a perpetrator of domestic violence is several times more likely to kill his victim than when there is not such a history. This correlation is even greater when there is alcohol use by the perpetrator of the violence. Admittedly, most of the research involves violence of a husband toward a wife or a boyfriend toward a girlfriend, but what a propensity toward strangulation signals is an inability to control one's emotions.

19. I don't want to speculate on the motive apart from what is contained in Det. Franklin's report, but I do believe that Avery once again lost it and became physically violent. This time, there was no one to stop Avery, and as a result Avery killed her/his sister Grace.

## **AFFIDAVIT OF DETECTIVE ALEXI FRANKLIN**

1. My name is Alexi Franklin. I am 43 years old and a detective with the Alaska State Troopers. My specialization is murder investigations. I am based in the city of Alaskopolis, but my service area is entirely outside Alaskopolis. My service area includes the city of Moose Valley and several smaller villages around Moose Valley. These places are all too small to have a detective of their own with a specialization in murder investigations. My job requires me to travel a great deal. I do not do exclusively murder investigations – fortunately, there are not enough murders in my service area to keep me busy the entire year around. I also investigate serious property crimes and assaults depending on my availability. However, whenever there is a suspected murder within my service area, I am almost always called in to investigate.

2. I have been a detective for the Alaska State Troopers for the past seven years. Before that I was a police officer with the Alaskopolis Police Department. When I became a detective, I went out of state for a six-week training course in crime scene forensics. Among the areas I have trained in are fingerprint analysis, DNA sample collection, and forensic ballistics. Each year since then I have taken a one-week refresher course to keep my skills up to date. Over the course of my time with the Troopers, I have conducted 17 murder investigations. I have conducted over 120 investigations in total. Virtually all of my investigations require me to conduct fingerprint analysis or collect DNA samples or both. About a third of my investigations require some sort of forensic ballistics analysis.

3. I am able to conduct fingerprint analysis myself using a portable forensics lab that I take with me on my investigations. I do not conduct the chemical processing that is a part of DNA analysis because that requires complicated machinery that is not portable. But, I have been trained in collecting DNA samples from crime scenes. These samples are then sent to the DNA lab in Alaskopolis for further processing and analysis. I am able to conduct some ballistic analyses on-site, but analysis of bullets and guns is done back in my lab in Alaskopolis.

4. A fingerprint is an impression of the friction ridges that are found in a distinctive pattern on human fingers. No two human beings will have the same pattern of ridges. Even identical twins will have different fingerprints. With any fingerprint, there are potentially sixteen points of identification, places where the pattern of a fingerprint will come to a break, lines will merge, something like that. It is not necessary, however, to match all sixteen points to have a positive identification. While it is true that the more matching points that are found, the more confident one will be with an identification, an identification can be considered a positive identification with nine matches out of the sixteen points of identification. This is the standard adopted by the Alaska State Troopers.

5. There are two types of fingerprints found at crime scenes – patent fingerprints and latent fingerprints. Fingerprints may be deposited in natural secretions from the eccrine glands present in the skin (secretions consisting primarily of water) or they may be made by contaminants transferred from the peaks of friction skin ridges to a relatively smooth surface. Patent fingerprints are left when a substance (such as blood) is transferred from

the finger to a surface and are easily photographed without further processing. Latent fingerprints are not visible to the naked eye, but can be revealed through chemical treatment of a surface where it is believed fingerprints might be present. This usually involves “dusting” the surface with a fine powder that will stick to the secretions that created the fingerprint. The fingerprint that is revealed in this manner can then be either photographed or transferred to an adhesive surface for later analysis. If processed correctly, latent fingerprints can be just as reliable for identification purposes as patent fingerprints.

6. Just like everyone has a unique fingerprint, everyone (except identical twins) has a unique set of DNA. This unique DNA is found in every cell in a person’s body. The most common sources of DNA at crime scenes are hair, dandruff, blood, dead skin cells, sweat, and saliva. People all the time are sloughing off dead skin or losing stray hairs. This becomes even more prevalent when a person is involved in a physical altercation or struggle. At a crime scene, it is possible to search for hairs and skin cells and then conduct DNA analysis of that material to determine from whom it came. Using an ultraviolet light at the crime scene can help reveal dead skin cells and hair; an ultraviolet light can also help reveal fingerprints. I always have one in my portable investigation lab.

7. As I said, I am by no means an expert in conducting the chemical analyses necessary to identify a person from a DNA sample. This analysis is often called DNA profiling. My job, and what I have been trained to do, is to locate and collect DNA samples from a crime scene and send them to our lab for further analysis. This generally consists of looking carefully for stray hairs or swabbing a surface for dead skin cells or saliva or sweat. The collected samples need to contain DNA from only a single source to avoid contamination that could skew the identification. When the sample is properly collected and analyzed, DNA profiling is over 99.99% accurate.

8. There are a couple of different elements to forensic ballistics, at least as it relates to the present case. One is identifying the bullet as having come out of a specific gun. The first step is to make sure that the bullet is of the correct size and shape to be used in the gun in question. Assuming this is the case, it is possible to undergo what is known as ballistic fingerprinting. This is done through a careful analysis of the gun itself and the etchings on the bullet being examined. Every gun, even if mass produced, will have slight differences in the bore of the gun barrel. Bullets fired from rifled weapons acquire a distinct signature of grooves, scratches, and indentations as they are fired from the gun. By conducting a test firing of the gun, one can obtain a “control” bullet that can then be compared to the bullet from the crime scene. If the patterns of grooves, scratches, and indentations matches, then you know that the bullet at the crime scene was fired from the gun in question.

9. Another element of forensic ballistics is gunshot residue identification. Gunshot residue is the combination of burnt and unburnt particles from the explosive primer, the propellant, the bullet, the cartridge case for the bullet, and the firearm itself. Every type of gun will eject a certain amount of gunshot residue when fired; the exact chemical composition of that gunshot residue will be specific to that type of gun. Moreover, when fired most every gun will deposit a bit of gunshot residue on the hand of the person firing

the gun (as well as on any other body parts or clothes that are close to the gun when it is fired). This residue will stay on the person for several days and cannot be removed by normal soap and water. The residue can also be deposited onto objects that the person with the gunshot residue touches. Thus, it is possible to determine if a person fired a particular type of gun within the past few days by examining that person and/or their clothes for gunshot residue. This gunshot residue, though, can be removed by common household cleaners, especially those that are ammonia-based.

10. I neglected to examine the tire tracks in the driveway at the time of my initial investigation on October 14. I tried going back the next morning to examine the tire tracks, but it had rained overnight, and any tire tracks that may have been there were distorted beyond the point where reasonable identification of their source could be made. When a tire makes an imprint in mud or otherwise leaves an impression of its tread, it is possible to compare the pattern in the tread to the tire tread of a suspect's car to see if the car had been at the scene of the crime. Unless there are some unusual imperfections in the tire that result in a truly unique tread pattern, it may not be possible to identify a car with absolute certainty. Rather all you can do is say that a car with that particular type of tire had been there. Still, this can yield useful evidence in a crime investigation. I wish I had remembered to examine the tire tracks in the Armstrong driveway.

11. After conducting my initial examination of the Armstrong household, interviews of relevant persons, and my preliminary fingerprint analysis, I concluded that there was probable cause to believe that Avery Armstrong had shot and killed Grace Armstrong. I knew it would be several weeks before all of the DNA testing and more thorough fingerprint analysis could be conducted, but in that time Avery Armstrong could flee the state or even the country. I contacted Officer Riley early on the afternoon of October 16, 2009 and informed him/her that there was a sufficient basis for obtaining an arrest warrant for Avery Armstrong, which we promptly did.

12. I returned the next day to Alaskopolis. Over the course of the next several weeks I completed my investigation and prepared my investigation report. I stand by all of the descriptions, analysis, and conclusions in that report.

## AFFIDAVIT OF DR. JAN KOWALSKI

1. My name is Jan Kowalski. I am 56 years old, and I have been a medical doctor for the past 34 years. I went to Harvard Medical School and graduated in 1982. I completed my residency at St. Louis Mercy Hospital when I was 32. I then became an emergency room doctor at Baltimore Central Hospital. I worked there for close to twenty-five years. In my years there I witnessed all imaginable types of murders, accidents, suicides, and illnesses. My primary job in the emergency room, of course, is to treat whatever comes in and worry less about the source of the injury or wound. However, if you work as long as I did in the emergency room, you are bound to hear some of the backstories about your patients. I mean, often times it is obvious from the moment the patient comes into the emergency room why they are there. And if it is not immediately obvious, the paramedic will usually tell you.

2. About ten years ago my husband/wife and I took a vacation to Alaska. We happened to stop in Moose Valley for a day on our way out to a fishing excursion. Both of us fell in love with the place. When we got back to Baltimore, all we could do was talk about how much we loved Alaska and the more relaxed pace of living in the state. Not to mention all of the fishing and hiking opportunities. Five years ago, after our son went off to college, we thought more seriously about relocating. After a few months, a job opened up at the Moose Valley Regional Medical Center in the emergency room. What a stroke of luck! I applied for the job and was fortunate enough to get it. We moved to Moose Valley in July 2006.

3. I guess it is a good thing, but there is not enough of a need in the emergency room at the MVRMC for a full-time emergency room doctor. So, I also agreed to be the coroner for Moose Valley. My predecessor had a similar arrangement. The coroner is an employee of the city as opposed to the medical center, but both employers are relatively flexible with scheduling. Needless to say, emergencies with living people take priority over emergencies with dead people.

4. There is a great deal of overlap between my work as a doctor and my work as a coroner. I did go to an intensive two-week training course on the specific techniques I would need to know as a coroner. Most of them involve application of my medical training. I also through this training developed a network of fellow coroners with whom I can correspond if any unusual situations arise. I have found this networking to be quite useful at times.

5. Part of the job of being a coroner is to retrieve bodies as soon as possible after they are discovered. It is quite simply a health hazard to leave the bodies where they are found for any length of time. If a body is discovered by the police, I will receive a call to come to the scene, where I will be met by either a paramedic or an ambulance, depending on whether the victim might still be alive and which can get there first. I then accompany the body back to the hospital, where I place it in cold storage in a lab/morgue I have set up there. Depending on the time of day and my other responsibilities, I may start the autopsy immediately or I may wait a bit.

6. I don't exactly like being woken in the middle of the night to retrieve a body, but it is part of the job. This was the case with Grace Armstrong. I was in bed asleep when Officer Smith called me at 11:51 p.m. and told me that s/he had found Grace dead in her house earlier in the evening and that Avery Armstrong had identified the body. Officer Smith said that there was a substantial gunshot wound to Grace's head and that there was no chance she was still alive. Despite the lack of urgency, I quickly dressed and called the hospital ambulance to meet me at the Armstrong house. I actually live quite close to the Armstrong house, so including the six or seven minutes it took me to get dressed, I was able to get there about fifteen minutes after I received Officer Smith's call.

7. It was indeed immediately apparent that Grace Armstrong was deceased. I looked at the pictures Officer Smith took of the crime scene and determined that they would be sufficient for autopsy purposes. Hence, I did not take any of my own pictures. I donned gloves so as not to contaminate the corpse with my own DNA and, with the assistance of ambulance personnel, loaded Grace Armstrong's body into a body bag. We then took Grace's body back to the hospital morgue. Due to the late hour, I did not start my autopsy immediately but rather waited until the next day. This is common practice among coroners and does not compromise the investigation in any way.

8. Given the substantial gunshot wound to Grace's head and the fact that she was found holding a gun in her left hand when she was found, the obvious question I had to answer was whether Grace's death was a suicide or whether there was the possibility of foul play. I first conducted the standard toxicity tests on the corpse. I determined that at the time of her death, Grace had a blood alcohol level of .06, indicating that, given her weight (117 lbs) and height (5'4"), she had probably had 2 to 3 beers that night. This is assuming a normal rate of absorption of alcohol into the blood stream; some people have higher or lower rates of absorption. I did not find any poisons, controlled substances or prescription medications in the blood tests. Though it hardly seemed necessary, I did slice open the body to examine the stomach contents. Stomach contents were normal and indicated that the deceased had eaten a moderate-sized meal of a salad and pasta with tomato sauce that evening. Two recently ingested aspirin were found in the stomach contents, but no poisons, controlled substances or prescription medications were found. There are no outward signs of significant illness for the deceased.

9. Cause of death could not be definitively determined. While the gunshot to Grace's head certainly would have killed her, it is possible that she was already dead when the gunshot occurred. From examining the neck and head of the deceased, Grace Armstrong was definitely strangled, likely on the same evening on which she died. There were a few signs of strangulation. One was the redness and abrasions found on Grace's neck. There were two marks toward the center of the neck consistent with pressure by thumbs from a third party. I say that the marks are from a third party because of their placement. When a perpetrator strangles a victim, the perpetrator tends to grab the victim with both hands, placing the thumbs at the center of the front of the neck. When a person engages in self-strangulation, it is almost always with the assistance of a cord or belt or some similar object wrapped around the neck. The object used for strangulation often leaves distinct marks known as ligature marks. There were no ligature marks on Grace's neck. In the rare

instances of manual self-strangulation the person tends to grab oneself around the neck with the thumbs on opposing sides of the neck. Thus, the redness and abrasions on Grace's neck are a strong indicator that she was strangled by the hands of another person.

10. There is another indicator that Grace Armstrong was strangled – tiny pinpoint-sized series of red dots under her eyes and behind her ears. This phenomena is known as petechiae and results from burst capillaries near the skin. Petechiae can be caused by negative reactions to medication or from a sustained bout of hard coughing, but they are also commonly found after a person has been strangled. When physical pressure is placed on a victim's neck, the airways and major blood vessels are constricted. This increases pressure on the veins in the head because of the lack of oxygen and blood flow. As a result, the capillaries may hemorrhage. When these capillaries are near the surface of the skin, the hemorrhaging shows up as tiny red dots. Petechial hemorrhaging may also occur after death when the capillaries start to break down, but the resulting spotting tends to be bigger than pinpoint size and tends to blur together into one larger spot rather than appearing as a group of smaller spots. The spotting on Grace's face and behind her ears was the type of red pinpoint spotting that is consistent with strangulation prior to death.

11. Even with the abrasions on the neck and the petechiae, it is impossible to tell definitively if Grace Armstrong died from strangulation. I do feel fairly safe in concluding that she was strangled. Not all strangulation leaves outward signs on the body, but where there are outward signs, such as the abrasions and the petechiae, it is almost certain that Grace was strangled. However, different bodies react differently to strangulation and the restriction of air and blood. So, I cannot tell whether Grace died from the attack or even whether she became unconscious. When strangled, a person can lose consciousness in 30 seconds or sometimes less; death can occur in a matter of four to five minutes if constant pressure is applied. From my experience talking to police officers, I know that when someone is strangling someone else out of rage, they tend to let up when the other person becomes unconscious. Only if they intend to kill the victim will they continue with the strangulation after the victim becomes unconscious. I conducted an internal examination of Grace Armstrong's neck and did not find a crushed larynx or broken bones that would have been signs of more severe strangulation. I also did not see signs of involuntary urination or defecation that sometimes occurs when a victim loses consciousness or is on the verge of losing consciousness. None of this is to say that Grace Armstrong did not lose consciousness or even die as a result of strangulation, only that I cannot make this determination definitively.

12. While I cannot say with certainty the effects of strangulation on Grace, I can place the time of the strangulation as being within 12 hours of her death. Petechiae can last for a couple of days, but the abrasions on her neck either would have faded or turned into bruises within half a day after they occurred. I did not notice any fading in the abrasions. Again, these injuries also could have been the cause of Grace Armstrong's death, but at the very least they occurred soon before her death.

13. There are three other inconsistencies between the manner in which Grace Armstrong's body was found and the theory that she committed suicide. The first is the position of the exit wound on Grace's head. The entry wound is located at Grace's left

temple. Because Grace was left-handed, it would make sense, were she to be shooting herself in the head, that she would hold the gun in her left hand and place it at her left temple. The relatively small size of the entry wound, with a slight starburst pattern, indicates that the pistol was placed at the victim's left temple or within a foot of it. A shot from a further distance would not have produced this pattern and in fact would have had an even smaller entry wound.

14. However, if this is what she did, then the exit wound would almost certainly be in a different location than it was. The exit wound was in the back right of Grace's head, just where the head and the neck meet. The size of the exit wound is consistent with a gunshot from a .38 caliber pistol placed and fired on Grace's left temple. A .38 caliber pistol is a relatively high powered gun for a handheld, so it would be expected to produce a larger exit wound. But, the location of the exit wound suggests an odd angle of firing for a person committing suicide. I did not see many self-inflicted gunshot head wounds in my time working in the emergency room because these victims are almost always clearly dead and there is no reason to take them to the hospital. I know from my coroner's training, though, that people who are shooting themselves in the side of the head almost always place the gun exactly perpendicular to their temple. This would result in a gunshot wound on the exact opposite side of the head. However, on Grace's head the gunshot wound is at a downward angle from the left temple. This means that pistol must have been aimed downward into Grace's temple when it was fired. This would have been a very odd angle to hold a pistol for someone shooting oneself in the head.

15. The second inconsistency with a theory of suicide is the position of Grace Armstrong's body when it was found. The spray of blood that resulted from the exit wound was found roughly to the right of Grace's feet. This is consistent with Grace having been standing when the gunshot wound occurred because the blood would have splattered outward from the right side of her head and landed in a spray pattern near her feet. However, if Grace was indeed standing and shot herself, the position of her body on the ground is unusual for a couple of reasons. First, the body was found lying mostly on its back in a perpendicular orientation to the blood splatter from the exit wound. This would only be possible if the body fell straight more or less straight backward after the self-inflicted gunshot wound. I find this to be unlikely. The first thing that would have happened after the gunshot is that the body would have become weak in the knees and collapsed. It is far more likely that the body would have fallen to one side or the other, or even straight forward, than it is that the body would have fallen on its back like it was found. Furthermore, Grace's left arm was found with the gun pointed toward her head. Again, this is unlikely for a self-inflicted gunshot wound. The recoil from the gunshot itself would have flung the left arm away from the body. Then the collapse to the ground also probably would have caused the arm to fall in a different orientation than pointed toward the head. Thus, I find it highly unlikely, though admittedly not impossible, that Grace could have shot herself in the head and fallen into the position in which her body was found.

16. The last inconsistency with suicide is supposed method of suicide. Simply put, women who commit suicide with a gun do not shoot themselves in the head. I don't know if it is vanity or emotion, but women who commit suicide almost invariably shoot

themselves in the heart. I have never seen a female suicide gunshot to the head. In the course of investigating Grace's death, I consulted with some of my fellow coroners from around the country, and very few of them had seen a woman who had shot herself in the head – either in the temple or the mouth. From my informal survey, I would estimate that only about one in twenty suicides by self-inflicted gunshot is a woman, the rest are men. And, out of all of the female suicides, I would say that less than one percent are committed by a self-inflicted gunshot wound to the head. The rest are either a self-inflicted gunshot wound to the heart, hanging, suffocation, poisoning, or some other method. I remember reading a report in my coroner's training saying that suicide is about four times more common in men than in women, but that there are still close to 7,000 female suicides each year. The methods are different, though. Whereas firearms account for just over half of male suicides, they only account for about a third of female suicides, with poisoning being a slightly more common method accounting for a little over a third of all female suicides. The report did not discuss where on the body firearm suicides occur; this is information I have culled from my discussions with other coroners on the telephone and on message boards.

17. Sadly, Alaska has the highest suicide rate in the country. I just do not think Grace Armstrong was one of them. I cannot determine conclusively if her death was caused by strangulation or by a gunshot to her head, but I do believe she was killed by someone else.

## AFFIDAVIT OF AVERY ARMSTRONG

1. My name is Avery Armstrong. I am 25 years old. My parents are, or rather were, Robert and Mary Armstrong. They died on July 23, 2008 in a small plane crash. We had a small cabin – I can't believe that Grace sold it, it was so beautiful – on a small lake off the road system. It is about a 45 minute flight from Moose Valley. My parents owned the entire lake, small as it was, and our cabin was the only one on it. I used to love to visit there on summer weekends. Anyway, my parents were flying back from the cabin. It was kind of windy that day, the engine cut out, and my dad couldn't glide the plane to safety.

2. My parents' death was a tragedy for all of Moose Valley. My parents had a lot of money because of all those patents my mother had. And they helped out the town a lot. They especially donated to the arts and education. But, they were modest and all about it. I mean, they never asked that any buildings or rooms be named after them or nothing. I kind of wish they had. People should take pride in their accomplishments and not be afraid to show their success. They're gone now, and I don't know what people are going to remember them for.

3. I think my parents had about \$4 million in the bank, not including their house and cabin and stuff, when they died. Moose Valley was kind of too small for us, but my parents really loved it here. They both taught at the University of Alaska Moose Valley. My mom taught in the chemistry department. She had several patents on cleaning solutions that she was able to sell to major chemical companies. Even after giving the University a cut, she still made out pretty well. My dad taught poetry in the English department. He had a couple of books published that were well received, but he wasn't rich on his own right or anything.

4. I was so distraught when my parents died. And then I found out that they left all of the money to Grace. Well, almost all of it. I got \$50,000 and that was it! I always knew that my parents liked Grace better. It's tough having an older sister who is so perfect. Grace, who was three years older than me, was the smart one who did well in school. She was the artistic one, playing the clarinet, painting wildlife scenes and so on. None of that stuff ever interested me. I guess I just wasn't good enough for my parents. Of course, Grace also got the house and the cabin. She was pretty much already living in the house anyway.

5. I really didn't like how Grace took over our parents' house after they died. I mean, I know the will gave her the right to live there, but she kept treating it like it was hers alone, as if I had never lived there. I don't see what the big deal would have been to let me live there too. There was plenty of room. But, we didn't get along too well, so maybe Grace was right to turn me down when I asked if I could move in for a bit to save money. We would have gotten on each other's nerves like real quickly. For one thing, I can be a bit messy at times and Grace is a total neat freak. And, of course, you always had to take your shoes off when entering the house after Grace took it over. Mom and Dad were never that strict. Then again, I guess that kind of thing is not too unusual for Alaska.

6. As bad off as I was after my parents died, Grace was, like, five times worse. Grace was three years older than I am. But, she had never really left our parents. Grace was a total recluse. I mean, you normally think of a recluse as someone older. Or, maybe that's a hermit. Whatever's the right term, Grace was it. Don't get me wrong, Grace wasn't mean or anything. In fact she could be quite nice if you spent the time to get to know her. And if she let you get to know her. But generally speaking, Grace kept to herself. I think Grace loved her books and her paints more than she did people. I'm not sure if she had too many friends in town.

7. So, when our parents died, it really hit Grace hard. I think it is fair to say that our parents were Grace's best friends. When I say that Grace already lived at our parents' place when they died, that's not quite true. Grace did have her own apartment in town. But, she spent most evenings with Mom and Dad. Almost always had dinner over there. I didn't even have a key to the place. Whenever I tried to join in, I felt unwelcome, like I was disrupting their lifestyle. I wasn't cultured like Dad, or witty like Mom. I'm just me, but I'm fine with that.

8. Grace owned and worked in a small used book store in Moose Valley. There aren't very many people in town, and I don't think the store made any money. Actually, I think she probably lost money and Mom and Dad subsidized it. Did they subsidize me and my rock band? No. I was too proud to ask them for money. Grace didn't mind, however. So, I guess it wasn't a surprise when I found out what was in the will. It still hurt, though.

9. After Grace got all that money, she felt some weird obligation to continue my parents' passion to become a patron to the local arts. I mean, I know the will said to do this, but the language didn't seem binding to me. I say, live it up a bit. The kind of money my parents had can last a person a long time. But despite having all that new wealth, Grace didn't make any big purchases. She left her apartment and moved into Mom and Dad's place for real, but that was about it. Local arts organizations would come to her asking for money, and she still worked in her store, though her hours became more infrequent and unpredictable. But, I never saw her out on the town, or at a bar.

10. Grace just became increasingly despondent. To be honest, I think living in our parents' place was a bit of a curse to Grace because it made it impossible for Grace to escape her memories of them. She just got more and more withdrawn. I was never best friends with Grace. I tried to get along with her, mainly because I did love my parents and I knew it would make them feel awful to see us fight. And for the most part I was able to get along with Grace before Mom and Dad died. But after their deaths it just became tougher. Maybe Grace also felt that without our parents to keep happy she no longer had any reason to be nice to me.

11. The will allowed Grace to dole out money to me on an as needed basis as Grace saw fit. Needless to say, this caused even more tension. Yeah, there were times when I asked for money. But like I said, life is short – enjoy it! Plus, I was tired of waiting tables at restaurants. Grace would give me a little bit here and there, maybe a thousand dollars or so a month, but not as much as I deserved. I mean, here Grace was living in this mansion, at

least by Moose Valley standards, and I was stuck in a crappy apartment near the University. It was a fifteen minute drive from my apartment to what used to be our parents' house and now was effectively solely Grace's house. I wanted to buy a new car, but Grace wouldn't even give me money for that. So, I was stuck driving my green Subaru Outback everywhere. At least it is a reliable car.

12. Grace once told me, after getting control of Mom's money and all that, that I needed to learn how to use money responsibly before I could be entrusted with it. What's up with that? This is not Spiderman or anything. When Grace became the one to decide how that family fortune was spent, she developed this complex where she thought she was better than me. This really bugged me, but there was not much I could do about it. Grace had all of the money, and I had to go through her to get any of it.

13. Let me give you an idea of how little Grace cared about my wants and needs. May of 2009 I go to Grace and tell her I'd like to live in the family cabin for the summer. It wouldn't cost much. All I'd have to do is take enough food and other supplies out there to last, or arrange to have them flown in periodically. And, I'd be out of her hair. I loved that cabin! It was so peaceful and beautiful out there. Despite the solitude of it all, Grace didn't much like going out to the cabin, even when Mom and Dad were still alive. But this only meant that I'd have the place to myself and it wouldn't be an imposition to Grace. So, did Grace let me go out to the cabin for the summer? No she did not. If I had known ahead of time Grace would be so insensitive, I could have saved up money to afford the air taxi and supplies and so on. I guess I was wrong to think that Grace would be reasonable.

14. I didn't talk to Grace for over a month after she refused to let me go to the cabin. Just went on and lead my own life. But eventually I decided to try to make amends. As much as it pains me to say it, there's a part of me that's always cared about my sister. By August things had more or less smoothed over. Meaning that we were civil toward each other. We even had dinner over at the house once a week or so. I have to admit that Grace is, sorry, was, a pretty good cook.

15. The tension came back again in mid-September. I had the opportunity to buy a music store in town. A friend of mine, Bill Fong, was selling the store, Flash Trax, because he wanted to move back to Alaskopolis to be closer to family. Moose Valley is a college town, so there are lots of students that shop at the store. Whenever I was in Flash Trax it always seemed busy. The only problem was that I needed \$30,000 to make a down payment on the store. I could get a loan for the remaining \$270,000. This seemed like a good deal to me because not only did it include the building the store was located in, it also included all the inventory.

16. I thought Grace would help me out, because this was a way for me to stop waiting tables and actually get by on my own two feet. I think Grace should have given me the entire \$300,000 to buy Flash Trax. There was more than enough money in the inheritance and the \$300,000 wasn't even the half of the inheritance I felt I deserved. But, I knew it was very unlikely Grace would give me the entire amount. Still, I thought it would be no problem for Grace to give me at least the \$30,000 for the down payment. In the year Grace

had been in charge of Mom and Dad's money, I know she gave a \$25,000 grant to help start up the Moose Valley Theater Corps, so giving \$30,000 to her own sister should have been no big deal. Guess I was wrong.

17. I think I first went to Grace to ask for money on September 12, 2009. It was a Saturday, and we were having lunch together at a café in town. I told Grace what a good business idea it was. I even offered to take Grace by Flash Trax to see how much business it was doing, what with school just starting and all that. Grace wasn't interested; said she was already familiar with the place. Grace told me she'd think about it over the weekend and let me know within a week whether I could have the money. I could tell Grace wasn't too enthusiastic about the idea, but I was hoping she'd come to her senses and let me give it a go with the store. I pleaded with her to let me have the chance to prove I could make something of myself. I hated having to beg my big sister for money, but I had no choice.

18. The next Thursday, Grace gave me a call and told me that she didn't think Flash Trax would be a good use of Mom and Dad's money. She said that if the right opportunity came around maybe she'd lend me some money, but that I should look for better business opportunities. Grace said something about CD stores going out of business because of all the digital downloads. What was she thinking?! I doubt she ever even checked out Flash Trax. I love that place! There's nothing like browsing through CDs and holding them in your hands. I begged Grace to reconsider, but she said no.

19. I was fuming. I mean, if I'm going to fail, give me the money and let me fail! I hate it that Grace always thought she was better than me. Maybe she *was* better than me, but that doesn't justify treating me like she did. It was like I was a little kid to her. It really hurt that first my parents didn't trust me, and then when they died, Grace didn't trust me. All I wanted was some of my inheritance so that I could get my life started.

20. After Grace denied me the money for Flash Trax, I stayed away from her for the next couple of weeks. Then on October 11, Grace called me up and said we should have a fresh start. She asked if I wanted to come over for dinner. I was still pretty mad at her, but she's my sister, so I figured I'd give it a try. Unfortunately, the dinner didn't go well. We just have so little to talk about. Grace started to say that she was not against me and wanted to look out for what was best for me, but I wasn't going to have anything of it. I'm an adult, and I don't need anyone telling me what to do! It's not fair that Grace has access to our parents' money to do what she wants and I don't. We quickly got to the point where we were just yelling at each other. I couldn't stay through the end of dinner; I had to leave. Grace begged me to stay, and I know the fight really stressed her out, but I just didn't feel like I could be there any longer.

21. By that point, I had reached the conclusion that I would just have to make of my own life what I could and couldn't depend on Grace to help me out. I had talked to Bill right after Grace had denied me the money to see if Bill would work to find another way to let me buy Flash Trax, maybe finance him himself. Bill was a friend, but he had financial concerns, so I could understand why he wasn't able to do that. Then on October 12 he called me and told me that he had sold Flash Trax to someone else. And, it wasn't like he sold it to

someone who was going to keep it as a music store. No, it's going to become a café. The last thing Moose Valley needs is another café. But most of all I was mad at Grace because now my opportunity to do what I wanted in life was gone! I knew it would be a long time before an opportunity this good came along again. I called her up that night and left an angry message on her machine saying that I had lost out for good on Flash Trax and that I hoped she was happy. Grace didn't call back.

22. So, I was already pretty mad at Grace the morning of October 13. I tried to go about my day as normal, but I couldn't help but think about Grace. It is pretty hard to wait tables and be nice to customers when you have so much anger inside. But, I was able to mask my feelings well enough and get through the day. However, around 5:30 p.m., a friend of mine, Lily Marcus, comes into the restaurant and says, "Hey, I heard Pete and Julie Barker bought your cabin and lake." I couldn't believe it. How could Grace sell our family retreat!?! Especially when she knew how important it was to me! I immediately told my boss that I had to leave, that it was a "family emergency." I was shocked that Grace had not told me about the sale, especially since I had been over to our parents' place for dinner on Sunday.

23. I called and left a message saying that there was something important we needed to talk about and that she'd better be there at 8:00 p.m. when I came over. Grace kept her bookstore open from 11:00 a.m. until 7:00 p.m., so I knew she wouldn't be home for a while. I wanted to go to the house and wait for Grace, but I didn't have a key and couldn't get in, and it was getting too chilly to wait outside. I needed someone to talk to, so I called my cousin Jordan Walker. Jordan sympathized with me about the sale of the cabin and said s/he thought Grace had made a big mistake, but that ultimately it was something the two of us would have to work out. Jordan said s/he was happy that I was going over to talk to Grace and suggested that perhaps an airing of grievances was what was necessary to move past the events of the last few months. It was good to be able to vent to Jordan for a bit, but I was still pretty angry. I went for a walk to try to cool down. It didn't work.

24. At about 8:10 p.m., I went over to Grace's house. Grace seemed nervous when she let me in. I asked her if it was true that she had sold the cabin and lake to the Barkers. Grace said it was. I couldn't contain myself. I started yelling at Grace about how this was Mom and Dad's favorite place in the world and my favorite place in the world and that she had no right to sell it. The one thing that gives me the best memories of my parents, Grace destroys. Grace gave some explanation about how we weren't using the cabin any more and the Barkers were nice people and would use it. They bought it now because they have a plane with skis that could land on the lake during the winter. I have nothing against the Barkers, but this should be my place, not theirs. The only reason "we" weren't using the cabin is because Grace wouldn't let me! When I told Grace this she didn't have any response.

25. I didn't know what else to say either. I told Grace I didn't ever want to have anything to do with her again, and to please give me a portion of the inheritance, maybe just \$100,000, and half of the \$400,000 that the cabin and lake sold for, and I'd never bother her again. Ever since Mom and Dad died, Grace had been nothing but a source of frustration to me. I was ready to have her out of my life forever. Grace was quiet but firm.

She said that she couldn't give me what I was asking for. She said that I was not good with money and that I'd just find a way to waste the money once I received it. This was so unfair and untrue! But I could tell Grace's mind was made up. I stormed out of the house about half an hour to forty-five minutes after I arrived. I was totally enraged, but all I could do was go home and try to get over it.

26. So, I went home. Yes, I had something to drink, but it was only one beer to calm down and I certainly wasn't drunk. I just needed something to calm my nerves after my confrontation with my sister. And, I stayed at home the whole night after returning from her place. I tried to distract myself from the anger inside me by watching television, but this was only partially effective. It was at about 11:00 p.m., just as I was putting on my pajamas and getting ready to go to bed, that I received a call from Officer Smith telling me that Grace was dead. As angry as I had been at my sister earlier in the night, I was stunned. I certainly never wanted her to die. I immediately rushed over to the house. Officer Smith led me into the living room, where Grace's body lay with a gunshot wound to her head. Officer Smith asked me to identify the body, which I did and then broke down in tears.

27. It was such a gruesome scene. I don't remember much of that night after arriving at the house and seeing Grace. Seeing Grace's body, I was immediately placed in a state of shock. I almost felt like I was having an out-of-body experience, like nothing that was going on was real. I do remember Officer Smith asking if I wanted a ride home. The last thing I wanted at that moment was to be with a police officer. It was tough to gain my composure enough to drive home myself, but I managed to do it. When I arrived back at my apartment, I wept uncontrollably until 3 or 4 in the morning. I finally took a sedative, but it was still another hour or so before I was able to go to sleep. Needless to say, I did not sleep well.

28. I knew when I woke up the next morning that I'd be a suspect in Grace's death. I don't know if she was murdered or if she committed suicide. She was very stressed out about our arguments and still distraught over our parents' deaths, so I think it may very well have been suicide. I feel bad that my arguments with her may have played some role in Grace killing herself. And, I did know that our parents kept a pistol in a desk drawer in Dad's study for protection. I just never thought that Grace would use it on herself. But I don't know if it was murder or suicide. I'll leave that to the experts. All I know is that I'm not a killer.

29. Officer Smith came to arrest me on the afternoon of October 16. I was in my apartment; I hadn't felt much like working after Grace died. Like I said, I wasn't too surprised. I had been interviewed the day before by Detective Alexi Franklin. It seemed pretty clear from the questions being asked by the detective that I was the only real suspect in the case. I also gave the detective fingerprints and DNA samples – I figured they'd find a way to get them somehow, so I may as well give them voluntarily. I guess when you look at how much money Grace controlled and how poorly she treated me, it made sense. I mean, I'm not saying I killed my sister or anything, I can just see how other people would think that I did.

30. I have a bit of a past with Officer Smith. Look, I know I've made some mistakes in my life. The biggest was the time two years ago when I got drunk at a party and choked one of the other partygoers. We had been arguing for most of the night about politics, getting progressively drunker as we did it. Then, Sam said I was just a spoiled rich kid. I lost it and started choking him/her. Some of the other guests pulled me off of Sam. One of the guests called the police, and Officer Smith showed up. Sam wasn't really injured, but I was still charged with fourth degree assault and ended up doing a couple weeks in jail. I also did an twelve-week anger management course. I learned great techniques there for taking mental "time outs" when I feel anger coming on. I've also tried to be more careful about my drinking. I really regret what happened with Sam and have definitely learned my lesson about controlling my anger. Still, I think there are some like Officer Smith who have long memories and don't easily forget past transgressions. I guess that is what you get living in a relatively small city like Moose Valley.

31. This has been a rough couple of years for me. First my parents die, then I have disappointments with Flash Trax and the cabin, and now Grace dies. I don't care about the disagreements and arguments we had, she's still my sister and I loved her. Now I am all alone.

## **AFFIDAVIT OF JORDAN WALKER**

1. My name is Jordan Walker. I am twenty-five years old years old and a student at University of Alaska Moose Valley, where I am an English major. I originally came to the University to study with my uncle, Robert Armstrong. Grace and Avery Armstrong are my cousins. I have known them all of my life. I admit that I've been a bit aimless in my course selection and have taken a long time to graduate, but I am proud to say that I will graduate this spring semester.

2. I grew up in Bearclaw, which is about an hour drive from Alaskopolis and about a three-hour drive from Moose Valley. I thought about going to the University of Alaska Alaskopolis, but I decided that it would be too big for me. Plus, the opportunity to study with my uncle, who really was an excellent poet in addition to being a great guy, was too good to pass up. It has been a bit of a struggle to make it as a student. My parents did not have very much money, and the Armstrongs did not offer to pay for my education. I was not expecting them to and harbor no resentment toward them for it. I was able to get a job at a campus café, which along with a few student loans allowed me to get by.

3. My father is Mary Armstrong's brother. Our two families would frequently get together for holidays or in the summers for fishing outings. I even went out to the Armstrong's cabin for a week or two in the summer. This was a lovely cabin, and big too, on a private lake that could only be reached by float plane. The Armstrongs bought the place in 1998, and I've been out there five times since then – four times in the summer and once for Thanksgiving. I still cannot believe that Grace sold the cabin. I can certainly understand why Avery would be angry with her over that.

4. Avery Armstrong and I are the same age, and Grace was three years older than me. I feel close to Avery because we grew up together and felt close to Grace because of our mutual love of the English language. I would say I have a good relationship with both of them and have for many years. After I enrolled at the University and moved to Moose Valley, I talked to and saw each of them frequently.

5. Grace was very intelligent, extremely cultured, and I always found her to be quite caring. At the same time, she was pathologically shy and seemed to carry a certain air of sadness with her. Many people who knew Grace thought she was just a stuck-up artist. She did possess definite talent as a painter, and she probably had a greater appreciation for and breadth of exposure to literature than anyone else her age in Moose Valley. Grace could be a bit high strung and tense at times. She also had a problem with being obsessive compulsive about cleanliness. Whenever I would go over first to her apartment and then to her parents' house when she was living there, there was never a piece of trash lying around or an object out of place. I sometimes felt like I was walking around in a museum.

6. Owning and operating a bookstore was a perfect calling in life for someone like Grace. Faust's Attic was a charming new and used bookstore. Everyone thought so, even those who did not shop there. And, it was often the case that not many people shopped at Grace's bookstore. Indeed, I think Grace was happiest when she was alone with her books and could pick up a new gem to peruse while the hours of the day drifted by. Grace sought refuge in the printed page not because she thought herself better than everyone else but rather because there was so much love and caring in her heart and she found the "real" world to be so uncaring.

7. Grace was unquestionably the child of her parents. Robert and Mary were highly educated and impeccably sophisticated. They were wealthy, yet they saw their wealth as almost an embarrassment. Though not afraid to live well, my aunt and uncle saw it as their mission in life to be patrons of the arts in Moose Valley. I think part of this may have been because if they did not pay for the arts, there would be no arts in a relatively small place like Moose Valley. Still, this is a role they accepted happily. Moose Valley suffered a great loss when my aunt and uncle died. And, Grace felt an abiding burden – a word she used frequently when discussing her parents’ death with me – to carry on their legacy.

8. Avery, on the other hand, was always a bit of a wild seed. Avery never liked all of the cultural activities that the rest of his/her family did. Avery is into rock music and professional wrestling. No one really understands how that happened, growing up in the Armstrong household as Avery did. Avery was even in a rock band, Rotten Salmon. Avery played the bass guitar. It was, by all accounts from people who know more about these things than I do, a very bad band, even for a heavy metal band. The band tried to play a few shows around Alaska but never really took off. Still, as passionate as Grace was about books, Avery is about music. I do think it would have been fair, after all the money Grace took from her parents to keep her bookstore afloat, for Grace to have given Avery the money for Flash Trax.

9. Many people consider Avery to be rude; I charitably consider Avery to be headstrong. Avery is a bit too easily frustrated, but can be a loyal friend if you give her/him a chance. Growing up in a household where s/he never felt s/he fit in, I think there is a strong part of Avery that just wants to please other people. At the same time, Avery can be quite stubborn once s/he puts his/her mind to something. Often, these two impulses come into conflict, which can lead to short outbursts of rage when Avery feels underappreciated for trying to do what is right.

10. I was with Avery at the party where s/he got into trouble for choking Sam Marcus. Both Avery and Sam had been drinking a bit too much. Sam and Avery had been sniping back and forth at each other all night about gun control. Sam was in favor of gun ownership, whereas Avery thought that hunting rifles were fine but that in general there should be more restrictions on gun ownership. Sam was being very nasty. I wanted to strangle Sam myself. After a couple of hours, the two started yelling at each other. Then Sam said something along the lines of “If your parents weren’t so rich and artsy, I bet you’d have more respect for those of us who like owning guns.” This did not really make sense, but still Avery snapped, threw her/his beer down, and started choking Sam.

11. Almost immediately, several of us pulled Avery off of Sam. I do not believe Sam was injured all that seriously. But, one of Sam’s friends called the police, who came and took Avery away. Spending a couple of weeks in jail really changed Avery. After the “incident,” Avery cut back on her/his drinking quite a bit. I would not say that Avery was an alcoholic previously, but s/he did drink to excess more than average. And, Avery could be quite unpredictable when drunk – belligerent and argumentative sometimes and taciturn and withdrawn at others. After Avery’s drinking finally caught up with her/him, Avery learned to control this weakness better and became drunk maybe a couple times a year as opposed to once a month. Avery also took an anger management course that greatly improved Avery’s ability to control his/her sudden outbursts of rage. After s/he took the course, I would occasionally see Avery get into heated arguments, but I never seriously thought that Avery would lose control. I’ve never known Grace to drink more than one beer a night, and even then only once or twice a week. I guess Grace wasn’t exactly a teetotaler, but she was close.

12. Between Grace and Avery, I would definitely have to say that Grace was hit harder by their parents' untimely death. Like I have said previously, Grace was pathologically shy. But, understandably, after her parents died Grace added a layer of deep depression to her shyness. It used to be the case that Grace could be content to be by herself. After the plane crash, though, one could not help but think that Grace feared the very same loneliness she once cherished. Grace's shyness was balanced by being able to fall back on a comfortable and frequent rapport with her parents. With that refuge removed, Grace sunk deeper and deeper into her shell.

13. Grace's depression became worse as the months went by following the death of her parents. Grace confided in me on several occasions that she hoped she could become better friends with Avery. However, I think the two of them were too different for this to be a realistic possibility. Still, I can understand why Grace would want to try. I considered myself family to Grace, and greatly enjoyed her company, but I did not share the same immediate family connection that Avery did. And, I certainly could not share the pain of losing their parents in the way that Avery could. Indeed, Grace once told me that only Avery could understand what she was going through and that only Avery could bring her out of it.

14. I am not sure how much Grace really tried to understand Avery. It seemed like Grace wanted to make Avery more like herself and could not appreciate Avery as an individual. Take, for example, the music store Avery wanted to purchase – Flash Trax. I remember Grace calling me in mid-September to tell me that Avery had come to her asking for money, either for outright purchase of or at least for a down payment on the store. Grace asked me what she should do. I knew, as Grace did, that a small music store like that would have trouble surviving the increasing popularity of music downloads. And, neither of us had confidence in Avery to diversify the store from CDs into other areas. Still, I told Grace that giving Avery the \$30,000 for the down payment would be a good way to build trust with Avery and was well within her discretion according to her parents' will. Grace said she would think about it, but I could tell that Grace was not going to give Avery the money. I can understand being reluctant to fund a failing venture, but part of me could not help but think of this as a missed opportunity for Grace to reach out to Avery.

15. Not surprisingly, Grace's refusal to give money to Avery for Flash Trax drove a further wedge between the two. Avery could only see Grace as antagonistic and unfeeling, but I could see how much turning down Avery's request put a strain on Grace as well. Grace became even more withdrawn, something I did not previously think possible. Even with our close friendship and family bonds, I was reluctant to talk to Grace because her moroseness would drag me down too. I felt guilty about this, but try as I might, I could not do anything to cheer Grace up. Between Grace's depression and Avery's anger at her, I felt I was being pulled in two different directions.

16. I was very surprised to hear that Grace had sold the Armstrong cabin on the lake. I remember Grace calling me on the afternoon of October 10 to ask if I could come over for tea. It was not uncommon for Grace to invite me over on a weekend afternoon for a semi-formal tea in her living room, so I went without a second thought. I had no idea that she wanted to confess to me that she had sold the cabin. I asked her why, and she told me that the cabin was not getting much use with her parents gone and that the \$400,000 from the sale could be put to good use helping people in Moose Valley. I reminded Grace of how much the cabin meant to Avery and how disappointed s/he would be about the sale and how much this would hurt their already fragile relationship. Grace responded that she knew what Avery's reaction would be, but that

she had been tasked by her parents with looking out for the greater good. Grace begged me not to tell Avery about the sale, that she wanted to do this herself. Grace was clearly distraught over the sale, and I honestly do not know why she did not just give the cabin to Avery to use as s/he wished. For someone who professed wanting to build a relationship with Avery, Grace seemed to be doing everything she could to destroy it.

17. That visit on October 10 was the last I heard from Grace. I followed her wishes and did not tell Avery of the sale. I knew Avery would be angered when s/he found out, but it was not my place to interfere. I did talk to Avery briefly on the afternoon of October 12, after s/he found out that Flash Trax had been sold to someone else. I tried to calm Avery down, telling her/him that this was unavoidable and that Bill could not have been expected to wait forever to sell. I assured Avery that other opportunities would arise, though internally I had no idea what those would be. By the end of the conversation, Avery seemed resigned to losing Flash Trax – still a tad angry, but knowing nothing could be done about it now.

18. Then on October 13, I received a call from Avery that I feared was coming – Avery had found out about the cabin. I did not tell Avery that I already knew about the sale of the cabin. I knew that this was a matter between Grace and Avery and that they could only resolve this between themselves. In fact, this is what I told Avery. I could tell that Avery was extremely angry. I encouraged Avery to remember her/his anger management training and to try to have a reasoned conversation with his/her sister. Avery promised me s/he would do this, and I could tell by the tone in her/his voice that, as angry as s/he was, s/he knew this was a situation that must be resolved without violence.

19. Still, I feared that a heated verbal exchange was inevitable. I thought about trying to talk Avery out of going over to see Grace that evening, but I knew my attempts would be bound to fail. At the same time, I knew that the exchange would be one-sided (with Avery doing the bulk of the talking) and very stressful to Grace. Grace did not handle confrontations well to begin with, and coming from her own sibling, who I know from my discussions with her she genuinely loved and cared for, would only make things worse.

20. I was shocked to hear about Grace's death. Looking back, I think she must have committed suicide over her parents' death and the tension between herself and Avery. There were multiple signs of depression that I did not recognize at the time but which were definitely there. I regret not having done more to encourage Grace to seek counseling. I knew that Grace kept a revolver in her bedside table for protection, but I never thought she would use it on herself. But this must be what happened. Having known Avery all of my life, I simply do not think that s/he is capable of murder.

21. Since Grace's death, I have become the executive director of the Arts Resource Foundation, the non-profit organization set up by my aunt and uncle in their wills. I have to admit that this is a bit of a dream job for me. I mean, I am just finishing up college this year and already I have this great and well-paying job that allows me to continue with my love of the arts. It is hard to find a job as an English major, and I am honored that Mary and Robert trusted me enough to undertake such a big responsibility by naming me as Grace's successor. I will do my best to carry on the Armstrong legacy in Moose Valley.

## AFFIDAVIT OF DR. QUINN LESLIE

1. My name is Quinn Leslie. I am 50 years old and reside in Seattle, Washington. I am a trained psychiatrist and forensic psychologist. I received my M.D. in psychiatry from the University of Washington in 1994. I started my career working as a therapist in the prison system in Washington state. It is estimated currently that about half of the inmates in U.S. prisons have some form of mental illness. These estimates have quadrupled over the past couple of decades. I believe that there this is due primarily to a failure to diagnose mental illness when I initially started working in the prisons. I have worked hard over my career to increase the diagnosis of mental illness among the prison population and get inmates the treatment they deserve. In many instances, the proper medication can help control some of the symptoms of certain mental illnesses to the point where its sufferers can be functioning members of society instead of incarcerated in the jails.

2. As much as I loved my job, I realized after about four years that I could make a lot more money in private practice treating the wealthy who have high-stress careers. I keep in touch with my roots, so to speak, by maintaining a specialization in forensic psychology and testifying at trials. Forensic psychology is the application of psychological methods and techniques to the practice of law. Primarily, a forensic psychology expert is retained in criminal cases, but I get the occasional civil case now and then. My first appearance as an expert witness was in 2000, and I have appeared as an expert in 56 cases since then. I have never been rejected as an expert witness.

3. There are two topics on which I typically testify at criminal trials. The first is a competency evaluation of whether the accused is competent to stand trial. Here, I attempt to determine whether the accused has the mental capacity to participate effectively in the trial or whether he or she should be committed to a mental institution until such time as competency is regained. The other area on which I often testify is whether the accused was mentally insane at the time the crime was committed and therefore should be found not guilty by reason of that insanity. Over my career as an expert I have testified for both the prosecution and the defense. In fact, I would say that about two-thirds of the time I am working for the prosecution. For my work as an expert witness, I currently charge \$300 per hour to prepare for trial and \$400 per hour to testify, plus of course any travel expenses involved. These are less than the hourly rates I charge for treatment of my patients.

4. I am very selective in the cases I take to testify in as an expert witness. My services are in demand around the country, and if I didn't mind all of the travel I could certainly take on more cases than I do. One of the things that interested me about the Avery Armstrong case is that I was being asked to testify about issues other than the two I typically am called to address. For this case I have been asked to look at three things: 1) the mental state of Avery Armstrong on and around October 13, 2009, though not from the standpoint of trying to prove insanity; 2) the mental state of Drew Parsons as it relates to the accuracy of his/her observations; and 3) the mental state of Grace Armstrong and whether she committed suicide. I almost never am asked to examine the mental state of the victim of a crime, so this prospect especially interested me.

5. For my analysis, I interviewed Avery Armstrong, Jordan Walker, Drew Parsons, and Officer Riley Smith. [Note: The information provided in the interviews was consistent with that in the affidavits provided with this problem. Statement made in those affidavits may be used in examining Dr. Leslie to the extent that the use of these statements is permitted by the rules of evidence. Any additional statements that can be inferred from Dr. Leslie's testimony are accurate to the extent that they were actually made to Dr. Leslie.] I also reviewed the investigation report of Det. Franklin and the will of Mary Armstrong.

6. There are a couple of motivations that arguably could have led Avery Armstrong to kill Grace Armstrong, though my belief is that neither of these were strong enough actually to cause Avery to murder her/his sister. The first potential motivation is money. Avery expressed frustration over not receiving money from Grace. However, it is clear from the will of her/his mother that Avery stood to inherit very little from the death of Grace. I asked Avery if s/he was familiar with the terms of the will, and s/he said s/he was. Under the terms of the will, the vast majority of Mary Armstrong's estate went to the Arts Resource Foundation of Moose Valley. This money was controlled by the executive director, and Avery was not in line to become executive director. Avery expressed some resentment that his/her parents had not placed him/her in the line of succession to be executive director, but Avery clearly understood this provision of the will.

7. Avery did minimally stand to benefit from the increased share of royalty payments from her/his mother's patents. However, I researched the financial records of the Foundation and determined that this additional income to Avery would have been minimal. The majority of the cleaning solution patents that Avery's mother had obtained were by this point close to 15 years old and had largely been supplanted by newer patents. Indeed, these patents were set to expire in a couple of years, though Avery was not aware of this. Even still the total income to Mary Armstrong's estate of the patents by this point had dwindled to \$200,000 per year. Of this, Avery received \$10,000 and Grace \$10,000. Were Avery to have killed Grace over money, it effectively would have been for \$10,000 per year. Because Avery was aware of what s/he was receiving from his/her mother's estate and patents, s/he also knew that Grace was receiving the same amount. An additional \$10,000 per year is not a negligible sum, but in my professional opinion, Avery was not so desperate for money that this would have been an overriding motivation to commit murder, given the high likelihood of being caught.

8. The other potential motivation for Avery to kill Grace was out of anger over the lost opportunity with Flash Trax and the sale of the cabin. I should say that I completely agree with the decision of Grace Armstrong not to give money to her brother/sister for a business model that was destined to fail. Traditional CD stores are definitely on the way out. But, the opportunity to purchase Flash Trax was clearly important to Avery, and that is what I am to evaluate. The loss of the cabin was also very stressful and disappointing to Avery, especially because of the fond memories and family connections Avery had with the cabin. Given Avery's strong feelings for both the store and the cabin, the loss of both of them so closely together would understandably engender a great deal of anger in Avery.

9. Ultimately, though, I do not think that this anger would have led Avery to kill his/her sister in a fit of rage. I say this for a couple of reasons. First, Avery had been

dealing with a series of frustrations from Grace ever since their parents died. While I cannot completely discount the possibility that the coupling of the lost opportunity with the store and the sale of the cabin was the proverbial straw that broke the camel's back, lashing out in a fit of rage would be uncharacteristic in comparison to how Avery had dealt with previous frustrations. There may very well have been a great deal of yelling on the night of October 13, but there is no prior indication of physical violence toward Grace and thus little reason to believe there would have been such a violent outburst that would have resulted in Grace's death.

10. I am aware of the prior incident Avery was involved in in which s/he strangled a fellow party-goer. However, this incident was several years prior, and in the intervening time Avery, and this is my second reason for believing that s/he did not kill Grace out of rage, had taken anger management classes to help her/him learn how to control his/her emotions at those times when s/he might otherwise have a violent outburst. I have not personally audited the anger management course that Avery took, but I have reviewed the syllabus and am certainly familiar with these types of courses, having designed and taught many of them myself early in my career. I also reviewed the attendance reports and instructor notes from Avery's program, and it appears Avery was a very active participant in the classes and never missed a class – a model student for these kinds of courses. Because people enter these courses with such varied backgrounds, situations, and propensities toward rage, it is impossible to compile reliable statistics on success rates for anger management courses. The only real test comes from what that particular individual does after completing the program. Based on the fact that there are no subsequent reports of physical violence by Avery, I think it is reasonable to conclude that Avery learned and employed effective techniques for controlling his/her anger.

11. In the interest of intellectual honesty, I should qualify my remarks about Avery's mental state by saying that any psychoanalysis is a matter of suggesting probabilities. I was of course not at the Armstrong house on October 13 to directly observe Avery's behavior. All I have to base my opinions on are Avery's statements, which must be discounted because s/he potentially faces a long jail term, and reports of Avery's behavior from other witnesses. As such, I cannot say definitively what Avery's mental state was on October 13. However, in my professional opinion it is more likely that Avery did not have the necessary mental state to commit murder than that s/he did.

12. Turning now to Drew Parsons, the question is the reliability of his/her observations on October 13. The key issue is that of "priming". Priming, quite simply, refers to the idea that a witness's perceptions will be influenced by what the witness expects to see. For example, an individual who has just purchased a new car may start to notice with more frequency other people driving the same type of car because the person this person's car is more readily in his or her mind, having just purchased one. A psychologist would say that the individual had been "primed" to notice cars similar to the one he or she had just purchased.

13. In the present case, Drew Parsons was most definitely primed to see Avery Armstrong when s/he witnessed someone emerging from the Armstrong house after hearing a gunshot. Drew had received a panicked phone call from Grace earlier in the

evening about Avery coming over. Drew then watched Avery arrive and enter the house. Drew did not witness anything else regarding Avery until after hearing a gunshot. After hearing a gunshot, Drew Parsons was understandably more stressed herself/himself. When a person is under stress, the effects of priming are even stronger. This is because stress reduces the ability of a person to reflect on what he or she is observing; instead, the person relies more heavily on preexisting beliefs. Going into the evening, Drew Parsons expected Avery to be violent toward Grace. And, Drew had seen Avery enter the house earlier in the evening. Thus, the simplest way for Drew to make sense of observing a figure emerge from the Armstrong house after hearing a gunshot was to assume that this figure was Avery Armstrong. This is a classic example of priming, especially when Drew admitted that the face of this figure was at least partially obscured by the hood that figure was wearing. I cannot of course say with certainty that Drew did not in fact see Avery emerging from the house after hearing the gunshot, but what I can say with certainty is that Drew's identification of Avery Armstrong emerging from the house is inherently unreliable.

14. I should note that I have no reason not to believe the pure description Drew Parsons gave of what s/he saw – namely a figure wearing a yellow fleece with the hood pulled over his or her head emerging from the house and driving off in a green Subaru Outback. In other words, there is no reason to believe that Drew's vision was blurred or obscured (other than not being able to see clearly the face of the figure). What I am questioning is the conclusion that Drew reached from his/her observations that the figure was in fact Avery Armstrong.

15. Finally, I want to turn to the mental state of Grace Armstrong and the possibility that she committed suicide. This is the first time that I have been asked to give an opinion on whether a deceased person committed suicide. Normally it is obvious if a person committed suicide and there is no viable theory of an alternate means of death. I have heard of criminal cases where proof or disproof of suicide is one of the theories of the case, but I have not been involved in such a case myself. Rather, I am usually involved in determining whether a living person is suicidal and in need of observation and medical treatment. This involves interviews not just with acquaintances of the person but also, most importantly, with the person herself or himself. Needless to say, I do not have that luxury for Grace. All I can do is rely upon the interviews and resources I listed previously.

16. Because of the inability to interview Grace in person, I cannot proffer a diagnosis of suicidal tendencies. In other words, I could not say based on the information I have that Grace was likely to commit suicide, that she should have been monitored or committed to a mental institution, or that she should have been treated with some combination of medication and/or therapy. The most I can say is that her behavior before her death was consistent with someone who might commit suicide. It is apparent from the interviews I conducted that Grace was experiencing a severe amount of stress due to the conflict she was having with Avery. In my opinion, this came not so much from a fear for her physical safety as from anxiety over the strain on familial bonds. Put in another way, Grace cared deeply for Avery, did not want to hurt him/her emotionally, knew she was in fact hurting Avery emotionally, and was distressed over the impact this would have on their relationship. Grace may have had a personality that was prone to depression even before

the death of her parents, but after their deaths Grace showed strong signs of clinical depression by becoming increasingly despondent and withdrawn from others, including friends and family. I wish that Grace had sought therapy following the death of her parents, but it does not appear that she did.

17. When left untreated, depression has a way of spinning out of control. Grace may even have feared that recent events might lead to a permanent severing of bonds with her only remaining immediate family member. Avery unintentionally contributed to this impression through the verbal confrontations s/he had with Grace. The confrontation on October 13, which from Avery's own statements was especially heated, may have pushed Grace to the point where she committed suicide. Indeed, if I am incorrect in my earlier analysis and there was non-lethal physical contact from Avery placing her/his hands on Grace's neck, that certainly would have contributed even further to the emotional stress Grace was experiencing and could have made it more likely that she would commit suicide in response.

18. There is other evidence that Grace was experiencing a high degree of stress on October 13. Jordan Walker stated that Grace was obsessively clean. When I interviewed Drew Parsons, s/he confirmed this, as did Avery Armstrong. Yet, there were several items listed in Det. Franklin's report that would be unexpected for a person with an obsessive compulsive disorder. Assuming these "messes", for lack of a better word, were left by Grace and not caused by someone else, they are a further indication that Grace was highly stressed. Another indication of stress were the empty beer bottles found on the kitchen counter with Grace's fingerprints on them, indicating that Grace had been drinking, likely recently. Jordan Walker indicated that Grace rarely drank, and turning to alcohol is often a sign of stress, so it is reasonable to conclude that the empty beer bottles are an indication that Grace was experiencing heightened levels of stress at the time. Any heightened stress being experienced by Grace potentially could have contributed to her deciding to commit suicide.

19. I want to close by disabusing the notion that Avery was without problems. I do believe that Avery could have benefited from therapy to deal with issues regarding the death of his/her parents and the tension with Grace. I also believe that Avery could have handled her/his interactions with Grace better. But, this does not make Avery a murderer.

## AFFIDAVIT OF DETECTIVE PAT GARCIA

1. My name is Pat Garcia. I am 62 years old and a retired detective from the Alaska State Troopers. I was a detective in Alaskopolis for 23 years before retiring four years ago. I mostly fish now or spend time with my grandkids, but I do, such as now, occasionally testify as an expert witness at criminal trials using my prior experience to analyze and comment upon witnesses and reports offered by the prosecution. It is oddly fun to be on the defense side for a change. While I was with the Troopers, I handled innumerable murder and violent crime investigations. I am familiar with methods of fingerprinting, DNA sample collection and analysis, and forensic ballistics. To maintain my credibility as an expert witness, I regularly take continuing education courses on each of these topics so that I am familiar with the most recent techniques.

2. Despite only overlapping with her/him for about three years while with the Troopers, I have worked in the past several times with Det. Franklin. In fact, when s/he started with the Troopers, I was Alexi's mentor for a couple of months. Even though Det. Franklin had the rural beat and my cases were confined to Alaskopolis, s/he would frequently consult with me for ideas for ideas on how to pursue an investigation. I generally find Det. Franklin's work to be meticulous and thorough, though s/he is still relatively new to the job and occasionally misses avenues that could have been pursued. This is not uncommon; I was that way early in my career as well.

3. I have reviewed Det. Franklin's report. I have no reason to believe that any evidence was improperly handled. As far as I can tell, Alexi conducted the investigation with her/his usual meticulousness. However, I disagree with some of the conclusions reached by Det. Franklin. I believe that the report does not support a conclusion that Avery Armstrong killed Grace Armstrong for the following reasons: [Students are free to examine Det. Franklin's report and based on the facts provided therein come to their own conclusions about why the report does not support a theory that Avery murdered Grace. Students are permitted to come up with whatever alternate theories they believe are supported by the report.]

4. I also conducted a few tests not performed by Det. Franklin during her/his investigation. First, I tested the saliva residue in the beer bottles on the kitchen counter for DNA matching evidence. Det. Franklin had conducted fingerprint analysis on all nine bottles, but neglected to conduct DNA analysis, even though there would almost certainly be DNA samples within the saliva that would have been left by whomever drank the beer. The DNA can be tough to isolate when it is mixed with any leftover beer, but it can be done and besides is a task performed by the lab. I hired an independent crime lab in San Francisco to conduct DNA tests on the bottles, and they determined that DNA evidence from Avery Armstrong was found in only one of three bottles on which Avery's fingerprints were found. No DNA evidence from Avery was found in or on any of the other bottles, i.e. the ones on which Avery's fingerprints were not found. Grace Armstrong's DNA was found in the saliva samples taken from the eight bottles in which Avery's saliva and DNA was not found. The only reasonable conclusion from this is that Grace Armstrong drank eight of the

empty beer bottles found on the kitchen counter the night of October 13, 2009 and that Avery Armstrong drank from only one.

5. Now, it is impossible to tell how long the bottles had been sitting on the counter. If an analysis had been performed that evening, it may have been possible to determine how fresh the beer and saliva residue was in the bottles. But by the time I was able to examine them in mid-December, the bottles had dried out and it was too late to perform any such analysis. This is another thing that Det. Franklin overlooked.

6. Another test I performed which Det. Franklin should have performed was to compare the fingerprints and DNA of the third party or parties found in the Armstrong house to the fingerprints and DNA of Drew Parsons and Jordan Walker. I am not suggesting that either Drew Parsons or Jordan Walker murdered Grace Armstrong, but eliminating them as a contributor of the third party fingerprints and DNA would indicate that an unidentified third person was in the Armstrong house sometime recently. I performed the necessary tests and concluded that the unidentified fingerprints and DNA were indeed not from either Drew Parsons or Jordan Walker. I searched the state fingerprint database, but could not find a comparable match. This suggests that the third party either does not have a criminal record in Alaska or slipped through the cracks in the fingerprinting process. There is currently no database of DNA identifiers in Alaska.

7. Interestingly, though, I did find some DNA from Jordan Walker in the Armstrong house. On the sofa in the living room were a couple of hairs that I was able to identify as coming from Jordan Walker. Somehow, Detective Franklin had missed this. Hairs deteriorate less rapidly than other forms of biological evidence, so there was no reason to suspect that Jordan Walker had entered the house after the death of Grace Armstrong occurred. Exactly when these hairs were deposited, though, is impossible to determine.

8. I subpoenaed the home phone records of Grace Armstrong and cell phone records of Avery Armstrong for October 13. Neither had many calls on that day. Grace made a call in the morning at 9:23 a.m. to the Moose Valley Puppet Brigade; the call lasted 12 minutes. Then at 6:03 p.m. there was a one minute call from Avery Armstrong's cell phone. Finally, at 7:27 p.m. Grace made a seven minute call to Drew Parsons. Avery received no phone calls on his/her cell phone and made only three – a four minute call at 11:45 to Bill Fong; the call to Grace Armstrong; and a twelve minute call to Jordan Walker at 7:06 p.m. I guess neither of them were all that talkative.

9. The Armstrong house had been closed up since the night of Grace's death. I therefore felt relatively comfortable that things would be more or less as they had been that night. Now, because of the passage of time and the natural deterioration of biological evidence, I was not expecting to find any new fingerprints. But one interesting thing that Det. Franklin somehow overlooked was what was inside the bedside table in Grace Armstrong's bedroom. If you pulled out the drawer all the way, there was a box of bullets in the back. It was a small box that normally would have only held twenty .38 caliber bullets, but there were six missing. These were the appropriate kind of bullets for a .38 caliber pistol. I went back to the evidence room at the crime lab and checked the gun that

had been found in Grace Armstrong's left hand – there were five bullets remaining of the same type as were in the box in the bedside table.

10. I think it is reasonable to conclude that the gun used to shoot Grace Armstrong had been stored in the open drawer in the bedside table. There was nothing else in the drawer other than the partially empty box of bullets. And, people who have a handgun for self-protection commonly keep the gun somewhere near their bed, in case they hear an unexpected noise at night. I also know that having a gun in the house increases the chance of a homicide by three times and the chance of a suicide by five times.

11. Finally, I examined the doors and windows of the Armstrong house for any signs of a forced intrusion. I could not find any. However, the door from the master bedroom to the deck was unlocked. I asked both Officer Smith and Detective Franklin if either of them had unlocked the door, and neither of them had. The crime scene had been quickly secured, and there is no reason to believe that anyone else unlocked the door. So, I believe it is safe to conclude that the master bedroom door was unlocked at the time of Grace Armstrong's death. However, no footprints or other visible signs of a third party were found inside the master bedroom.

12. If you ask me what I think happened on the night of October 13, here is what I think happened: [Note: Students should come up with their own theory of Avery Armstrong's innocence and support it as best they can with the available evidence. Students may draw reasonable conclusions from the available evidence but are not permitted to create additional evidence. Students may draw upon the sources relied upon by Det. Pat Garcia, though standard rules of evidence still apply.]

## **III. Exhibits**

# The Last Will and Testament of Mary Armstrong

I, Mary Armstrong, a resident of Moose Valley, Alaska, being of sound mind, revoke any prior Wills or Codicils made by me and do declare this to be my Last Will and Testament.

## Article I Family

I am married to Robert Armstrong. I have two children, Grace Armstrong and Avery Armstrong. Any reference to my descendants in this Last Will and Testament is a reference to my children and their descendants.

## Article II Specific Bequests

**A. Memorandum.** I give all my tangible personal property, together with any insurance policies covering the property and any claims under those policies, in accordance with a "Memorandum for Distribution of Personal Property" or other similar writing directing the disposition of the property.

**B. Specific Bequest to Grace Armstrong.** I give to my daughter, Grace Armstrong, the amount of Fifty Thousand (\$50,000) Dollars. In the event my daughter predeceases me, this gift shall be distributed to her descendants, if any.

**C. Specific Bequest to Avery Armstrong.** I give to my son/daughter, Avery Armstrong, the amount of Fifty Thousand (\$50,000) Dollars. In the event my son predeceases me, this gift shall be distributed to his descendants, if any.

**D. Specific Bequest of Primary Residence.** I give my primary residence to the Arts Resource Foundation of Moose Valley, Alaska ("Arts Resource Foundation" or "Foundation") upon the condition that my husband, Robert Armstrong, may live in the house for the remainder of his life. Upon his death, or if he predeceases me, my daughter, Grace Armstrong and her family may live in the house rent free for her lifetime and upon her death, my son/daughter, Avery Armstrong, if surviving, and his/her family may live in the house rent free for his/her lifetime. Any proceeds from the sale of the secondary residence shall go directly to the Arts Resource Foundation and be considered part of the endowment thereto. Upon the death of both of my children, the house shall be held outright by the Arts Resource Foundation.

**E. Specific Bequest of Secondary Residence.** I give my secondary residence, the cabin at Fortson Lake, to the Arts Resource Foundation upon the condition that it be reserved for the use and enjoyment of my husband, Robert Armstrong, and my children, Grace Armstrong and Avery Armstrong, and any of their

descendants. The use and disposition of the secondary residence shall be at the sole discretion of the executive director of the Foundation. Any proceeds from the sale of the secondary residence shall go directly to the Arts Resource Foundation and be considered part of the endowment thereto.

### **Article III My Residuary Estate**

**A. Distribution to my Husband.** I give the rest, residue and remainder of my estate to my husband, Robert Armstrong, and not to his descendants. If my husband fails or ceases to survive me by 30 days, I give the rest, residue and remainder of my estate in accordance with the following provisions of this Article.

**B. Distribution to Arts Resource Foundation.** I give the rest, residue and remainder of my estate to the Arts Resource Foundation of Moose Valley, Alaska, for the specific charitable purpose of benefiting the creative arts primarily in and around the city of Moose Valley, Alaska, and secondarily in the State of Alaska as a whole.

Of this contribution, Three and a Half Million (\$3,500,000) Dollars shall be considered an endowment and shall not be put to any other use than the accumulation of income, except as otherwise specified. The remainder of this contribution shall be considered as discretionary funds for use fulfilling the mission of the Arts Resource Foundation. If at any point the discretionary funds of the Foundation exceed One Million (\$1,000,000), the excess funds over that amount shall be contributed to the endowment for the Foundation.

Any income received by my estate from patents or other sources shall be contributed as follows: 90% shall be contributed to the discretionary funds of the Arts Resource Foundation; 5% shall be given to Grace Armstrong for her maintenance; and 5% shall be given to Avery Armstrong for her/his maintenance. If either Grace or Avery shall predecease the other, the 5% share for the deceased sibling shall be given to the surviving sibling.

**C. Director of the Arts Resource Foundation.** For the duration of his lifetime, my husband Robert Armstrong shall be the executive director of the Arts Resource Foundation. In the event Robert fails to serve or resigns, my daughter Grace Armstrong shall serve as the director of the Arts Resource Foundation for the duration of her lifetime. In the event Grace fails to serve or resigns, Jordan Walker shall serve as the director of the Arts Resource Foundation. Any executive director may nominate a successor to serve subsequent to the above line of succession.

The annual salary for the director shall be Fifty Thousand (\$50,000) Dollars a year, to be drawn from the discretionary funds for the Foundation. The executive director of the Arts Resource Foundation shall have sole control and discretion in use of the discretionary funds of the Foundation for the purpose of fulfilling the mission of the Foundation. If money exists in the discretionary fund to do so, the executive director may elect to give either Grace Armstrong or Avery Armstrong a gift of \$100,000 not

more than once every five years if a good use for the money is demonstrated to the satisfaction of the executive director.

**Article IV  
Personal Representative**

I appoint my husband, Robert Armstrong, as my Personal Representative. If my husband fails or ceases to serve, I appoint my daughter, Grace Armstrong, as my Personal Representative.

I waive any bond or surety requirement for my Personal Representative. My Personal Representative shall be granted all powers pursuant to State law, including Title 13 of the Alaska Statutes.

**Article V  
Other Provisions**

**A. Contest Provisions.** 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.

**B. Governing Law.** My will shall be governed, construed and administered according to the laws of Alaska as from time to time amended.

**C. Cremation Instructions.** I wish that my remains be cremated in accordance with any known instructions left by me, whether in writing or orally given to any family member. If I have failed to leave instructions regarding the cremation of my remains, I wish that my remains be cremated and my ashes disbursed as my Personal Representative sees fit.

I, Mary Armstrong, the testator, sign my name to this instrument this day, October 19, 2005, and, being first sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes expressed in the Will, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

---

Mary Armstrong

We, John Doe and Jane Jones, the witnesses, sign our names to this instrument, and, being first sworn, do hereby declare to the undersigned authority that the testator signs and executes this instrument as the testator's Will and that testator signs it willingly (or willingly directs another to sign for the testator), and that each of us, in the presence and hearing of the testator, hereby signs this Will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

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John Doe, Witness

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Jane Jones, Witness

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

Subscribed, sworn to and acknowledged before me by Mary Armstrong, the testator and subscribed and sworn to before me by John Doe and Joe Jones, witnesses, this day, October 19, 2005.

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Jane Black  
Notary Public in and for Alaska  
My Commission Expires: January 24, 2007

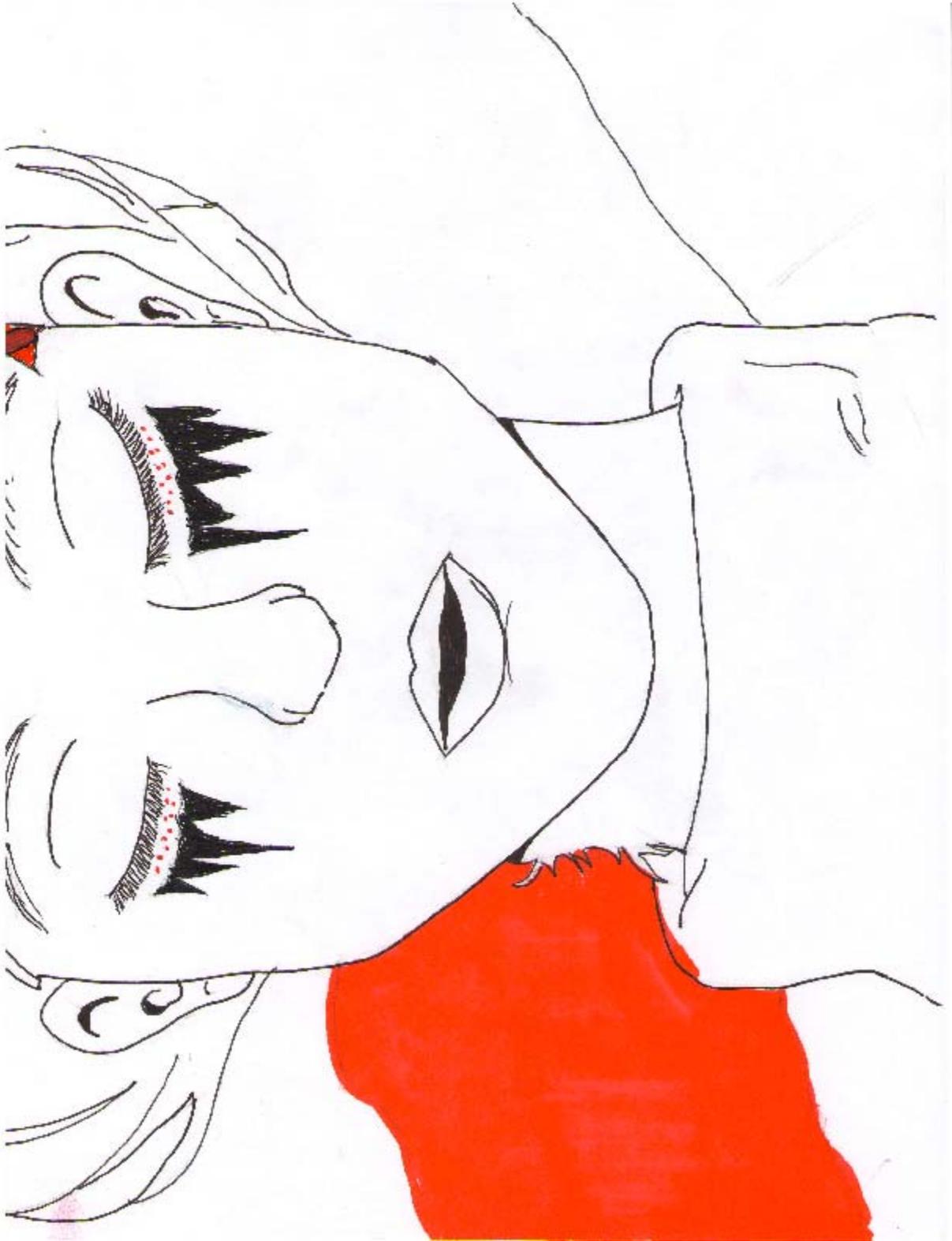
.38 caliber revolver and unused bullets found in Grace Armstrong's left hand at crime scene (blood cleaned off of gun)



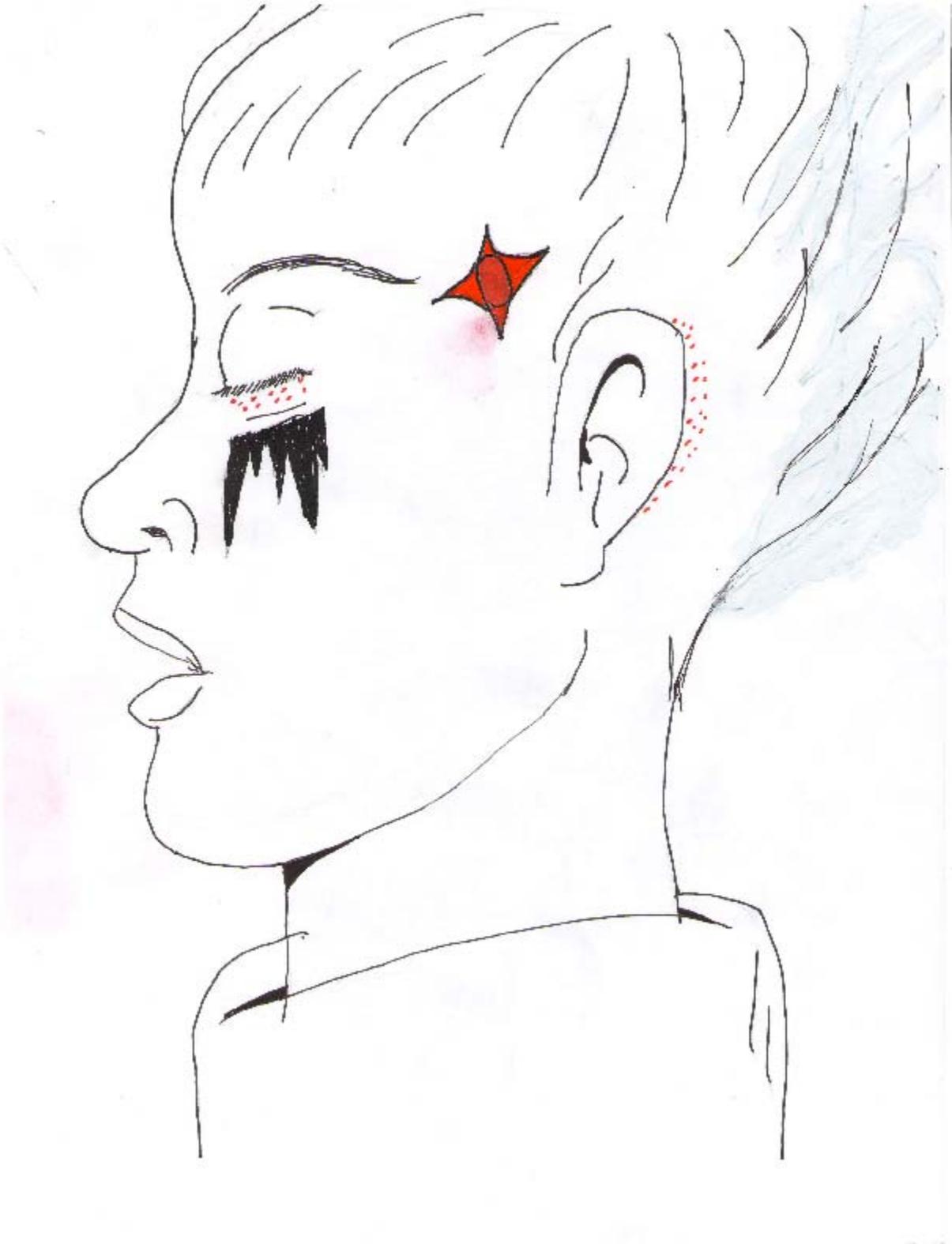
Grace Armstrong Full Body Sketch



Grace Armstrong Front Head Sketch



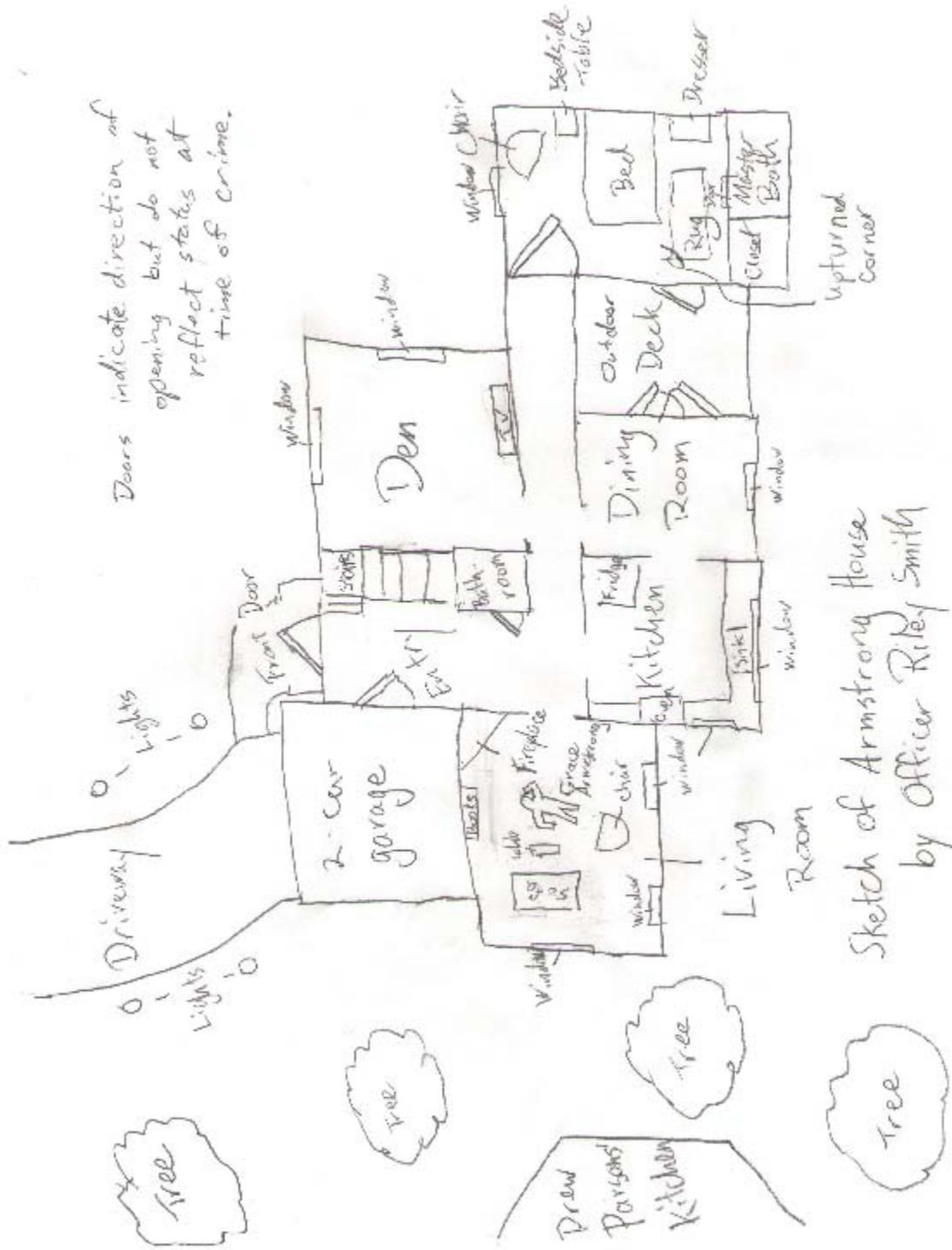
Grace Armstrong Left Side Head Sketch



Grace Armstrong Right Side Head Sketch



Officer Riley Smith Crime Scene Sketch



## **ALASKA STATE TROOPER INVESTIGATION REPORT**

TYPE OF INVESTIGATION: Murder

VICTIM: Grace Armstrong, age 28 at time of death; 5'4", 117 lbs

INVESTIGATING OFFICER: Det. Alexi Franklin

DATE OF INCIDENT: October 13, 2009

DATE OF INVESTIGATION: October 14, 2009

PRELIMINARY RECOMMENDATION FOR ARREST: October 16, 2009

DATE OF REPORT: December 2, 2009

LOCATION OF INCIDENT: 7412 Romanov Way, Moose Valley

INDIVIDUALS INTERVIEWED: Officer Riley Smith; Avery Armstrong (fingerprints and DNA sample voluntarily obtained); Drew Parsons – all individuals interviewed on October 15, 2009 [Note: Responses given in these interviews were consistent with statements made in the affidavits provided with this problem.]

BACKGROUND: Was contacted via email (1:27 a.m. 10/14/09) by Officer Riley Smith of the Moose Valley Police Dept. re death of victim. Called back to confirm. Flew to Moose Valley at noon. Arrived at crime scene 3:02 p.m. 10/14/09.

CRIME SCENE INVESTIGATION AND SUBSEQUENT TESTING: Corpse already removed. Examined pictures of body as found. Pictures reveal obvious gunshot wound to head. Bullet appears to have entered at left temple and exited toward back of head below right ear. Shape of entry wound indicates gun likely placed flush with head when fired. Pictures indicate pistol found in left hand of victim. Examined pistol in evidence room of police station and determined to be .38 caliber pistol. Ballistics tests indicated bullet found at crime scene to have been shot from pistol found in victim's hand. Tests on bullet also indicated etchings consistent with contact with human bone. Several blood spots found on gun barrel; blood determined through DNA testing to be from victim.

Blood stains on living room rug where victim found – large pool and spray pattern. Pool of blood indicates massive bleeding, likely from single point on body. Spray of blood located roughly at feet of where Grace Armstrong's body had been. Spray pattern consistent with exit wound from close range gunshot to head. Location of spray pattern suggests victim standing when gunshot to head occurred. Splattered blood on victim's clothes also consistent with exit wound from standing victim; significant blood splattering found on right shoulder of victim's shirt. Took samples of blood spray from rug; later determined in lab to contain brain matter. DNA from blood and tissue samples indicate source as Grace Armstrong. Single bullet also found on rug eighteen inches from start of blood spray; location of bullet consistent with gunshot from .38 caliber pistol passing through and exiting human head.

Conducted fingerprint analysis on pistol. Fingerprints hard to lift due to numerous blood spots on pistol. Only fingerprints found on pistol were from victim's left hand, in which pistol was found. Fingerprint from thumb on top of pistol; partial index finger print found on trigger; prints from middle and fourth finger found on pistol handle. Finger prints found were consistent with position of victim's left hand as found on pistol at time of death. No other fingerprints found anywhere else on the pistol. Victim's hands both uncovered at time of death. Victim

reported by others to be left-handed. Subsequent DNA analysis of pistol did not reveal any other DNA than that of victim. All DNA came from blood on pistol.

Examined remainder of living room. DNA (hair and skin cells) of Avery Armstrong found on living room chair. Fingerprints from Avery Armstrong found on arms of chair. Position of fingerprints consistent with Avery Armstrong sitting in chair. Multiple hairs (12 positively identified), identified via DNA analysis to be from Avery Armstrong, found near location of victim's body. Multiple hairs (over 40) from Grace Armstrong, identified via DNA analysis, also found near location of victim's body. Hairs from victim found both within blood spray and near where head lay when found. 26 hairs from Grace Armstrong found in area away from victim's head and body, near fireplace. 17 hairs from Avery Armstrong found in same area. Number of hairs found likely indicates physical struggle between Grace Armstrong and Avery Armstrong. Rug examined for skin cells from Avery Armstrong, but none found; amount of blood near victim made it difficult to find DNA evidence from other persons.

No third party DNA from either hair or skin cells found in living room. No fingerprints from third party found in living room. Examined curtains in living room for fingerprints or DNA evidence; only fingerprints from victim found. Curtains must be manually pulled on fabric of curtain to be closed. Curtains were closed at time investigation conducted.

Examined front door. Identified latent fingerprints from Grace Armstrong, Avery Armstrong and unknown third source on outside doorknob. Ten of sixteen points of identification matched for Avery Armstrong print. Fingerprints of Grace Armstrong found on inside doorknob; no prints from Avery Armstrong or third party found. Examined remainder of door for latent prints and none found.

Examined kitchen. Multiple fingerprints and DNA samples (hair, skin cells) from Avery Armstrong were found. DNA (saliva) from unidentified third party found on empty unwashed glass in sink. Examined nine beer bottles on kitchen counter – latent fingerprints of Grace Armstrong found on all nine bottles; latent fingerprints of Avery Armstrong found on three bottles. For fingerprints from Avery Armstrong, was able to match eight of sixteen points of identification. Patent and latent fingerprints of Avery Armstrong found on refrigerator door.

Examined dining room. Multiple fingerprints of Avery Armstrong on table and one chair; ten of sixteen points of identification matched. Fingerprints and DNA evidence (skin cells and hair) from Grace Armstrong only found on one chair; different chair from chair apparently used by Avery Armstrong. No third party DNA or fingerprints found in dining room. Table cleared of plates; traces of food residue found on table near chair apparently used by Grace Armstrong. DNA testing of food residue matched Grace Armstrong's DNA.

Examined master bedroom. DNA of Avery Armstrong identified in single hair found on floor near doorway to bedroom. No other hair found from Avery Armstrong in or near master bedroom. No fingerprints from Avery Armstrong or third party found in or near master bedroom. Fingerprints of Grace Armstrong found throughout master bedroom, including on open dresser drawer and open bedside table drawer.

Examined upstairs rooms. DNA from unidentified third party found in single hair on desk of home office; DNA same as that on glass in kitchen sink. No third party fingerprint evidence found. No fingerprints or DNA evidence from Avery Armstrong found. Substantial DNA evidence (hair, skin cells) from Grace Armstrong found. Fingerprint (identical to that on front door) found on stairway banister. No DNA or fingerprint evidence from third party or Avery Armstrong found elsewhere in upstairs rooms.

**OTHER EVIDENCE CONSIDERED:** Conducted controlled test shot of .38 caliber pistol found in Grace Armstrong's hand. Test shot to be used for ballistic fingerprinting and gunshot residue testing. Blood on gun analyzed before testing.

At interview of Avery Armstrong (10/15/09; beginning 10:36 a.m.), checked Avery for gunshot residue. Did not find any residue on either of Avery Armstrong's hands or on any clothing examined. Examined all blue dress shirts and pairs of blue jeans owned by Avery Armstrong, along with leather jacket. No gunshot residue or blood found on any of those items. Requested Avery produce yellow fleece jacket worn on night of victim's death. Avery Armstrong responded that s/he does not own such a jacket; no such jacket found in Avery Armstrong's apartment. Searched Avery Armstrong's apartment with his/her permission and confirmed there was no yellow fleece jacket. Did not find any blood stains on any clothes or any other objects in apartment. Searched Avery Armstrong's car – did not find any traces of either blood or gunshot residue on driver's seat or steering wheel. Did find traces of common ammonia-based cleaning agent on seat and steering wheel; fact that chemical traces still present suggests vehicle cleaned within last 48 hours.

Examined corpse of Grace Armstrong. Confirmed entry and exit wound. Obtained fingerprints and DNA samples. Tested both hands of victim for gunshot residue. Substantial gunshot residue found on victim's left hand; no residue found on right hand. Gunshot residue determined to be from .38 caliber pistol found at crime scene. Some blood found on victim's left hand. When shot at close range, small amounts of blood from entry wound sometimes splatter on hand of person holding gun, even if entry wound small. Looked for fingerprints on victim's body. Found partial fingerprints on victim's throat. Fingerprints had five points of identification in common with Avery Armstrong; suggests possible contact by Avery Armstrong, but insufficient for definitive positive identification. Neck partially covered with blood, making fingerprint identification difficult. No fingerprints found on back of victim's neck – right side of neck mostly destroyed by exit wound; left side of neck possibly covered by victim's long hair. Examined body for DNA evidence from Avery Armstrong or third party. Five hairs from Avery Armstrong found on shirt of Grace Armstrong. No hairs or other DNA evidence found from third party. DNA analysis on body and shirt complicated by contamination from victim's blood; made it impossible to conduct DNA analysis unless individual hairs could be found.

**CONCLUSION:** Avery Armstrong shot and killed Grace Armstrong. [Note: Students should at trial elaborate on the reasoning behind this conclusion. Students are free to support this conclusion with the evidence in this report, including the testimony of the witnesses interviewed by Det. Franklin. (Standard hearsay rules and other rules of evidence apply.) Students may not make up facts not contained in this report, but are free to draw reasonable conclusions from the facts that have been presented.]

# **IV. Competition Rules**

**RULES GOVERNING THE ALASKA HIGH SCHOOL**  
**MOCK TRIAL COMPETITION**

**CONTENTS**

- A. *Governing Rules*
- Rule 1. Competition Coordinators
  - Rule 2. Interpretation of Rules
  - Rule 3. Code of Conduct
  - Rule 4. Emergencies
  - Rule 4.5 Food and Beverages in the Courtrooms
- B. *The Problem*
- Rule 5. Case Materials
  - Rule 6. Witness Bound by Statements
  - Rule 7. Unfair Extrapolation
  - Rule 8. Gender of Witnesses
  - Rule 9. Voir Dire
- C. *The Trial*
- Rule 10. Team Eligibility
  - Rule 11. Team Composition
  - Rule 12. Team Presentation
  - Rule 13. Team Duties
  - Rule 14. Swearing of Witnesses
  - Rule 15. Trial Sequence and Time Limits
  - Rule 16. Timekeeping
  - Rule 17. Time Extensions and Scoring
  - Rule 18. Prohibited Motions
  - Rule 19. Sequestration
  - Rule 20. Bench Conferences
  - Rule 21. Supplemental Material/Illustrative Aids
  - Rule 22. Trial Communication
  - Rule 23. Viewing a Trial
  - Rule 24. Videotaping/Photography/Audiotaping
- D. *Judging*
- Rule 25. Decisions
  - Rule 26. Composition of Panel
  - Rule 27. Score Sheets
  - Rule 28. Completion of Score Sheets
  - Rule 29. Team Advancement
  - Rule 30. Selection of Opponents for Each Round
  - Rule 31. Merit Decisions
  - Rule 32. Effect of Bye

- E. *Dispute Settlement*
  - Rule 33. Reporting a Rules Violation
  - Rule 34. Reporting Rules Violations During Trial
  
- F. *Conduct Initiating the Trial*
  - Rule 35. Team Roster
  - Rule 36. Stipulations
  - Rule 37. The Record
  - Rule 38. Jury Trial
  - Rule 39. Standing During Trial
  - Rule 40. Objection During Opening Statement/Closing Argument
  
- C. *Presenting Evidence*
  - Rule 41. Argumentative Questions
  - Rule 42. Establishing Proper Predicate/Foundation
  - Rule 43. Procedure for Introduction of Exhibits
  - Rule 44. Admission of Expert Witnesses
  - Rule 45. Use of Affidavits
  - Rule 46. Use of Notes
  - Rule 47. Use of Exhibits in Examining Witnesses
  
- D. *Closing Arguments*
  - Rule 48. Scope of Closing Arguments
  
- E. *Critique*
  - Rule 49. The Critique

### III. MODIFIED FEDERAL RULES OF EVIDENCE (Mock Trial Version)

- A. *General Provisions*
  - Rule 101. Scope
  - Rule 102. Purpose and Construction
  
- B. *Relevancy and its Limits*
  - Rule 401. Definition of “Relevant Evidence”
  - Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible
  - Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time
  - Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes
  - Rule 405. Methods of Proving Character
  - Rule 406. Habit; Routine Practice
  - Rule 407. Subsequent Remedial Measures
  - Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements

- Rule 411. Liability Insurance (civil case only)
- C. *Privileges*
  - Rule 501. General Rule
- D. *Witnesses*
  - Rule 601. General Rule of Competency
  - Rule 602. Lack of Personal Knowledge
  - Rule 607. Who may Impeach
  - Rule 608. Evidence of Character and Conduct of Witnesses
  - Rule 609. Impeachment by Evidence of Conviction of Crime (this rule applies only to witnesses with prior convictions)
  - Rule 610. Religious Beliefs or Opinions
  - Rule 611. Mode or Order of Interrogation and Presentation
  - Rule 612. Writing Used to Refresh Memory
  - Rule 613. Prior Statements of Witnesses
- E. *Opinions and Expert Testimony*
  - Rule 701. Opinion Testimony by Lay Witnesses
  - Rule 702. Testimony by Experts
  - Rule 703. Bases of Opinion Testimony by Experts
  - Rule 704. Opinion on Ultimate Issue
  - Rule 705. Disclosure of Facts or Data Underlying Expert Opinion
- F. *Hearsay*
  - Rule 801. Definitions
  - Rule 802. Hearsay Rule
  - Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial
  - Rule 804. Hearsay Exceptions – Declarant Unavailable
  - Rule 805. Hearsay within Hearsay

## **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

#### **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 be 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.

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 9, with 9 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 (9 out of 9) 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 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 rule 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.

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.

## **II. 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, other than topic headings, 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 Competition.

### **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**

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 proved, 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 proved 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 which conflict with each other, the court shall apply the presumption which 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 proved 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 proved 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 which conflict with each other, the court shall apply the presumption which 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. Privileges Recognized Only as Provided**

Except as otherwise provided by the Constitution of the United States or of this state, by enactments of the Alaska Legislature, or by these or other rules promulgated by the Alaska Supreme Court, no person, organization, or entity has a privilege to:

- (1) refuse to be a witness; or
- (2) refuse to disclose any matter; or
- (3) refuse to produce any object or writing; or
- (4) prevent another from being a witness or disclosing any matter or producing any object or writing.

## **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**

(a) Subject to the limitation imposed by these rules, the credibility of a witness may be attacked by any party, including the party calling the witness.

(b) Evidence proffered by any party to support the credibility of a witness may be admitted to meet an attack on the witness' credibility.

### **Rule 608. Evidence of Character and Conduct of Witness**

(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 proved 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) to 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 opposing 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. *A witness shall not be permitted to testify as an expert until designated by the Court as an expert. An expert witness shall only be considered an expert in the fields designated by the Court, as requested by the party seeking expert designation.*

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 therefore without prior disclosure of the underlying facts or data, 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 which 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 contained on the scoresheets, 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 and character descriptions. **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.

2010 ALASKA HIGH SCHOOL  
MOCK TRIAL CHAMPIONSHIP COMPETITION  
(Anchorage, April 2-3, 2010)

**TEAM REGISTRATION FORM**  
(Please CLEARLY print name and contact information)

School (Organization) Name: \_\_\_\_\_

Team Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Teacher or other School Advisor: \_\_\_\_\_

Advisor Contact Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Advisor FAX Number: \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

Attorney Coach: \_\_\_\_\_

Coach Contact Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Coach FAX Number: \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

Student Team Members (Please print names in block lettering)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS IS TEAM NUMBER \_\_\_\_\_

Each team must have a minimum of six student 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. A different registration form must be submitted for each team. Any school wishing to register multiple teams MUST indicate which team is the "First Team," "Second Team," etc. **All teams must be registered *no later than March 26, 2010.***

THERE IS NO REGISTRATION FEE THIS YEAR. HOWEVER, WE STILL NEED TEAM ROSTERS. PLEASE RETURN THIS FORM TO:

ALASKA HIGH SCHOOL MOCK TRIAL  
c/o RYAN FORTSON  
NORTHERN JUSTICE PROJECT  
310 K STREET, SUITE 200  
ANCHORAGE, ALASKA 99501  
FAX: 866-813-8645