

**TO: ALL MOCK TRIAL PARTICIPANTS**

**FROM: SUSAN K. ROBERTS, PRESIDENT**

**RE: 2009-2010 INDIANA HIGH SCHOOL MOCK TRIAL COMPETITION**

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On behalf of the Indiana High School Mock Trial Association, we welcome your participation in the 2009-2010 Mock Trial competition. In this year's criminal case the defendant has been charged with murder by poisoning the victim with arsenic. The prosecution alleges that the defendant, a shy, geeky student at an elite high school took revenge after the defendant was hazed and humiliated publicly by the victim. The defense claims that the defendant is innocent.

*Students* – Through participation you will experience what it is like to prepare for and present a case before a judge. Working with your team and coaches, you will learn to evaluate information and respond quickly. As you prepare, you will sharpen public speaking and presentation skills. The greatest benefit is the opportunity to learn how the legal system works. By studying and understanding courtroom procedure, you should become more comfortable with federal and state laws as part of the legal system. Your interaction with some of Indiana's finest attorneys and judges will give you a glimpse of the different interpretations of trial procedure and different approaches of individual members in the legal arena.

*Teacher Coach, Attorney Coach, or Judge* – We strongly encourage you to focus on the goal of participation by students rather than stressing competition while preparing for the competition. Your contributions of time and talent are making many experiential educational opportunities available annually to many Indiana students. Your participation is an essential key element to the success of this program. You can be proud of the impact you have made on the lives of these students.

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**Good luck and have fun!**

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## CASE BACKGROUND

At Elite Preparatory High School, certain students who are deemed to be among the “popular crowd” are invited to belong to a social club. The club is very exclusive and the members pride themselves on admitting only the elite, the “best of the best.” The school does not officially recognize the club, but the school has not banned it either because students of well-established, wealthy families in the community, and significant contributors to the school, are among its primary members. The club is called *Carpe Diem* (seize the day) to represent their carefree, overflowing life. At the beginning of their meetings, club members chant “*Carpe diem quam minimum credula postero*,” i.e. “Seize the day, trusting as little as possible in the future.”

The club follows certain traditions, rituals and ceremonies. At the start of each school year, members of the group scout out the 10<sup>th</sup> graders, usually 15 and 16 year old students, they feel would fit into their group. They then invite this select group to “rush,” a three-week time period, giving everyone an opportunity to get to know one another at various social gatherings. When rush is completed, there is an elimination of pledges who did not make the “cut.” The senior members of the club identify those pledges who are deemed worthy to be part of the exclusive “pledge class.” The students who accept the invitation to pledge begin an additional six-week period during which they are forced to serve the members of the club and do whatever they are told. *Carpe Diem* prides itself on the severity of its hazing. Every pledge class ends the pledge period with the “Running of the Gauntlet” at Arcane Park.

This year, the senior members of *Carpe Diem* included President Duke Kenilworth, and Rush Chair Austin Tayshus. As the top of the club’s chain of command, they had the last word on the membership selection process. Les Hayes was one of the eight students in the pledge class. Les was new to the school. At the Running of the Gauntlet festivities, all was going as planned, starting with the pledges reciting the Club Motto, followed by swatting the pledges with paddles, dousing them with ketchup, mustard and raw eggs, and having them swallow live goldfish. Humiliating “awards” were given to some of the pledges, including the “Flunky” award, which was given to Les. Duke and Austin warned the pledges that this was just the beginning, and that it would only get worse.

Alcohol was also present, and the pledges were ordered to serve the Club officers beer in

special beer mugs that were specially engraved with each officer's name. Shortly after Austin saw Les serve Duke his beer, Duke complained of stomach pains, a headache, and dizziness. Duke began vomiting, and eventually collapsed. The police and EMTs arrived, but they were unable to revive Duke, and he was pronounced dead at the scene. The police issued citations for underage drinking and called for the students' parents to take them home. The medical examiner ruled Duke's death was the result of alcohol poisoning. However, eight months after his death, the police received an anonymous tip suggesting that Duke had been murdered by someone poisoning his drink at the Running of the Gauntlet. Duke's body was exhumed, and new (recently elected) coroner determined that Duke had died from arsenic poisoning. Les was arrested and charged with murder.

**Prosecution Witnesses:**

Student – Austin Tayshus  
Police Detective – Jo/Joe Friday  
Coroner – Dee Muir

**Defense Witnesses:**

Defendant – Les Hayes  
Teacher – Mel Lowe  
Former Coroner – I.M. Wright

*The Case Background is not to be used as evidence in the case, but rather is provided for background purposes only. This case is a work of fiction. The names and events described herein are intended to be fictional. Any similarity or resemblance of any character to an actual person or entity should be regarded as only fictional for purposes of this mock trial exercise.*



## APPLICABLE LAW

### IC 35-42-1-1 (1) **Murder**

A person who knowingly or intentionally kills another human being, commits murder, a felony.

### IC 35-42-1-3 **Voluntary manslaughter**

- (a) A person who knowingly or intentionally kills another human being while acting under sudden heat commits voluntary manslaughter, a Class B felony. However, the offense is a Class A felony if it is committed by means of a deadly weapon.
- (b) The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder under section 1(1) of this chapter to voluntary manslaughter.

### IC 35-41-2-2 **Culpability**

- (a) A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so.
- (b) A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so.

“**Sudden heat**” is defined as sufficient provocation as to excite in the defendant’s mind anger, rage, resentment, or terror sufficient to obscure the reason of an ordinary person, preventing deliberation and premeditation, excluding malice, and rendering a person incapable of cool reflection. *Brown v. State*, 751 N.E.2d 664, 671 (Ind.2001)

### IC 35-41-4-1 **Standard of proof**

- (a) A person may be convicted of an offense only if his guilt is proved beyond a reasonable doubt.

### IC 35-42-2-2 **Criminal recklessness; element of hazing**

- (a) As used in this section, “hazing” means forcing or requiring another person:
  - (1) with or without the consent of the other person; and
  - (2) as a condition of association with a group or organization; to perform an act that creates a substantial risk of bodily injury.
- (b) A person who recklessly, knowingly, or intentionally performs:
  - (1) an act that creates a substantial risk of bodily injury to another person; or
  - (2) hazing; commits criminal recklessness. Except as provided in subsection (c), criminal recklessness is a Class B misdemeanor.
- (d) A person who recklessly, knowingly, or intentionally:
  - (1) inflicts serious bodily injury on another person; or

- (2) performs hazing that results in serious bodily injury to a person; commits criminal recklessness, a Class D felony. However, the offense is a Class C felony if committed by means of a deadly weapon.

**IC 7.1-5-7-7 Illegal possession**

- (a) It is a Class C misdemeanor for a minor to knowingly:
  - (1) possess an alcoholic beverage; or
  - (2) consume it.

**IC 35-50-2-4 Sentencing for a Class A felony**

A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IC 35-50-2-5 Sentencing for a Class B felony**

A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IC 35-50-2-6 Sentencing for a Class C felony**

- (a) A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IC 35-50-2-7 Sentencing for a Class D felony**

- (a) A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1½) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IC 35-50-3-3 Sentencing for a Class B misdemeanor**

A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days; in addition, he may be fined not more than one thousand dollars (\$1,000).

**IC 35-50-3-4 Class C Misdemeanor**

A person who commits a Class C misdemeanor shall be imprisoned for a fixed term of not more than sixty (60) days; in addition, he may be fined not more than five hundred dollars (\$500).

STATE OF INDIANA            )  
  ) SS:            IN THE MARION SUPERIOR COURT  
COUNTY OF MARION        )            CRIMINAL DIVISION I

STATE OF INDIANA            )  
  )  
                          Plaintiff,        )  
                  v.                        )            CAUSE NO. 49D01-0909-CF-00356  
  )  
LES HAYES,                        )  
  )  
                          Defendant.     )

**STIPULATIONS**

*Note: No witness may contradict or deny knowledge of the facts contained in the stipulations.*

1. All exhibits included in these Case Materials are authentic and accurate in all respects; no objection to the authenticity of these exhibits will be entertained. Unless stated otherwise herein, the admissibility of the exhibits on other grounds may be challenged. Stipulated facts may be offered as evidence, without objection, except relevancy objections may be permitted.
2. All witness statements were signed under oath by each witness.
3. Les is being tried as an adult.
4. If the defendant is found guilty, a separate sentencing hearing will be conducted at a later date. Thus, sentencing is not an issue for this trial.
5. Following the hazing, none of the members of *Carpe Diem* were either suspended from school or had other disciplinary actions taken against them. The members of *Carpe Diem* were not charged with hazing or criminal recklessness. Nevertheless, Austin could be charged with hazing or criminal recklessness at some later date. There were no discussions with the Prosecutor’s Office about immunity.
6. Several members of *Carpe Diem* were charged with possession and consumption of alcohol by a minor. The Prosecutor accepted *nolo contendere* pleas for all such members charged, including Austin, and agreed to a plea bargain with a fine of \$200.
7. All standard forensic procedures were followed in this investigation. There are no objections as to the chain of evidence.

8. Fingerprint analysis shows that Hayes' fingerprints are on the bottle labeled arsenic trioxide that was located in a locked cabinet in the Chemistry classroom at Elite Preparatory High School. In addition, Hayes' fingerprints were detected on the key, the lock, and the cabinet containing the arsenic trioxide bottle. No identifiable fingerprints, other than Duke and Austin's fingerprints, were lifted from Duke's beer mug.
9. Duke's engraved beer mug is admitted as evidence; there is no need to physically introduce it in court.
10. The October 30, 2007 toxicology report shows that Duke Kenilworth had a .32% blood alcohol content at the time of his death.
11. Coroner Wright conducted the October, 2007 autopsy. The October 31, 2007 autopsy report, prepared by Coroner Wright, shows no underlying physical or medical conditions contributing to the death of Duke Kenilworth.
12. The July 7, 2008 toxicology report of the beer mug shows detection of arsenic in the mug engraved "Duke." The toxicology report indicates that no poisons were detected in the remaining 4 beer mugs belonging to the officers of *Carpe Diem*.
13. The March 30, 2009 toxicology report shows that arsenic levels of 400 mg were detected in the hair follicles and fingernails of Duke Kenilworth after the body was exhumed.
14. The translation of the Latin poem contained in *Exhibit C* is accurate and was performed by a certified translator.
15. Statistics and studies related to alcohol poisoning or alcohol overdose are admissible.

1 **Statement of Austin Tayshus**

2 My name is Austin Tayshus, and I live at 1234 Executive Drive in Lake of the Isles,  
3 Indiana. You probably recognize my family name. My family is a well-known, well-established  
4 family in the Lake of the Isles community. You could say we are of “old money.” My family  
5 lives off the income from our inheritance and does not rely upon salaries or business ventures  
6 such as families in the mid and lower upper class. As such, I live a privileged life. My family’s  
7 wealth traces back to the mid-1800’s. My great great grandfather, Josef Tayshus, amassed one of  
8 the largest private fortunes in the United States (second only to the Rockefellers) in the oil  
9 business during the late 19<sup>th</sup> and early 20<sup>th</sup> century. My grandfather, Edwin Tayshus, moved to  
10 Indiana in the mid 1950’s so that his bride, my grandmother, could be near her ailing mother.  
11 We were one of the first families in this community. I make no apologies for my family’s  
12 wealth. The way I see it, in this world, there are the haves and the have-nots. We’re the haves.

13 My family is also very well connected, socially and politically, with the most influential  
14 people in this county and the State. I have opportunities available to me that others do not.  
15 Doors open for me wherever I go. But, the way I see it, our family also does a lot for this  
16 community too. For example, a few years ago, our family was the largest benefactor of our local  
17 hospital when it needed a new cardiac wing. The hospital wing carries our name. So, if ever any  
18 member of my family is in need of medical care, the red carpet is rolled out. I pretty much have  
19 full access to the hospital whenever I want.

20 I am currently attending Yale. I graduated from Elite Preparatory High School in May,  
21 2008. Elite is a private school in Lake of the Isles, Indiana. Primarily children of the wealthy  
22 families in the community attend Elite. The school offers the best in a quality education.  
23 Academics, teachers, resources, extracurricular activities and exchange programs are  
24 unparalleled at Elite. Elite also prides itself on what students accomplish after graduation, such  
25 as admission to top colleges and universities. Elite has a distinguished list of alumni, including  
26 one former presidential candidate, three U.S. senators, and five U.S. Ambassadors. Of course,  
27 such an exclusive education comes at a high price. It’s not a problem for my family, of course,  
28 but not everyone has such an opportunity. For students who are not from wealthy families, Elite  
29 also offers scholarships to candidates who have exceptional academic prowess. I believe Les

1 Hayes received a scholarship to Elite for his/her science achievements. I'm sure Hayes would  
2 never be able to attend Elite otherwise, as the Hayes' family is not in the same league financially  
3 as the other families with children attending the school. Talk about a braniac! Hayes is a  
4 walking encyclopedia when it comes to science, and particularly chemistry. No wonder Dr.  
5 Lowe had Hayes working as an assistant under his/her tutelage in the Chemistry lab. The kid is a  
6 science geek.

7 Duke Kenilworth was one of my best friends at Elite. In the fall of 2007, we were both  
8 seniors at Elite and were the top dogs on campus. Duke was the most popular student at Elite  
9 then. I've never fully understood why Duke was more popular than me. Afterall, Duke's  
10 family's wealth was not old money. The Kenilworths came into their millions by winning  
11 Powerball a few years ago. But, I put that all behind me and when we were freshmen at Elite, I  
12 introduced Duke to all of the Elite classmates in our same social class. We were friends ever  
13 since then.

14 Duke and I belonged to *Carpe Diem*, which, if you know Latin, means "seize the day."  
15 The club is called *Carpe Diem* (seize the day) to represent our carefree, overflowing life. At the  
16 beginning of our meetings, we always chant our motto: "*Carpe diem quam minimum credula*  
17 *postero*," i.e. "Seize the day, trusting as little as possible in the future." *Carpe Diem* is a co-ed  
18 social club made up of a very elite group of students at Elite. Prior to the initiation in the fall of  
19 2007, we had 42 members. Duke was elected as President of *Carpe Diem* our senior year. Duke  
20 didn't appreciate the status that goes along with that position, but I sure did. I suppose I was a  
21 little jealous at the time. I was angry that I was not elected President. A member of my family  
22 has always held that position in their senior year. Duke often bragged in my face about being  
23 President of *Carpe Diem*. A few times I heard him snicker to our friends about how I was the  
24 one Tayshus who didn't make it to the top. Sometimes Duke was cruel that way. Duke could be  
25 very cruel at times. I had been humiliated publicly by Duke on more than one occasion, and I'd  
26 get really steamed up about it, but then time would pass, and I would let by-gones be by-gones.  
27 Duke just thought he was being funny, but he also knew how to push your buttons. Duke  
28 honored me by selecting me as Rush Chair, which is the second most important role in *Carpe*  
29 *Diem*. As the top of the club's chain of command, we had the last word on the membership

1 selection process. As the Rush Chair, I also was responsible for checking up on the pledges.

2         Only students in the “popular crowd” are invited to belong to *Carpe Diem*. The club is  
3 very exclusive. We are very picky about who we allow to be a part of *Carpe Diem*. We pride  
4 ourselves on admitting only the “best of the best.” The school does not officially recognize the  
5 club, but the school has not banned it either. Of course, the school wouldn’t dare ban *Carpe*  
6 *Diem* because students of well-established, wealthy families in the community, and significant  
7 contributors to the school, including my own family, are among its primary members. It’s a  
8 privilege and a status symbol to be invited to pledge *Carpe Diem*. The club is well-known for  
9 throwing the wildest parties around, and sometimes alcohol can be found there.

10         When school starts each year. We choose our favorite 10<sup>th</sup> graders to participate in our  
11 “Rush.” The Rush is a three-week time period, giving everyone an opportunity to get to know  
12 one another at various social gatherings. We then narrow that group down to those we allow to  
13 pledge. The senior members of the club identify those pledges who are deemed worthy to be part  
14 of the exclusive “pledge class.” The students who did not make the “cut” are eliminated from  
15 further participation and becoming a member of the group for the remainder of their time at Elite.  
16 The students who accept the invitation to pledge begin an additional six-week period during  
17 which they are forced to serve the members of the club and do whatever they are told. If a pledge  
18 endures the six-week pledge season, the student is eligible for consideration of initiation in the  
19 club. The final night for every pledge class is the “Running of the Gauntlet” at Arcane Park.  
20 That’s when we try to give the pledge class the most grief and torment, all in good fun.

21         At the beginning of the 2007-08 school year, *Carpe Diem* invited twenty students to rush.  
22 Of those twenty students, five students were eliminated and were not part of the pledge class. Of  
23 the 15 remaining students, about half of the students wimped out for some reason or another  
24 during the pledge season. So, on the night of the Running of the Gauntlet there were eight  
25 pledges remaining.

26         Les Hayes was invited to rush *Carpe Diem* even though Hayes was not in the “popular  
27 crowd.” Hayes was new to the school, and didn’t know very many people. In many ways, Hayes  
28 was an outcast. Hayes is shy and geeky, and certainly below our standard. But, Duke convinced  
29 me that we should invite Hayes to join. I thought, at first, that Duke invited Hayes for a joke, and

1 so I went along with it. I later learned that Duke, who didn't always make the grades his parents  
2 expected, had hoped to use Hayes to change his grades. Hayes worked in the school's office and  
3 had the opportunity to make grade changes.

4 Being invited to rush in *Carpe Diem* was a good way for Hayes to fit in and be cool for  
5 once. So, Hayes accepted the invitation to rush. Recruiting Hayes turned out to be a really bad  
6 decision. Below that shy, geeky surface, I think there is a dark, sinister side to Hayes. During  
7 the rush period when we were getting to know the students, Hayes talked about how he/she likes  
8 games of strategy and was an avid Survivor fan. Hayes told me that he/she admired the  
9 manipulation that the players used to get what they wanted. Hayes said that in those tropical  
10 locations, there are many plants that can make you ill, and if you used that knowledge to your  
11 advantage, you could win the game. During the rush period, if someone made fun of Hayes, I'd  
12 see Hayes with a mischievous grin – almost like he/she was calculating a way to get even. It sort  
13 of creeped me out.

14 After rush, Hayes was invited to join the pledge class. During the next six-week period,  
15 we tested the pledges to their max. I wouldn't call it hazing. It was all in good fun. Every day,  
16 we would do something to see if they had what it takes to stay with the club. We all went  
17 through it when we were sophomores. I don't see anyone with any physical or emotional scars,  
18 and the reward is worth the hardships. We poured ketchup, mustard and raw eggs all over the  
19 pledges. We also made them swallow live goldfish. Usually, the things we made the pledges do  
20 were pretty simple, but they were created to scare the pledges. For example, we told the pledges  
21 to chew on a piece of glass. Then we put an eggshell in the pledge's mouth. Since the pledge  
22 was blindfolded, there was no way for them to know whether the object was really glass until  
23 they chewed it. We would also mess with them in the hallway at school either stepping on the  
24 back of their shoes to make the shoes come off, or knocking their books on the floor as they were  
25 headed to class. We also made them carry our books to our classes and carry our lunches in the  
26 cafeteria. We even made them buy our lunches, which amounted to nothing for most of the  
27 pledges. For Hayes, it probably meant he/she went without lunch that day because he/she didn't  
28 have a lot of money. All of the things we put them through were all in good fun and harmless.

29 Hayes seemed to always have an attitude, and couldn't take a joke. I wanted to eliminate

1 Hayes from the club then, but Duke said he had plans for Hayes. A couple of weeks after Hayes  
2 was invited to be part of the pledge class, Duke asked Hayes to use his/her position in the school  
3 office to change Duke's test grade in his Physics class. Hayes refused. Duke told Hayes that this  
4 was the ultimate test of loyalty to the club members, and that Hayes should remember that the  
5 pledges were to do whatever we asked them to do. Hayes still refused. Then things got ugly, and  
6 there was a shouting match. Duke got angry, and yelled "I will make sure you know the wrath of  
7 my anger." Surprisingly, Hayes didn't back down, and yelled back at Duke "What goes around,  
8 comes around." I was present the entire time during this shouting match.

9 Part of the pledge process involves the seniors belittling, humiliating and chastising the  
10 pledges publicly. Duke seemed to be harder on Hayes than any other pledge, particularly after  
11 the shouting match. Duke made fun of Hayes for being a geek. Duke would say in the school  
12 halls loud enough for anyone to hear that Hayes didn't get into Elite on the money his/her family  
13 could scrape together. Duke also teased Hayes for having lame jobs working in the office and  
14 helping Dr. Lowe in the Chemistry Department. I tried to keep Duke from picking on Hayes  
15 because I thought it was over the top. But, Duke said, "No one tells me what to do." Duke was  
16 popular enough that if he wanted to blackball anyone, even a friend like me, you could find  
17 yourself an outcast real fast, so I left it alone. A few days before the Running of the Gauntlet,  
18 Hayes confronted Duke with a rumor that he/she had heard. Hayes had heard that Duke intended  
19 to blackball Hayes. Duke laughed, and told Hayes "Yeah, the only reason I allowed you to be a  
20 pledge is so that we'd have a patsy in the group to be our big joke." I knew Duke was joking,  
21 but I don't think Hayes knew it. In fact Hayes appeared angry, and said "You'll be sorry if you  
22 do. That'll be the end of you." Duke didn't like being threatened and decided that Hayes would  
23 get the "Flunky Award" at the Running of the Gauntlet night.

24 The Running of the Gauntlet at Arcane Park was held on October 26<sup>th</sup>, 2007 beginning at  
25 10 p.m. As the Rush Chair, I was in charge of the Running of the Gauntlet night. I set up all the  
26 stations, including the beer station, complete with a beer mug for each of the five officers of the  
27 club, engraved with their name. I wanted it to be a night to remember and that we could look  
28 back later and laugh. We started first with everyone saying our motto. Then, we had each of the  
29 pledges run through the gauntlet – two rows of members that would strike the pledge with a

1 wooden paddle as they proceeded through the gauntlet. We did that about four times throughout  
2 the night. We never hit hard, but I remember when I went through it as a pledge that the repeated  
3 paddles caused some stinging. I happened to notice that Duke was hitting Hayes harder than the  
4 other pledges. I saw Hayes wince. None of the other pledges were hit so hard to make them  
5 wince. I can imagine that after the 4<sup>th</sup> time through, Hayes was black and blue.  
6 The night included a hog roast. The pledges were forced to cook two hogs and feed them to the  
7 upperclassmen. The pledges were then herded to various “stations,” at the park, with each  
8 “station” in a different location with a different activity. It was intended to create good fun, at  
9 least for the upperclassmen. For example, one station had a long row of troughs containing slimy  
10 mud. The pledges were led barefoot through the troughs and told that they were walking through  
11 the guts of the hogs that they had roasted earlier that evening. As part of the festivities we gave  
12 out awards. Duke called Hayes’ name, and had him/her come to the front of the group. Duke  
13 poured glue all over Hayes, on top of his/her head, and all over his/her body, and then slashed  
14 open a feather pillow and poured the contents over Hayes. Duke then pronounced that Hayes had  
15 been tarred and feathered as this year’s recipient of the “Flunky Award.” Hayes took the  
16 punishment, but his/her facial expression showed that Hayes was seething. I announced that this  
17 was just the beginning and things were going to get worse. My announcement was just to make  
18 the pledges be fearful. We didn’t really have anything horrible planned.

19 We made each of the pledges fetch food and our drinks for the club officers. I had  
20 assigned each pledge to fetch the drinks for the five officers. Each of officers had their own  
21 personalized mug with their names engraved. The alcohol was located at a pavilion away from  
22 our main activities to avoid suspicion in case the cops showed up. The diagram attached as  
23 **Exhibit A** accurately shows the location of the alcohol station, as well as where the main  
24 activities were held for the Running of the Gauntlet. Hayes was probably the 6<sup>th</sup> pledge that I had  
25 assigned to fetch drinks for everyone. I’m sure Hayes served Duke alcohol. Shortly after Hayes  
26 had served drinks to the officers and I was ready to assign the job to the next pledge, Duke began  
27 complaining of a headache and feeling dizzy. Then he started to vomit, and finally collapsed.

28 I immediately called 911, and started yelling frantically to Duke trying to wake him up. I  
29 think I grabbed Duke’s beer mug at the time and threw it to the side so that I could kneel next to

1 Duke to wake him up. I don't know what I said, while I was making efforts to help him regain  
2 consciousness. I was distraught. Plus, I have to admit I was pretty inebriated that night, so I  
3 probably wasn't making any sense. I was still drunk when I was giving my statement to the  
4 police immediately after it happened. Do you think I'd talk to the cops that way if I were sober?  
5 I'm not stupid. At the time I thought we were going to get in trouble for hazing, and since I was  
6 the Rush Chair, the cops would be looking at me. That's all I meant by what I said to the cops. I  
7 figured someone would try to blame me for the booze that was there, and for Duke's collapse  
8 because of the alcohol. Obviously, I didn't know at the time that Duke had died.

9 I am aware that Dr. Lowe says he/she saw me in the Chem lab supposedly snooping  
10 around prior to the night of the Running of the Gauntlet. It never happened. Dr. Lowe didn't  
11 make that statement to the police until 9 months after Duke was gone. And Dr. Lowe has a  
12 reputation in the school for having a poor memory. Lowe has a laid back attitude, and details,  
13 other than science, seem irrelevant to him/her. I think it was probably Duke that Lowe saw in the  
14 lab. Sometimes people see Duke and I as one, since we always hang together. So, they naturally  
15 assume where one is the other is also. Also, I specifically recall Duke telling me that he was  
16 going to try to find Hayes' password for the school's office computer so that he could "improve"  
17 his poor grades, since Hayes wouldn't do it for him.

18 I still can't believe Duke's gone. I'm glad Dr. Muir replaced Dr. Wright as coroner in the  
19 last election, so that we could find out the true cause of Duke's death and so that the murderous  
20 Hayes didn't get away with anything. Hayes thought he/she was so clever. I hope Hayes rots in  
21 jail the rest of his/her life. I knew all along that Duke didn't die of alcohol poisoning like  
22 Wright said. On the night of the Running of the Gauntlet, Duke wasn't drinking alcohol any  
23 more than any other night that we partied. I bet Duke didn't have more than six or seven  
24 12-ounce beers the night of his death. On that night, I had been drinking quite a bit, as had  
25 everyone else. I lost count how many I had. But Duke could hold his liquor well. Sure, I've  
26 seen Duke drink so much in the past that he was puking his guts up, but I'm sure that those times  
27 he had a lot more to drink than the night of his death. When Duke died, I always suspected that  
28 Les Hayes was guilty of foul play.

1            *I affirm under penalty of perjury that the foregoing is true and correct to the best of my*  
2 *belief and knowledge.*

3

*Austin Tayshus*  

---

4

1 **Statement of Detective Joe/Jo Friday**

2 My name is Joe/Jo Friday. I am a detective with the Lake of the Isles Police Department.  
3 I am 48 years old and have worked on the force for 25 years since receiving my Bachelor’s  
4 degree in Criminology from Indiana University. I have been a detective for the last 20 years. I  
5 have been assigned to various postions and roles, including detective for burglary, theft, and  
6 crimes involving weapons. I also have been detailed to Homicide and the Marion County Drug  
7 Task Force. In addition, I served an assignment as an undercover Vice/Narcotics investigator.

8 As part of my ongoing trainings, I have attended numerous seminars and training  
9 sessions, including, to name a few: Advanced Interview and Interrogation School, Investigation  
10 of Cults and Mind Control Groups, Gang Activity, Community Oriented Policing, U.S. Justice  
11 Department DEA Narcotics an and Dangerous Drugs School, and Detective School. I am a  
12 member of Fraternal Order of Police. I have received countless awards, the most recent of which  
13 were: Medal of Valor, Meritorious Service Medal, The Indiana Bar Association's Law  
14 Enforcement Official of the Year 2006, and the Marion County Police Officer of the Year 2007.

15 I’ve investigated many cases of alcohol related deaths – mostly from deaths related to  
16 drinking and driving. I had not investigated any cases in the past of alcohol poisoning deaths.

17 I have investigated deaths from poisoning in the past mostly related to drug deals gone  
18 badly. Some drug dealers mix tetramisole with cocaine to make it go further. I’ve also been  
19 involved in a Task Force to prevent poisoning of law enforcement officers by drug dealers using  
20 Ricin. In 1998, an alert was received in our Department warning of Ricin. The advisory  
21 suggested that drug dealers could use it to bait law enforcement officers. It looks like  
22 methamphetamine, but it is extremely fatal. Just touching it or breathing it can be fatal. I have  
23 not investigated any cases involving arsenic previously.

24 I pride myself on my thorough investigations. As a detective, a critical skill is sorting  
25 through the myriad of information you receive to uncover just the facts. Just the other day, I was  
26 speaking to this woman who had witnessed a drug deal. She started speculating what drugs may  
27 have been exchanged in the transaction, and I reminded her “just the facts, ma’am.” She picked  
28 up rather quickly that I’m a no nonsense person. In my investigations, I only want the facts

1 pertinent to the investigation. I have little tolerance for ramblings of irrelevant information or  
2 speculation that can't be established with the evidence.

3 On the night of October 26, 2007, at 11:23 p.m., I responded to an emergency call at  
4 Arcane Park relating to a teenager who had been drinking and had collapsed. I arrived five  
5 minutes later and found a student, later identified as Duke Kenilworth, unconscious on the  
6 ground. Exhibit A is a diagram of Arcane Park, where the events relating to Duke Kenilworth's  
7 death occurred. I prepared Exhibit A at or about the time of my investigation on or about  
8 October 26, 2007. Exhibit A is a true and fair representation of the park as it appeared on that  
9 night. Upon my arrival, I saw the victim sprawled on the ground at the place unconscious in the  
10 location where I have marked the "X" on the diagram. I detected a strong odor of alcohol from  
11 the victim's person. Also, there was a beer mug engraved "Duke" tipped over on the ground  
12 approximately 6 1/2 inches from the right hand of the body. I immediately called for an  
13 ambulance, and called a backup unit. The EMT could not revive Kenilworth and he was  
14 pronounced dead at 11:38 p.m.

15 Upon arrival of the backup team, I instructed the officers to process the young people  
16 present for underage drinking, and arrange for their parents to pick them up, as no one would be  
17 allowed to drive after drinking. I took a statement from Austin Tayshus upon learning that Austin  
18 was the Rush Chair and in charge of the Running of the Gauntlet evening's festivities. A true  
19 and accurate copy of Austin's statement is attached hereto as Exhibit B. Austin's statement is a  
20 perfect example of one of those witness interviews that was a complete waste of my time. I just  
21 want the facts, but I got a bunch of nonsense from Austin. He/She was obviously inebriated. I  
22 didn't see any reason to follow-up on anything he/she said, as it was obvious to me, at the time,  
23 that this was a case of young people being reckless and irresponsible about drinking alcohol  
24 without realizing the serious consequences.

25 Did you know that, according to the National Institute on Alcohol Abuse and Alcoholism  
26 (NIAAA), the annual average number of deaths for which alcohol poisoning was listed as an  
27 underlying cause was 317, or 0.11 per 100,000 population? An average of 1,076 additional  
28 deaths included alcohol poisoning as a contributing cause, bringing the total number of deaths  
29 with any mention of alcohol poisoning to 1,393 per year (0.49 per 100,000 population). Alcohol-

1 poisoning deaths among young people number about one-half dozen or so per year. The number  
2 of alcohol-poisoning deaths has doubled between 1995 and 2005. The number is probably much  
3 higher. A 1992 study concluded that 4000 deaths occur each year from alcohol overdosing:  
4 drinking too much alcohol too fast. This study recognized that death certificates did not always  
5 accurately reflect that the death was due to AOD (alcohol overdose), particularly for younger  
6 persons to ease family pain or for colleges to avoid negative publicity. Teenagers are particularly  
7 vulnerable to AOD. In the study, of the first 8 cases that were examined, half of the cases were  
8 deaths of persons 16 years old or younger. At least half were first-time drinkers and had never  
9 been drunk.

10           Once I had handled the immediate issues of attempting to revive the decedent, and  
11 coordinating the orderly handling of the youth at the park, I then began my investigation. I  
12 collected and properly stored the beer mugs of the five club officers. Each mug had a different  
13 name on it. I also spoke to several witnesses who told me that the decedent had complained of a  
14 headache and dizziness before vomiting and collapsing into a state of unconsciousness.  
15 According to witnesses interviewed, the decedent had consumed five to six 12-ounce beers over  
16 the span of two hours. I learned that several of the pledges, including Les Hayes, were among  
17 the people who filled the club officers' mugs. I learned that each member, including Duke, had  
18 been drinking from his own personal mug that evening.

19           Five days later, I received the autopsy report concluding that alcohol poisoning was the  
20 cause of death. Kenilworth's BAC (blood alcohol content) was .32%. Given the coroner's  
21 conclusions, I closed my file. I did not investigate whether anyone had access to any poisons  
22 because there was no reason to suspect poisoning at the time.

23           On June 30, 2008, I received an anonymous call regarding Kenilworth's death. I did not  
24 recognize the voice of the anonymous caller; it was altered mechanically so that you couldn't  
25 even tell the gender of the caller. The caller stated that I should re-open the case because the  
26 caller thought Kenilworth was murdered by the use of poison added to the alcohol in his beer  
27 mug. The caller indicated that someone in, or connected with, *Carpe Diem* had it in for  
28 Kenilworth.

1 Even though I had closed the case previously, I apparently had not released the physical  
2 evidence from the evidence room. So, the beer mugs still happened to be in the evidence room. I  
3 then had each mug tested for poisons. Subsequently, the toxicologist's report confirmed that the  
4 beer mug engraved with Kenilworth's name tested positive for arsenic. The tests for poisons of  
5 the other club officers' mugs were negative.

6 Given these new developments, I retrieved my file from my closed cases, and re-  
7 opened it. On July 15, 2008, I asked the coroner, I.M. Wright, to have Kenilworth's body  
8 exhumed so that it could be tested for arsenic poisoning. Without additional facts to warrant a  
9 change in the cause of death, Dr. Wright was unwilling to explore the possibility that his/her  
10 certification of the cause of death may have been wrong. At that time, Wright was in an intense  
11 battle for re-election as coroner. I think Wright didn't want the negative publicity that could  
12 affect his/her campaign if he/she had come to the wrong conclusion the first time around. Joe  
13 Public wouldn't be too pleased knowing there was a murderer that was walking around the  
14 community for the past nine months. So, Wright refused to have the body exhumed.

15 Because I knew the Tayshus family, I contacted Austin and inquired as to further detail of  
16 the events of October 26, 2007. I asked Austin if he/she and any thoughts on who would have  
17 had it in for Kenilworth. Without hesitation, Tayshus pointed the finger at Les Hayes. Austin  
18 noted that Hayes worked in Elite's Chemistry Department after school, and would have had  
19 access to arsenic maintained in the locked cabinets in the Chemistry Department. After giving  
20 Hayes his/her Miranda rights with his/her parents present, I questioned Hayes. Hayes acted  
21 suspicious immediately. Prior to even discussing with Hayes that the Kenilworth case had been  
22 re-opened, Hayes started by saying "I didn't kill him."

23 I then obtained a search warrant for Hayes' school locker, and the Chemistry room, as  
24 well as a search warrant for Hayes' residence. Fingerprint analysis shows that Hayes'  
25 fingerprints were detected on the key, the lock, and the cabinet where the arsenic trioxide bottle  
26 was located in the Chemistry classroom at Elite Preparatory High School. Hayes fingerprints  
27 were also detected on the bottle labeled arsenic trioxide that was located in the Chemistry lab's  
28 locked cabinet. The bottle labeled arsenic trioxide was empty. I spoke with Dr. Lowe who could

1 not recall if any Chemistry lab experiments or exercises would have required the use of arsenic  
2 during the school year.

3 No identifiable fingerprints, other than Kenilworth and Tayshus, were lifted from  
4 Kenilworth's beer mug. No traces of arsenic were detected in the search of Hayes' school locker  
5 and residence. No incriminating evidence related to Kenilworth's death was located at Hayes'  
6 residence. A book on Napoleon Bonaparte was located in Hayes' locker. I subsequently learned  
7 that Napoleon suffered and died from arsenic poisoning during his imprisonment. Also, a note  
8 was located in Hayes' locker in the back corner stuck behind a shelf. Hayes' admitted to having  
9 written the note. The note was written in Latin, but a certified translator has interpreted its  
10 meaning. The translation follows each line of the note. A true and accurate copy of the note,  
11 with the translation, is attached as *Exhibit C*.

12 On August 29, 2008, I approached Coroner Wright with a second request to exhume the  
13 body given the mounting evidence that I had accumulated pointing to the guilt of Les Hayes.  
14 Again, Wright denied my exhumation request.

15 On November 3, 2008, Wright lost his/her bid for re-election as Coroner. In a close race,  
16 Dee Muir edged out Wright and was elected as Coroner. I presented my investigation results  
17 and exhumation request to Coroner Muir after he/she had taken office in January, 2009. My  
18 request was made January 15, 2009. Muir promptly signed the necessary paperwork for the  
19 exhumation. The Kenilworth family also agreed to the exhumation. Duke Kenilworth's body  
20 was exhumed on January 26, 2009.

21 The toxicology report showed that arsenic trioxide was present in Kenilworth's body.  
22 Coroner Muir concluded that Kenilworth was murdered by ingestion of the poison arsenic  
23 trioxide. Given the overwhelming evidence, I arrested Les Hayes on March 31, 2009 for the  
24 murder of Duke Kenilworth. My investigation was documented in my initial investigation report  
25 and a supplemental report. *Exhibits D* and *E* are true and accurate copies of my initial  
26 investigation report and supplemental report, respectively. I am the custodian of those reports, as  
27 well as the statement of Austin Tayshus. The reports were prepared by me, based upon my  
28 personal knowledge from the investigation, and were prepared at or about the time of the events  
29 stated therein. I keep notes of my investigation and complete the report when the investigation is

1 complete. The reports and Tayshus' statement are kept in the course of regularly conducted  
2 business of the Lake of the Isles Police Department, and it is the regular practice to make such  
3 records.

4 ***I affirm under penalty of perjury that the foregoing is true and correct to the best of my***  
5 ***belief and knowledge.***

6 Joe/Jo Friday  
7

1 **Statement of Dee Muir**

2 My name is Devyn Muir, but I use the nickname Dee. I am the current Coroner for  
3 Marion County. I was elected on November 4, 2008, and I took office on January 1, 2009.

4 **Exhibit F** is a true and accurate copy of my Curriculum Vitae. The position for the Coroner's  
5 office was a hotly contested election, and came down to a small margin of votes, with me as the  
6 victor. In 2006, I made the decision to throw my hat in the ring after prompting from several  
7 influential and affluent members in the county who promised to support my campaign for  
8 Coroner. The Tayshus family was one of several families that provided the financial support for  
9 my election. Edwin Tayshus II was the Campaign Finance Chair. Edwin is well connected with  
10 the local Republican Party. Tayshus' connections with the medical community were extremely  
11 helpful as a Coroner. With Edwin's help, I gained the support of nearly all of the medical  
12 community. If the medical community is behind you, the voters have more confidence in your  
13 skills for the position. The Coroner position had been held by a Democrat for the past decade and  
14 the group believed that if a highly qualified candidate were on the Republican ticket, we could  
15 win that spot. It was one of the most heavily financed offices during the 2008 election.

16 I occasionally attend social functions where some of my campaign supporters are present  
17 also, but I do not have any close contacts with them. I exercise my judgment and decisions as  
18 Coroner independent of any past social connections or political affiliations. Forensic pathology  
19 is a matter of science. Science speaks the truth.

20 As you can see from my Curriculum Vitae, I have a military background and run the  
21 Coroner's office like a tight ship. One of the campaign platforms that I ran on was that the  
22 Coroner is expected to have a well-managed organization. I believe former Coroner Wright lost  
23 the election because he/she did not meet this fundamental principle. The public lost confidence  
24 in his/her ability to properly perform his/her duties. I demand that the deputy coroners and  
25 pathologists do good work, and do the work thoroughly and efficiently so that we can provide the  
26 public with accurate and speedy results.

27 I was not Coroner at the time of the death of Duke Kenilworth and played no role in the  
28 initial autopsy in which it was determined that Kenilworth died as a result of alcohol poisoning.  
29 Former Coroner I.M. Wright reviewed the toxicology report of the blood alcohol content at the

1 time and determined the case was an alcohol overdose, and did not do any further testing. In my  
2 opinion, based upon my education, training, and experience as a forensic pathologist, and my  
3 review of the toxicology report, autopsy report, and police report, I believe there was inadequate  
4 evidence at that time to rule the case an alcohol overdose. The toxicology report indicated that  
5 the blood alcohol content was .32%. While a .32% BAC is 4 times the legal limit, it is not  
6 typically a fatal level, unless there is an underlying factor in the subject's health, such as a  
7 medical condition. .40% is the accepted median lethal dose, that is the dose that is lethal for 50%  
8 of adult humans. .35%-.40 % represents potentially fatal alcohol poisoning. Severe impairment  
9 occurs at .30-.39%. At .30% a person would be in a stupor. They have little comprehension for  
10 where they are and they may pass out suddenly and be difficult to awaken. At .35%, the level of  
11 surgical anesthesia, a coma is possible. Wright's autopsy report does not identify any underlying  
12 medical issues or observations that would confirm the conclusion of alcohol poisoning. Given  
13 that the .32% was not at a level that would typically cause a fatality or even a coma, I would have  
14 expected to see contributing factors or further investigation of other possible causes for the death.  
15 Wright's autopsy report showed no contributing factors. I agree that testing for poisons, such as  
16 arsenic, are not standard forensic pathology protocol, however, in this instance the tests should  
17 have been ordered when the BAC was returned at .32% with no further contributing factors. In  
18 my professional view, Coroner Wright's procedures were substandard and his/her conclusions  
19 were incorrect.

20 It is my understanding that Wright is standing behind his/her conclusions. Wright has  
21 told me that he/she intends to run for Coroner in the 2012 election given that the 2008 election  
22 was a close one. It will be a blow to Wright's public image if Wright were to admit that mistakes  
23 were made and a murder was allowed to walk the streets free for the past two years. That would  
24 be political suicide. Certainly, it would be difficult to find financial backers with a dark spot on  
25 your record like that. Wright is attempting to salvage his/her reputation by insisting that he/she  
26 didn't miss this one. I've had occasion to be in social circumstances recently where Wright has  
27 been present and just from Wright's demeanor and facial expressions I can tell he/she is still  
28 steaming from the election loss.

1 I became involved in this case on or about January 15, 2009, when Detective  
2 Friday brought to my attention the results of his/her investigation, including a copy of his/her  
3 initial investigation report, supplemental investigation report, fingerprint analyses, and  
4 toxicology reports from the beer mug that the victim used on the night of his death. I then  
5 reviewed Wright's original autopsy report. Given the additional evidence uncovered by  
6 Detective Friday, and my conclusion that Wright's autopsy was inadequate without further  
7 testing, I signed papers to exhume the body of Duke Kenilworth. I contacted the Kenilworth  
8 family and obtained their consent as well. At that time, I learned that the Kenilworth family had  
9 given Duke a natural burial. Duke was interred at Flanner and Buchanan's Washington Park  
10 North Cemetery in Kesler Woods in Indianapolis. The family preferred the natural burial because  
11 Duke was committed to making a greener environment for future generations.

12 The goal of the natural burial is to return the body to the earth in a manner that does not  
13 inhibit decomposition and allows the body to recycle naturally. It is intended as an  
14 environmentally sustainable alternative to existing funeral practices. In a natural burial, the body  
15 is prepared without chemical preservatives or disinfectants such as formaldehyde-based  
16 embalming fluid that can destroy the microbial decomposers necessary to break the body down.  
17 The body is also buried in a biodegradable coffin. In the case of Duke's burial, he was buried in  
18 a wicker coffin. The grave does not use a burial vault and is dug to a depth shallow enough to  
19 allow the same aerobic activity found in composting. The decomposition occurs rather rapidly in  
20 a natural burial.

21 Decomposition begins at the moment of death. At this stage it is caused by two factors:  
22 autolysis, the breaking down of tissues by the body's own internal chemicals and enzymes; and  
23 putrefaction, the breakdown of tissues by bacteria. The rate and the manner in which a human or  
24 animal body decomposes are strongly affected by a number of factors. In a roughly descending  
25 degree of importance, those factors include temperature, access by insects and rodents, burial,  
26 and depth of burial, trauma to the body, humidity or dryness, rainfall, body size and weight, prior  
27 embalming, clothing, and the surface the body rests on. Where the body has been buried,  
28 skeletonization generally occurs around 6-8 months. Where skeletonization occurs the internal  
29 organs have been lost through autolysis or insect activity, and there is decomposition or

1 mummification of the outer tissues covering less than one half of the skeleton. Hair follicles and  
2 nails have not been destroyed even with decomposition of the body.

3 Ordinarily, if we were to look for poison initially we would examine the blood, urine,  
4 organs, and tissue of the decedent, as well as the hair follicles and nails. Tests are available to  
5 diagnose poisoning by measuring arsenic in blood, urine, hair and fingernails. The urine test is  
6 the most reliable test for arsenic exposure. However, hair follicles and nails are very useful  
7 samples for detecting poisons. Drugs, chemicals, and biological substances accumulate and are  
8 stored in hair and nails where they can be detected and measured. Tests on hair and fingernails  
9 can measure exposure to high levels of arsenic over the past 6-18 months.

10 Because Duke Kenilworth had a natural burial, most of these tests were unavailable to  
11 me. Instead, I only had the hair follicles and nails to examine for toxins or poisons. The hair  
12 follicles and nails of Duke Kenilworth were then collected by me and sent to toxicology for  
13 testing of poisons. On March 30, 2009, the toxicology report was completed. It showed a  
14 presence of 400 mg of arsenic trioxide poisoning. With such a significant concentration of  
15 arsenic detected, it is unlikely that the presence of arsenic is attributable to leaching from the soil  
16 or groundwater.

17 When dealing with poisons, we often speak of their fatal dose and fatal period. A fatal  
18 dose of a poison is the average dose, which is enough to kill an adult human, while fatal period is  
19 the average period taken by the poison to kill. Arsenic trioxide is approximately 500 times more  
20 toxic than pure arsenic. 70-200 mg of arsenic trioxide is a fatal dose and symptoms such as  
21 difficulty speaking, mild headaches, lightheadedness, nausea, vomiting, and abdominal pains will  
22 appear within 15-30 minutes, followed by circulatory collapse and renal failure after several  
23 hours or days. However, with the combined effect of the high level of blood alcohol content, the  
24 fatal period was significantly reduced, and thus it would not be unusual for circulatory and/or  
25 renal failure to occur in 30 minutes to an hour.

26 When a large dose of a poison is given in one go, killing the victim within minutes, it is  
27 called acute poisoning. When small doses of a poison are given over a long period of time,  
28 typically over years, it is called chronic poisoning.



1 **Statement of Les Hayes**

2 My name is Lester/Leslie Hayes, but everyone calls me Les. I live at 2532 Oleander  
3 Drive, Apt. 3B, Indianapolis, Indiana. I am a junior at Elite Preparatory High School. I have the  
4 privilege of attending the school because of a generous scholarship funded by one of Elite's  
5 wealthy donors. I don't know if my arrest for the alleged murder of Duke Kenilworth or this trial  
6 will cause the scholarship to be withdrawn. That's the least of my worries now. I can't believe  
7 I've been charged with this crime. I am innocent!

8 I received a full-ride scholarship from Elite commencing with the 2007-08 school year. I  
9 would never have been able to afford attending such a prestigious school on my parents' modest  
10 income. My parents were pleased when I was accepted to attend. They were going to try to  
11 borrow money and take on extra jobs so that I could go. Then, I was awarded the scholarship,  
12 and they were especially proud. Still, it wasn't without sacrifice for them. Elite is located in  
13 Lake of the Isles, which is clear across town. My mother has to get up an extra hour early every  
14 morning and drive me to school just so that we miss traffic and she can get to her job on time.  
15 It's a hassle for her I know.

16 My parents also worry about making sure that I fit in at school. They have good reason to  
17 worry. First it's tough being the new kid at school. It's also hard to get to know people when  
18 you don't live in the same community. And, I don't exactly blend in with the crowd. I like to  
19 talk about science, especially Chemistry. I find it difficult to carry on superficial conversations  
20 and things that most teens want to talk about. So, I withdraw into myself. I find it hard to relate  
21 to people, so I often walk through school with a book in front of my face. I've bumped into  
22 several people as a result. I always say I'm sorry, but I'm sure it hasn't won me any friends.  
23 Because I have difficulty relating to other students my age, I often I find myself talking out loud  
24 to myself about a particular Chemistry problem or phenomenon. I like to talk out loud because it  
25 helps me work through the problem. I suppose that's one of the reasons that the students at Elite  
26 call me a science geek, a nerd, brainiac, or bookworm. Sometimes the name-calling is hurtful,  
27 but my parents have emphasized that people just don't understand me.

28 The school offered me a couple of jobs for after school with a small stipend in addition to  
29 my scholarship. I was happy to be offered these opportunities because I wanted to fit in with the

1 right clothes and have money to join clubs or go with the kids after school to a movie or  
2 something. Also, since my mother didn't get off of work until an hour after school ends, it helps  
3 occupy my time while I'm waiting for her to pick me up from school. I am a Chemistry Lab  
4 Assistant for Dr. Lowe, and when he/she does not need me, then I report to the front office of the  
5 school to help them with their needs. Both jobs are well suited for me. I'm pretty good with  
6 computers, so I feel like I'm really helping them in the Front Office. They have me design  
7 PowerPoint presentations and Excel spreadsheets with complex formulas. I have also been asked  
8 to enter some of the grades in the computer as some of the teachers have trouble with navigating  
9 through the program for reporting grades. The school assigned me a special password to access  
10 that program, which I keep in my Chemistry Lab notebook.

11 My job as a Lab Assistant is rewarding. It's hard to believe I'm getting paid to do it. I  
12 love Chemistry, and working with Dr. Lowe has been great. Many times Dr. Lowe stays in the  
13 lab while I'm doing my work and we talk about careers in science or other science stuff.  
14 Sometimes Dr. Lowe has other commitments and leaves me in charge to do whatever is  
15 necessary on my own.

16 I full access to everything in the lab. I usually help set up labs for the next day, prepping  
17 everything by getting out any equipment, supplies, or chemicals needed for each of the lab tables.  
18 I also take care of cleaning up anything after a lab has been conducted for the day, as well as  
19 organizing the chemicals. I am somewhat obsessive compulsive. I am constantly straightening  
20 out each of the bottles containing the chemicals to make sure they are properly aligned. I also  
21 like organizing the chemicals by their order on the Periodic Table of Elements. Dr. Lowe is not a  
22 highly organized person, so I think my organizational skills are a big help to him/her. Dr. Lowe  
23 gave me a duplicate key to the locked cabinet containing dangerous or expensive chemicals. I  
24 straighten and organize those chemicals all the time too, and frequently, the lab experiment will  
25 call for one of the chemicals in the locked cabinet.

26 I lied to Detective Friday about not knowing whether there was arsenic in the cabinet. I  
27 have nearly all of the types of chemicals in the Lab memorized. I shouldn't have lied to the  
28 Detective, but I was afraid that someone might think that I took the arsenic and used it to kill  
29 Duke. I can't say how much arsenic was in the bottle in 2007 before Duke's death. I don't pay

1 attention to how much inventory was in the lab for every chemical. I am not responsible for  
2 doing an inventory or re-ordering. Dr. Lowe performs those tasks at the end of school year. I  
3 also fudged a little on saying I didn't know the potent properties of arsenic. I think most people  
4 know that, and again it was stupid to lie about something when I have nothing to hide.

5 I have to say I was surprised when I was asked to rush for *Carpe Diem*, being so new,  
6 shy, and a science geek. I really wanted to feel like I belonged at the school, and the club was the  
7 most popular students at Elite. I jumped on the opportunity to fit in. That's how I met Duke and  
8 Austin. Duke was President of the Club, and Austin was the Rush Chair. Austin became the  
9 Club President after Duke's death, but the Club then had a stigma attached to it because of  
10 Duke's death. I made it through the first phase, and then I was invited to join the pledge class.  
11 Unfortunately, a few weeks later, Duke asked me to access the grade program on the school's  
12 Front Office Computer and change one of his grades. He tried to pressure me that I was  
13 obligated to do anything he asked if I wanted to be in the club. I refused and Duke got mad,  
14 yelling and screaming at me, "I would feel his wrath." There was another incident where Duke  
15 was humiliating me in front of a bunch of students, having me carry a pacifier and wear a sort of  
16 diaper over my clothes. I may have said, "What goes around comes around" at the time. What I  
17 meant was that you build certain karma, good or bad, and life has a way of evening things up. I  
18 certainly wasn't meaning it as a threat or some warning to Duke.

19 Pledging was difficult to say the least, and much more arduous than I expected. I was  
20 called a lot of names, and made fun of because of my aptitude for Chemistry and poor financial  
21 status. It was humiliating. Perhaps it was my imagination, but I could have sworn I was treated  
22 much worse than the other pledges. I certainly didn't take it personally, and I figured it was  
23 worth the prize of initiation into the club and finally belonging to an inner circle of the popular  
24 students. The pledging period was almost over, and the Running of the Gauntlet was within my  
25 reach, when I heard a rumor that I was going to be blackballed. I confronted Duke about the  
26 rumor and he said, "Yeah, we just invited you so that we would have a patsy. You'll be our big  
27 joke." I felt like someone punched me in the gut as hard as they could. I was angry, and blurted  
28 out, "You'll be sorry if you do. That'll be the end of you." Austin Tayshus was standing right  
29 there. I thought if I could make Duke fear that I would report the hazing, then Duke might be

1 worried that he would be charged with hazing, the Club would be shut down, or that he would be  
2 removed as President. I figured at this point, I didn't have much to lose. If it was a joke on me  
3 all along, I wouldn't lose friends I didn't have by snitching on them about the hazing. It wasn't a  
4 well-conceived plan, because it seemed to make Duke only angrier and crueler to me. With only  
5 a few days to the finale of the Running of the Gauntlet, I thought I'd just stick it out. Maybe in  
6 my naïve way of thinking I thought I could gain the respect of the upperclassmen by showing  
7 them that I was not a wimp, and that I had toughed it out.

8         The Running of the Gauntlet was on Friday night, October 26, 2007. The upperclassmen  
9 put us through all sorts of humiliating experiences. The pledges, including myself, were fearful  
10 of what was coming next every step of the way. Duke continued to single me out for torture.  
11 When we ran through the Running of the Gauntlet, where they had two rows set up of the  
12 upperclassmen and they hit the pledges with wooden paddles, it seemed that Duke took great  
13 pleasure in hitting me hard. I think we ran through the Gauntlet 4 times. I was grimacing out of  
14 pain, not anger, from that experience. They also set up stations, and told us that we were walking  
15 through hog entrails and blindfolded us. I could handle the physical abuse, but the mental abuse  
16 was almost more than I could bear. At one point Duke called me up to the center stage of the  
17 Pavilion as depicted on Exhibit A, which is a fair representation of Arcane Park as it appeared on  
18 the night of October 26, 2007. In front of the whole crowd, Duke said what a loser I was - - I  
19 was a poor, geeky nerd that never should have been invited to join *Carpe Diem*. And because I  
20 had failed to obey every command of the officers of the club, and failed to show them respect at  
21 all times, I was being awarded the "Flunky Award." He then proceeded to pour glue all over me,  
22 my clothes, my hair, and then slashed a feather pillow and poured it over my head. He declared  
23 that I was "tarred and feathered" - - an outcast of society. I was angry at the time, but then I  
24 started thinking that this was probably just one more of those humiliating tests, and that the  
25 "Flunky Award" didn't mean that I wasn't going to get in the club, but rather that I had failed in  
26 some respects to uphold the pledge promise to do whatever we were told. Austin then said,  
27 "This was just the beginning and things were going to get worse." I almost turned around and  
28 went home. I certainly had not thought of revenge. But I decided I could endure whatever came  
29 my way. I had come this far.

1           Then it was my turn to serve the 5 officers of *Carpe Diem* with their beers. Austin kept  
2 yelling at the pledges that it was our responsibility to keep the officers' beer mugs full at all  
3 times. Each of the beer mugs had the name of the respective officer engraved on it. I don't recall  
4 which mugs I filled that night. I did go back to the beer station to fill a few mugs, but I'm sure it  
5 wasn't for Duke. Duke had been drinking a lot of beer that night. I'd say at least 20 beers over  
6 the course of one hour. By the time I was the designated pledge to serve the beer (I think I was  
7 the 6<sup>th</sup> out of 8), Duke was becoming pretty intoxicated, and had slowed down his drinking  
8 almost completely. Shortly thereafter, Duke started complaining of a headache, and complained  
9 of abdominal pains, and nausea. Duke began vomiting and it seemed that he started choking on  
10 his own vomit. Within minutes, Duke collapsed to the ground and appeared unconscious. I was  
11 not responsible for whatever caused Duke to collapse. I did not add arsenic or any other drug or  
12 toxin to Duke's beer. I did not murder Duke Kenilworth.

13           Austin Tayshus called 911 almost immediately. Austin was attempting to wake up Duke  
14 and kept saying over and over again, "I'm sorry. I didn't mean for this to happen." The EMTs  
15 arrived, but couldn't revive Duke, and pronounced him dead at the scene. It was a nightmare in  
16 my life that I will never forget. I've never seen a person die in front of me before, and I never  
17 hope to again.

18           There are a couple of other things I want to explain. Detective Friday searched my locker  
19 and found a note I had written in Latin. The poem was not about some deep dark secret of  
20 revenge, but rather I had written it up to memorize to impress the upperclassmen of *Carpe Diem*.  
21 You see, the poem is by Horace and is where *Carpe Diem* originated. Also when Detective  
22 Friday came to my house in mid-2008, he/she thinks it was suspicious that I said "I didn't kill  
23 Duke" before Detective Friday even told me why he/she was there. The fact of the matter is that  
24 word spreads pretty fast in the halls of Elite. I believe Dr. Lowe had told me that the police were  
25 looking into Duke's death and thought it was a homicide. When Detective Friday read me my  
26 Miranda rights, I knew it was more than just him/her taking my witness statement, and that I  
27 must be a suspect. Why else would he/she read me my rights?

28           ***I affirm under penalty of perjury that the foregoing is true and correct to the best of my***  
29 ***belief and knowledge.***

1

2

## Statement of Mel Lowe

1  
2 My name is Melvin/Melanie Lowe. Although I'm required by the school administration  
3 to use a more formal title at Elite Preparatory High School, I prefer to be called Mel. The  
4 students and other faculty and staff call me Dr. Lowe. I'm not particularly into titles, but I just go  
5 with the flow. No reason to make waves over my name. *Exhibit H* is a true and accurate copy  
6 of my Curriculum Vitae. The things that are most important to me are buried in between the  
7 lines. For example, my time with Greenpeace and the Peace Corps were incredibly enriching. It  
8 afforded me the opportunity to reach within my soul and connect with our planet and people in  
9 need. Although I had opportunities to become a full-time professor at some of the most  
10 prestigious colleges and universities, I find myself drawn to a simpler life where the pressure of  
11 finding grant money, research, writing and publishing articles or books doesn't weigh me down. I  
12 settled in Indiana because the people here are homegrown. Real. I can connect with them. Elite  
13 Preparatory High School is a little stuffy for my taste. I feel like I've joined a country club at  
14 times teaching there. But, sometimes it is the affluent people that need the most direction in life.  
15 Certainly the job pays well, and gives me the opportunity to travel every summer to New Mexico  
16 for a body, mind, and spiritual cleansing in a sweat lodge. It is a great Native American tradition.

17 I am very familiar with the defendant Les Hayes. I actually knew of Les prior to his/her  
18 attending Elite. I was on the faculty committee that considered Les for a scholarship to attend  
19 Elite. In the 7<sup>th</sup> grade, Les took the ACT for science and tested higher than most juniors seeking  
20 college admission. Les tested again in his/her freshman year at his/her prior school and scored  
21 off the charts. I met with Les to further assess his/her talents in science and to see if Les would  
22 be a good fit for the school. Elite takes a lot of pride in having some of the brightest students in  
23 the country attending here. The school pours a ton of money into hiring the best faculty and  
24 state-of-the art equipment and resources. The students and faculty want for nothing when it  
25 comes to the education provided at Elite. I was extremely impressed with Les. He/she had a  
26 particular acumen for Chemistry. We hit it off right from the start, even though Les is a bit shy  
27 and awkward. Sometimes that just goes with being a teen and finding your voice. Les certainly  
28 was into science and particularly Chemistry. I suppose you could call him/her a science geek.  
29 But why does that have to carry a negative connotation? Les is brilliant. In any event, in part due

1 to my recommendation, Elite gave Les a full scholarship, worth well over \$300,000. Still, I was  
2 aware that Les, in order to “fit in” with the affluent masses of the student body, would need  
3 spending money for clothes, food and activities. I offered Les a job as a Chemistry Lab  
4 Assistant, which would entail setting up any equipment or chemicals needed for a particular lab  
5 for the classes, as well as cleaning up and returning all chemicals to their proper storage.  
6 Actually, the job wasn’t such an altruistic move on my part. I recognize my limitations - - and  
7 one of those limitations is attending to the minutiae of prepping, cleaning up, and organizing for  
8 the Chemistry labs. Les was always diligent about taking care of the any tasks required of  
9 him/her as my Assistant. No other students or persons worked as a lab assistant in the Chemistry  
10 Department. Les continued to work in the Chemistry lab after Duke’s death, and in the 2008-09  
11 school year.

12 Les also worked after school in the school office on days that I didn’t need him/her. Les  
13 is a wiz on the computer, and is an asset to the front office at Elite. Les was also a student in my  
14 advanced Chemistry class during the 2007-08 school year. Les was the only sophomore in the  
15 class, primarily made up of Juniors and Seniors, but Les stood out as the superstar in the class.  
16 Les is currently in my AP Chemistry class, and is exceeding all expectations.

17 Les was, and continues to be, a class act. He/she never boasts about his/her incredible  
18 talents and aptitude. He/she is pretty humble. I like that in a person. Working side by side in the  
19 Chemistry lab, I’ve come to know Les pretty well. I felt a sort of kinship with Les. Les  
20 reminded me of myself in my youth – only he/she is brighter and more socially awkward. You  
21 couldn’t meet a better kid. I find it hard to believe that Les is capable of harming anyone. Les  
22 also has a lot of integrity. I overheard a conversation in the school hallway one day during the  
23 fall semester of 2007 in which Duke Kenilworth tried to get Les to change a poor grade for  
24 Kenilworth. Les refused, even when Duke threatened him/her. I heard Duke yell at Les about  
25 the “wrath of his anger.” But Les still didn’t waiver in holding to his/her principles.

26 Les and I talked a lot about Chemistry and Science when we were together. I tried to help  
27 him/her in discussing career path options and opportunities. I want to help Les in every way  
28 possible. I offered to take Les to meet some of the Chemistry Department Heads one-on-one  
29 with the most prominent colleges and universities. Occasionally, we talked about my

1 experiences with Greenpeace or the Peace Corps, which I was really cool with that. We never  
2 had a conversation about arsenic that I can recall.

3 I wasn't in the Chemistry Lab 100% of the time, or even half of the time when Les was  
4 helping after school. I trusted Les, and didn't have any reason to watch him/her with a close eye.  
5 I gave Les full access to the chemicals in the lab, including the chemicals that were locked in a  
6 cabinet due to their dangerous qualities or their significant value. Les even had a duplicate key to  
7 the cabinet, which I gave to him/her until the end of each school year. I do recall on one occasion  
8 seeing Austin Tayshus in the Chemistry lab after school, which I thought was quite curious. I  
9 had left the room to go to the faculty lounge for some home-baked goodies, and when I came  
10 back, Austin was in the room rummaging around. I thought it was suspicious and I could tell  
11 from Austin's facial expressions that I had caught him/her off-guard too. He/She looked like the  
12 cat that ate the canary.

13 I never witnessed Les taking any of the arsenic trioxide from my Chemistry lab. I will  
14 never believe that Les took any arsenic trioxide from my lab. Les is too ethical to steal  
15 something. I know when the police came with the search warrant for the chemistry lab, they took  
16 the bottle of arsenic trioxide from my locked cabinet in the lab where I kept it stored. I saw that  
17 the bottle was empty when they confiscated it. I don't recall when the arsenic trioxide would  
18 have been used in one of my labs. I tend to be forgetful, especially about those kinds of details,  
19 and I'm not very good at paperwork. I don't keep an ongoing inventory list of the chemicals in  
20 my lab. Generally, I wait until the end of the year and replenish anything that has been used  
21 during the school year. When the police confiscated the arsenic trioxide bottle from my lab, it  
22 had been 8 months since Duke's death. Who's to say when the arsenic was last used? I wish I  
23 could find my paperwork from my order for chemicals to be replenished at the end of the 2007-  
24 08 school year to see if it was empty then. Logically, the empty bottle means nothing more than  
25 in the 2008-09 school year the substance was used in a lab.

26 I'm aware that the police department also has confirmed that Les' fingerprints were on  
27 the bottle of the arsenic trioxide, on the key to the locked cabinet where the arsenic is stored, and  
28 on the cabinet door itself. Again, I don't think you can make much of these facts. Les was, and  
29 still is, my Lab Assistant. Obviously, in 2007, prior to Duke's death, Les would have been

1 retrieving chemicals from the various cabinets in the lab where they are stored. Les was  
2 constantly organizing the chemicals in an obsessive-compulsive sort of way. So even if he/she  
3 didn't retrieve the arsenic bottle for one of my lab experiments, which is equally possible, he/she  
4 could have handled the bottle as part of organizing it and the other bottles in the cabinet.  
5 Moreover, the fingerprints could also have been made subsequent to Duke's death, since the  
6 fingerprint analysis was not performed until 2008.

7 I saw several instances of Duke and Austin, but mostly Duke, publicly ridiculing and  
8 humiliating Les in the hallways at school. They would make Les carry their books, and buy their  
9 lunches, and sometimes trip him/her up by stepping on the back of his/her shoes. I didn't know  
10 at the time that there was this secret *Carpe Diem* club and that Les was a pledge. Even if I had  
11 known that, I still would have thought Duke was cruel to Les. Duke made fun of Les for being a  
12 geeky science nerd, and also made fun of Les for being poor. Duke made Les wear a cloth diaper  
13 one day and suck a pacifier because Duke said Les was a big baby because his/her momma drove  
14 him/her to school. I was outraged at seeing this last act, and I made it stop. Les' face was all red.  
15 I couldn't tell if it was anger or embarrassment. I later talked to Les about it after school and  
16 he/she said, "What goes around, comes around."

17 Duke had a cruel streak. I'd seen it before. I recall some time in the fall semester in  
18 2007, before school started for the day, I overheard Duke telling Austin that the school nurse was  
19 looking for him/her because his/her father had died under suspicious circumstances. All of the  
20 color drained out of Austin's face, and he/she dropped to his/her knees unable to gain any  
21 strength with the devastating news. Then I heard Duke laughing and saying how pathetic Austin  
22 was for falling for such Tomfoolery. Austin was enraged, and I heard him/her say, "This is the  
23 last time you'll ever play one of your cruel jokes on me. You'll get what's coming to you one  
24 day. Just wait and see."

25 Elite may fire me for testifying in this matter as a witness for the defense. The powers at  
26 be at Elite don't like to get embroiled in messes. To me, I'd rather stand up for what's right than  
27 keep quiet and lose sleep at night because I didn't do the right thing for a fellow human being. If  
28 I lose my job, I'm at peace with that.

29 ***I affirm under penalty of perjury that the foregoing is true and correct to the best of my***

1 *belief and knowledge.*

2

*Mel Lowe*

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3

1 **Statement of I. M. Wright**

2 My name is Isa Wright. I am presently employed as a senior forensic pathologist  
3 investigator for NSC Investigations. Not only do I conduct the forensic pathology investigations,  
4 but also I am available as an expert witness in forensic pathology. Prior to my employment with  
5 NCS, I was coroner for one term in Marion County, Indiana. I held that position from January 1,  
6 2005 to December 31, 2008. *Exhibit I* is a true and accurate copy of my Curriculum Vitae.

7 I was not elected in the November, 2008 election, but it was a very close race. I plan to  
8 run again in 2012. I don't have any need to testify to restore public confidence in my abilities. I  
9 have made sound decisions and processed thousands and thousands of cases efficiently and  
10 properly in my 4 years as Coroner of Marion County. There may have been a few incidents of  
11 some lab errors, but none of them were made public. Furthermore, the minor lab errors that  
12 occurred didn't affect any major cases or convictions, and the errors were subsequently corrected.  
13 The real reason that I lost the election was that Coroner Muir had 10 times the campaign funds  
14 than my campaign. Muir was backed by a lot of rich folks, especially in the Lake of the Isles  
15 community. During my campaign for 2012, I plan to show the voters that Muir is beholden to  
16 only the rich folks that supported his/her campaign. Take this case for example, there is clear  
17 evidence of alcohol poisoning, but Muir wants to sweep that under the rug because Austin  
18 Tayshus was responsible for providing the alcohol at the Running of the Gauntlet on October 26,  
19 2007. And Austin Tayshus was responsible for making sure that Kenilworth's mug was  
20 constantly filled. Austin Tayshus organized the whole hazing episode. Tayshus is complicit in  
21 this whole affair. Something is rotten in Denmark when there is clear evidence of hazing and no  
22 charges have been made. Some may say I'm bitter about losing the election. Yeah, maybe that's  
23 true. I resent that money bought the election for Muir. But that's not why I'm testifying against  
24 Muir. The plain and simple fact is that I stand behind my autopsy report and its conclusions  
25 because I am right. The exhumation of Kenilworth and subsequent toxicology report proved  
26 nothing.

27 *Exhibit J* is a true and accurate copy of my October 31, 2007, autopsy report for Duke  
28 Kenilworth. The report was prepared by me, based upon my personal knowledge, and was  
29 prepared at or about the time of the events stated therein. The autopsy report is kept in the course

1 of regularly conducted business of the Marion County Coroner's Office, and it is the regular  
2 practice to make such records. As is noted on my report, and has not been refuted by Muir, the  
3 BAC level was .32%. Detective Friday's report states that witnesses reported that Kenilworth  
4 had consumed eight to ten 12-ounce beers in a period of one hour. Twelve beers in one hour  
5 would calculate to the fatal range of a BAC of .37-.40% based upon Duke's weight. However, it  
6 is important to note that the BAC levels are based upon median lethal dose. So, for half of the  
7 population that level is fatal. Then there are the outliers. A BAC of less than a .37% may be fatal  
8 for some humans. Muir seems to ignore this reality because that simple fact is an inconvenient  
9 truth.

10 Heavy consumption of alcohol is approximately 5 standard drinks (12 ounce beer) for  
11 males. The faster someone drinks, the higher the BAC is, and the more dangerous drinking  
12 becomes. One of the main reasons why alcohol has the capacity to poison the human body is  
13 because it gets absorbed very quickly and gets eliminated very slowly. Alcohol poisoning quickly  
14 affects bodily functions that sustain life. Alcohol depresses nerves that control involuntary  
15 actions of the human body. As a depressant, alcohol affects breathing, heart rate and blood  
16 pressure. When people drink too much in a short time, the areas of the brain that control these  
17 functions can be sedated--literally put to sleep. If that happens, people can die because breathing  
18 mechanisms shut down or people choke on their own vomit because the gag reflex has been  
19 inhibited by the ingestion of alcohol. A fatal dose of alcohol will eventually stop these functions.  
20 After the victim stops drinking, the heart keeps beating, and alcohol in the stomach continues to  
21 enter the bloodstream and circulate throughout the body. Alcohol poisoning takes place when an  
22 individual consumes significantly more alcohol than his or her body can process. Usually, cases  
23 of alcohol poisoning take place at parties where young adults tend to drink a lot in a very short  
24 period of time. The danger in such a situation is that the body cannot adjust to such high amounts  
25 of alcohol so quickly. The body can sometimes absorb alcohol so quickly that it enters the blood  
26 even before the person gets sick. A sign of alcohol poisoning is when a person passes out and  
27 does not respond to attempts to wake them. Unfortunately, alcohol poisoning can be fatal, as in  
28 the death of Duke Kenilworth. As noted in my autopsy report vomit was located in the posterior  
29 oral cavity, which shows that the alcohol had depressed the decedent's gagging reflexes.

1           At the time of my autopsy report, and I submit the same is true now, there were no  
2 indications that warranted ordering toxicology testing for poisons. Finding toxins in the human  
3 body isn't as clear-cut as it might seem. There are literally hundreds of agents that can make a  
4 person ill, debilitated, incapacitated or worse. You can't test for everything. Instead, a coroner  
5 tries to focus on the most likely candidates given the totality of the evidence. The screens that  
6 are part of the standard forensic protocol typically test for alcohol, narcotics, sedatives,  
7 marijuana, cocaine, amphetamines, and aspirin. Toxicology testing follows a two-tiered  
8 approach. Screening tests, which are easier, faster, and cheaper, are used to identify common  
9 classes of drugs. The screening test tells the medical examiner and toxicologist that some type of  
10 narcotic is present, but not which one. Determining which one requires more sophisticated, time-  
11 consuming and expensive Confirmatory Testing. The confirmatory testing will determine  
12 exactly which member of the class is present and in what amount. And if the screening tests are  
13 normal, no further testing is warranted and the medical examiner would not spend the time and  
14 money to go further down that road. If a person wanted to kill someone they could use a poison  
15 that would not be found in a typical screen. Things such as arsenic, selenium, and most plants  
16 (oleander, deadly nightshade, etc.) do not show up on the typical tox screen. It is common  
17 practice that if a tox screen comes back negative, then the medical examiner doesn't usually go  
18 any further with the testing, unless a poison is suspected.

19           Based upon Detective Friday's report at the time of my autopsy, there were no indications  
20 to order further testing. Even now, there is very little to go on, but once I had learned that there  
21 was a suspicion of arsenic poisoning, I likely would have ordered the exhumation also. Detective  
22 Friday claims that he/she requested exhumation twice during mid-2008. I have no recollection  
23 such requests were made. It is something I would expect to remember had it occurred, especially  
24 a repeated request. There's nothing in writing to confirm the requests were made, other than  
25 Friday's self-serving investigation report, which wasn't completed until January, 2009. I would  
26 have expected, if it was that important to Friday, that he/she would have submitted the request  
27 formally to go on record of any disagreement with my judgment on the matter.

28           The flaw in Muir's reliance on the toxicology report showing arsenic trioxide is that  
29 he/she failed to rule out the possibility of arsenic trioxide leaching from the soil or ground water.

1 The possibility of contamination from the site is particularly critical in this case because the  
2 decedent had a natural burial. In a natural burial, there is no vault or typical coffin that would  
3 prevent penetration of the soil and water contaminants. In fact, that's the whole point of a natural  
4 burial – to allow the body to return to nature and all of its elements - - from dust to dust.  
5 Therefore, Muir should have performed testing of the soil and water near the burial grave of the  
6 decedent.

7 Arsenic is commonly present in soil. Arsenic from the surrounding soil and ground water  
8 will leach into the corpse. Hair follicles and fingernails are particularly susceptible to absorbing  
9 arsenic or other toxins from the soil because of their ability to absorb and store trace elements of  
10 arsenic. So, as an important factor in determining the cause of death, the forensic pathologist has  
11 to establish that the arsenic detected in the corpse's hair and fingernails was not introduced after  
12 burial. Without these tests, the toxicology reports may provide misleading evidence, such as in  
13 the case here. Muir was careless in his/her determination that a homicide occurred. Without  
14 further testing of the soil, the toxicology test results could be just an artifact of how the body  
15 subsequently decomposed. Furthermore, although tests can determine the presence of arsenic  
16 trioxide, they cannot predict whether arsenic levels in the body will affect a person's health.

17 I obtained samples of the soil within a 3-foot radius of Kenilworth's burial site. I first  
18 screened samples with a gas chromatograph and mass spectrometer. These are standard lab  
19 equipment that can detect signatures of toxins. Based upon my testing, I determined that there  
20 was a significant amount of arsenic in the soil consistent with the finding of the 400 mg. of  
21 arsenic trioxide in Kenilworth's hair follicles and fingernails. If Kenilworth had died of arsenic  
22 poisoning, the amounts found in the hair follicles and fingernails would have been 200 to 1000  
23 times higher.

24 *I affirm under penalty of perjury that the foregoing is true and correct to the best of my*  
25 *belief and knowledge.*

26 *I. M. Wright*  
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