

September 4, 20XX

Local Man Shot by Ex-Con Ed Hard

By ALEXIS RHODES
HERALD REPORTER

At 9:10 p.m. last night, a jealousy and alcohol-fueled grudge between an ex-convict and a local survivalist and owner of University Fitness exploded with a gunshot. A seeming act of vengeance by Edward Hard, a convicted rapist, left the victim, Bruno Summers, lying in the arms of his newlywed wife, Deborah.

Police Investigators say Summers was shot in the chest with a .22 caliber pistol and is presently at Mercy Hospital listed in critical condition.

The investigators also say Hard was arrested at his home less than two hours after the shooting.

The shooting occurred at The Garage tavern, located at the 1100 block of Broadway in Ruston.

Bert Kain, a witness at the scene, sketched a history of confrontations between Ed Hard, 27, and Bruno Summers, 30. Kain, a regular at the bar, stated, "I knew something was gonna happen. A couple of weeks ago Ed fought with that Bruno [Summers] guy. Afterwards, Ed [Hard] said he was gonna get that guy and he did just that."

Other witnesses to the bloody shooting detail a similar story of escalating violent encounters between Hard and Summers that began two weeks ago. On August 20th, Hard, who is known to have dated Debbie Summers before her recent marriage to Bruno, allegedly attacked Bruno Summers from behind as Bruno and his then fiancée, Debbie, were attempting to leave The Garage.

Mary Apple, a waitress at The Garage, was a witness to the first clash.

Herald reporter Alexis Rhodes can be reached at 206-555-1234 or arhodes@jamnerherald.com.

September 7, 20XX

Barroom Shot Proves Fatal

By DOUGLAS NIELSON
OBSERVER REPORTER

Early this morning Bruno Summers, died of gunshot wounds inflicted four days earlier in a senseless shooting at the Garage tavern in Ruston.

The alleged assailant, Edward Hard, has been held in Jamner County jail since the night of the shooting. Originally, Hard was charged with first degree assault, but Prosecuting Attorney O. Long says the charge against Hard will now likely be changed to murder.

September 23, 20XX

White Supremacists March for Death Penalty

By EDWARD CHANG
OBSERVER REPORTER

Spurred by the shooting death of one of their members, Bruno Summers, a neo-Nazi survivalist group known as "Nationalist Patriot Alliance," paraded to the Jamner County Courthouse shouting demands of the death penalty for Edward Hard, Summers' alleged assailant.

When asked for comment, Detective Russell Tharp, of the Ruston Police

Entry 1: Newspaper Articles-2 of 2

Department stated, “We investigate and prosecute all crimes equally. It doesn’t matter if the victim is a high-powered executive or a low-life racist piece of scum. We have a job to do, and we’ll do it.”

September 15, 20XX

Jamner Herald Feature

Market for Murder

By JEANNE RILEY
HERALD REPORTER

Customer: “A bottle of Wild Turkey and a pack of Camels, please.”

Clerk: “Yes, sir. Will that be all today?”

Customer: “Oh, yeah, and a .22.”

Clerk: “Very good, sir.”

As of yet, this scene isn’t being played out at your local Safeway. But if one considers the ease with which anyone can purchase guns, from “Saturday Night Specials” to machine guns, given the laws that are in effect today, the day of “express-lane check-out, nine items or less no waiting” sales of deadly artillery is close at hand.

The underground illegal sales of guns have been and always will be a disturbing fact of life. More disturbing is the cavalier flaunting of regulations by licensed sellers in purveying their deadly trade.

A recent incident in our “All-American” city of Ruston should again focus public attention on the problem of gun sales to those whom society and the law have deemed unfit to own or possess a “piece,” criminals and minors.

Edward Hard, a twenty-seven-year-old convicted rapist, is now awaiting trial in Jamner County jail for the murder of Bruno Summers. Ed Hard is accused of fatally shooting Bruno Summers in the chest at

close range with a .22 caliber handgun purchased at a licensed gun shop.

Herald reporter Jeanne Riley can be reached at 206-555-1235 or jriley@jamnerheerald.com.

Ruston Observer 3-Part Feature Honeymoon to Heartbreak: The Debbie Summers Story

By KATHERINE CHARHON
OBSERVER REPORTER

The children, eight-year-old Ronnie and Amanda, just twelve, play in the room, glancing every so often at the woman sadly rocking in Daddy’s chair. Ronnie and Amanda wonder whether the laughing lady who Daddy brought home as their new mother will ever return from behind those vacant eyes.

Debbie Summers became the wife of Bruno Summers and the mother of Amanda and Ronnie on August 27, 20XX. Debbie became a widow eleven days later. Bruno died of a gunshot wound allegedly inflicted in a jealous rage by an old boyfriend of Debbie’s.

With one quick shot, the alleged assailant, Edward Hard, transformed Debbie Summers from a happy newlywed into a bereaved widow. Debbie Summers is now a widowed single mother of two children she has only barely gotten to know.

Debbie is struggling to be a good mother. But she is depressed and dazed. Her emotional state is a reflection of the nightmare that haunts her, asleep or awake, since she held the bleeding, dying Bruno in her arms that tragic night.

Television and Radio Log

September 3, 20XX:

Radio

KIPI: 9:10 a.m – 11:03 p.m. – Report of bar room shooting. No description of suspect given. (30 seconds.)

September 4, 20XX:

Television

KENG: (Channel 5, Ruston) – 6:37 a.m. – Report of “member of survivalist group” being shot. Hard described as suspect. (45 seconds.) 5:17 p.m. – On the scene video report from The Garage. Hard identified as “convicted rapist” suspect. (60 seconds.)

KMMO: (Channel 4, Ruston – 5:12 p.m. – Report of “Neo-Nazi” being shot. Hard’s criminal background described. (30 seconds.)

KARO: (Channel 7, Ruston) – 12:11 p.m. – Bar room shooting incident reported. Hard described as “ex-con suspect.” (45 seconds.) 5:12 p.m. – same news copy as for 12:11 p.m. report. (45 seconds.)

Radio

KIPI: 6:20 a.m., 7:03 a.m., 8:03 a.m., 9:02 a.m., 11:02 a.m., 12:04 p.m. – Report on Garage shooting. Hard background criminal and personal, briefly sketched. (45 seconds.)

September 7, 20XX:

Radio

KIPI: 10:02 p.m., 11:03 p.m. – Report of Summers’ death.

September 8, 20XX:

Television

KARO: 12:12 p.m., 6:12 p.m. – Report of death by gunshot of Summers. Describe shooting events again. (45 seconds.)

Radio

KIPI: 6:20 a.m., 7:03 a.m., 8:03 a.m., 9:02 a.m., 12:06 a.m. – Report of Summers’ death and possible murder charges against “convicted felon” Hard. (45 seconds.)

Television

KARO: Every half hour between 5:01 a.m. and 12:16 p.m. and at 6:21 p.m. – Report of Summers’ death and possible murder charges against “convicted felon” Hard. (45 seconds.)

September 9, 20XX:

Radio

KIPI: 12:21 p.m., 6:22 p.m. – Report of charge of first-degree murder against “convicted felon” Hard. (30 seconds.)

September 23, 20XX:

Television

KARO: 12:12 p.m. – Live coverage (including helicopter use) of Summers’ survivalist group march on Jamner County Courthouse demanding death penalty for Hard. (1 minute 15 seconds.)

KENG: 5:06 p.m., 10:07 p.m. – Report on “death penalty” march by survivalist group. Hard referenced. (45 seconds.)

Radio

KIPI: 1:02 p.m., 2:01 p.m., 3:03 p.m., 4:03 p.m., 5:03 p.m., 6:05 p.m. – Report on demonstration calling for death penalty for Hard. (45 seconds.)

Television

KARO: 12:13 p.m., 12:43 p.m., 5:15 p.m. – Report of march by Neo-Nazi survivalist group demanding death penalty for Hard. (30 seconds.)

September 30, 20XX:

Television

KENG: 5:41 p.m. – Commentary on “gun control.” References to Summers’ death. Hard as suspect, and demonstration of September 23. (1 minute 15 seconds.)

SUPERIOR COURT OF THE STATE OF MAJOR FOR JAMNER COUNTY

PEOPLE OF
STATE OF MAJOR,

Plaintiff,

vs.

EDWARD TAYLOR HARD,

Defendant.

No. MJR-1000

INFORMATION

I, Norm Gamlen, Prosecuting Attorney for Jamner County in the name and by the authority of the State of Major, do accuse Edward Taylor Hard of the crime of murder in the first degree, committed as follows:

That the defendant Edward Taylor Hard, in Jamner County, Major, on or about September 3, 20XX, with premeditated intent to cause the death of another person did cause the death of Bruno Summers, a human being, who died on or about September, 7, 20XX.

Contrary to statute, and against the peace and dignity of the State of Major.

Prosecuting Attorney

By



K. Richardson

Senior Deputy Prosecuting Attorney

RUSTON POLICE DEPARTMENT REPORT**SUSPECT INFORMATION**

Date	Time	Police Dept./Unit		Case No.		File No.	
9/3/20XX	2300 hrs	Ruston / 4		00432150		5000	
Booking Date	Time	Offense				B.A. No.	
9/4/20XX	0130 hrs	Assault 1 st Degree				13000	
Name (Last, First MI)			Sex	Race			
Hard, Edward Taylor			M	White			
D.O.B.	State/Province of Birth	Height	Weight	Hair	Eyes	Skin	
4/15/20XX-27	Major	5'8"	165 lbs	Brn	Brn	Light	
Scars, Marks, Tattoos, etc.			Caution-Armed, Dangerous		Statement Taken		
"Mom" right forearm					Yes		
Last Known Address - City, State, Zip				Phone		Drivers License No.	
1492 West, Ruston, Major				206-832-2314		HARDTEJ592AL	
State	Expires	Social Security No.	Local No.	FBI No.	State ID No.		
Major	20XX	522-83-2466		12133	M-1912		
Fingerprint Classification		Alias Name(s)		Vehicle License No.		State	
		Ed		HIGH		Major	
Vehicle ID No.	Year	Make	Model	Style	Color(s)		
Occupation			Business Address or School				
House Painter			1492 West, Ruston, Major 832-2317				
Marital Status(Children (No.))			Living With		Time in County	Union and Local No.	
Single			Self		Life		
Investigating Officer				Serial	Unit	Phone	
Tharp				113	4	206-625-2000	
Criminal Record (Convictions)							
Rape Auto Theft 2 DUIs 3 Thefts							
Active Parole or Probation?				Probation Officer\Phone			
Yes				Smith 206-383-0620			
Facts of Crime (How Crime Planned - How Carried Out - Etc.) (Indicate Any Weapons Involved)							
Suspect was observed by witness Tom Donaldson shoot victim, Bruno Summers, on 9/3/20XX in City of Ruston, Major							
Names of Accomplices							
Additional Case(s) Suspected\Cleared							
Anticipated Date of Referral				Anticipated Charge			
9/6/20XX				Assault 1st Degree			
Further Investigation Necessary - State Whether Presence Required (Line-Up, Exemplar, Etc.)							
Objection to Release? Yes ___ No ___ State Reasons for Recommendations							
Suspect armed with .22 caliber revolver, shot victim without provocation.							
Preliminary Appearance Date			Judge		Bond Poster, Date, Amt, Co.		
9/4/20XX			Roe				
P.R.		Conditions:					
Yes ___ No _X_							
Return Date		Returned or Excused			Released? Bond Set (\$)		
9/6/20XX					No		

Ruston Police Department Report: Follow Up Report

Suspect:		
Edward Taylor Hard, 27, 1492 West, Ruston, Major 206-832-2314 5'8", 165 lbs.		
Arrested and booked Inv. Assault.		
Persons Interviewed:		
Deborah Summers	1962 NE 6 th , Ruston	206-433-1112
Tom Donaldson	1776 Amble, Apt. 3, Ruston	(B) 206-233-4173 (H) 206-833-5142
Mary Apple	1984 South 41 st , Ruston	(B) 206-233-4173 (H) 206-394-8621

9/3/20XX 2120 hrs. Detective R. Tharp was contacted at his home by Detective Sergeant Maida and advised of a shooting which took place at the Garage tavern at 1130 Broadway Ave. Victim has been shot once. His condition is unknown at this time.

9/3/20XX 2145 hrs. Detective Tharp arrives at scene and is met by Officer Downing. Downing advises that the shooting took place near front - north interior of the billiard area within The Garage. The victim has been removed from the scene and transported by aid unit to Mercy Hospital. The victim is alive. Officer Downing points out the location of the shooting and blood on the wall. This will be photographed later. Victim is Bruno Summers.

9/3/20XX 2155 hrs. Detective Tharp interviews wife of victim, Mrs. Deborah Summers; Mrs. Summers, who says she did not see what actually happened, identifies the man who ran out of the tavern with a gun as Edward Taylor Hard, a former boyfriend, who resides at 1492 West. Mrs. Summers leaves for Mercy Hospital.

9/3/20XX 2158 hrs. Patrol car dispatched to suspect's residence.

9/3/20XX 2205 hrs. The scene is photographed by a police identification technician. Detective Tharp made the following observations which were recorded: a few blood spots on the floor eight feet south of north end of hall and three feet east of men's restroom wall. There was also a mark on the west wall approximately five feet six inches from the north end of hall which was four feet from the floor. Closer examination reveals this was not a recently made mark.

9/3/20XX 2235 hrs. The scene was secured and Dets. returned to the Homicide Office.

9/3/20XX 2245 hrs. Detectives advised that patrol has arrested suspect Edward Hard at his residence and recovered a handgun. Officer Yale en route to Homicide Office

with suspect Hard and the weapon. Patrol Officer West calls from Mercy Hospital where the victim is receiving emergency treatment, is alive but in critical condition. Patrol Officers are interviewing Tom Donaldson, bartender at the Garage tavern. Interview indicates that two weeks ago, on approximately August 20th, suspect and victim had fought and suspect had threatened the victim's life. Tonight, at approximately 2105 hrs. there was a confrontation between the suspect and the victim at the Garage tavern.

9/3/20XX 2250 hrs. Sergeant Maida placed a hold on 911 tape for call received from the Garage billiard hall.

9/3/20XX 2300 hrs. Suspect has been placed in interview room by Officer Yale. Detective Tharp into interview room with suspect, Edward Taylor Hard. Information for a Suspect Information Report is obtained from Hard. He states that he is a self-employed house painter. Hard is advised of his rights from the standard form. He reads the form out loud and after each entry he is asked if he understands, and he answers yes to all four admonishments. He also signifies this by placing his initials in the left hand column of the form alongside each entry. He also places a signature in the appropriate box. At this time he signs the written waiver portion. Suspect Hard appears to be under the influence of something. He had watery red eyes, spoke with slurred speech and had the odor of alcoholic beverage on his breath. Nevertheless, he appeared to understand his rights and to knowingly waive them.

Suspect Hard stated that at approximately 9:00 p.m. he and two friends, John Gooding and Rebecca Karr, had gone to the Garage for a drink. He stated that they were sitting at the bar and he got up and went to the restroom. As he approached the restroom, the victim, Bruno Summers, came out of the restroom and confronted him. Suspect Hard indicated that he was surprised to see Summers and had been unaware of the fact that Summers had been in the tavern prior to the confrontation. Suspect Hard said that prior to this time he had not looked around The Garage, but had rather been sitting at the bar drinking and conversing with friends. Suspect Hard stated that the victim Summers threatened and shoved him and then reached into his pocket. Hard stated that in response, he pulled a .22 caliber revolver from his coat pocket to protect himself, pointed it at the wall and the gun accidentally discharged, hitting the victim.

9/3/20XX 2330 hrs. Suspect Hard's statement was reduced to writing and signed by the suspect. After giving his initial statement, Detective Tharp confronted Hard with the fact that he had been overheard to make a remark about Summers prior to the shooting, and that Hard must have been aware of the fact that Summers was in the bar before meeting him coming out of the restroom. Second, Hard was confronted with the fact that the firearm was obviously pointed at victim Summers rather than at the wall for it would have been impossible to misjudge the aim at that short a distance. At this point, suspect Hard stated, "I think I'd better get an attorney. Don't you think I'd better get an attorney?" Det. Tharp stated, "If you want an attorney, I can't ask you any further questions." Suspect Hard then stated, "Do you think an attorney could help me?" Det. Answered, "That's up to you to decide. Do you want an attorney?" Hard then

responded, "I want to tell you what happened. That guy is a Nazi. Yes, I knew he was there. He deserved what he got. I couldn't continue to be afraid." Det. Tharp then again asked, "Do you want an attorney?" Suspect Hard answered, "Yes, probably better get one." No further questions were asked by Det. Tharp.

9/3/20XX 2340 hrs. Suspect Hard was turned over to the custody of Officer Yale with instructions to conduct a breathalyzer test on suspect Hard but to conduct no further questioning concerning the shooting.

9/4/20XX 0030 hrs. Officer West arrives at Homicide Office from Mercy Hospital. Items of evidence gathered by Officer West from the hospital are delivered by Officer West to the evidence room. Evidence items include the victim's clothing and a closed folding buck knife found in the right hand pocket of the victim's jacket. West reports that victim is in critical but stable condition at Mercy Hospital.

9/4/20XX 0130 hrs. Suspect Hard booked for assault in the first degree.

9/4/20XX 0910 hrs. Several phone messages from the media concerning the case. Victim Summers seems to be a member of a neo-Nazi survivalist group. Message related to Information Officer. Neo-Nazi information confirmed by membership card Officer West found in victim's wallet.

9/4/20XX 0920 hrs. Det. to computer terminal. Check gun for stolen registration and any firearm registration to suspect. Firearm registered to Edward Taylor Hard. Also ran suspect and victim in computer system. They check clear with MJCIC and NCIC. Both have rap sheets contained in file.

9/4/20XX 1100 hrs. Affidavit of probable cause completed. Met with Senior Deputy Prosecutor Richardson and discussed case. Richardson will inform deputy in charge of preliminary appearance calendar of police department objection to release. Richardson agrees on potential charge of assault.

9/4/20XX 1305 hrs. Appointment with Deborah Summers. Statement obtained from her. On August 20, suspect Hard had assaulted victim in the Garage tavern. Victim struck suspect Hard, chipping tooth and bloodying suspect's lip. Suspect threatened victim. On Sept. 3, witness Summers and victim were in the same bar, and suspect made a comment about victim. She now states she witnessed suspect shoot victim on September 3rd. She saw no provocation by victim.

9/4/20XX 1410 hrs. Patrol dispatched to Mercy Hospital to recover slug taken from victim's body in surgery.

9/4/20XX 1430 hrs. Officer Harris delivers slug and victim's blood sample to Homicide Office. He packaged, labeled, and placed them in evidence.

9/4/20XX 1500 hrs. Lab reports request forms for fingerprints, victim's clothing and firearm completed and submitted to crime lab.

Entry 4: Ruston Police Department Report: Follow-up Report-5 of 7

9/5/20XX 1000 hrs. Report delivered to Senior Deputy Richardson and discussed. Further follow-up requested including additional information from bartender and waitress.

9/5/20XX 1300 hrs. Arrived at the Garage tavern. No additional information obtained from Donaldson, bartender. He can add nothing to statement. He recalls other patrons of tavern at time of shooting as:

Bert Kain and Angie Lenz – regular customers, he will have them call.

Robin Luntlebunk – regular customer, address unknown.

Waitress Mary Apple works later shift. Called at home – no answer.

9/5/20XX 1515hrs. Returned Homicide Office. Called Mary Apple. She did not see shooting because her back was to suspect and victim. She witnessed August 20 assault by suspect on victim, and statement is the same as Donaldson about this incident. She said that she thought Hard was intoxicated on September 3rd (speech was slurred). She could not remember if either Summers or Hard was intoxicated on August 20th. She recalls Cindy Rigg, patron, was in the bar August 20.

9/6/20XX 1030 hrs. Suspect charged Assault. Case cleared.

9/7/20XX 0745 hrs. Sgt. Maida advised Det. Tharp that victim Bruno Summers died 0130 hrs. this day. Autopsy to be conducted at 1100 hrs. Called and apprised Senior Deputy Richardson.

9/7/20XX 1130 hrs. Present at ME's Office for autopsy. Cause of death is gunshot wound.

9/7/20XX 1340 hrs. Met with Senior Deputy Richardson. Discussed ME's conclusion. Richardson to re-evaluate case for murder charge. Richardson requests that a statement be taken from Peter Dean and that any photos he may have taken with his cell phone be obtained.

9/7/20XX 1430 hrs. Determine from Detective Borden of burglary and theft unit that a potential witness, Jack Waters, may be in County Jail and wants to talk to homicide investigators. He is charged with possession of stolen property 1, bail \$20,000.

9/23/20XX 1500 hrs. Arrive at County Jail. Jack Waters brought down to Homicide Office. He indicates he observed the shooting, has important information, and that he wants immunity in exchange for testimony. Told him this was for the prosecutor to decide.

City of Ruston, Major
Ruston Police Department

610 3rd Avenue, Public Safety Building, 2nd Floor Ruston, Major (206) 646-1820

Witnesses

Date of Crime:	9/3/20XX	Case No.:	00432150
Date of Arrest:	9/3/20XX	Type of Case:	Homicide

Name:	Address:	Phone:
Mary Apple	1984 So. 41st.	(B) 233-4173
Dr. Brett Day	Mercy Hospital	(H) 394-8621
Peter Dean	444 Aitken St.	(B) 352-1000
Tom Donaldson	1776 Amble, Apt. #3	(H) 833-5142
Fred Faye	120 North Arch St. (American Gun Shop)	543-8444
Dr. L.R. Jackson	ME's Office	222-1783
Bert Kain	1408 Talbot Way	833-4829
Det. R. Tharp	Police Dept., Homicide Unit	342-1213
Cindy Rigg	10001 Axcell Blvd.	441-3000
Deborah Summers	1962 N.E. 6th	433-1112
H. Tredwell	Crime Laboratory	981-2222
Off. F. West	Police Dept., Unit 220	342-1183
Off. M. Yale	Police Dept., Unit 13	342-1181

Report prepared by: Det. Tharp, R.P.D.

City of Ruston, Major
Ruston Police Department

610 3rd Avenue, Public Safety Building, 2nd Floor Ruston, Major (206) 646-1820

Evidence Record

Time: 2150 **Case No.:** 00432150
Date: 9/3/20XX **Type of Case:** Homicide
Type of Prem.: Tavern

Item No.	Quantity	Description	Entered By:
1	1	Bruno Summers' t-shirt	West
2	1	Bruno Summers' jacket	West
3	1	Bruno Summers' buck knife	West
4	1	Neo-Nazi card	Tharp
5	1	Edward Taylor Hard's .22 caliber revolver, serial #76636	Yale
6	5	One (1) expended and four (4) live rounds	Yale
7	1	Edward Taylor Hard's breathalyzer ampoule	Harris
8	1	.22 caliber slug removed from Bruno Summers by Dr. Brett Day	Harris
9	1	Blood sample	Harris
10	1	Test fired slug	Tredwell
11	1	Clothes - proximity testing	Tredwell

Ruston Police Department Alcohol Influence Report

			Citation Number	
			00432150	
Status (Driver, Ped., Etc.)		Miranda Given?	Date\Time of Accident	
Other			9/3/20XX 2100hrs	
Suspect's Name (Last, First, MI)		D.O.B.	Height	Sex
Hard, Edward		4/15/20XX-27	5'8"	M
Subject Request Lawyer?		Was A Lawyer Contacted?		If Yes, Time?
No		No		
Subject's Mouth Checked?			Operating Motor Vehicle at Time of Stop\Accident?	
Capped Tooth			No	
Physical Defects?	If Yes, Explain:			
No				
Impaired Vision?	If Yes, Explain:			
No				
Corrected Lenses?	If Yes, Explain:		Wearing Lenses at Time of Accident?	
No				
Impaired Speech?	If Yes, Explain:			
No				
Ill?	If Yes, Explain:			
Yes	"Shot a man."			
Taking Medication?	If Yes, Explain:			
No				
Medical Warning on Label of Drug\Medication?			Diabetic?	Take Insulin?
			No	No
Amount of Last Dose:		Time of Last Dose:		Epileptic?
				No
Injured?	If Yes, Explain:			
Yes	Lip – Stitches Out			
Under Care of Medical/Dental Professional?			If Yes, Explain:	
Yes			Broken tooth and severed lip	
Injured\Involved in Any Accident(s) in Last 24 Hours?			If Yes, Explain:	
No				
How Much Sleep in Last 24 Hours?		Without Looking, What Time Is It?		
5 hrs.		Reply:	11pm	Actual: 0005 hrs.
Where Going at Time of the Stop/Accident?			Where Started:	
Time Started:	Anything Mechanically Wrong with Vehicle Driving? If Yes, Explain:			
What Drinking?	Where?			
Beer	Garage tavern / Home			
How Much?	Time Started:		Time Stopped:	
"Couple." "Maybe Four."	2000 hrs.		2200 hrs.	
Feel Affected?	If Yes, Explain:			
Yes	"Tired."			
Drinking Since Stop/Accident?			If Yes, Explain:	
Shooting Yes			"Couple beers at home."	
Observations - Explain:				
Clothing – mussed, shirt tail out. Breath – moderate. Speech – slurred. Color of face – flushed. Eyes – watery, bloodshot. Attitude – cooperative.				

Unusual Actions\Statements:		Pg. 2	
Test Area (Describe):	Level		
WALKING AND TURNING: Have subject walk a straight line, in heel-to-toe manner, then turn and walk back in same manner, describe subject's performance (falling, swaying, staggering, etc.)			
Swaying			
BALANCE: Have subject stand erect with feet together, eyes closed, and head back. Observe subject's balance. Then describe it (falling, swaying, slur, etc.)			
Falling			
FINGER TO NOSE: Have subject stand erect with eyes closed, head back, and arms extended horizontally to sides. Then, one arm at a time, have subject touch the tip of his\her nose with tip of index finger, draw an arrow from the appropriate box to the point on face touched.		Right Hand	Left Hand
ALPHABET: Have subject say alphabet. Record the order of the letters, and letters missed or repeated.			
ABCDEFGHIJKLMNPPQRSTUVWXYZ			
Pupils	1. Under existing lighting, describe subject's pupils (dilated, contracted, normal, etc.)		
	Dilated - Slow		
	2. Flash light in subject's eyes and describe reaction:		
Officer's opinion of subject's impairment due to use of alcoholic beverage \drugs:			
Implied Consent Warnings	You are being advised of your right to refuse to submit to a sobriety breath test, and of the following additional sanctions: 1) That your refusal will cause your privilege to drive to be revoked or denied; 2) That if you agree to the test, it will be administered at city expense and the results may be used against you in a criminal prosecution; 3) That you may request an additional test, including a blood test to be administered by a qualified person of your choosing and at your expense; 4) That your refusal to take the test may be used against you in any subsequent criminal trial.		
After taking these admonitions into consideration, do you agree to take the test?			Yes
BREATHALYZER TEST (Check off each step of the chemical test with "X" as it is performed)			
X	1. Warm up machine until thermometer indicates 47-53 degrees c.	X	8. Align scale pointer with start line
X	2. See that nullmeter is centered.	X	9. Turn selector to "take," take sample. Turn selector to "analyze." Record time sample was taken.
X	3. See that comparison ampoule is in place. In left hand holder	X	10. When (piston down) or (red light) comes on, wait 1 1/2 minutes, or until (read) (green light) comes on, then center meter using balance wheel, or knob with light on, and selector left in "analyze" position.
X	4. Gauge test ampoule and record test ampoule control number.	X	11. Read answer on scale and record.
X	5. Insert and connect test ampoule.	X	12. Dispose of test ampoule and bubbler
X	6. Turn selector to "take," flush out, and turn selector to "analyze."	X	13. Turn selector to off position.
X	7. When (piston down) or (red light) comes on, wait 1 1/2 minutes, or until (read) (green light) comes on, then center meter using balance wheel or knob with light on and selector left in "analyze" position.		
Were any radio transmissions made from inside the testing room while the breathalyzer test was in progress?			No
Breathalyzer Serial No.:	Test Ampoule No.:	Chemical Test Result:	
	123	.16	
Date Completed:	Time Completed:	Charge:	
9/4/20XX	0100	Assault	
As a condition of my release, I agree not to drive or return to my vehicle until:		Date:	9/4/20XX
Signed X <i>Edward Taylor Hard</i>		Time:	0045
Primary Officer		Secondary Officer (Witness)	
13			



APPROPRIATE LEA
 City
 County

STATE OF MAJOR
APPLICATION TO TRANSFER PISTOL
(All information must be typed or printed in ink and must be accurate)

APPROVAL CODE *(Optional)*
 DEALER'S TRANSACTION NO.
 826497-S

INSTRUCTIONS TO DEALER

DEALER MUST ASSURE FORM IS COMPLETED IN FULL AND CLEARLY LEGIBLE

Blue: Send by close of business day to the Chief of Police or Sheriff as appropriate
Canary: Send immediately upon delivery of weapon to: Department of Licensing, Firearms Section, PO Box 9649, Ruston, MJ 98374-4421 *(THIS FORM IS ISSUED PURSUANT TO MAJOR CRIMINAL CODE § 324)*
Pink: Retain for six (6) years.

SECTION A – DESCRIPTION OF FIREARM

PISTOL'S SERIAL NUMBER 76636	NCC	CALIBER .22	CONDITION NEW or USED	OTHER IDENTIFYING NUMBERS	BARREL LENGTH
MAKE <i>(No Abbreviations Allowed)</i> H&R Arms Company	COUNTRY OF MANUFACTURER & IMPORTER OF WEAPON USA	TYPE OF ACTION: FRAME ONLY <input type="checkbox"/> REVOLVER <input checked="" type="checkbox"/> PISTOL <input type="checkbox"/>		MODEL NUMBER OR NAME	
THIS APPLICATION FORM INITIATED <i>(Date, Time, AM or PM)</i> 8/22/20XX 1:30 PM		NO DEALER SHALL TRANSFER A PISTOL TO THE APPLICANT (BUYER) UNTIL THE STATUTORY TIME REQUIREMENT SHALL HAVE ELAPSED FROM THE TIME OF THIS APPLICATION TO ACTUAL TRANSFER OF POSSESSION. <i>(MAJOR CRIMINAL CODE § 324)</i>			

SECTION B – STATEMENT OF BUYER

SEX <input checked="" type="radio"/> M or <input type="radio"/> F	DATE OF BIRTH 4/11/20XX-27	RACE White	HEIGHT 5'8"	WEIGHT 165	EYE COLOR Brown	PLACE OF BIRTH <i>(City, State or Province, & Country)</i> Ruston, Major
BUYER'S NAME Last: Hard First: Edward Middle: Taylor			IT IS A CLASS C FELONY FOR A NON-US CITIZEN TO POSSESS FIREARMS IN WASHINGTON STATE WITHOUT FIRST OBTAINING A STATE OF RUSTON ALIEN FIREARMS LICENCE <i>(MAJOR CRIMINAL CODE § 327)</i>			
HOME ADDRESS <i>(Number, Street, Apt. No.)</i> 1492 West			US CITIZEN? <input checked="" type="radio"/> Y or <input type="radio"/> N	STATE OF RUSTON ALIEN FIREARMS LICENCE NO. _____ EXPIRES _____		
CITY Ruston	STATE Major	ZIP 98139	COUNTY Jamner	HOME TELEPHONE NO. (206) 832 2314	RESIDENT OF THE STATE OF MAJOR? <input checked="" type="radio"/> Y or <input type="radio"/> N	
RESIDENCY METHOD: <i>I have been a resident of the state of Major for the previous consecutive 90 days at the following residence(s):</i> Same			LENGTH OF TIME RESIDENT OF MAJOR 3 YEARS 2 MONTHS			

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

BUYER – IMPORTANT READ CAREFULLY AND INITIAL

I certify that I am not ineligible to possess a pistol under Major Criminal Code § 324, and that (1) I have not been convicted in this state or elsewhere of, a) any felony offense, b) any domestic violence as described in Major Criminal Code § 324 committed on or after July 1, 1993; (2) I have not been convicted of three violations of any offense within Major Criminal Code §§ 324-329 within five (5) calendar years; (3) I have not been involuntarily committed for mental health treatment pursuant to Major Administrative Code §§ 1092, 1244, 1865, or equivalent statute in another jurisdiction, unless my right to possess a firearm has been restored by a court pursuant to Major Criminal Code § 324(d); (4) I am not under twenty-one years of age; (5) I am not subject to a court order or injunction regarding firearms possession; (6) I am not free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense; (7) I do not have an outstanding warrant for my arrest from any court of competent jurisdiction for a felony or misdemeanor; (8) I have not been ordered to forfeit a firearm under Major Criminal Code § 325(e)(1) within one (1) year prior to applying for the purchase of this pistol; (9) and my concealed pistol license, if any, is not in a revoked status. I understand that by signing this application I am waiving confidentiality and requesting that the Department of Social and Health Services, mental health institutions and other health care facilities release information relevant to my eligibility to purchase a pistol to a court or law enforcement agency. I certify under penalty of perjury, and subject to the criminal penalties set out in the Major Criminal Code that the statements and other information set forth in this license are true and correct.

CONCEALED PISTOL LICENSE NUMBER 493275	EXPIRATION DATE 8/31/20XX	ISSUING AUTHORITY Jamner Sheriffs Office	BUYER'S INITIALS X ETH
WASHINGTON STATE DRIVER LICENSE OR ID NUMBER HARD*TE59#2AL		NAME LISTED ON LICENSE OR ID Hard, Edward Taylor	
BUYER'S SIGNATURE <i>(Sign Full Legal Name)</i> X Edward Taylor Hard			

SECTION C – STATEMENT OF DEALER

I certify that the purchaser is personally known to me or has presented clear evidence of his or her identity, I have followed the procedures set out in Major Criminal Code § 327 and the Brady Handgun Control Act, and I do not have reasonable cause to believe the purchaser is ineligible to possess a firearm under Major Criminal Code § 237 or under Federal Law.

DATE & TIME WEAPON DELIVERED <i>(Date, Time, AM or PM)</i> 8/27/20XX 1:30 PM	STAMP AREA
UBI NUMBER <i>(16 Digit Number)</i> 5468752139574136	FEDERAL FIREARMS LICENSE NUMBER 97820
DEALER'S / STORE NAME American Gun Shop	
ADDRESS <i>(Number, Street, City, State, Zip)</i> 210 North Arch Street, Neva, MJ, 98105	
DEALER'S SIGNATURE X <i>[Signature]</i>	DEALER'S TITLE Owner
DEALER'S TELEPHONE NO. (206) 543-8444	

Send this original to the Chief of Police of the municipality or the Sheriff of the county of which the purchaser is a resident.
 FIR-625-001 PISTOL TRANSFER APP. (R/2/04)FM

FAXED

**DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
FIREARMS TRANSACTION RECORD PART I - OVER-THE-COUNTER**

Transferor's Transaction Serial Number

WARNING: You may not receive a firearm if prohibited by Federal or State Law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Prepare in original only. All entries must be in ink. Read the Important Notices, Instructions and Definitions of this form.

Section A - Must Be Completed Personally By Transferee (Buyer)

1. Transferee's Full Name (Last, First, Middle) <u>Hard, Edward Taylor</u>		2. Residence Address (No., Street, City, County, State, ZIP Code; cannot be a post office box) <u>1492 West Ruston, Major 98139</u>	
3. Place of Birth (City, State or foreign country) <u>Ruston, Major</u>	4. Height <u>5'8"</u> Weight <u>165</u>	5. <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	6. Birth Date Month <u>4</u> Day <u>11</u> Year <u>20XX-27</u>

7. Social Security Number (Optional, but will help prevent misidentification.)

8. Race (Ethnicity) (Check one or more boxes)

<input type="checkbox"/> American Indian or Alaska Native	<input type="checkbox"/> Black or African American	<input type="checkbox"/> Native Hawaiian or Other Pacific Islander
<input type="checkbox"/> Hispanic or Latino	<input type="checkbox"/> Asian	<input checked="" type="checkbox"/> White

9. What is your State of residence (if any)? Major (See Definition 5. If you are not a citizen of the United States, you have a State of residence only if you have resided in a State for at least 90 days prior to the date of this sale.)

10. What is your country of citizenship? (List more than one, if applicable.) US

11. If you are not a citizen of the United States, what is your INS-issued alien number or admission number? _____

Certification Of Transferee

12. Answer questions 12a through 12l by writing "yes" or "no" in the boxes to the right of the questions.

a. Are you the actual buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Important Notice 1 for actual buyer definition and examples.)	<u>Yes</u>
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (An information is a formal accusation of a crime by a prosecutor. See Definition 3.)	<u>No</u>
c. Have you been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Important Notice 6, Exception 1.)	<u>No</u>
d. Are you a fugitive from justice?	<u>No</u>
e. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	<u>No</u>
f. Have you ever been adjudicated mentally defective (which includes having been adjudicated incompetent to manage your own affairs) or have you ever been committed to a mental institution?	<u>No</u>
g. Have you been discharged from the Armed Forces under dishonorable conditions?	<u>No</u>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Important Notice 7.)	<u>No</u>
i. Have you been convicted in any court of a misdemeanor crime of domestic violence? (See Important Notice 6, Exception 1 and Definition 4.)	<u>No</u>
j. Have you ever renounced your United States citizenship?	<u>No</u>
k. Are you an alien illegally in the United States?	<u>No</u>
l. Are you a nonimmigrant alien? (See Definition 6.)	<u>No</u>

13. If you are a nonimmigrant alien, do you fall within any of the exceptions set forth in Important Notice 6, Exception 2?
 Yes No Not applicable (If "yes," the licensee must complete question 18c.)

I certify that the above answers are true and correct. I understand that answering "yes" to question 12a when I am not the actual buyer of the firearm is a crime punishable as a felony. I understand that a person who answers "yes" to any of the questions 12b through 12k is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 12l is prohibited from purchasing or receiving a firearm, unless the person also answers "yes" to question 13. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of law. (See Important Notice 8.)

14. Transferee's Signature <u>Edward Taylor Hard</u>	15. Date <u>8/22/20XX</u>
---	------------------------------

Section B - Must Be Completed By Transferor (Seller)

16. Type of firearm(s) to be transferred: Handgun Long Gun Both

17. Location of sale if at a gun show. (See Instruction to Transferor 13.) _____ (city, state)

18a. Type of identification (e.g., driver's license or other valid government-issued photo identification.): DRIVER'S LICENSE
 Number on identification: HARD*TEJ59*2AL
 Expiration Date of identification (if any) 4/11/20XX+2. (See Instruction to Transferor 1.)

18b. Aliens only: Types and dates of additional required identification (e.g., utility bills or lease agreements. See Instruction to Transferor 2.)

18c. Nonimmigrant aliens only: Type of documentation showing an exception to the nonimmigrant alien prohibition (e.g., hunting license/permit; waiver. See Instruction to Transferor 3.)

Question 19, 20, or 21 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions to Transferor 5-7.)

19a. The transferee's identifying information in Section A of this form was transmitted to NICS or the appropriate state agency on 8/23/20XX (Date).

19b. The NICS or state transaction number (if provided) was: 2144278

19c. The response initially provided by NICS or the appropriate state agency was: Proceed Denied Delayed

19d. If initial NICS or state response was "Delayed," the following response was received from NICS or the appropriate state agency on _____ (Date)
 Proceed Denied No resolution was provided within 3 business days.

19e. The name and Brady identification number of the NICS examiner (if provided) _____ / _____ (name) (number) (optional)

20. No NICS check was required because the transfer involved only NFA firearm(s). (See Instruction to Transferor 7.)

21. No NICS check was required because the buyer has a valid permit which qualifies as an exemption to NICS (See Instruction to Transferor 7.)
 State Permit Type: _____ Date of issuance: _____
 Expiration Date (if any): _____ Permit Number: _____

Section C

If the transfer of the firearm(s) takes place on a different day from the date that the transferee signed Section A, the transferee must complete Section C immediately prior to the transfer of the firearm(s). (See Instruction to Transferee 3 & Instruction to Transferor 6.)

I certify that the answers I provided to the questions in Section A of this form are still true and correct.

22. Transferee's Signature _____ 23. Date _____

Section D

24. Manufacturer and/or Importer	25. Model	26. Serial Number	27. Type (pistol, revolver, rifle, shotgun, etc.)	28. Caliber or Gauge
H&R ARMS CO.	S&W CTGE	76636	REVOLVER	.22

Complete ATF F 3310.4 For Multiple Purchases Of Handguns (See Instruction to Transferor 11.)

29. Trade/corporate name and address of transferor (Hand stamp may be used.) AMERICAN GUN SHOP
210 N ARCH ST.
NEVA, NJ 98055

30. Federal Firearms License Number (Hand stamp may be used.) 97820

On the basis of (1) the statements in Section A; (2) my verification of identity noted in question 18a and my verification again at the time of transfer (if the transfer does not occur on the same day the verification was noted in question 18a); and (3) the information in the current State Laws and Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.

The Person Actually Transferring The Firearm(s) Must Complete Questions 31-34.

31. Transferor's Name (Please print.) FRED FAYE

32. Transferor's Signature Fred Faye

33. Transferor's Title OWNER

34. Date Transfer is completed 8/22/20XX

OFFICE OF THE PROSECUTING ATTORNEY

Jamner County Courthouse
950 Ruston Avenue South
Ruston, Major 98404
(206) 584-2000

O. Long
Prosecuting Attorney

Dr. L.R. Jackson
Chief Medical Examiner
ATTN: Ms. P. Kim
Jamner County Medical Examiner
300 10th Avenue
Ruston, Major 98402

Deceased: Bruno E. Summers

Date of Death: September 7, 20XX

Defendant: Edward Taylor Hard

Dear Dr. Jackson:

Because this death involves a possible homicide, we request that you assign a high priority to your examination report. As soon as possible, please send two copies of your report to:

Filing Unit Coordinator
Criminal Division
Jamner County Prosecuting Attorney

If you will return this letter with your report, we can expedite adding it to the criminal investigation file.

Thank you for your cooperation.

For J.P. Burns, Jamner County Prosecuting Attorney,



O. Long

Filing Unit Coordinator

Autopsy Report
Medical Examiner #84-543

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**Jamner County
Medical Examiner Division
Autopsy Report**

L.R. Jackson, M.D.
Chief Medical Examiner

J.T. Weal, M.D.
Medical Examiner

Dorian Ray Flannery
Assistant Medical
Examiner
M.E. Case 84-543

Date and Time of Examination
7 September 20XX at 2045 hours

External Examination

Identification:

The body is identified by M.E. number on the right upper leg, as well as a hospital identification band on the left wrist which gives the name as "Bruno Summers."

Clothing:

The following clothing and therapeutic paraphernalia is initially present:

1. A blue and white hospital gown.
2. A pair of white, jockey style under shorts.

The following therapeutic paraphernalia are present:

1. An oro-tracheal tube and bite bar are taped in place.
2. Two adhesive EKG pads are present on the right shoulder, and one each on the left shoulder, right subcostal region and left side of the abdomen.
3. Eight sutures close a 10 cm carved incision line 2 cm inferior to the right anterior costochondral line.
4. Intravenous catheters are taped in place in the left antecubital fossa, right upper arm.
5. A chest tube is inserted between ribs 6 and 7, 2 cm medial to the posterior axillary line.

Before cleaning, the hands are examined. There is no visible evidence of gunshot residue. The fingernails have up to a 2 mm overhang and are neatly trimmed and clean.

Autopsy Report
Medical Examiner #84-543

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General Description:

With the clothing removed and the body cleaned, it is that of a well developed, normally nourished white male who appears to be in his late twenties to early thirties, and whose listed age is 34 years. The length is 6 feet 2 inches and weight as received is 210 pounds. The body is well preserved and has not been embalmed. Slight lividity is present dorsally and blanches with pressure.

The body is cold and has been refrigerated.

The scalp is covered by brown hair which measures up to approximately 3 inches when straightened. The face is clean shaven except for a fine, 1/8 inch stubble over the upper lip and a small amount of coarse brown hair over the lower chin. The external ears are normally formed and located. The irides are brown, corneae dull and conjunctivae pale. The skeleton of the nose is intact. No foreign material is present in the nares. The lips and tongue are intact. The teeth are natural and in good condition. An oro-tracheal tube is in place. The neck is symmetrical and trachea in the midline. The chest is normally formed. The abdomen is flat and soft and is the site of injuries to be described. No massae are palpable. The external genitalia are circumcised, adult male. The arms are symmetrical and normally formed. Intravenous catheters are present as previously described. The legs are symmetrical and normally formed. The back is straight and symmetrical.

Identifying marks include the following:

- a. A ¼ inch depressed scar over the right frontal region.
- b. An irregular, ¾ x ¼ inch scar over the extensor aspect of the right forearm.
- c. A ¾ x ¼ inch scar over the extensor aspect of the right wrist.
- d. Pale striae over the anterior axillary fold bilaterally.
- e. A 1 x ¼ inch vertical scar over the antero-medial aspect of the left thigh.
- f. Irregular to ovoid scars measuring from ¼ to 1 inch in diameter over the anterior knees and tibia.
- g. A ¾ x ½ inch ovoid scar over the left medial malleolus.
- h. A ½ x ¼ inch ovoid scar over the midline of the posterior neck.

Intravenous catheters are in place in the left antecubital fossa and medial aspect of the right upper arm. Three recent needle punctures are also present in the right antecubital fossa. Over the medial aspect of the antecubital fossa there is a ⅝ x ½ inch hypertrophic, mottled hypo- and hyperpigmented scar. Although not typical, this may represent a needle track and will be examined microscopically.

Autopsy Report
Medical Examiner #84-543

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External Evidence of Injury:

1. Gunshot Wound.

EXTERNAL WOUND: Entrance wound is not visible, probably masked by previously described suture line.

PATH OF BULLET: The bullet perforated the anterior abdominal chest wall in the right upper quadrant close to the midline. It then passed into the anterior aspect of the right lobe of the liver. The site of entry in the liver is marked by three sutures. A $\frac{1}{4}$ inch tunnel proceeds through substance of liver to an exit opening $\frac{3}{8}$ inch wide. It then pierced the diaphragm in the 6th intercostal space in the mid axillary line. The bullet entered the anterior basal segment of the right lower lobe of the lung. It then exited the lung and glanced off the inferior surface of the 7th rib. The 7th rib is inferiorly and anteriorly grooved. The bullet came to rest in the chest wall, embedded in the inferior/superior aspect of the 8th rib in the posterior axillary line. There is approx. 50 cc of blood in the peritoneal cavity.

RECOVERY OF BULLET: A distorted copper jacket and lead bullet were recovered from the 8th rib as noted above, by the hospital surgery team.

COURSE OF BULLET: Relative to erect body, the bullet passed from center to right, front to back at an angle of approx. 45 degrees, and roughly horizontal until striking the 7th rib. Bullet then passed from above to below, very slightly from right towards center.

2. Over the anterolateral aspect of the right upper leg there is a cutaneous defect. This is at a point 32 $\frac{1}{2}$ inches above the heel. It consists of a $\frac{1}{2}$ x $\frac{1}{4}$ inch ovoid defect with the long axis vertical. There is drying of the edges but no significant abrasion is noted. Incision of this area reveals a minimal amount of hemorrhage at the borders of the lesion. There is no deep hemorrhage or track leading from the wound.

The injuries are numbered for orientation only. The number does not imply temporal sequence. The description of the injuries will not be repeated under the Internal Examination.

Internal Examination:

Body Cavities:

Autopsy Report
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There is blood in the cavities as previously described. Fibrous adhesions are present between the diaphragm and dome of the right lobe of the liver. The MEDIASTINUM is unremarkable. The organs are anatomically disposed.

Organ Systems:

Cardiovascular System:

The HEART weighs 330 grams and has its normal shape. The PERICARDIUM is smooth and glistening. The CORONARY ARTERIES arise and are distributed in the usual manner with right dominance. They show no atherosclerosis. The ENDOCARDIUM is smooth and glistening and the CARDIAC VALVES intent and unremarkable. The MYOCARDIUM is reddish-brown and firm and shows no focal lesions. The aorta follows its usual course and shows no atherosclerosis. The GREAT VESSELS of venous return are unremarkable.

Respiratory System:

The LARYNX, TRACHEA, and BRONCHI are unremarkable. The RIGHT and LEFT LUNGS weigh 540 and 410 grams respectively. The RIGHT is the site of the previously described injury. The lungs are firm, subcrepitant and the PLEURA has a diffuse petechial surface. There are multiple blebs over the apices. Cut surfaces are moist. With digital pressure the RIGHT exudes a modest amount of blood, the LEFT a minimal amount of blood. The terminal air spaces showed dense consolidation in both lungs.

Urinary System:

The KIDNEYS weigh 130 grams each. They have their normal shape and the capsules strip with ease revealing smooth external surfaces. Cut surfaces show the usual architecture. The PELVES and URETERS are unremarkable. The BLADDER contains 5 ml of urine. Its mucosa is unremarkable.

Internal Genitalia:

The PROSTATE and TESTES are unremarkable.

Lympho-Reticular System:

The SPLEEN weight 80 grams. Its capsule is intent and the parenchyma showed marked acute congestion. The THYMUS is involuted. The LYMPH NODES where noted are unremarkable.

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Gastro-Intestinal Tract:

The ESOPHAGUS is unremarkable. The STOMACH mucosa is intact and continuous with an unremarkable duodenum. The SMALL and LARGE INTESTINES are unremarkable. The APPENDIX is present.

Hepato-Biliary System:

The LIVER weighs 1817 grams. It is the site of the previously described injuries. Elsewhere the capsule is intact and the organ maintains its usual shape. Diffuse fibrosis is present on the outer surfaces. Cut surfaces show the usual lobular architecture. The GALL BLADDER contains 15 ml of bile. Its mucosa is unremarkable and the BILE DUCTS normally disposed.

Endocrine System:

The PITUITARY, THYROID, ADRENALS and PANCREAS are unremarkable.

Musculo-Skeletal System:

The 7th and 8th ribs on the right side have been described previously. No other fractures are identified. The BONE MARROW where visualized is unremarkable. The skeletal muscle has its usual color and texture.

Neck Organs:

There is no hemorrhage in the SOFT TISSUES. The CARTILAGINOUS and BONY structures are intact.

Head:

Reflection of the SCALP reveals no hemorrhage. The CALVARIA is intact. There is no epidural or subdural hemorrhage. The BRAIN weighs 1153 grams. The LEPTOMENINGES are glistening and transparent and the GYRI have their usual orientation and configuration. There is no evidence of herniation. The VESSELS at the base of the brain are normally disposed and show no atherosclerosis. Multiple sections reveal the cortical ribbon to be intact. The usual landmarks are present and unremarkable. Removal of the DURA from the base of the SKULL reveals no fractures.

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Microscopic Examination:

HEART: No pathological diagnosis.

LUNG: Consolidation and atelectasis of RIGHT LUNG. Consolidation of LEFT LUNG.
Exudate was fluorescent for antibody to Legionella.

KIDNEY: No pathological diagnosis.

BRAIN: No pathological diagnosis.

SKIN INCISION: Incision with fibrous replacement and dermal sutures near rib cage area.

ARM: Scars.

Autopsy Report
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Major State Toxicology Laboratory
Department of Laboratory Medicine
University of Major
Harborview Medical Center
Ruston, Major
Phone: (206) 223-3536

CASE NO.: 25076 DATE RECEIVED: 9/3/20XX DATE COMPLETED: 9/7/20XX

SAMPLE IDENTIFICATION: Flannery, Dorian R. 543

SAMPLE MATERIAL	QUANTITY	CONTAINER	LABELED
BLOOD	9 ml	VG	Yes
URINE	5 ml	SCB	Yes

GASTRIC

BILE

OTHER

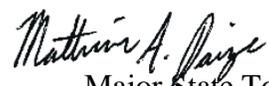
1.

2.

SEND REPORT TO: Jamner County Prosecuting Attorney

ANALYSIS PERFORMED	RESULTS	COMMENTS
Blood Alcohol, .10	0 gm	
Urine: Drug Screen	Gentamicin Cephalothin Nafcillin	

PLEASE REFER TO OUR CASE NUMBER IN ALL FUTURE CORRESPONDENCE
REGARDING THIS CASE


Matthew A. Paige
Major State Toxicologist

Autopsy Report
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Pathological Diagnoses:

1. Gunshot wound of chest:
 - a. Perforations of liver and lung.
 - b. Right hemothorax (50 cc), and hemoperitoneum (150 cc).
 - c. Bullet recovered in right chest wall.
 - d. Course of wound: Front to back at 45 degree angle, center to right, roughly horizontal until striking the 7th rib, then downward and very slightly to center.
2. Bullous emphysema of apices of lungs.
3. Pneumonia of lungs.
4. Recent therapy:
 - a. Endotracheal tube.
 - b. Multiple needle punctures and intravenous catheters.
 - c. Incision and sutures right anterior abdomen.
 - d. Sutures right lobe liver.
 - e. Chest tube right lung.
 - f. Antibiotics in body fluids.

Opinion:

The decedent suffered a gunshot wound and was initially stabilized in ER. Pt developed pneumonia. Antibiotics recovered in urine were appropriate for GI surgery, and most causes of pneumonia. Cause of death was respiratory distress secondary to pneumonia.


Dorian Ray Flannery, M.D.
Medical Examiner


L.R. Jackson, M.D.
Chief Medical Examiner

9-14-20XX
Date Signed

TYPE IN PERMANENT BLACK INK

FOR INSTRUCTIONS SEE HANDBOOK

**STATE OF MAJOR DEPARTMENT OF SOCIAL AND HEALTH SERVICES
VITAL RECORDS
CERTIFICATE OF DEATH**

LOCAL FILE NUMBER

146-8
STATE FILE NUMBER

1. NAME - FIRST, MIDDLE, LAST Bruno E. Summers				2. SEX Male		3. DEATH DATE 9/7/20XX	
4. RACE White		5. AGE 30	6. UNDER 1 YEAR	7. UNDER 1 DAY	8. BIRTHDATE 7/16/20XX-30		9. COUNTY OF DEATH Jamner
10. CITY, TOWN OR LOCATION OF DEATH Ruston, Major				11. PLACE OF DEATH Mercy Hospital			12. REC'D EMERGENCY CARE? Yes
13. BIRTH STATE (COUNTRY) Major		14. COUNTRY OF CITIZ. US	15. MARITAL STATUS Married	16. SPOUSE Deborah Miller		17. ARMED FORCES Yes	
18. SOCIAL SECURITY NUMBER 535-46-1671			19. USUAL OCCUPATION Business Owner		20. KIND OF BUSINESS OR INDUSTRY Athletic Club		
21. RESIDENCE - NUMBER AND STREET 1962 N.E. 6th Street		22. CITY OR LOCATION Ruston		23. INSIDE CITY LIMITS? Yes	24. COUNTY Jamner	25. STATE Major	
26. FATHER - NAME: FIRST, MIDDLE, LAST Hans O. Summers				27. MOTHER - NAME: MAIDEN NAME: FIRST, MIDDLE, LAST Gretchen Hess Summers			
28. INFORMANT - NAME				29. MAILING ADDRESS			
30. BURIAL, CREMATION, ETC. Burial		31. DATE 9/10/20XX	32. CEMETARY\CREMATORY NAME Golden Pine Cemetery		33. LOCATION CITY\TOWN, STATE Ruston, Major		
34. FUNERAL DIRECTOR SIGNATURE			35. NAME OF FACILITY Holiday View		36. ADDRESS OF FACILITY 825 So. 182nd		

TO BE COMPLETED ONLY BY CERTIFYING PHYSICIAN

37. TO THE BEST OF MY KNOWLEDGE, DEATH OCCURRED AT THE TIME, DATE, AND PLACE AND DUE TO THE CAUSES STATED

Brett Day, MD

38. DATE SIGNED

9/7/20XX

39. HOUR OF DEATH

0130

40. NAME AND TITLE OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER

Dr. Brett Day**TO BE COMPLETED BY EXAMINER OR CORONER**

41. ON THE BASIS OF EXAMINATION AND/OR INVESTIGATION IN MY OPINION DEATH OCCURRED AT THE TIME, DATE, AND PLACE AND DUE TO THE CAUSES STATED

JR Jackson, MD

42. DATE SIGNED

9/7/20XX

43. HOUR OF DEATH

0130

44. DATE PRON. DEAD

9/7/20XX

45. HOUR PRONOUNCED DEAD

0130

46. NAME AND ADDRESS OF CERTIFIER - PHYSICIAN, MEDICAL EXAMINER OR CORONER (TYPE OR PRINT)

Mercy Hospital, Ruston, Major

47. A) IMMEDIATE CAUSE ENTER ONLY ONE CAUSE PER LINE FOR (A) (B) AND (C)

Respiratory distress secondary to pneumonia

B) DUE TO OR AS A CONSEQUENCE OF

Gunshot wound - anterior abdominal chest wall

C) DUE TO OR AS A CONSEQUENCE OF

INTERVAL BETWEEN ONSET AND DEATH

1 day

INTERVAL BETWEEN ONSET AND DEATH

4 days

INTERVAL BETWEEN ONSET AND DEATH

48. OTHER SIGNIFICANT CONDITIONS

49. AUTOPSY?

50. REFERRED TO EXAMINER OR CORONER?

51. ACC, SUICIDE, HOM

Homicide

52. INJURY DATE

9/3/20XX

53. HOUR OF INJURY

2110

54. DESCRIBE HOW INJURY OCCURRED

Assault

55. INJURY AT WORK?

No

56. PLACE OF INJURY (SPECIFY)

Garage Tavern

57. LOCATION

STREET OR BOX NO.

CITY\TOWN

STATE

58. REGISTRAR SIGNATURE

59. DATE RECEIVED

FOR STATE REGISTRAR

60. ITEM DATE

DOCUMENTARY EVIDENCE

REVIEWED BY

61. ITEM DATE

DOCUMENTARY EVIDENCE

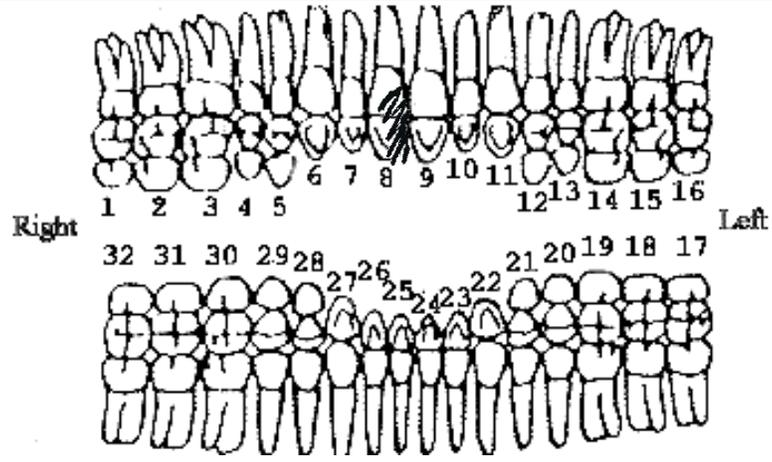
REVIEWED BY

Entry 9. Dental Record of Ed Hard-1 of 1

NAME HARD, EDWARD T.		4/11/20XX-30 M		SEX M
ADDRESS 1492 WEST, RUSTON, NJ 98139		PHONE 832-2314	DATE 8/22/20XX	
OCCUPATION HOUSE PAINTER		REFERRED BY	ACKN.	
ESTIMATE				
GINGIVA				
OCCLUSION N/A				
PERIODONT N/A				
ABNORMALITIES				

X-RAYS **T-9(CHIP)**

REMARKS



NAME		ADDRESS				
DATE	TOOTH	SERVICE RENDERED	TIME	CHARGE	PAID	BALANCE
8/22/20XX	9	EMG-PALL TREATMENT X-RAY PIA, CHIPPED TOOTH		83.00		
8/29/20XX	9	PORCELAIN TO METAL CROWN PREP		P		
8/30/20XX	9	PORCELAIN TO METAL CROWN SEAT		612.00		
Dr. Francis Xavier, D.D.S.						

FBI CRIMINAL RECORD

SUBJECT:

Contributor: Identifier	Name State #	Arrested or Received	C - Charge D - Disposition
PD Sacramento, CA	Jack Waters #67890	9-10-20XX-8	c - Armed Robbery d - 5 years
PD Ruston, MJ	Jack Waters #32976	5-6-20XX-2	c - malicious misch. 1 st degree d - 6 mo. Prison
PD Ruston, MJ	Jack Waters #19842	3-9-20XX-1	c - burglary 2 nd degree d - 1 year and probation
PD Ruston, MJ	Edward Taylor Hard #12693	4-15-20XX-9	c - rape, 3 rd degree d - 2 years, 3 months
PD Ruston, MJ	Edward Taylor Hard #54932	4-15-20XX-7	c - DWI d - dismissed
PD Ruston, MJ	Edward Taylor Hard #73921	5-19-20XX-7	c - DWI d - dismissed
PD Ruston, MJ	Edward Taylor Hard #46384	5-19-20XX-6	c - taking and riding a motor vehicle without permission d - -----
PD Ruston, MJ	Edward Taylor Hard #89732	5-19-20XX-2	c - theft, 3 rd degree d - dismissed

FBI CRIMINAL RECORD

SUBJECT:

Contributor: Identifier	Name State #	Arrested or Received	C - Charge D - Disposition
PD Ruston, MJ	Alan Long #24931	6-2-20XX-15	c - forgery - checks d - 5 yr. suspended sentence, condi- tion: obtain treatment for alcoholism
PD Ruston, MJ	Alan Long #37236	6-2-20XX-15	c - embezzlement d - 5 year suspended sentence
PD Ruston, MJ	Bruno Summers #53862	2-6-20XX-5	c - attempted rape, 3 rd degree d - probation



Mercy Hospital

1567 Broadway, Ruston, Major

To: Defendant Attorney/Plaintiff Attorney
From: Rose Gadfly
Mercy Hospital
1567 Broadway
Ruston, Major

Records
Department

October 1, 20XX

Dear Attorneys:

As per your mutual request, I am enclosing the hospital records of Mr. Bruno Summers.
The documents requested include:

1. Emergency Department Records – 1 page
2. Nursing Record – 5 pages

Sincerely,

A handwritten signature in black ink that reads "Rose Gadfly". The signature is written in a cursive, flowing style.

Rose Gadfly
Chief Records Clerk
Mercy Hospital

Entry 11: Letter and Hospital Records of Bruno Summers-2 of 7

DESCRIBE INJURY (WHEN, WHERE, & HOW) OR ILLNESS:

9/3/20XX Gunshot Wound (GSW) at close range. Entered chest (abdomen). Shot at approx. 9:00 p.m.

ALLERGIES:

NA

PREV. TETANUS DATE		<i>NA</i>		GIVEN THIS VISIT?		HEIGHT		WEIGHT		LMP	
				<i>NO</i>		<i>6' 4"</i>		<i>219</i>		<i>---</i>	
TIME	TEMP.	PULSE	RESP.	BLOOD PRESSURE	I.V.S.						
<i>22:20</i>	<i>/</i>	<i>124</i>	<i>40/ Labored</i>	<i>40/ Unobtained</i>	<i>Ringers lactate at 5 amps</i>						
MEDICATIONS TAKEN:											
<i>None</i>											
MEDICATIONS GIVEN:											
<i>None</i>											
HISTORY & PHYSICAL FINDINGS:											
<i>(1) This 30 year old 20:20 ♂ sustained a .22 caliber GSW to his thoracic area. The bullet penetrated the lower chest cavity and may have struck the liver; other abdominal traumas may be found. No bullet exit. (2) Pt. conscious and in extreme pain. (3) Respiration labored (4) Pt. says he was in "perfect" health. (5) Pt. has alcohol smell on his breath. (6) Pt. states, "I should have left when I saw him."</i>											
TREATMENT & ORDERS:											
<i>* Surgery recommended</i>											
<i>___ Procedure and rules explained to Pt. and he understands and agrees to proceed</i>											
<i>___ Immediate surgery for removal of bullet ordered</i>											
BROUGHT TO HOSPITAL BY:				ACCOUNT NO.		ADMIT DATE		ADMIT TIME			
<i>Ambulance</i>				<i>1717</i>		<i>9/3/20XX</i>		<i>22:15</i>			
DISPOSITION & CONDITION ON DISCHARGE:				ADMIT DIAGNOSIS				RM - BED			
<i>Transfer to IC</i>				<i>GSW of Chest</i>				<i>201</i>			
PATIENT NAME (LAST, FIRST, MI)											
<i>Summers, Bruno E.</i>											
DIAGNOSTIC IMPRESSION:				STREET ADDRESS							
<i>GSW Trauma causing thoracic and abdominal distress</i>				<i>1962 N.E. 64th</i>							
				CITY, STATE		ZIP		PHONE			
				<i>Ruston, Major</i>		<i>98139</i>		<i>433-1112</i>			
NURSE (SIGNATURE)				RELIGION		PHYSICIAN					
<i>Betty Frank, R.N.</i>				<i>---</i>		<i>---</i>					
				DIET	COND.	AGE	SEX	BIRTH DATE			
				<i>3</i>	<i>3</i>	<i>30</i>	<i>M</i>	<i>7/16/20XX-34</i>			
PHYSICIAN (SIGNATURE)				NEAREST RELATIVE							
<i>[Signature]</i>				<i>Mrs. Deborah Summers</i>							
				STREET ADDRESS							
				<i>Same</i>							
				CITY, STATE, ZIP				PHONE			
				<i>Same</i>				<i>Same</i>			
				GUARANTOR NAME				PHONE			
				<i>Hans Summers</i>				<i>756-3560</i>			
				EMPLOYER & CITY							
				<i>Retired</i>							

EMERGENCY ROOM
REPORT
MERCY HOSPITAL



DATE	TIME	PROBLEM	PATIENT PROGRESS NOTES
9/4/20xx	00:45	NEW TRANSFER	Pt. White male 30 year old
			transferred from ER
			G SWT post-surgery <u>N.F.</u>
		P#1	Please see doctor's summary (incl.)
			for appropriate details of ER +
			Surgey report.
			MEDS-NONE ENT-NORM <u>N.F.</u>
		VS BP 40/? HR 110 R 18	No Volume Overload = IV of ringers
			Lactate Continued ($\frac{\text{Samples}}{\text{Xopen}}$)
9/4/20xx	04:30	P#1	G SN
			1. VS's returning to normal
		VS BP 80/60 HR 80 R 20	2. Blood Volume replacing adequately
			3. Pt.'s Arterial Blood Gases
			Improving
			PCO2 = 31
			PO2 of 50 with 90% saturation
			<u>N.F.</u>
PATIENT NAME: ADDRESS: PHYSICIAN ADMIT DATE: ADMIT TIME:			NURSING CARE RECORD Mercy Hospital Ruston, Major 

DATE	TIME	PROBLEM	PATIENT PROGRESS NOTES
9-4	10:36	P#1	$US = \frac{HR}{30} \quad \frac{BP}{140/80} \quad \frac{R}{Norm} \quad \frac{T}{99^{\circ}F}$ ① Pt. complains of pain ② Pt. neuro = alert, OX3 ③ Renal = clear, >150 cc/hr
	OK		A/P ① No painkillers allowed at this time to stabilize respiration. ② Pt. is looking better ③ No volume overload LA six 40mg. N x 2 for urine < 150 cc/hr
9/4/20xx	17:10	P#1	
		VS	$\frac{HR}{30}$ $BP/130/80$ $\frac{R}{labored to norm}$ $\frac{T}{99^{\circ}F}$ $T^m \frac{38}{38}$ $\frac{6200}{3700}$
			looks great % extreme
		OK	discomfort/pain.
			Pt. neuro-oriented x3, Follows commands + cooperative
			— Pt. Pulm. Clear upper BS ↓ BSSFT
			— A/C 7.46/38/89 40% MA S/P ∅ SPUTUM
			— CxR = no volume overload GI -
			A B d - soft BS (+), tube feeds c 250 cc/hr 1/2 strength renal → 200 cc/hr clear
			* no lasix now
			A/P overall, looks great
PATIENT NAME: ADDRESS: PHYSICIAN ADMIT DATE: ADMIT TIME:			NURSING CARE RECORD Mercy Hospital Ruston, Major 

DATE	TIME	PROBLEM	PATIENT PROGRESS NOTES
9/5/20XX	00:30	P#1 vs BP 130/70 HR 24 T 98°F R labored	Hemo -28 N.F. c/o still in Pain
9/5	11:45	vs BP 22/60 HR 25 T 102° R labored	T is spiking Pt. c/o extreme pain in chest.
		N.F.	x-ray shows re-expanded lung.
			hemothorax reduced to insign size
			P. NERO-ALERT, OX3 distracted
			by pain. COV-HSR 5 Ectopy
OK			Renal OK LA Six Pro Urine C 200 ^u /hr metabolic 142/2.6 178 T.B. -0.7 clear 97/35 15 MET 31
		A/P	overall doing well, T problem
			still showing evidence of distress
			2. volume excess, will force distress
9/6/20XX	00:30	P#1 N.F.	vs BP 100/50 HR 30 R labored T/101°F
			*increasing (20 ^u 40 mg/hr) SERSANG
			Drain from Drain Tubes (thoracic)
			NOTIFIED DR. DAY
			N.F.
PATIENT NAME: ADDRESS: PHYSICIAN ADMIT DATE: ADMIT TIME:			NURSING CARE RECORD Mercy Hospital Ruston, Major 

DATE	TIME	PROBLEM	PATIENT PROGRESS NOTES
9/6/ 20XX	07: 00	P# 1	VS/BP $\frac{HR}{30}$ $\frac{TC}{22}$ labored T/100°F 110/50
			Some increasing consolidation
			In right lower lobe.
			- extends to right middle lobe.
			Etiology - Unknown at this time.
			① Preliminary Diagnosis of PNEUMONITES (P#2)
			② work-up of SPUTUM + B cultures IMMEDIATELY
			③ CEPHALOTHIN - 1g 4th GENTAMICIN
			④ Culture of Serous Drain NOW
			VS/BP 100/50 HR 32 R/20 labored T/105°F
9/6/ 20XX	20: 35	N.F.	* T SPIKE
		Pt. #1 Pt. #2	P. NEURO-LETHARGIC, ODIENT ^{POOR} +2
			<u>DEMON TOXICITY</u>
			X-ray reveals consolidation in right lung
			middle lobe entirely involved
			RIGHT-UPPER-INVOLVED
			- SAME LEFT LOWER
			IAB SPUTUM : 6 cultures are
			∅ growth in 24 hrs.
			{NEXPG.}
PATIENT NAME: ADDRESS: PHYSICIAN ADMIT DATE: ADMIT TIME:			NURSING CARE RECORD Mercy Hospital Ruston, Major 

DATE	TIME	PROBLEM	PATIENT PROGRESS NOTES
9/6/ 20XX	20: 35	P#1	A/P
		P#2	Diffen Diag-Staph Pneumonia ① Probably NOT Stress lung SXN ② Consultation request + infections disease consult ③ NAFCILLIN IV 2gm q 4h ④ <u>IMMEDIATELY</u> Blood & IV. to Stable
9/7/20XX	00: 30	P#1	VS/HR BP R T 32 100/40 labored 104° F
		P#2	PE. NOT RESPONDING TO MEDS.
9/7/20XX	01:30	P#1	VS/BP/N/A HR/N/A R/N/A T/N/A
		P#2	A/P
			- Pt. EXPIRED
			- Autopsy ORDERED
			(N.F.)
PATIENT NAME: ADDRESS: PHYSICIAN ADMIT DATE: ADMIT TIME:			NURSING CARE RECORD Mercy Hospital Ruston, Major





City of Ruston
Ruston Police Department
610 3rd Avenue, Public Safety Building, 2nd Floor
Ruston, Major (206) 646-1820

Crime Laboratory Report

Agency: Ruston Police Department **Laboratory No.:** 222-3000
Suspect: Hard, Edward **Agency Case:** 00432150
Victim: Summers, Bruno
Officer: Detective Tharp

Evidence Examined:

W-1: One T-Shirt
Y-5: One S and W .22 caliber long rifle revolver bearing serial number 76636
Y-6: One spent cartridge case and four live rounds
H-8: One spent bullet

Results of Examination:

The firearm (Y-5) was examined, test fired, and found to be in operable condition. Trigger pull pressure required to discharge the weapon was measured at 3.5 – 4.5 pounds in single action and 10 to 12 pounds for double action. Both trigger pulls are within normal range for this firearm.

The revolver (Y-5) was test fired using ammunition of the same make as those in Y-6. The submitted bullet (H-8) was examined and microscopically compared to the submitted pistol. It was determined that the spent bullet (H-8) had been fired by the revolver (Y-5).

Results of proximity testing indicate the muzzle of the revolver was approximately 18 to 36 inches away from the shirt (W-1) at the time of discharge, assuming no intermediate target.



Signature



Date

Department of Public Safety - Ruston, Major	STATEMENT
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Victim	Witness	X	DATE\TIME 9-3-20XX\2300	CASE NO. 00432150
TAKEN BY			SERIAL	
STATEMENT OF Thomas Donaldson			AGE	
ALIAS				
ADDRESS 1776 Amble, Apt. 3			ZIP	PHONE 833-5142
DATE AND PLACE OF BIRTH				
OCCUPATION AND EMPLOYER Bartender, the Garage tavern				BUSINESS PHONE 233-4173

ENTER STATEMENT BELOW

This is a true and correct statement, which is voluntarily given by me to Officer Rule, #1441. I am employed as a bartender at the Garage bowling alley and billiard hall, which is located at 1130 Broadway Ave. The owner of the tavern is M.C. Davola.

On approximately August 20 of this year, I was on duty in the tavern at approximately 11:00 p.m. At this time, Bruno Summers and his fiancée, Debbie, were sitting at a table. Bruno was a regular customer at The Garage. I know that Bruno is a member of some sort of survivalist group, but he rarely causes any trouble in the bar. Bruno and Debbie had been in the Garage for about two hours and had had several rounds of drinks. I caught a glimpse of a man, who I later recognized as Ed Hard, a "semi-regular" customer at The Garage, go to their booth. Ed had several drinks and was acting loud and obnoxious. He also staggered slightly. I do not believe Ed Hard was intoxicated. Ed sat down at the table, and I could hear him talking to Debbie. I saw Bruno and Debbie get up to leave when Ed jumped Bruno from behind. They fought, and Ed got knocked down to the floor. Ed had a split lip and a chipped tooth. I told them both to leave the bar.

Tonight, Ed came into the tavern at about 8 o'clock with two other people. The three of them sat at the bar, and I served them several rounds of drinks. At one point, I overheard Ed make a remark to his friend, "That Nazi had better not come near me again."

At about 9:00 p.m., I saw Bruno and Debbie sitting at a table near the front entrance. I was busy working at the bar when I heard a loud noise in the front. I heard a gunshot. When I ran around the corner, I saw Ed running from the hallway and Bruno on the floor.

I immediately called 911 and reported the shooting. Others gathered around Bruno, who was lying on the floor. I waited with Bruno until the aid car arrived.

I declare, under penalty of perjury under the laws of the State of Major, that the statement above is true and correct to the best of my knowledge.

9/3/20XX
Date

Thomas Donaldson
Signature

Ruston Police Department EXPLANATION OF RIGHTS

INCIDENT NUMBER
UNIT FILE NUMBER

Date: 9/3/20XX Time: 2330 HRS Place: HOMICIDE OFFICE
 Statement of: EDWARD TAYLOR HARD

EXPLANATION OF MY CONSTITUTIONAL RIGHTS

Before questioning and the making of any statement, I, EDWARD TAYLOR HARD
 have been advised by DET. R. THARP of the following rights:

1. I have the right to remain silent;
2. Any statement that I do make, either oral or written, can be used as evidence against me in a court of law (I understand that if I am a juvenile my statement may be used against me in a criminal prosecution in the event that juvenile court declines jurisdiction in my case);
3. I have the right at this time to an attorney of my own choosing and to have him present before and during questioning and the making of any statement;
4. If I cannot afford an attorney, I am entitled to have one appointed for me by a court without cost to me and to have him present before and during questioning and the making of any statement.

Signature Edward Taylor Hard

WAIVER OF CONSTITUTIONAL RIGHTS

I have read the above explanation of my constitutional rights and I understand them. I have decided not to exercise these rights at this time. The following statement is made by me freely and voluntarily and without threats or promises of any kind.

Witnesses Det J. Bell Signature Edward Taylor Hard

On Sept. 3, 20XX, at about 9:00 PM, I went to the Garage Tavern with two friends. I was sitting at the bar talking to them. I got sat I got up and headed towards the restrooms. Bruno Summers came out of the restroom and came up to me. Until then I did not know he was in the tavern. About two week before, Summers had struck me, broken my tooth and cut my lip so I needed stitches. Summers threatened to kill me when he came up to me in the tavern last night. He pushed me and was reaching into his pocket. I pulled a gun out of my pocket. It accidentally went off when I pointed it at the wall and hit Summers.

Department of Public Safety - Ruston, Major	STATEMENT
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Victim		Witness	X	DATE\TIME	CASE NO.
TAKEN BY					SERIAL
STATEMENT OF Robin Luntlebunk					AGE
ALIAS					
ADDRESS			ZIP	PHONE	
DATE AND PLACE OF BIRTH					
OCCUPATION AND EMPLOYER				BUSINESS PHONE	

ENTER STATEMENT BELOW <div style="text-align: center;"> <p>Can't be found.</p> <p><i>R.T.</i></p> </div>

I declare, under penalty of perjury under the laws of the State of Major, that the statement above is true and correct to the best of my knowledge.

Date

Signature

Department of Public Safety – Ruston, Major	STATEMENT
--	------------------

Victim	Witness	X	DATE\TIME 9-4-20XX 1305	CASE NO.
TAKEN BY			SERIAL	
STATEMENT OF Deborah Summers			AGE 21 years	
ALIAS				
ADDRESS 1962 NE 6 th		ZIP 98139	PHONE 433-1112	
DATE AND PLACE OF BIRTH 8-8-20XX-21				
OCCUPATION AND EMPLOYER			BUSINESS PHONE	

ENTER STATEMENT BELOW

I am the wife of Mr. Bruno Summers. We were married on August 27th of this year.

About a week before I got married, I was in the Garage tavern with Bruno in the evening. We had been out to dinner and then went to the Garage for a drink. Ed Hard came into bar area of The Garage. I had dated Ed before I met Bruno. Ed came over to the booth where we were and sat down and ordered a drink. He was drunk, and he said things to me like: “Let’s put things right,” “We can make it tonight,” and “Come home with me.” He acted like Bruno wasn’t there. Bruno didn’t say anything to Ed. He just said, “Come on” to me, and we got up to leave. When we got up, Ed got loud and started yelling at me not to leave.

Bruno put some money on the table for the tab, and we started to leave. Then, Ed just grabbed Bruno around the neck. Bruno wrestled with Ed and then hit him. Ed was knocked to the floor. He had a bloody lip. Ed said that he’d get Bruno the next time. Tom, the bartender, told us all to leave.

On August 22, I was home with Bruno and Peter Dean when the telephone rang. I picked it up and a man who wouldn’t identify himself, but who I recognized to be Ed Hard, said, “Tell that Nazi you live with that he’s a dead man.” Then Bruno took the telephone and after a few minutes hung up. Bruno then said: “Slime-head. You know what that Slime-head said? I am going to kill you if you marry Deborah.” Bruno then said, “Not if I can help it.”

Yesterday, September 3, Bruno, a friend, Peter Dean, and I went to the Garage tavern. Bruno’s parents, Gretchen and Hans, came over to our house to watch their grandchildren while we went out. We arrived at the Garage at about 7:30 p.m. and went to the bowling alley side. We bowled and had some snacks and drinks.

At approximately 9:00 p.m., we decided to go over to the other side of the Garage where the pool tables are. We walked back to the bar area. Just as we were entering the bar area, I could see Ed at the bar and he was talking real loud. I put my hand on Bruno’s arm to stop him from going into the bar area. I told Bruno we should leave, but he said it would be okay and we could sit down away from him. At first, I didn’t think Ed saw us, but before we left the bar area I saw him look around and say, “Look at who’s back.” He then whispered something to the person beside him and they both laughed. The three of us went away from the bar area to the front of the place and sat in a booth.

About five minutes after we entered the pool side of The Garage, Bruno got up and went to the restroom, which is located just to the left of the entrance. I saw Ed leave the bar and go towards the restroom just as Bruno was leaving the restroom. When Bruno was coming back, Ed walked up to Bruno, and they were talking with each other. Bruno was pointing at Ed with his finger. All of a sudden, Ed pulled a gun out of his pocket and shot Bruno. Bruno fell to the floor holding his chest. Ed then ran out of The Garage. I started screaming. I saw Bruno had blood on his chest. I remember yelling for Peter to call Bruno's father. I saw Peter call and then take pictures with his cell phone.

Medical aid arrived and then the police. I talked to the police and then went to Mercy Hospital where Bruno is now. The medical people took over and tended to Bruno's wound. Just as they were lifting Bruno off the floor to put him on a stretcher, I saw Hans, Bruno's dad, and his son arrive at the door to The Garage.

I declare, under penalty of perjury under the laws of the State of Major, that the statement above is true and correct to the best of my knowledge.

9/4/20XX

Date

Deborah Summers

Signature

Department of Public Safety - Ruston, Major	STATEMENT
--	------------------

Victim	Witness	X	DATE\TIME	CASE NO.
TAKEN BY				SERIAL
STATEMENT OF Officer F. West				AGE
ALIAS				
ADDRESS Police Dept., Unit 220			ZIP	PHONE 342-1183
DATE AND PLACE OF BIRTH				
OCCUPATION AND EMPLOYER Police Officer, Jamner Co.				BUSINESS PHONE

ENTER STATEMENT BELOW

On 9/3/20XX at 2120 hrs., I was working car 2-X-4 when PD radio advised there was a shooting at the Garage tavern at 1130 Broadway Avenue. I responded from about 5th and Union. On arrival at approximately 2125 hrs., I ran into the Garage and found a group of people around a white male, about 30 years of age, lying on his back near the restrooms. I called for a medic unit and also advised radio that the victim had been shot in the chest. I stayed with the victim, who was moaning, until the medical personnel arrived.

I followed the aid car to Mercy Hospital where victim was taken to the emergency unit and went into surgery. The victim was alive upon arrival at Mercy Hospital. I obtained the victim's clothing from Nurse Frank. I then transported the victim's clothing to the Evidence Room where I turned it over to Officer Smith for placement into evidence. Nurse Frank found a folded Gerber knife in the victim's jacket and gave it to me with the victim's clothing. The clothing was turned over to the evidence room at 0030 hrs. on 9/4/20XX.

I declare, under penalty of perjury under the laws of the State of Major, that the statement above is true and correct to the best of my knowledge.

11/4/20XX
Date


Signature

Department of Public Safety - Ruston, Major	STATEMENT
--	------------------

Victim	Witness	X	DATE\TIME 9/4/20XX 0313 hrs	CASE NO. 00432150
TAKEN BY			SERIAL	
STATEMENT OF Officer M. Yale			AGE	
ALIAS				
ADDRESS Police Dept., Unit 4			ZIP	PHONE 342-1183
DATE AND PLACE OF BIRTH				
OCCUPATION AND EMPLOYER Police Officer, City of Ruston				BUSINESS PHONE

ENTER STATEMENT BELOW

On 9/3/20XX at approximately 2210 hrs., I was working 4-R-5 with Officer DiJulio. At that time, we responded to 1492 West to apprehend suspect Edward Taylor Hard. According to Homicide Detective, Hard had been observed shooting victim.

Arrived at suspect's residence at 2230 hrs. Officer DiJulio covered rear door. When suspect Hard opened the door, I explained that a shooting had taken place at the Garage tavern and he had been identified as the shooter. I indicated that he should tell us where the gun was and that if it was in the house, let us get it.

Suspect Hard asked officers what would happen if he denied the officers admission into the house. I informed him that we felt that we had enough probable cause to obtain a search warrant and that officers would stand guard around the house until it was obtained. Two other patrol cars had already arrived at the scene at this time, and officers gathered near the door.

At this point, suspect Hard stated he's been home watching TV and drinking beer and made a motion to show officers the living room. He then retreated into the house. Once inside the house, I looked in the living room and saw the television on and a six-pack of beer on the table. Suspect was placed under arrest and advised of his rights.

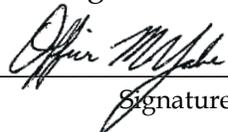
I approached the coffee table which had three empty beer cans and three unopened ones. Near the table on the floor in plain view was a .22 caliber revolver. I took the revolver into custody. There were four live rounds and one expended round in the chamber. I initialed the revolver and later delivered the evidence to the property room.

Suspect Hard was taken to the Homicide Office where he was placed in an interview room.

At 2340 hrs., after being questioned by detectives I took custody of suspect and conducted a breathalyzer test. Suspect's reading was .16. There was a strong odor of intoxicants about him. His eyes were red and watery, and his speech was slurred. End of Statement.

I declare, under penalty of perjury under the laws of the State of Major, that the statement above is true and correct to the best of my knowledge.

9/4/20XX
Date


Signature

Transcript of Interview of Officer Yale by Deputy Prosecutor

9/11/20XX

Deputy Prosecutor ["DP"]: I know you've already talked this over with Detective Tharp, but why don't you tell me again about how you got the gun in that Hard case.

Officer Yale ["Y"]: You want it on tape? I've never had a prosecutor interview me on tape before.

DP: It's O.K. I work a little different than some, but I find taping helps get ready for defense suppression motions, and I've never had any trouble from having taped.

Y: O.K, if that's how you work About 2210 I was on patrol with DiJulio. We got a call that there had been a shooting at the Garage and that this guy, Ed Hard, was the suspect.

DP: Uh huh.

Y: Well, the dispatcher gave us Hard's address and told us to pick him up.

DP: What did you do then?

Y: Went over there. Oh yeah . . . I called for back-up. This was a man with a gun we were dealing with, and I didn't want anyone to get hurt.

DP: Sure.

Y: Anyway, me and DiJulio went over to the address we were given. A one-story house. I pulled in the drive. . . .

DP: Had your back-up come yet?

Y: No. So, DiJulio went around the back door just in case he saw us and was going to try and run, and I walked up on the front porch, stepped to the side of the door, and waited for the back-up.

DP: How long did they take?

Y: 30-35 seconds.

DP: Who arrived?

Y: Two marked cars.

DP: So with yours, there were three marked units?

Y: Yeah.

DP: Who joined you?

Y: Monroe, Banks, Blake, and Sonns.

DP: All in uniform?

Y: All of us were.

DP: Any weapons out?

Y: Banks had an automatic shotgun. The rest of us had our holsters unsnapped. We were dealing with a shooting . . .

DP: I know. What did you do next?

Y: I told Blake to join DiJulio in the back. Just in case. And told Monroe, Banks, and Sonns to join me at the front door.

DP: Go on.

Y: Well, we positioned ourselves on both sides of the door, and I knocked – announcing that we were police officers.

DP: Did anyone answer?

Y: Not right away. So I knocked again – and about five seconds later this guy comes to the door.

DP: What happened then?

Y: I asked if he was Ed Hard and he asked why did I want to know. So, I told him about the shooting at The Garage, and Hard being a suspect – and he said he was Hard but he'd been home watching TV and drinking beer.

DP: I'm looking at your report of 9/4 and some of the sequences of events seem slightly different than you're telling me now.

Y: Well, things happened fast at the door. All in a real short time.

DP: OK. What happened after he told you he was Ed Hard?

Y: I told him to step outside slowly, which he did, placed him spread eagle against the house and pat searched him for weapons.

DP: Did you find any?

Y: No. Then I cuffed him, and told him he was under arrest for the shooting.

DP: Did you get a description of the shooter from the dispatcher?

Y: Yeah. And he fit it.

DP: OK. What then?

Y: I wanted to find the gun. So I told the suspect we wanted the gun and that he should tell us where it was.

DP: Did he?

Y: Not at first. He said, "What if I don't want you guys in my house?" So I told him that if he wanted to play that game, we've got more than enough for a warrant and that I'd take him to jail, then go to the judge for the warrant while the rest of the officers guarded his house.

DP: What did he say?

Y: Nothing. He just looked at all of us for a while, shrugged his shoulders, pointed towards his living room with his shoulder, and slowly started to step inside.

DP: You followed him?

Y: Sure. He was telling us that the gun was in the living room.

DP: Did he say that?

Y: Not with words. But it was clear. He was telling us that the gun was in the living room and that we could look.

DP: So, you looked?

Y: You bet. We wanted that gun.

DP: And you found it?

Entry 20: Officer Yale Interview Transcript-4 of 4

Y: Yeah, we took Hard in the living room and there on the floor between a coffee table and the couch was the gun.

DP: And this was in the living room?

Y: Right in plain view in the area Hard gave us permission to search.

DP: Good. And this was the gun with the four live rounds which you took into custody?

Y: Yes. The murder weapon.

Curriculum Vitae

Dr. Brett Day

1870 S. Tacoma Way
Ruston, Major
(206) 756-7849

- Personal:** Age: 55; Divorced, 2 children – 30 and 25 years old; Health: Excellent.
- Undergraduate:** University of Washington, Bachelor of Science Degree, Basic Medical Science (20XX-37 through -34).
- Medical School:** University of Washington School of Medicine, 4 years; Degree: M.D. (20XX-34 through -30).
- Internship:** U.S. Public Health Services, San Francisco, CA.
- Residency:** 4 years at Virginia Mason Hospital, Seattle, in general surgery.
Thoracic residency fellowship at St. Mary's Hospital in Minneapolis, Minnesota.
- Board Certified:** American College of Surgeons in General Surgery.
Board eligible for certification in thoracic surgery, but not certified.
- Practice:** General surgery for 20 years. Associated with Mercy Hospital, Flower Hospital, and Sunnyview Nursing Home.
- Military:** Navy for 2 years, rank of Captain.
- Professional Associations and Affiliations:**
Jamner County Medical Society.
American Lung Association of Major: President, local chapter.
- Community Services:**
Heart Association of Major: President, local chapter.
Jamner County Memorial Division American Heart Association: Director of Heart Association Fund Drive, 20XX-6.

Curriculum Vitae

Dr. L.R. Jackson
430 S.W. Fawcett
Ruston, Major
(206) 242-3190

- Personal:** Age: 44; Married, 1 child – 15 years old; Health: Excellent
- Undergraduate:** University of North Dakota, Bachelor of Science Degree, Biology, 20XX-10.
- Medical School:** Guadalupe, Mexico, 4 years; Degree: M.D.
- Internship:** U.S. Public Health Services, Presonton, Wyoming.
- Residency:** 4 years at St. Steven's Hospital, Duluth, Minnesota, in Pathology.
- Board Certified:** American College of Forensic Pathologists.
- Practice:** Forensic Pathologist for 16 years. Jamner County Medical Examiner's Office.
- Professional Associations and Affiliations:** American College of Clinical Pathologists; College of American Pathologists.

CURRICULUM VITAE

Dr. T.A. Loopman
5698 SE Ryan
Ruston, Major

PERSONAL DATA

Born – April 24, 20XX-71, Ruston, Major.
Married, two children.

EDUCATION

B.S., University of Major (Pharmacy, 20XX-49).
M.S., University of Buffalo (Pharmacology, 20XX-47).
Ph.D., University of Buffalo (Pharmacology and Physiology, 20XX-45).
M.D., Yale University, Medical School (20XX-42)

POSITIONS

Professor of Pharmacology and Toxicology – School of Medicine, Major State, 20XX-12 to present.
Research Affiliate – Regional Primate Center, University of Major, 20XX-20 to present.
Professor of Pharmacology and State Toxicologist – School of Medicine, University of Major, 20XX-31 to 20XX-12.

SOCIETIES

American Association for the Advancement of Science.
Society of Toxicology.
Western Pharmacology Society.

COMMITTEES AND BOARD

President – Western Pharmacology Society, 20XX-19 to 20XX-18.
President – Society of Toxicology, 20XX-19 to 20XX-18.
National Safety Council Committee on Tests for Intoxication, 20XX-37 to present.

PUBLICATIONS

Loopman, T. A., “A Study of the Rate of Metabolism of Ethyl Alcohol,” Quart. J. Studies Alcohol 11: 527-537 (20XX-38).
Loopman, T. A., “Pharmacology of Alcoholism,” Western Medicine 7: Supplement 3, 5-7 (20XX-22).
Loopman, T.A., “Acute and Prolonged Toxicity Tests,” Journal of the Association of Official Analytical Chemists 58: 4, 645-649 (20XX-13).
Loopman, T.A., “Suggestibility and the Person Under the Influence,” Journal of Clever Lawyers 9: 2-9 (20XX-2).

Curriculum Vitae

Mr. James Raven
4909 Laurel Place
Ruston, Major
(206) 756-3936

- Personal: Age 46; Divorced, no children; Health: Excellent
- Undergraduate: University of Iowa, Bachelor of Arts Degree, Criminal Psychology
- Military: U.S. Army 4 years, 20XX-29 to 20XX-25. Rank of Sergeant. Trained at Army's Polygraph School at Fort Gordon, Georgia. Accredited by the American Polygraph Association.
- Employment: Boston Police Department, 20 years, 20XX-20 to 20XX. Chief Polygraph Examiner for 8 years.
Scientific Security, Inc., Boston, Massachusetts, 20XX to present.
- Professional Associations and Affiliations: American Polygraph Association
Northwest Polygraph Examiner's Association
- Publications: "Truth or Fancy?," Vol. 16 Journal of the American Polygraph Association, 416-24 (20XX).
"Truth or Consequence?" Vol. 14 Journal of the American Polygraph Association, 320-29 (20XX-2).
"Believe It or Not," Vol. 3 Journal of Forensic Behavior, 214-24 (20XX-10). Drive, 20XX-6.

H. Tredwell, M.S.

Education

Colorado State University, Ft. Collins, CO Master of Science – Anatomy (forensic),
Aug 20XX-12

Colorado State University, Ft. Collins, CO Bachelor of Science – Microbiology, May 20XX-13

Employment

- **Forensic Scientist III**, Ruston Police Department Crime Laboratory
Firearm/Toolmark Examiner, *November 20XX-9— Present*
- **Criminalist III**, Texas Department of Public Safety, Austin, TX
Firearm/Toolmark Examiner, *November (20XX-12)—20XX-9*

Firearm / Toolmark Examination

Examination and analysis of ballistic and toolmark evidence related to criminal incidents. Report generation and testimony of conclusions in courts of law. Examinations include:

- Bullet & cartridge case comparisons
- Firearm operability
- Proximity determination of muzzle to target
- Less lethal weapons
- Serial number restoration
- Toolmark comparisons
- Shooting scene reconstruction
- Evidence collection and interpretation

Professional Training

- **Firearm/Toolmark Analysis Training**, Texas Dept. of Public Safety,
November 20XX-11—December 20XX-9
- **Firearms and Ballistics Seminar**, University of Texas Austin, *March 20XX-10*
- **South Western Association of Forensic Scientists Meeting**, Tucson, AZ *October 20XX-9*
- **South Western Association of Forensic Scientists Meeting**, El Paso, TX *April 20XX-8*
 - **Firearms Evidence**
 - **Forensic Anthropology and Odontology**
 - **Bullet Impacts**
- **Drugfire Training**, Washington, DC, *October 20XX-10*

Entry 25: H. Tredwell, Firearms Examiner-2 of 5

- **Association of Firearm and Toolmark Examiners** Conference, Tampa, FL *July 20XX-9*
- **Association of Firearm and Toolmark Examiners** Conference, Williamsburg, VA *July 20XX-8*
- **Case Review**, Jamner County Medical Examiner, Bi-monthly meetings on forensic pathology, death scenes and wound ballistics. *March 20XX-8—present*
- **Expert Courtroom Testimony**, Snohomish County Prosecutor, *May 20XX-5*
- **Association of Firearm and Toolmark Examiners** Conference, San Antonio, TX *May 20XX-3*

○ **Ricochet Analysis Workshop**

- **BATF NIBIN Training**, Ft. Myers, FL *February 20XX-3*
- **Bloodstain Pattern Analysis (40 Hours)**, Bothell, WA *July 20XX-3*
- **TASER Conference**, Las Vegas, NV *April 2004, May 2006*, Scottsdale, AZ *April 20XX-2*
- **Investigation of Lethal Encounters**, Force Science Center, Buriem, WA *June 20XX-2*
- **Canadian Officer Safety Conference**, Victoria, British Columbia *September 20XX-2*
- **American Academy of Forensic Scientists Conference**, Seattle, WA *February 20XX-1*

Armorer Schools

Factory authorized armory certification from the following manufacturers:

Sigarms (pistols)
Glock (pistols)
Smith & Wesson (pistols)
Ruger (rifle)
Remington (shotgun & rifle)
Heckler & Koch (SMG, shotgun, USP03)
Colt (M16/AR15 rifle)
PepperBall™
TASER (M26, X26)

Less Lethal Instructor Courses

ADVANCED TASER Instructor (M26, X26) *October 20XX-4*

TASER®- Master Instructor Scottsdale, AZ *April 20XX-3*

PepperBall™ Tacoma, WA *June 20XX-3*

In-Custody Death Investigation Instructor Scottsdale, AZ *August 20XX-3*

Professional Presentations

- “Identification of Automobile Wiring Harness”** Association of Firearm and Toolmark Examiners Conference, Williamsburg, VA
- “TASER—A new blast from the past”** Association of Firearm and Toolmark Examiners Conference, Newport Beach, CA
- “TASER—Revisited”** Association of Firearm and Toolmark Examiners Conference, San Antonio, TX
- “KIP—Knife Identification Project”** Association of Firearm and Toolmark Examiners Conference, San Antonio, TX
- “Forensic Testing of TASER Weapons”** Tactical TASER Conference, Las Vegas, NV, Los Angeles County Coroner
- “Forensic Evaluation of Less Lethal Impact Munitions, Flammability Testing of OC and TASER ”** Jamner County Medical Examiner, Ruston, MJ, Canadian Officer Safety Conference, Victoria, British Columbia
- “Flammability Testing of OC and TASER”** TASER Conference and Policy Forum, Scottsdale, AZ
- “Forensic Evaluation of Less Lethal Impact Munitions”** American Academy of Forensic Scientists Conference, Seattle, WA

Publications

- “Case Head Separation on a .357 Sig Cartridge Case”** AFTE Journal, Volume 31, Number 1
- “Aluminum Barreled Derringer”** AFTE Journal, Volume 32, Number 1
- “Lead is Lead”** AFTE Journal, Volume 34, Number 3
- “Sardius 9mm Semi-automatic pistol”** AFTE Journal, Volume 34, Number 3
- “9mm Smith and Wesson Ejectors”** AFTE Journal, Volume 34, Number 4
- “Consecutively Made Cartridge Cases”** AFTE Journal, Volume 34, Number 4
- “Asphalt Skip Shooting Reconstruction”** AFTE Journal, Volume 35, Number 1
- “Knife Identification Project (KIP)”** AFTE Journal, Volume 35, Number 4, Fall 20XX-3
- “The Advanced TASER M26,X26: Forensic Considerations”** AFTE Journal, Volume 36, Number 4, Fall 20XX-2

Court Testimony

Testified over 85 times as an expert witness in criminal courts of law in Texas and Major State. Testimony has included firearm and toolmark identification, weapon functionality, serial number restoration, distance determinations, crime scene reconstruction, less-lethal weapon analysis.

Forensic Proficiency Examinations

Helped design and produce forensic proficiency tests for firearm and toolmark examiners with Collaborative Testing Services from (20XX-7)—20XX-4. These tests are distributed to laboratories internationally as part of the accreditation process.

Research Projects

Designed and implemented the Knife Identification Project (KIP) with Ric Wyant. This project involved obtaining consecutively made knives for the purposes of studying microscopic individuality of tool marks. One hundred and thirty test kits were produced using these knife blades and distributed to laboratories worldwide. Results were compiled and error rates were published in the *Association of Firearm and Toolmark Examiner's* forensic journal.

Less Lethal Testing

Impact Munitions: Forensic testing of a variety on less-lethal impact ordnance (bean bags, sponge rounds, FN303, etc.) into ballistic gelatin to determine relative impact energy, penetration potential and relative lethality. *July 20XX-2*

TASER, OC Flammability: Evaluated 16 types of Oleoresin Capsicum aerosols when deployed simultaneously with the TASER M26 to determine flammability potential. *Dec 20XX-2*

Stinger and TASER Comparison Testing: Forensically compared Conductive Energy weapons in a scientific setting. *March 20XX-1*

Course Instruction

Continual forensic ballistic, trajectory, digital photography, TASER, less-lethal, and crime scene instruction to numerous police departments, prosecuting and defense attorneys in the Washington State area. *20XX-8—Present*

College Instruction:

Law enforcement instructor at Neva Community College, Neva, MJ

○ Forensic Photography

Law enforcement instructor at Skagit Valley College, Vernon, MJ 20XX-5

○ Interviewing and Interrogation

Entry 25: H. Tredwell, Firearms Examiner-5 of 5

Professional Affiliations

Association of Firearm and Toolmark Examiners, *March 20XX-9—Present*

- **Distinguished Member** *June 20XX-4 —Present*
- **Research and Development Committee** *May 20XX-2—Present*

American Academy of Forensic Scientists: Associate Member *February 20XX— Present*

FBI- Scientific Working Group on Firearms and Toolmarks (SWGgun), *June 20XX-2— Present*

NIJ- Technical Working Group on Less Lethal Weapons, *April 20XX—Present*

Awards

Director's Citation, Texas Department of Criminal Justice, *January 20XX-10*

Certificate of Appreciation, Sheriff's Association of Texas, *June 20XX-9*

Larry Warren Lindell Award, Neva County Sheriff, *June 20XX-6*

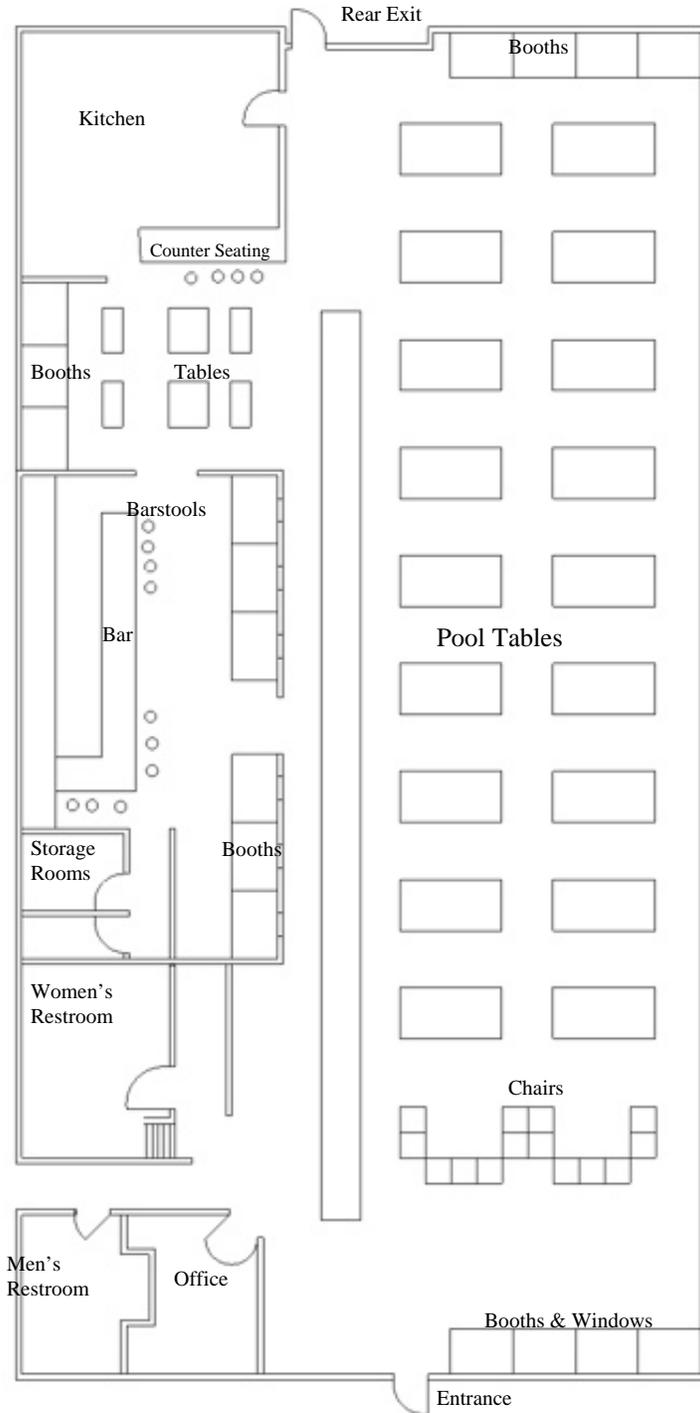
Reserve Deputy of the Quarter, Neva County Sheriff, *2001, 20XX-2*

Distinguished Member Award, Association of Firearm and Toolmark Examiners, *June 20XX-2*

Certificate of Appreciation, Neva County Sheriff, *November 20XX-2*

Employee of the Year, Major State Patrol Forensic Services Bureau, *May 20XX-1*

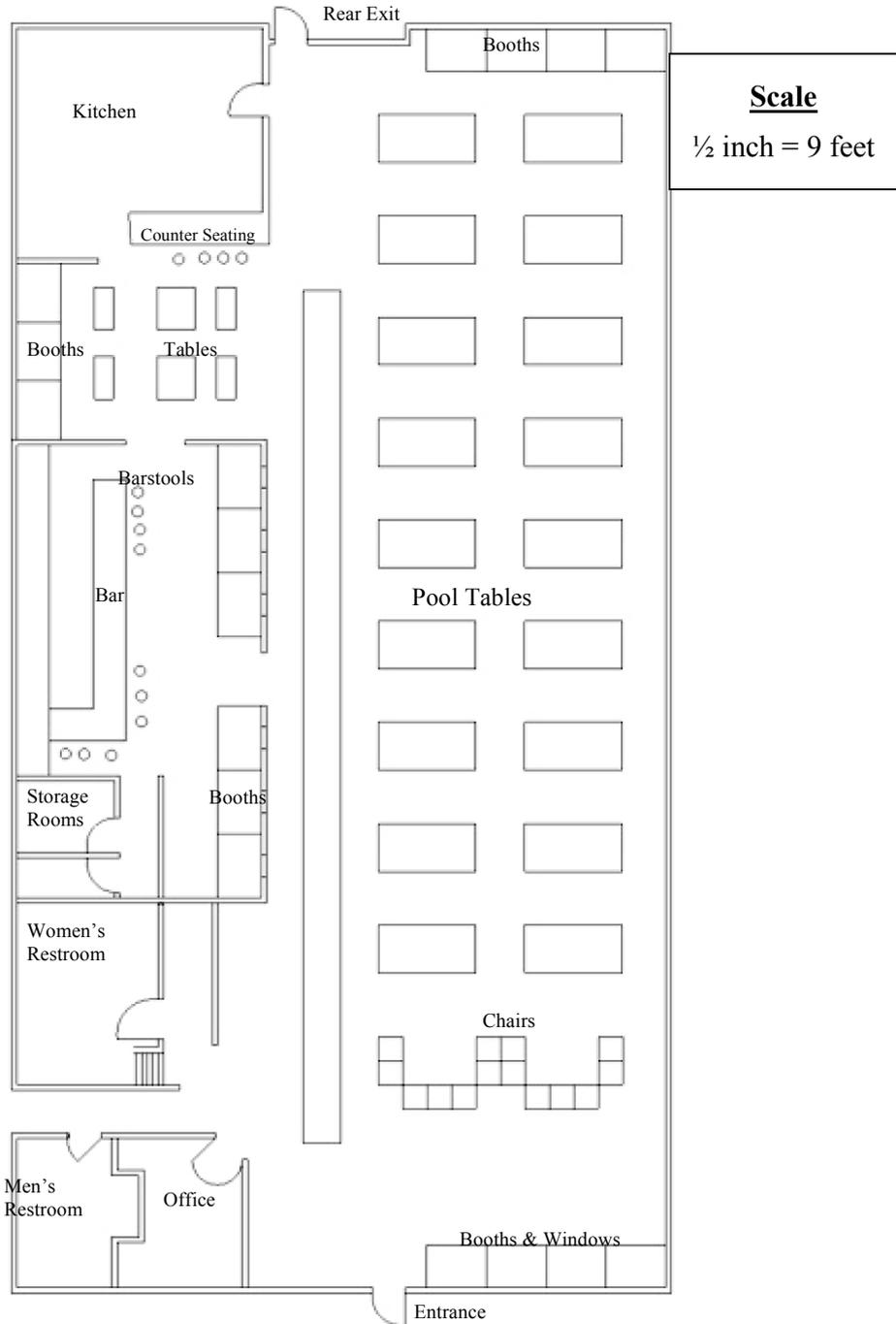
GARAGE TAVERN



Scale
1/2 inch = 9 feet

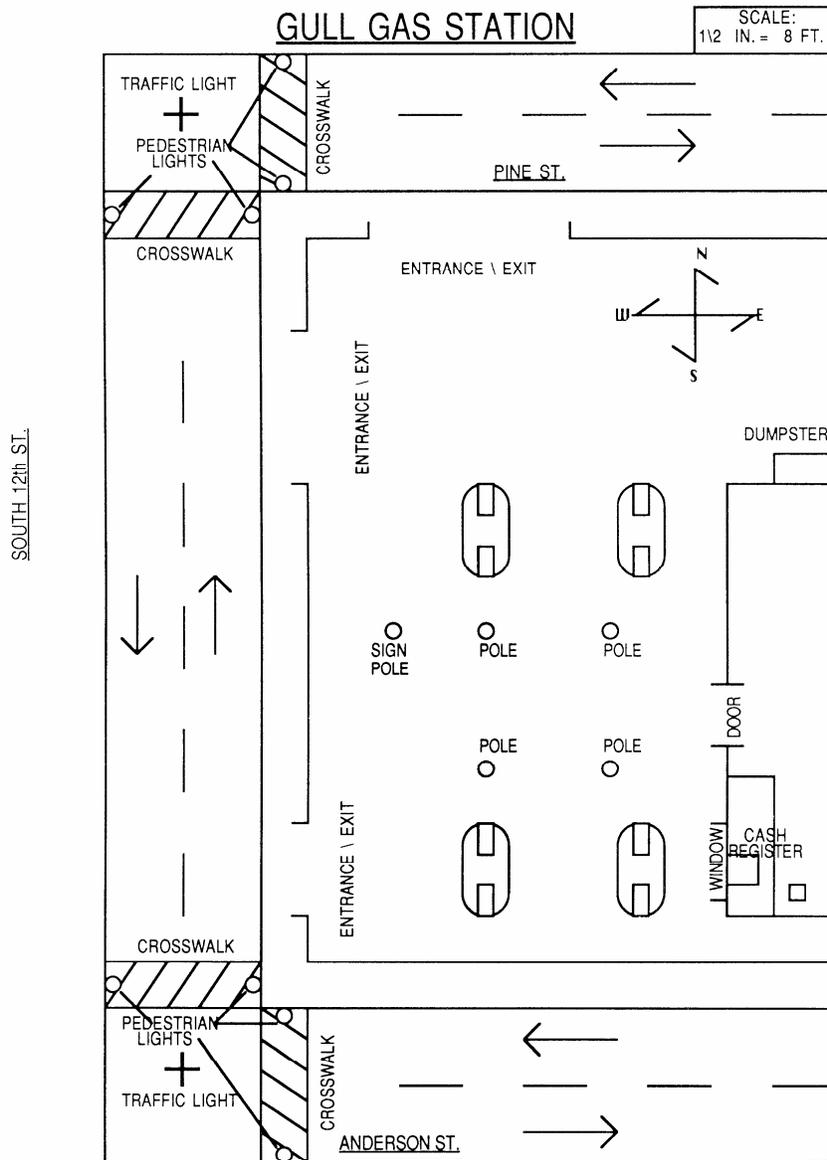
1130 Broadway Ave., Ruston, Major

GARAGE TAVERN



1130 Broadway Ave., Ruston, Major

Entry 27: Scale Diagram, Gull Gas Station-1 of 1



Entry 27: Scale Diagram, Gull Gas Station-1 of 1

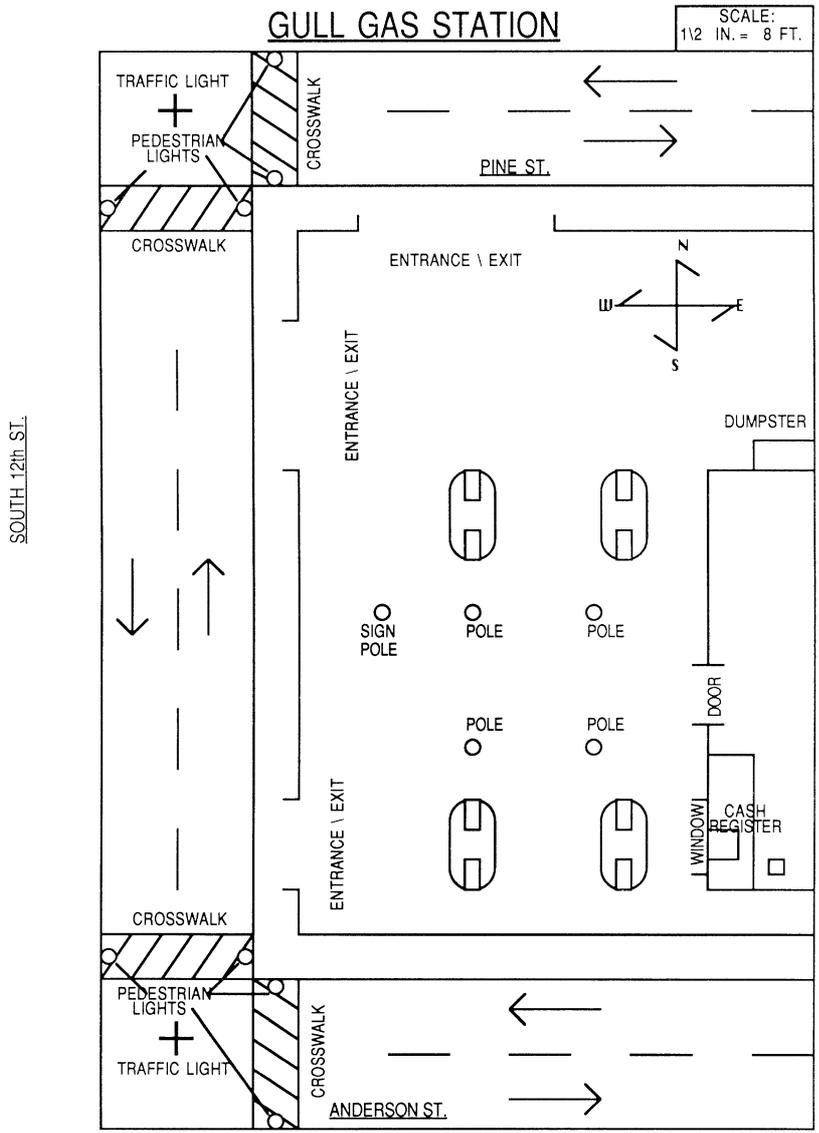
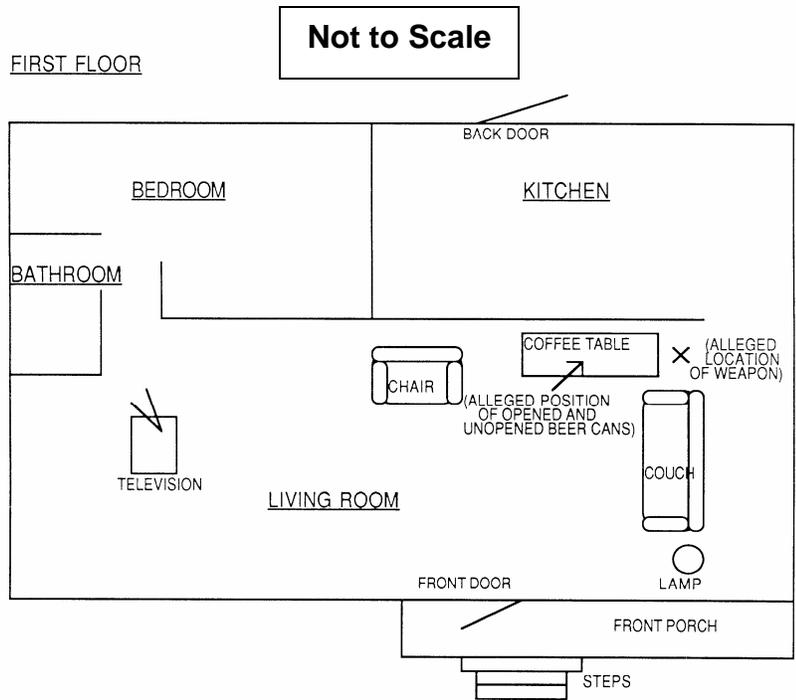
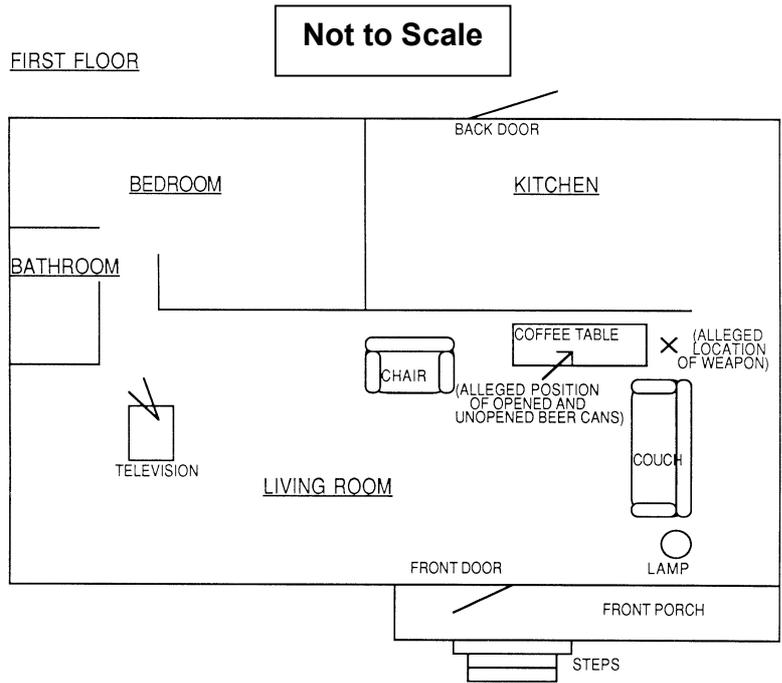


DIAGRAM OF EDWARD TAYLOR HARD'S HOME AT THE TIME OF THE SEARCH



Entry 28: Diagram (Not to Scale), Edward Hard's House-1 of 1

DIAGRAM OF EDWARD TAYLOR HARD'S HOME AT THE TIME OF THE SEARCH



Entry 29: Garage Tavern Photos (Garage Exterior Photo A)-1



Entry 29: Garage Tavern Photos (Garage Exterior Photo B)-2



Entry 29: Garage Tavern Photos (Garage Exterior Photo C)-3



Entry 29: Garage Tavern (Garage Interior Photo D)-4



Entry 29: Garage Tavern (Garage Interior Photo E)-5



Entry 29: Garage Tavern (Garage Interior Photo F)-6



Entry 29: Garage Tavern (Garage Interior Photo G)-7



Entry 29: Garage Tavern (Garage Interior Photo H)-8



Entry 29: Garage Tavern (Garage Interior Photo I)-9



Entry 29: Garage Tavern (Garage Interior Photo J)-10



Entry 29: Garage Tavern (Garage Interior Photo K)-11



Entry 29: Garage Tavern (Garage Interior Photo L)-12



Entry 29: Garage Tavern (Garage Interior Photo M)-13



Entry 29: Garage Tavern (Garage Interior Photo N)-14



Entry 29: Garage Tavern (Garage Interior Photo O)-15



Entry 29: Garage Tavern (Garage Interior Photo P)-16



Entry 29: Garage Tavern (Garage Interior Photo Q)-17



Entry 30: Photographs After Shooting of Bruno Summers, September 3, 20XX (Photo A)-1



Entry 30: Photographs After Shooting of Bruno Summers, September 3, 20XX (Photo B)-2



Entry 31:Family Photographs of Bruno, Deborah, and the Summers Children (Photo A)-1



Entry 31: Family Photographs of Bruno, Deborah, and the Summers Children (Photo B)-2



Entry 31: Family Photographs of Bruno, Deborah, and the Summers Children (Photo C)-3



Entry 31: Family Photographs of Bruno, Deborah, and the Summers Children (Photo D)-4



Entry 31: Family Photographs of Bruno, Deborah, and the Summers Children (Photo E)-5



Entry 31: Family Photographs of Bruno, Deborah, and the Summers Children (Photo F)-6



Entry 31: Family Photographs of Bruno, Deborah, and the Summers Children (Photo G)-7



Entry 31: Family Photographs of Bruno, Deborah, and the Summers Children (Photo H)-8



Entry 31: Family Photographs of Bruno, Deborah, and the Summers Children (Photo I)-9



Entry 31: Family Photographs of Bruno, Deborah, and the Summers Children (Photo J)-10



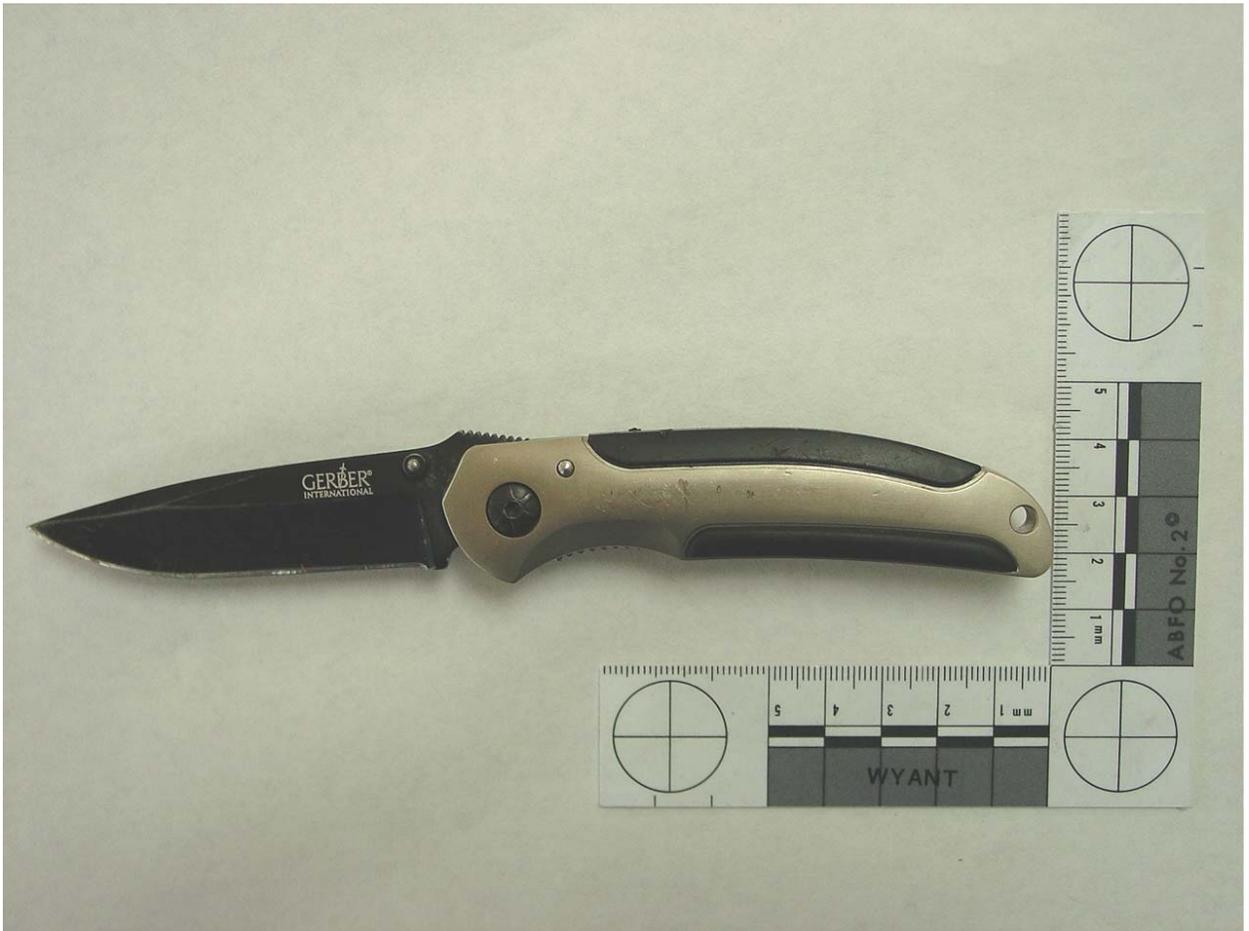
Entry 32: Gun and Bullets Photos (Photo A)-1 of 2



Entry 32: Gun and Bullets Photos (Photo B)-2 of 2



Entry 33: Knife Photo-1 of 1



IN THE SUPERIOR COURT OF THE STATE OF MAJOR
IN AND FOR THE COUNTY OF JAMNER

GRETCHEN and HANS SUMMERS,)	
Individually and as Administrators,	)	No.: 20XX 01234 9
Personal Representatives of the)	
Estate of Bruno Summers, deceased,	)	SUMMONS*
And as guardians for)	
AMANDA and RONNIE SUMMERS;)	
RONNIE SUMMERS, individually and)	
DEBORAH SUMMERS, individually,)	
)	
Plaintiffs,)	
)	
vs.)	
EDWARD TAYLOR HARD; M.C. DAVOLA))	
And JANE DOE DAVOLA, his wife;)	
TOM DONALDSON; MARY APPLE; and)	
JOHN DOE and MARY DOE, his wife,)	
And the DOE CORPORATION, d/b/a)	
THE GARAGE)	
)	
Defendant)	

TO THE DEFENDANT: A lawsuit has been started against you in the above-entitled court by the above-named plaintiffs. Plaintiffs' claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the person signing this Summons within twenty (20) days after the service of this Summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where Plaintiffs are entitled to what they ask for because you have not responded. If you serve a notice of appearance on the undersigned person you are entitled to notice before a default judgment may be entered.

* Review for critique purposes only. This document is not intended as a model summons.

Entry 34: Summons-2 of 2

You may demand that the Plaintiffs file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this Summons. Within fourteen (14) days after you serve the demand, the Plaintiffs' must file this lawsuit with the court, or the service on you of this Summons and Complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This Summons issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Major.

DATED this 1st day of November, 20XX

By: F.C. Fank
Attorney for Plaintiffs

F.C. Fank

IN THE SUPERIOR COURT OF THE STATE OF MAJOR
IN AND FOR THE COUNTY OF JAMNER

GRETCHEN and HANS SUMMERS)	
Individually and as Administrators,	)	No.: 20XX 01234 9
Personal Representatives of the)	
Estate of BRUNO SUMMERS, deceased,	)	COMPLAINT FOR
And as guardians for	)	DAMAGES*
AMANDA and RONNIE SUMMERS;)	
RONNIE SUMMERS, individually and)	
DEBORAH SUMMERS, individually,)	
)	
Plaintiffs,)	
)	
vs.)	
EDWARD TAYLOR HARD; M.C. DAVOLA)	
And JANE DOE DAVOLA, his wife;)	
TOM DONALDSON; MARY APPLE; and)	
JOHN DOE and MARY DOE, his wife,)	
And the DOE CORPORATION, d/b/a)	
THE GARAGE)	
)	
Defendant)	

COMES NOW the plaintiffs herein and for causes of action allege and complain:

1. Plaintiffs GRETCHEN and HANS SUMMERS are the personal representatives and the duly appointed, qualified, and acting Administrators of the estate of BRUNO SUMMERS, deceased, who died on or about September 7, 20XX.

2. Plaintiffs GRETCHEN and HANS SUMMERS are also the duly appointed guardians for the minors, AMANDA and RONNIE SUMMERS. Plaintiffs bring this action for the benefit of decedent’s estate, and for the benefit of themselves individually, decedent’s surviving wife, DEBORAH, and minor children, AMANDA and RONNIE.

* Review for critique purposes only. This document is not intended as a model complaint.

3. DEBORAH SUMMERS, surviving wife of BRUNO SUMMERS brings this action pursuant to paragraph 2 and individually and on behalf of herself.

4. Plaintiffs DEBORAH SUMMERS, the widow of BRUNO SUMMERS, AMANDA and RONNIE SUMMERS, the minor children of BRUNO SUMMERS, and HANS and GRETCHEN SUMMERS, parents of BRUNO SUMMERS, are residents of Jamner County, in the State of Major.

5. Defendant EDWARD T. HARD is a resident of the State of Major.

6. Defendants M.C. DAVOLA and JANE DOE DAVOLA, his wife, are residents of the State of Major.

7. Defendant TOM DONALDSON is a resident of the State of Major.

8. Defendant MARY APPLE is a resident of the State of Major.

9. Defendant DOE CORPORATION is a corporation duly incorporated under the laws of Major, and with M.C. DAVOLA and JANE DOE DAVOLA, his wife, or with JOHN DOE and MARY DOE, is doing business in the State of Major as The Garage.

10. Defendants M.C. DAVOLA, MARY APPLE, and TOM DONALDSON are lawful employees of the Garage and/or of M.C. DAVOLA and/or of DOE CORPORATION and/or of JOHN and MARY DOE.

11. On or about the 7th of September, 20XX, at The Garage, 1130 Broadway Ave., Ruston, Jamner County, State of Major, decedent BRUNO SUMMERS was shot and did subsequently die by a handgun negligently, willfully, wantonly, and recklessly discharged by EDWARD T. HARD.

12. The herein above-described prior incident was proximately caused by the negligent acts of TOM DONALDSON, MARY APPLE, and M.C. DAVOLA in that they unlawfully failed to use reasonable care in serving liquor to EDWARD T. HARD on September 3, 20XX; failed to protect BRUNO SUMMERS from foreseeable injury at the hands of EDWARD T. HARD.

13. Plaintiffs repeat and re-allege each and every allegation contained herein in paragraphs 1 through 12, and for a second claim herein allege that the prior above-described incident was proximately caused by the willful, wanton, malicious, and reckless acts of defendants TOM DONALDSON, MARY APPLE, and M.C. DAVOLA in that they unlawfully

failed to observe reasonable care in serving liquor to EDWARD T. HARD; failed to perform the duties imposed by the lawful and duly promulgated laws, regulations, and codes of the State of Major.

14. Plaintiffs repeat and re-allege each and every allegation contained herein in paragraphs 1 through 12, and for a third claim herein allege that the above-described incident was proximately caused by the willful, violent, and negligent acts of defendant EDWARD T. HARD, an ex-felon, in that by unlawfully possessing and concealing a pistol, having been convicted of crimes of violence, to wit, rape, he knowingly failed to conform his conduct to that which is prescribed by law, for persons convicted of such violent crimes in that defendant reasonably failed to avoid confrontation with BRUNO SUMMERS; provoked such confrontation; and in that defendant failed to use reasonable care in handling the pistol that wounded BRUNO SUMMERS.

15. Plaintiffs repeat and re-allege each and every allegation contained herein in paragraphs 1 through 14, and for a fourth claim herein allege that the above-described incident was proximately caused by the willful, wanton, malicious, and reckless acts of defendant EDWARD T. HARD.

16. Plaintiffs repeat and re-allege each and every allegation contained herein in paragraphs 1 through 14, and for a fifth claim, herein allege that the prior above-described shooting and killing was proximately caused by the negligent, willful, wanton, malicious, and reckless acts of defendant M.C. DAVOLA, in that defendant failed reasonably to protect a patron, plaintiffs' decedent, BRUNO SUMMERS, from foreseeable harm at the hands of EDWARD T. HARD, by failing to instruct employees of the Garage to take precautions to prevent violent confrontations between defendant EDWARD T. HARD and plaintiffs' decedent BRUNO SUMMERS.

17. Plaintiffs repeat and re-allege each and every allegation contained herein in paragraphs 1 through 14, and for a sixth claim, herein allege that by reason of the aforesaid acts, failure or omission to act, by the said defendants, plaintiffs DEBORAH, HANS, GRETCHEN,

RONNIE, and AMANDA SUMMERS have individually suffered negligent and intentional infliction of emotional distress.

18. At the time of his death, plaintiffs' decedent, who was age 30, had a life expectancy of 60 years. Decedent was a devoted husband and father, constantly interested in the welfare of his wife and children. He was in excellent physical health, worked hard and regularly, and devoted his earnings to the care, support, and maintenance of his wife and children. By reason of the death of plaintiffs' decedent, plaintiffs' decedent's surviving parents, spouse, and minor children have been deprived of support, comfort, society, counsel, and services, all to their damage in amounts to be determined at trial.

19. By reason of the injury and death of plaintiff's decedent, BRUNO SUMMERS, his estate has become liable for funeral expenses in an amount to be determined at trial.

20. By reason of the injury and death of plaintiffs' decedent, decedent's estate has been deprived of accumulations to the estate during his life, in an amount to be determined at trial.

21. Plaintiffs DEBORAH SUMMERS, individually, and AMANDA and RONNIE SUMMERS, the minor children of the deceased, and plaintiffs HANS and GRETCHEN SUMMERS repeat and re-allege each and every allegation contained in paragraphs 1 through 19.

WHEREFORE, PLAINTIFFS GRETCHEN, HANS, RONNIE, and AMANDA SUMMERS, INDIVIDUALLY and as PERSONAL REPRESENTATIVES, and as ADMINISTRATORS OF THE ESTATE OF BRUNO SUMMERS, and as GUARDIANS AD LITEM of AMANDA and RONNIE SUMMERS, the minor children of plaintiffs' decedent, BRUNO SUMMERS; and DEBORAH SUMMERS as the surviving spouse of BRUNO SUMMERS, and individually, PRAY JUDGMENT for the damages heretofore described, and for such other sums as the COURT deems proper by way of exemplary or punitive damages, for costs of suit, attorneys fees, and for such other relief as the COURT deems proper in the premises, in an amount to be determined at trial.

Entry 35: Complaint (for critique only)-5 of 5

DATED this 15th day of November, 20XX

By: 
Attorney for Plaintiffs
F.C. Fank, MBA #7136

IN THE SUPERIOR COURT OF THE STATE OF MAJOR
IN AND FOR THE COUNTY OF JAMNER

GRETCHEN and HANS SUMMERS)	
Individually and as Administrators,	)	No.: 20XX 01234 9
Personal Representatives of the)	
Estate of BRUNO SUMMERS, deceased,	)	ANSWER BY ED HARD*
And as guardians for)	
AMANDA and RONNIE SUMMERS;)	
RONNIE SUMMERS, individually and)	
DEBORAH SUMMERS, individually,)	
)	
Plaintiffs,)	
)	
vs.)	
EDWARD TAYLOR HARD; M.C. DAVOLA))	
And JANE DOE DAVOLA, his wife;)	
TOM DONALDSON; MARY APPLE; and)	
JOHN DOE and MARY DOE, his wife,)	
And the DOE CORPORATION, d/b/a)	
THE GARAGE)	
)	
Defendant)	

COMES NOW the defendant, EDWARD T. HARD, by and through his attorney, D.G. CASE, and answers:

1. Defendant Ed. Hard has insufficient information with which to form a belief as to the truth or falsity of paragraphs 1-10, 12, 13, 16, 17, 18, 20, and 21 and therefore denies the same.
2. Defendant HARD admits in paragraph 11 that Bruno Summers died, but denies each and every other allegation in that paragraph.
3. Defendant HARD denies the allegations in paragraphs 14 and 15.

* Review for critique purposes only. This document is not intended as a model answer.

4. Paragraph 14 of the complaint is inflammatory, prejudicial, and scandalous and included to prejudice defendant HARD. Defendant requests that it be stricken from the complaint forthwith.

FIRST AFFIRMATIVE DEFENSE

5. Bruno Summers' injuries as duly set forth and alleged in the complaint were accidental in that the gun discharged accidentally and subsequently injured Bruno Summers. Such conduct was reasonable.

SECOND AFFIRMATIVE DEFENSE

6. Defendant Hard alleges as a second affirmative defense that Bruno Summers proximately caused his own injuries in failing to avoid a confrontation, failure to use reasonable care, by voluntary intoxication, and failing to leave The Garage, he assumed the risks and hazards. By reason of his conduct, Bruno Summers caused and provoked his own injuries. Such negligent conduct must be imputed to plaintiffs by reason of State of Major statutes.

THIRD AFFIRMATIVE DEFENSE

7. Plaintiffs' damages, if any, were solely and proximately caused by and contributed to by the actions of third parties.

8. By way of reservation of rights, without waiver, EDWARD HARD specifically reserves the right to amend its answer and claims herein by way of adding additional parties, affirmative defenses, cross-claims, and third-party claims as additional investigation, discovery or circumstances warrant.

PRAYER FOR RELIEF

WHEREFORE Defendant EDWARD TAYLOR HARD respectfully prays for the following heretofore described relief:

1. That paragraph 14 of plaintiffs' complaint be stricken immediately;
2. That plaintiffs' complaint against EDWARD TAYLOR HARD be dismissed with prejudice;
3. That defendant HARD be awarded costs and attorneys fees and other relief as the court deems fit.

Entry 36: Ed Hard Answer (for critique only)-3 of 3

DATED this 8 day of November, 20XX

Edward Taylor Hard

EDWARD TAYLOR HARD

D. G. Case

D. G. CASE, MBA # 8416

77 4th Ave. S.E.

Ruston, Major 94802

(206) 877-4777

Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF MAJOR
IN AND FOR THE COUNTY OF JAMNER

GRETCHEN and HANS SUMMERS)	
Individually and as Administrators,	)	No.: 20XX 01234 9
Personal Representatives of the)	
Estate of BRUNO SUMMERS, deceased,	)	ANSWER BY DAVOLA,
And as guardians for	)	DONALDSON, and APPLE*
AMANDA and RONNIE SUMMERS;)	
RONNIE SUMMERS, individually and)	
DEBORAH SUMMERS, individually,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
EDWARD TAYLOR HARD; M.C. DAVOLA)	
And JANE DOE DAVOLA, his wife;)	
TOM DONALDSON; MARY APPLE; and)	
JOHN DOE and MARY DOE, his wife,)	
And the DOE CORPORATION, d/b/a)	
THE GARAGE)	
)	
Defendant)	

COMES NOW the defendants DAVOLA, DONALDSON, and APPLE, by way of answer to plaintiffs’ complaint, by and through their attorney answer as follows:

- With regard to paragraphs 1 through 5, 14, 15, 17, 18, and 20 defendants are without knowledge or information to form a belief as to the truth of the allegations as to admit or deny them, and therefore deny the same.
- With regard to paragraphs 6 through 10, defendants admit the allegations contained therein.
- With regard to paragraphs 11 through 13, 16, and 21 of the complaint, defendants specifically deny each and every allegation contained therein, as though fully set forth in full.

* Review for critique purposes only. This document is not intended as model answer.

1 BY WAY OF FURTHER ANSWER, defendants state as though fully set forth in full:

2
3 4. The plaintiffs have failed to state a claim upon which relief can be granted under
4 Rule 12(b)(6) as stated in paragraphs 2, 11, 13, 15, 16, and 21 and defendants move that those
5 claims be dismissed.

6 BY WAY OF FURTHER ANSWER AND AS A FIRST AFFIRMATIVE DEFENSE,
7 defendants allege:

8 5. At the time and place alleged in plaintiff's complaint, the deceased, Bruno
9 Summers, acted carelessly and negligently. That he by his own negligence, contributed
10 proximately and negligently to his own alleged injuries.

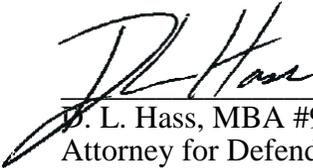
11 6. Plaintiffs were intoxicated when they arrived at The Garage, September 3rd,
12 20XX. By remaining on the premises with knowledge aforethought of Ed Hard's presence both
13 Deborah and Bruno Summers voluntarily assumed the risk of later events and harm.

14 THIRDS AFFIRMATIVE DEFENSE AND BY WAY OF A CROSS-CLAIM AGAINST
15 EDWARD HARD

16 7. Defendant Ed Hard's shooting and killing of Bruno Summers constituted an
17 independent superseding event not reasonably foreseeable by defendants.

18 WHEREFORE, DEFENDANTS DAVOLA, DONALDSON AND APPLE, PRAY THAT

19 Plaintiff's complaint as set forth in paragraph 4 of the answer be dismissed, and that
20 plaintiffs take nothing by his action and that defendants be awarded costs and all other relief that
21 the court finds is equitable and just.

22
23
24 
25 D. L. Hass, MBA #9143
26 Attorney for Defendants
27
28

Jamner County Health Department Community Health Care Delivery Systems

NAME <u>Summers, Deborah m.</u>	BIRTHDATE <u>8/8/20XX - 20</u>
ADDRESS <u>1962 N.E. 6th</u>	SS# <u>534-46-1672</u>
CITY, TOWN <u>Ruston, m.j. 98139</u>	ETHNIC <u>white</u>
PHONE <u>(206) 433-1112</u>	MARITAL STATUS <u>Married</u>
EMPLOYER\OCCUPATION <u>NONE</u>	FINANCIAL DATA
NEXT OF KIN <u>Hans Summers</u>	FAMILY SIZE <u>4</u>
ADDRESS <u>1200 maple Ave</u>	INCOME\MO. <u>NONE</u>
CITY, TOWN <u>Ruston, m.j. 98465</u>	FEE CODE
PHONE <u>(206) 784-2076</u>	
RESPONSIBLE PARTY <u>myself</u>	INSURANCE COVERAGE & #
ADDRESS <u>Same as above</u>	MEDICARE
CITY, TOWN <u>Same as above</u>	MEDICAID
PHONE <u>Same as above</u>	PCMB
CURRENT PHYSICIAN <u>NONE</u>	OTHER
PHONE	
ALLERGIES <u>NONE</u>	Where would you have gone if clinic not available? <u>DON'T KNOW</u>
MEDICATIONS <u>NONE</u>	Referred to clinic by: <u>a friend</u>

CONSENT FOR TREATMENT\AUTHORIZATION FOR RELEASE OF INFORMATION

Having voluntarily presented myself at Jamner County Clinic, I acknowledge awareness of the fact that evaluation and treatment to be received may be administered by a physician or a mid-level practitioner. I consent to and authorize evaluation and treatment that may be advisable or necessary in the judgment of the physician or the mid-level practitioner. I also authorize release of this record for insurance or medical follow-up reasons.

Martha Lindsey

Witness

Deborah Summers

Signature

Sept. 5, 20XX

Date

TIME In: 9:45 am Out: 10:00 am	ROOM 201
--------------------------------------	-------------

NEVA COUNTY MEDICAL SERVICES

DATE: 10-3-20XX
 NAME: Summers, Deborah M.
 SEX: F BIRTHDATE: 8-8-20XX-21
 ADDRESS: 1200 Maple Ave
 STATE: MJ ZIP: 98465
 PHONE: 756-3436
 BROUGHT BY: Self
 WEIGHT: 110
 LAST TETANUS: 20XX-3
 ALLERGY TO MED.: None
 CURRENT MEDICATIONS:

VITAL SIGNS

TIME:	TEMP:	P:	R:	BP:
-------	-------	----	----	-----

PROBLEMS:

#1 Anxiety

S: Pt. has been in internal conflict since the shooting death of her husband one month ago. Pt. complains that she has "fallen to pieces" and feels "numb" ever since the shooting. She has been drinking moderately since the occurrence and before but does not smoke. Past med. and surg. histories are negative. Currently, Pt. says she is taking Valium to reduce her anxiety. Valium prescribed by Dr. Risseen of Jamner Co. Health Clinic. Rev. of system negative for body hurts, headaches.

O: Agitated shy female in apparent mild distress and hysterical physical trauma. Pupils are equal and react to light. Her heart is normal without murmurs. Lungs are clear. Abdomen is soft without enlarged organs or tenderness. Pelvic and rectal tympanic membranes are slightly reddened.

A: 21-year-old female with recent severe trauma in life wishes medication to inhibit anxiety. Pt. is a mild hysteric who has a history of hysteric displays. Valium would effectively mitigate Pt.'s physical/emotional trauma. Agitated condition is a reflection of Ms. Summers' "personality type."

- P:**
1. No refill of Valium prescription.
 2. Encouraged to quit drinking and watch diet.
 3. FU in 2 weeks suggested.

ORDERS:

DISCHARGE INSTRUCTIONS:

CBC

CHEMISTRY

BLOOD GASES

URINALYSIS

N/A N/A
 X-RAY EKG

	ADMIT	HOME	OW	OTHER	ON DISCH.
DISPOSITION		XX			Mild Distress
PRIMARY PHYS. Sherman Group			AT	Neva Co. Medical	CLINIC
SPECIALIST N/A			AT		CLINIC

ECONOMIC REPORT

The Value of the Economic Loss to the Estate
Due to the Death of Mr. Bruno Summers

Prepared by

Bruce D. Hann, Ph.D.
Department of Economics
University of Willow Bay
Ruston, Major 98416

Lost Earnings: Bruno Summer

This report provides an estimate of the value of the economic loss to the estate of Bruno Summers due to his death on September 7, 20XX. The estimate addresses economic losses due to his loss of earnings adjusted for expected future changes in those earnings, loss of value of fringe benefits and loss of value of non-market services. I have deducted from the estimated loss of compensation, an estimate of his consumption expenditures. The report is divided into four sections; the basic background information, a description of my projections of future compensation; a description of adjustments to future compensation losses; and finally my conclusions. Numbers in brackets refer to footnotes at the end of this report.

1. Assumptions and Background Data

Mr. Summers was born in (20XX- 29). At the time of his death he was 30 years old. He was a high school graduate. Mr. Summers entered military service after graduating from high school and served briefly overseas. Following his honorable discharge from the Army, he began working at the University Fitness Health Club. By age 24 he had worked his way to the position of manager of the club and was earning approximately \$40,000 per year with fringe benefits. At age 25, Mr. Summers purchased the club for \$80,000 with funds received from an inheritance.

Mr. Summers refurbished the old club and invested another \$70,000 in new equipment. Mr. Summers developed a loyal following by providing low impact exercise programs for overweight clients centered around the Whole Body Vibration system and positive body image programs. His clientele and club revenues had expanded rapidly over the past five years. With \$140,000 in loans from a local bank secured by assets from his inheritance, he had opened a new club in another part of town.

Shortly before his death, Mr. Summers had begun negotiating a sale of the clubs to Universal Gyms, a national chain of health clubs. Mrs. Summers reports that Mr. Summers planned to sell the business but continue managing the two clubs with a salary of \$60,000 per year plus benefits. Negotiations ceased at the time of his death. Since his death, the clubs have been operated by a hired manager, with oversight by Mr. Summers' wife. Financial data taken from Schedule C of Mr. Summers' tax returns are shown in Table 1.

At the time of his death, Mr. Summers was married, with two children. This was his second marriage. He had two children, Amanda age 12 and Ronnie age 8, from his first marriage to Priscilla. They divorced six years ago, and Bruno's parents got custody of the children because his ex-wife was an alcoholic. Bruno's children moved in with his parents, and Bruno visited them at the grandparents' house. In June 20XX, Bruno, Deborah and the children moved into a house that Bruno purchased.

2. Life Expectancy

Based on life expectancy data for white males prepared by a government agency, I have estimated his life expectancy at 47 additional years at the time of the accident. [1]

3. Work Life Expectancy

Mrs. Summers indicated that Mr. Summers planned to work until he became eligible for full Social Security benefits. Give the current regulations, I have assumed that his work life expectancy would be for another 37 years to age 67.

4. Future Wage Growth

Over long periods of time, wage and salary compensation have a tendency to increase along with increases in labor productivity and increases in general price inflation. Over the past 50 years, wages have increased at about 4.8% per year due to these two factors. [2] Any payment for future lost compensation must be adjusted for these expected increases.

5. Discounting Future Losses to Present Value

On the other hand, any payment today for a future loss must be adjusted for the fact that the payment today can be invested and earn interest. For example, if the interest rate is 5 percent, to compensate for a future loss of \$105 a year from now, the payment made today need only be \$100. The \$100 paid today will earn \$5 in interest over the year, which together with the \$100 payment compensates for the \$105 dollar future loss. Making reductions to the future lost amounts for the fact that current payments can earn interest every year to help make future payments is called discounting to present value.

There are many different interest rates observable in the financial markets and the choice of an interest rate to discount future estimated losses is important. Interest rates vary depending on the risk of the underlying financial instrument. For example, Federal government bonds have almost no risk of default compared to bonds issued by companies, so the interest rates on government bonds is lower than the interest rates on corporate bonds. The interest rate chosen to discount future earnings should be based on a financial instrument whose risk is comparable to the risk faced by a wage earner. I have chosen to use the interest rates available on three-year government bonds for the discount rate. This rate has averaged about 6.1% over the past 50 years. [3]

Interest rates, like wage rate increases, also vary with general price inflation. As inflation increases, interest rates tend to increase. Consequently, when inflation increases, and the interest rate increases, the discounting to present value increases and the amount needed to pay for future losses declines. Conversely, when inflation increases, the adjustment made for wage changes increases and the amount needed to pay for future losses increases. These two opposing effects of inflation on wage rate increases and interest rates largely offset each other. When we adjust interest rates for inflation we have a real (inflation adjusted) interest rate. When we adjust wage rate increases for inflation we are left with the real increases in wage rates, which is generally attributed to increases in productivity. Calculations in this report reflect real interest rates and real wage rate increases. Inflation has averaged about 3.9% over the past 50 years [4], implying a real interest rate of 2.2% and real wage increases of about .9% per year.

6. Estimated Income Loss

To calculate the lifetime income loss for Mr. Summers, I first determine a base income stream. In the year before his death, Mr. Summers' business showed profits of \$60,000 per year. As a sole proprietor, he reported this as personal income on his tax returns. I assume that this reflects his base earning ability. I assume that Mr. Summers would have continued in the position as manager of the University Fitness club or in a similarly compensated position. For projections of future income, I assume that his real earnings over his worklife will increase at .9% per year, the long term national average.

As individuals gain experience on the job, they become more productive and their earnings rise to reflect this. Earnings peak as individuals reach their forties and fifties. As they reach their sixties, their efforts in the work force begin to diminish due to illness or choice and near retirement, earnings tend to decline. I have adjusted the pattern of future earnings estimates for the age-earnings cycle of a male with a high school education. In 20XX - 3, the average annual earnings for males with a high school education, from age 30 to retirement at age 67 is 118% of the average earnings for males of age 30 [5]. Since Mr. Summers' earnings at age 30 were \$60,000, I have used \$70,800 as the estimate for his average base earnings over his work life.

I have made two other adjustments to the base income. Since Mr. Summers is subject to possible future unemployment, I have reduced his base earnings by 3.5%, the average unemployment rate for white males of his age group [6]. Since the earnings at the time of his death were in 20XX dollars, I have made an inflation adjustment to value those wages in current dollars. Inflation in the two years since Mr. Summers' death has been a total of 5%. [4] Adjusting for unemployment and inflation, I use a base income of $\$70,800 * 1.05 * (1 - .035) = \$71,738$. The projected real earnings over his life expectancy are shown in the attached Table 2. The estimated base earnings of \$71,738 in current dollars are increased at the real wage growth rate of .9% per year. The present value of these earnings is estimated at \$2,173,008, as shown in Table 2.

7. Additional Components of Economic Loss

There are four additional components to Mr. Summers' estate's net economic loss: the loss of fringe benefits, the effect of his consumption, the loss of his non-market services contributed to the household and the impact of his death on the value of the business.

7.a. Fringe Benefits

Mr. Summers was planning to work for Global Gym Corporation after he sold his business to them. He expected that the compensation package would include medical insurance payments, contributions to retirement plan, and production bonuses. Based on data for managers as reported by the Bureau of Labor, the value of these fringe benefits is estimated at 14.4% of base earnings or \$312,913. [7]

7.b. Consumption

The loss of earnings to Mr. Summers' estate should be adjusted due to the fact that had he lived, he would have consumed part of that income. The amount of his consumption would not represent a loss to the estate. I have reduced his earnings by an estimate of the amount of his consumption.

Family consumption tables found in Nelson and Patton [8]) indicate that a male adult's consumption varies with income and with the number of children in the household. Mr. Summers' children lived with Deborah and him and he was responsible for their support. Therefore, I have used estimates of consumption of the male head of household for a family with two children for the next nine years, until his first child turns 21, for one child for one year and for a family with no children for the remainder of his work life. The average fraction of income consumed is as follows:

Number of Children	Number of Years	Consumption Fraction
2	9	.17
1	4	.191
0	24	.232

$$(.17*9 + .191*4 + .232*24)/ 37 = .2125$$

The estimated annual consumption is $.2125 * \$71,738 = \$15,244$. The present value of consumption over his worklife is \$461,764 or 21.25% of earnings.

I assume that his Social Security retirement benefits and pension benefits will fund his post-retirement consumption.

7.c. Non-Market Household Services

In addition to his earnings, Mr. Summers contributed to his family by doing regular chores and maintenance around the house. Mrs. Summers states that he helped with cleaning the house, washing the cars, taking the cars in for maintenance, yardwork, paying bills, preparing information for tax returns, some shopping and banking. She reports that she does all those tasks now. The average hours spent by working men in household services is estimated at 12.9 hours per week. [9] I have valued these services at \$25 per hour, the cost of hiring a maid or yard worker from a local agency. When men retire, the average number of hours spent doing work around the home increases to 19.3 per week. I have estimated that the annual loss of value of household services is \$16,770 per year until Mr. Summers' expected retirement age and \$25,090 per year from retirement until the end of life expectancy. The present value of these services over Mr. Summers' expected life time is estimated at \$653,091. I have assumed that the cost to replace these service increases at the same rate as the real wage rate, or .9% per year. I have used a 2.2% real discount rate for these estimates.

7.d. Effect of the Death of Mr. Summers on the Value of the Business

At the time of his death, Mr. Summers was considering an offer from Universal Gyms to buy University Fitness Clubs. A written offer sheet dated before Mr. Summers' death showed that Universal Gyms offered \$300,000 for the two clubs, to be paid in three annual installments of \$100,000, and contingent upon Mr. Summers managing the clubs for Universal Gyms for the next two years at a salary plus performance bonus of \$60,000, plus fringe benefits. As condition of the sale, Mr. Summers was required to sign a non-compete agreement for 25 years. Universal Gyms withdrew the offer after learning of Mr. Summers' death.

In the years since Mr. Summers' death, Mrs. Summers has had to hire a manager to operate the clubs. Because of this additional expense, the clubs have earned only \$5,000 annual profits for Mrs. Summers in the one full year since Mr. Summers' death. The current depreciated book value of

assets of the business is \$50,000. Assuming the business now could be sold for the book value of assets, the estate has lost \$250,000 due to the reduction in value of the business.

8. Summary

The losses to the estate of Bruno Summers are due to the loss of his future earnings, fringe benefits and non-market services, and due to the loss in the value of the business he had built. I have reduced these losses for Mr. Summers’ estimated consumption and have adjusted future values to present value. The estimated present value of lost compensation is \$2,173,008 for earnings and \$312,913 for fringe benefits. The deduction for consumption is \$461,764. The estimate of his lost household services is \$653,091. The estimated loss in value of the business is \$250,000. Total losses are \$2,927,248.

Summary of Losses to the Estate of Bruno Summers

Earnings	\$2,173,008
Plus: Fringe Benefits, 14.4% of earnings	\$312,913
Less: Consumption, 21.25% of earnings	-\$461,764
Value of Lost Household Services	\$653,091
Reduced Value of the Business	\$250,000
Present Value of the Loss to the Estate	\$2,927,248

For the Estate of Bruno Summers

Table 1. University Fitness Club: Summary Financial Data

	20XX	20XX+1	20XX+2	20XX+3	20XX+4	20XX+5
Revenues	\$100,000	\$150,000	\$200,000	\$275,000	\$355,000	\$355,000
Expenses, including wages	\$ 80,000	\$100,000	\$125,000	\$250,000	\$260,000	\$315,000
Net revenues	\$ 20,000	\$ 50,000	\$ 75,000	\$ 25,000	\$ 95,000	\$ 50,000
Interest on debt	\$ -	\$ -	\$ -	\$ 10,000	\$ 10,000	\$ 10,000
Taxes	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Depreciation and amortization	\$ 10,000	\$ 15,000	\$ 15,000	\$ 20,000	\$ 25,000	\$ 25,000
Profits	\$ 10,000	\$ 35,000	\$ 60,000	\$ (5,000)	\$ 60,000	\$ 5,000

Table 2. Lost Income Estimates for Mr. Bruno Summers

Base annual earnings	\$60,000
Age-earnings cycle adjustment	1.18
Assumed unemployment	3.5%
Inflation adjustment 200x to present	5.0%
Adjusted base earnings	\$ 71,738
Real wage growth rate	0.9%
Real interest rate for discounting	2.2%

Year	Adjusted Base Earnings	Discount Factor: $1/(1+.022)^n$	Discounted Earnings
200x *	\$ 71,738	1	\$71,738
200x +1	\$ 72,384	1	\$72,384
200x +2	\$ 73,035	0.978	\$71,463
200x +3	\$ 73,693	0.957	\$70,554
200x +4	\$ 74,356	0.937	\$69,657
200x +5	\$ 75,025	0.917	\$68,770
200x +6	\$ 75,700	0.897	\$67,896
200x +7	\$ 76,381	0.878	\$67,032
200x +8	\$ 77,069	0.859	\$66,179
200x +9	\$ 77,763	0.840	\$65,338
200x +10	\$ 78,462	0.822	\$64,506
200x +11	\$ 79,169	0.804	\$63,686
200x +12	\$ 79,881	0.787	\$62,876
200x +13	\$ 80,600	0.770	\$62,076
200x +14	\$ 81,325	0.754	\$61,286
200x +15	\$ 82,057	0.737	\$60,507
200x +16	\$ 82,796	0.722	\$59,737
200x +17	\$ 83,541	0.706	\$58,977
200x +18	\$ 84,293	0.691	\$58,227
200x +19	\$ 85,052	0.676	\$57,487
200x +20	\$ 85,817	0.661	\$56,755
200x +21	\$ 86,589	0.647	\$56,033
200x +22	\$ 87,369	0.633	\$55,321
200x +23	\$ 88,155	0.620	\$54,617
200x +24	\$ 88,948	0.606	\$53,922
200x +25	\$ 89,749	0.593	\$53,236
200x +26	\$ 90,557	0.580	\$52,559
200x +27	\$ 91,372	0.568	\$51,891
200x +28	\$ 92,194	0.556	\$51,230
200x +29	\$ 93,024	0.544	\$50,579
200x +30	\$ 93,861	0.532	\$49,935
200x +31	\$ 94,706	0.521	\$49,300
200x +32	\$ 95,558	0.509	\$48,673
200x +33	\$ 96,418	0.498	\$48,054
200x +34	\$ 97,286	0.488	\$47,443
200x +35	\$ 98,161	0.477	\$46,839
200x +36	\$ 99,045	0.467	\$46,243
Present Value of Earnings			\$2,173,008

Data Sources:

[1] U.S Department of Health and Human Services, National Center for Health Statistics, National Vital Statistics Reports, U.S. Life Tables, 20XX-3, Volume 54, Number 14, April 19, 20XX+1. http://www.cdc.gov/nchs/data/nvsr/nvsr54/nvsr54_14.pdf

[2] Economic Report of the President, 20XX+1, and earlier years, Table 46, Hours and earnings in private nonagricultural industries, 1959-20XX. <http://www.gpoaccess.gov/eop/tables06.html>

[3] Economic Report of the President, 20XX+1, Table B-73, Bond Yields and Interest Rates, 1929-20XX. <http://www.gpoaccess.gov/eop/tables06.html>

[4] Economic Report of the President, 20XX+1, and earlier years, B-60, Consumer Price Indexes for major expenditure classes, 1959-20XX. <http://www.gpoaccess.gov/eop/tables06.html>

[5] U.S. Census Bureau, Current Population Survey, 20XX Annual Social and Economic Supplement, Table: PINC-04. Educational Attainment—People 18 Years Old and Over, Total Money Earnings in 20XX-2, Age, Race, Hispanic Origin, and Sex. <http://pubdb3.census.gov/macro/032006/perinc/toc.htm>

[6] Bureau of Labor Statistics, Current Population Survey of Employment, Unemployment for White Males by Age, 1954-20XX, <http://www.bls.gov/cps/home.htm>

[7] Bureau of Labor Statistics, Survey of Employer Costs for Employee Compensation, July 20XX+1. <http://www.bls.gov/news.release/ecec.t01.htm>

[8] Ruble, Michael, R., Robert T. Patton, David M. Nelson, “Patton-Nelson Personal Consumption Tables: 2000-2001 Updated and Revised,” *Journal of Forensic Economics*, 15(3), 20XX-4, pp. 295-301.

[9] Robinson, John P., and Geoffrey Godbey, Time for Life, 2nd edition, Penn State Press, 20XX-9, page 105.

Entry 40: University Fitness Photographs (Photo A)-1 of 3



Entry 40: University Fitness (Photo B) 2 of 3



Entry 40: University Fitness (Photo C) 3 of 3



ECONOMIC REPORT

Critique of Plaintiff's Economic Report

Prepared by

Thomas Monday, Ph.D.
Professor, Department of Economics
University of Santa Laura

Economic Report of Dr. Thomas Monday, Defendant's Economist

I have been retained as an economist to help prepare the defendants representing Edward Taylor Hard and M.C. Davola, to take the deposition of Dr. Hann and to examine Dr. Hann at trial. The following is my critique of Dr. Hann's report concerning the value of the economic loss to Bruno Summers' estate. In my opinion, Bruno Summers' earnings capability was much lower than estimated in Dr. Hann's report and the loss in value of the business is also much lower than estimated by Dr. Hann. Further, I believe that the estimate of the value of lost non-market services is overstated and the value of fringe benefits is incorrect. I believe that the loss in the value to the estate is approximately \$1,094,412.

The loss to the estate of Mr. Summers contains two major components: loss of earnings and loss of the value of the business. Dr. Hann appears to have utilized commonly accepted methods in estimating the present value of the earnings loss to the estate of Bruno Summers. However, I believe that Dr. Hann used an inappropriate method for valuing the loss in value of the business owned by the estate of Mr. Summers. Further, I find that the facts in this case do not support many of the assumptions used by Dr. Hann in preparing his report. Alternative assumptions consistent with the facts lead to substantially reduced estimates of the losses.

I have reviewed eight factors used by Dr. Hann:

1. The length of Mr. Summers' worklife
2. The allocation of cash flow from the business between (1) earnings from the labor of Mr. Summers in his business and (2) a return to capital invested in the business
3. The real interest rate used in discounting future earnings
4. The annual increase in real wages
5. Fringe benefits
6. The assumed amount of future consumption by Mr. Summers
7. The valuation of non-market services provided by Mr. Summers and lost by the estate
8. The market valuation of the business

1. Worklife estimate

Dr. Hann relies on Mrs. Summers' statements that Mr. Summers would work until age 67. However there are several events that may have affected Mr. Summers' actual work life, including the probability of injuries due to accidents, disease, declining health, unexpected layoffs, or simply a choice to retire early. Intentions stated at age 30 may not reflect actual behavior as one ages. It is an error to use a worklife expectancy that is not adjusted for these probabilities that potentially can affect anyone. In this case, Mr. Summers' medical reports indicate serious liver disease. If the doctors indicate that this disease has reduced Mr. Summers' life expectancy, it may also have reduced his worklife. Second, Mr. Summers' survivalist hobbies and neo-Nazi activities are high risk activities. If these increase the probability of injury or death above that of the average individual, they would reduce his expected worklife.

Statistical tables exist that do incorporate the impact of the probabilities of unexpected causes for withdrawal from the workforce. Based on a commonly used table, 30-year-old men with a high school education and currently active in the labor force, experience a worklife expectancy of 28.26 years to age 58.26. [1]

2) Future earnings

Dr. Hann estimated base income for Mr. Summers at \$60,000 per year, an amount equal to the taxable income for the health club business owned and managed by Mr. Summers. However, Mr. Summers had invested over \$150,000 of capital in the business. Consequently Mr. Summers' earnings reported in his tax returns represented two things, 1) earnings for his services as the manager of the clubs and 2) a return on the capital invested in the business, which will continue after his death. The value of his services as the manager can be determined by looking at the wages paid to comparable managers who are not owners. The manager hired to replace Mr. Summers is paid \$45,000 per year. A survey of health club managers shows that average wages are about \$42,000 per year. I have estimated the value of Mr. Summers' earnings as manager of the club at \$45,000 per year. His earnings on his invested capital is \$15,000 per year. (This is consistent with assuming that the \$150,000 he has invested earns 10% per year.)

I have adjusted his earnings for 5% inflation over the past two years, the probability of future unemployment estimated at 3.5% per year and 18% for the impacts of the age earnings cycle. The adjusted estimate of base income is \$53,804 per year.

3. Discount rate for earnings

Dr. Hann uses data for the last 50 years to estimate past and future inflation, interest rates, and wage rate growth. From this data, he calculates a 2.2 real interest rate for discounting and a .9% real wage growth rate. However, I believe that recent economic events more closely reflect conditions that will exist in the future over Mr. Summers' work life. If we use a 20-year time horizon, we find that the average real interest rate was 2.7% and the real wage rate growth was .5%. The higher discount rate and lower wage growth rate both act to reduce the present value of future earnings losses. The present value of future earnings is estimated at \$1,179,129.

4. Fringe benefits

Dr. Hann adds 14.4 % of Mr. Summers' wages to the loss to account for the value of fringe benefits provided by his business in the form of his personal health care and pension contributions. However, health care benefits would have been consumed by Mr. Summers during his work life. In addition, Dr. Hann assumes that Mr. Summer's post-retirement consumption is funded by the pension plan. Since both of these fringe benefits would have been consumed by Mr. Summers, they are not a net loss for the estate.

5. Consumption

The source for the estimate of consumption used by Dr. Hann reports consumption as a fraction of total household income in 20XX-5. However, Dr. Hann calculated consumption as a fraction of only Mr. Summers' earnings. Based on examination of Mr. and Mrs. Summers' income tax statement, I found that Mrs. Summers, while not currently working, does receive \$20,000 per year from a trust fund set up by her parents. Consequently total household income is \$88,804, including \$53,804 in wages from the business, \$15,000 in return on capital from the business and \$20,000 from the trust fund.

Dr. Hann assumes that Mr. Summers' consumption pattern is that of a male living in a household with four people. Using a more current source of data on consumption patterns [2], I find that the average male in households with income of \$88,804 consumes 18.1% of family income, or \$16,074 per year as compared to the \$14,430 estimated by Dr. Hann. The \$16,074 is 29.9% of

Mr. Summers' earnings. The present value of that consumption until Mr. Summers retires is \$352,559. I agree with Dr. Hann that Mr. Summers' consumption after retirement will be provided by his employer's contributions to pension and social security compensation.

6. Non-market services wage rate and self-consumption

Dr. Hann assumes that Mr. Summers contributed the average amount of non-market services to the household or 12.9 hours per week. He assumes that upon retirement, the number of hours would increase to 19.3 hours per week. He values these services at \$25 per hour, the retail cost of buying these services from a professional. There are four reasons why this estimate overstates the loss to the estate. First, the \$25 per hour valuation is the cost of services provided by a professional. It would be reasonable to assume that the amount of time needed for a professional to accomplish these services would be less than the amount of time needed by an amateur, so to price services provided by an amateur at the professional rate will overestimate their value. I have assumed that Mrs. Summers could hire a local helper at the going wage rate for a janitor or maid of about \$12 per hour. [3]

Second, a part of these services, such auto maintenance for a second car, would be services that would have been self-consumed and no longer needed after Mr. Summers' death.

Third, Mrs. Summers has said that Mr. Summers spent most of his time at work or working out and thus had little time to perform household services. To assume that he performed the average amount of household services would appear to overestimate his actual contribution.

Fourth, services provided by Mrs. Summers in support of Mr. Summers, such as shopping, laundry and cooking, will no longer need to be provided. Some deduction for estimated self-consumption of total household services should be made. Although no studies directly address this issue, it would be reasonable to assume that self-consumption of total household services is the same percentage as the percentage of consumption of family income, or 18.1%. Using the same source as Dr. Hann, total household non-market services provided by both Mr. and Mrs. Summers is estimated at 44.9 hours per week if Mr. Summers is working and 51.3 hours per week if he is retired. If 18.1% of those hours (8.1 hours per week while working and 10.3 hours while retired) are consumed by Mr. Summers, the net loss is (12.9 – 8.1) or 4.8 hours per week while he is working and (19.3 – 9.3) or 10.0 hours per week if he is retired. Using these reasonable assumptions, annual losses are \$2,995 per year (4.8*\$12*52) while working and \$6,240 while retired. I assume that the value of these services increases at the rate of wage rate growth of .5% per year. They are discounted at 2.7% per year. The present value of the net loss in services to the household is estimated at \$117,843.

7. Loss in value of the business

Recently Universal Gyms has made a revised cash offer for the clubs to Mrs. Summers for the amount of \$50,000, including assumption of the outstanding debt of \$100,000. The original offer to purchase of \$300,000 did not include assumption of debt of \$100,000. The new offer has a value of \$150,000, so, if we accept these offers as representing the value of the business at the time of the offers, the net loss in value of the business is \$150,000.

Summary

The loss to Mr. Summers' estate is substantially less than estimated by Dr. Hann. If we use assumptions that are based on the facts in this case, the losses are estimated at \$1,094,412.

Summary of Losses to the Estate of Bruno Summers

Earnings	\$1,179,129
Less: Consumption, 29.9%	-\$ 352,559
Value of Lost Household Services	\$ 117,843
<u>Reduced Value of the Business</u>	<u>\$ 150,000</u>
Present Value of the Loss to the Estate	\$1,094,412

Data Sources:

[1] Skoog, Gary R., and James E. Ciecka, "The Markov (Increment-Decrement) Model of Labor Force Activity: Extended Tables of Central Tendency, Variation and Probability Intervals," The Journal of Legal Economics, Spring/Summer, 20XX-4.

[2] Bureau of Labor Statistics, Consumer Expenditure Survey, Table 37. Consumer units of two persons by income before taxes: Average annual expenditures and characteristics, Consumer Expenditure Survey, (20XX – 3) – (20XX-2).
<http://www.bls.gov/cex/home.htm>

[3] Washington State Employment Security Department, Occupational Employment and Wages Survey, 20XX, mean wage for Janitors and Porters.
<http://www.workforceexplorer.com/cgi/dataanalysis/?PAGEID=4&SUBID=146>

EKKO INSURANCE
SAFEPLAN POLICY
For
APARTMENTS, MOTELS, OFFICES,
SERVICES and MERCANTILES

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* Pages not applicable to the *Summers v. Hard* lawsuit are not included.

Entry 42: EKKO Insurance Policy-2 of 10

HOME OFFICE: 4888 BROOKLYN AVE. N.E., RUSTON, MAJOR 98455
(A stock insurance company herein called the company)

SAFEPLAN Policy #: 20112235

NAME OF THE INSURED AND MAILING ADDRESS	POLICY PERIOD
THE GARAGE TAVERN 1134 BROADWAY AVE RUSTON, MJ 98212	from 01-12-20XX to 01-12-20XX+1 Beginning and ending (12:01 A.M. at the mailing address of the insured)
REPLACES	

BUSINESS OF THE NAMED INSURED IS:
SALE OF ALCOHOLIC BEVERAGES

THE NAMED INSURED IS:
SOLE PROPRIETORSHIP

INSURANCE IS PROVIDED FOR THE INSURED WITH RESPECT TO THE DESCRIBED PREMISES AND COVERAGES SHOWS

LOC	DESCRIBED PREMISES
1	1134 BROADWAY AVE RUSTON, MJ 98212

Sec	Coverage	Loc.	Bldg.	Limit of Liability
I	ALL RISK COVERAGE			
I	B-BUSINESS PERSONAL PROPERTY LOSS OF INCOME	1	01	\$20,000 ALL ACTUAL LOSS SUSTAINED, NOT EXCEEDING 12 CONSECUTIVE MONTHS
II	BUSINESS LIABILITY PREMISES MEDICAL PAYMENTS			ALL \$600,000 EACH OCCURRENCE ALL \$5,000 EACH PERSON / \$20,000 EACH OCCURRENCE
III	EXTERIOR BUILDING GLASS			REPLACEMENT COST

POLY FORMS AND ENDORSEMENTS:

CF - 932 07 - 08 CF - 969 1 - 83

ANNUAL PREMIUM \$7,000.00
TOTAL ANNUAL PREMIUM \$7,000.00

Countersignature  Date 1/12/20XX
Agent JOHNSON INS AGENCY Issuance Date 02-05-20XX

THIS PAGE AND THE ATTACHMENTS ARE YOUR COMPLETE NEW INSURANCE POLICY. WE APPRECIATE THE OPPORTUNITY TO SERVE YOUR INSURANCE NEEDS. PLEASE SEE OR CALL YOUR INDEPENDENT AGENT FOR INFORMATION ON THIS OR OTHER TYPES OF PROTECTION.

AGENT NO. 43 - 0488

OP - 852 7/2001 PRINTED IN U.S.A.

COVERAGE A – BUILDINGS

This policy covers the replacement cost of the building(s) at the premises described in the Declaration for which a limit of liability is shown.

COVERAGE B – BUSINESS PERSONAL PROPERTY

This policy covers replacement cost of the Business Personal Property owned by the insured, usual to the occupancy of the insured, at the premises, or within 100 feet of the premises, described in the Declaration for which a limit of liability is shown, including:

1. The personal property of others, but not that of an employee, in the care, custody or control of the insured for business purposes while in or on the premises described in the Declarations, or within 100 feet of such premises. Such insurance shall apply without regard to the insured's legal liability.
2. The business personal property of the insured and the property of others in the care, custody or control of the insured for not more than \$1,000 for all losses arising out of any one occurrence while such property is in due course of transit, or otherwise temporarily away from the described premises.
3. **PERSONAL PROPERTY AT NEWLY ACQUIRED LOCATIONS:** This policy also covers the business personal property of the insured for not exceeding \$10,000 while at premises owned, leased or operated by the insured, other than those described in the Declarations, but this coverage shall cease thirty (30) days from the date of acquisition of such premises or on the date values at such locations are reported to the Company or on the expiration date of the policy, whichever occurs first.
4. Tenant's improvements and betterments, meaning the insured's use interest in fixtures, alterations, installations or additions comprising a part of the building occupied but not owned by the insured and made or acquired at the expense of the insured, exclusive of rent paid by the insured, but which are not legally subject to removal by the insured.
5. **ACCOUNTS RECEIVABLE:** This policy covers loss of or damage to accounts receivable and shall be adjusted on the value of:
 - a. All sums due the insured from customers, provided the insured is unable to effect collection thereof as the direct result of loss of or damage to records of accounts receivable;
 - b. Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage;
 - c. Collection expense in excess of normal collection cost and made necessary because of such loss or damage;
 - d. Other expenses, when reasonably incurred by the insured in re-establishing records of accounts receivable following such loss or damage.

EXCLUSIONS. In addition to exclusions listed under SECTION I – PERILS AND EXCLUSIONS, Accounts Receivable are not covered for loss or damage due:

- a. to loss due to bookkeeping, accounting or billing errors or omissions;
 - b. to loss due to alteration, falsification, manipulation, concealment, destruction or disposal of records of accounts receivable committed to conceal the wrongful giving, taking, obtaining or withholding of money, securities or other property but only to the extent of such wrongful giving, taking, obtaining or withholding;
 - c. to loss due to electrical or magnetic injury, disturbance or erasure of electronic recordings, except by lightning
6. **MONEY AND SECURITIES:** This policy covers money and securities used in the conduct of the insured's business for an amount not exceeding \$1,000 per occurrence, as follows:
 - a. On Premises: While in or on the premises described in the Declarations, or within a bank or savings institution; and
 - b. Off Premises: While en route to or from such described premises, bank or savings institution, or within the living quarters of the custodian of such funds

The insured shall keep records of all the insured property in such a manner that the Company can accurately determine therefrom the amount of loss.

The amount of the Company's liability for loss shall not exceed:

- a. what it would cost at the time of loss to replace the property with other of like kind and quantity; or
- b. the actual cash value thereof at the time of loss provided, however, at the option of the insured, payment of the cost of replacing securities may be determined by the market value at the time of such settlement.

Dishonest or fraudulent acts or a series of similar or related acts of any person acting alone or in collusion with others during the policy period shall be deemed to be one occurrence for the purposes of applying the deductible and the limit of liability.

COVERAGE C – LOSS OF INCOME

This policy covers the actual business loss sustained by the insured and the expenses necessarily incurred to resume normal business operations resulting from the interruption of business or the untenability of the premises when the building or the personal property, at a location shown in the Declarations, is damaged as a direct result of an insured peril. The actual business loss sustained by the insured shall not exceed:

1. the reduction in gross earnings, less charges and expenses which do not necessarily continue during the interruption of business; and
2. the reduction in rents, less charges and expenses which do not necessarily continue during the period of untenability.

The actual business loss sustained shall not include charges and expenses which do not necessarily continue during the interruption of business or during the untenability of the premises.

Loss of income shall be payable for only such length of time as would be required to resume normal business operations but not exceeding such length of time as would be required to rebuild, repair or replace such part of the building or personal property as has been damaged or destroyed as a direct result of an insured peril. Such loss shall not exceed twelve consecutive months from the date of loss and shall not be limited by the expiration date of this policy. The insured is required to resume normal business operations as promptly as possible and shall use all available means to eliminate any unnecessary delay.

Entry 42: EKKO Insurance Policy-4 of 10

The term "normal business operations" of the insured means the condition that would have existed had no loss occurred.

RESUMPTION OF OPERATIONS: It is a condition of this insurance that if the insured could reduce the loss resulting from the interruption of business:

1. by complete or partial resumption of operation of the property herein described, whether damaged or not; or
2. by making use of merchandise or other property at the locations described herein or elsewhere; or
3. by making use of stock at the locations described herein or elsewhere

such reduction shall be taken into account in arriving at the amount of loss hereunder.

LIMITATIONS: The Company shall not be liable for any increase of loss which may be occasioned by:

1. interference at the described premises by strikers or other persons with rebuilding, repairing or replacing the property or with the resumption or continuation of business; or
2. the suspension, lapse or cancellation of any lease, license, contract or order unless such suspension, lapse or cancellation results directly from the interruption of business, and then the Company shall be liable only for such loss as affects the insured's earnings during, and limited to, the period of indemnity covered under this policy.

SECTION I – PERILS AND EXCLUSIONS (NAMED PERIL)

When Named Peril Coverage is designated in the Declarations for Section I, the section titled Perils and Exclusions (Named Peril) is applicable.

PERILS INSURED

This policy insured against all direct loss, subject to all the provisions contained herein, for loss caused by:

1. Fire.
2. Lightning.
3. Windstorm or Hail.
4. Explosion, including direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox (or combustion chamber) of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom.
5. Smoke, meaning sudden and accidental damage from smoke, other than smoke from agricultural smudging or industrial operations.
6. Aircraft or Vehicles, meaning only direct loss resulting from actual physical contact of an aircraft or a vehicle with the property covered or with the building(s) containing the property covered, except that loss by aircraft includes direct loss by object falling therefrom.
7. Riot. Riot Attending a Strike or Civil Commotion, including direct loss by acts of striking employees of the owner or tenant(s) of the building(s) while occupied by said striking employees and shall also include direct loss from pillage and looting occurring during and at the immediate place of a riot attending a strike or civil commotion.
8. Vandalism or Malicious Mischief, meaning only the willful and malicious damage to or destruction of the property covered.
9. Sprinkler Leakage, meaning leakage or discharge of water or other substance from within an automatic sprinkler, or direct loss caused by collapse or fall of a tank forming a part of such system.

EXCLUSIONS

The Company shall not be liable for loss:

1. occasioned directly or indirectly by enforcement of any ordinance or law regulating the construction, repair or demolition of buildings or structures;
2. caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by perils not otherwise excluded;
3. caused by any electrical injury or disturbance of electrical appliances, devices, fixtures, or wiring caused by electrical currents artificially generated unless fire as insured against ensues and then this Company shall be liable for only loss caused by the ensuing fire.
4. caused by, resulting from, contributed to, or aggravated by any of the following:
 - a. earth movement, including but not limited to earthquake, landslide, mudflow, earth sinking, earth rising or shifting;
 - b. flood, surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
 - c. water which backs up through sewers or drains;
 - d. water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors, or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors;
 - e. delay or loss of marketunless fire or explosion as insured against ensues, and then this Company shall be liable for only loss caused by the ensuing fire or explosion.

SECTION I – DEDUCTIBLE

This deductible clause does not apply to coverage as provided for Loss of Income.

For loss by theft, the sum of \$250 shall be deducted from the amount of loss to property in any one occurrence. For loss other than loss by theft, the sum deducted will be \$100.

The aggregate amount of this deductible in any one occurrence shall not exceed \$1,000.

SECTION II –BUSINESS LIABILITY AND PREMISES MEDICAL PAYMENTS

PERSONS INSURED

Each of the following is an **insured** under this insurance to the extent set forth below:

1. The **named insured** and, if an individual, the spouse of such **named insured** if a resident of the same household.
2. If the **named insured** is designated in the Declarations as:
 - a. Partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof by only with respect to his liability as such;
 - b. Other than an individual, partnership or joint venture the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such.
3. Any person or organization while acting as real estate manager for the **named insured**
4. Any employee of the **named insured** while acting within the scope of his duties as such.
5. Any entity which the **insured** acquires or forms, and over which the **insured** maintains financial control through ownership of more than 50% of its capital stock or assets. This coverage for such entities will expire 90 days after the acquisition or formation of such entity.

INSURING AGREEMENTS

1. **BUSINESS LIABILITY**
The Company will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **bodily injury, property damage, personal injury or advertising injury** caused by an **occurrence** to which this insurance applies.
2. **STOP-GAP EMPLOYER'S LIABILITY**
The Company will pay for the legal liability of the **insured** for such **bodily injury** of any employee of the **insured** who sustains an injury which arises out of and in the course of the **insured's** employment, provided such employee is reported and declared under the workers' compensation fun of the State(s) of Montana, Major, Nevada, Ohio, Utah, and West Virginia.
3. **PREMISES MEDICAL PAYMENTS**
The Company will pay to or for each person who sustains **bodily injury** caused by accident all reasonable **medical expense** incurred within one year from the date of the accident on account of such **bodily injury**, provided such **bodily injury** arises out of (a) a condition in the **insured premises** or (b) operations with respect to which the **named insured** is afforded coverage for bodily injury liability under this policy.

RIGHT AND DUTY TO DEFEND

The Company shall have the right and duty to defend any claim or suit against the **insured** seeking damages payable under this policy, even though the allegations of the suit may be groundless, false or fraudulent. The Company may make such investigations and settlements of any claim or suit as it deems expedient. The Company is not obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

SUPPLEMENTARY PAYMENTS

The Company will pay, in addition to the applicable limit of liability:

1. all expenses incurred by the Company, all costs taxed against the **insured** in any **suit** defended by the Company and all interest on the entire amount of any judgment therein which accrues after the entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
2. premium on appeal bonds required in any such **suit**, premiums on bonds to release attachments in any such **suit** for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the **insured** because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed \$250 per bail bond, but the Company shall have no obligation to apply for or furnish any such bonds;
3. expenses incurred by the **insured** or first aid to others at the time of an accident, for **bodily injury** to which this policy applies;
4. reasonable expenses incurred by the **insured** at the Company's request in assisting the Company in the investigation or defense of any claim or **suit**, including actual loss of earnings not to exceed \$50 per day.

EXCLUSIONS

Under Insuring Agreement 1 Business Liability:

This insurance does not cover:

1. **bodily injury** or **property damage** included within the **war hazard** with respect to liability assumed by the **insured** under any contract or agreement or expenses of first aid under the Supplementary Payments provision;
2. any obligation for which the **insured** or any carrier as his insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
3. with respect to employee injuries:
 - a. **bodily injury** to any employee of the **insured** arising out of and in the course of his employment by the **insured** for which the **insured** may be held liable as an employer or in any other capacity; or
 - b. any obligation of the **insured** to indemnify or contribute with another because of damages arising out of the **bodily injury**; or

Entry 42: EKKO Insurance Policy-6 of 10

- c. **bodily injury** sustained by the spouse, child, parent, brother, or sister of an employee of the **insured** as a consequence of **bodily injury** to such employee arising out of and in the course of his employment by the **insured**.

This exclusion applies to all claims and suits by any person or organization for damages because of such **bodily injury** including damages for care and loss of services.

This exclusion does not apply to liability assumed by the **insured** under a contract.

4. **property damage** (a) to property owned or transported by the **insured**; (b) to personal property rented to the **insured**; (c) to property under **bailment** to the **insured** (except injury to or destruction of such property arising out of the use of elevators or escalators or to liability assumed under sidetrack agreements); (d) to that particular part of any property (i) upon which operations are being performed by or on behalf of the **insured**, or (ii) out of which such injury or destruction arises; (e) to premises alienated by the **named insured** arising out of such premises or any part thereof; (f) to the **named insured's products** arising out of such products or any part of such products; (g) with respect to the **completed operations hazard** to work performed by or on behalf of the **named insured** arising out of such work or any portion thereof, or out of such materials, parts or equipment furnished in connection therewith;
5. damages claimed for the withdrawal, inspection, repair, replacement or loss of use of the **named insured's products** or any work completed by or for the **named insured** or of any property of which such products or work form a part if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
6. **bodily injury or property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of any **mobile equipment** while being used in any prearranged or organized racing speed or demolition contest or in any stunting activity or in practice of preparation for any such contest or activity;
7. loss of use of tangible property which has not been physically injured or destroyed resulting from:
- a delay in or lack of performance by or on behalf of the **named insured** of any contract or agreement; or
 - the failure of the **named insured's products** or work performed by or on behalf of the **named insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **named insured**
- but this exclusion does not apply to loss of use or other tangible property resulting from the sudden and accidental physical injury to or destruction of the **named insured's products** or work performed by or on behalf of the **named insured** after such products or work have been put to use by any person or organization other than an **insured**;
8. liability or injury arising out of or in connection with domestic activities of any **insured** which are not connected with the business of any **insured**;
9. **bodily injury or property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of:
- any **automobile** or aircraft owned or operated by or rented or loaned to any **insured**; or
 - any other **automobile** or aircraft operated by any person in the course of his employment by any **insured**.
- This exclusion does not apply to the parking of an **automobile** on premises owned by, rented to or controlled by the **named insured or the ways immediately adjoining**, if such **automobile** is not owned by or rented or loaned to any **insured**.
10. [alcoholic beverage liability deleted]
11. **bodily injury** to (a) another employee of the **named insured** arising out of or in the course of his employment or (b) the **named insured** or, if the **named insured** is a partnership or joint venture, any partner or member thereof;
12. liability for **personal injury** assumed by the **insured** under any contract or agreement;
13. **personal injury** arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of any **insured**;
14. **personal injury** arising out of a publication or utterance described in item (b) of the Definitions of **personal injury**:
- if the first injurious publication or utterance of the same or similar material by or on behalf of the **named insured** was made prior to the effective date of this insurance; or
 - concerning any organization or business enterprise or its **products** or services made by or at the direction of any **insured** with knowledge of the falsity thereof.
15. **personal injury** arising out of the legal, accounting, advertising or medical occupations, or any activities related to, associated with, or made possible by the **insured's** professional knowledge of these occupations. This exclusion does not apply to veterinarians, optometrists or dentists;
16. **advertising injury** arising out of:
- failure of performance of contract, but this exclusion does not apply to the unauthorized appropriation of ideas based upon alleged breach of implied contract; or
 - infringement of trademark, service mark or trade name, other than titles or slogans;
 - incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;
17. **advertising injury** for any **insured** in the business of advertising, broadcasting, publishing or telecasting
18. **bodily injury or property damage** due to rendering of or failure to render any professional service, including but not limited to:
- legal, accounting, advertising, engineering, drafting, architecture, and
 - medical, dental, pharmacological, cosmetic, hearing aid, optical, or ear piercing services.
- This exclusion does not apply to Incidental Medical Malpractice Injury. Incidental Medical Malpractice Injury means injury arising out of the rendering of or failure to render the following services, if the **insured** or any **insured's** indemnity is not engaged in the business or occupation of providing any of these services:
- medical, surgical, dental, X-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
 - the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.
19. any claim made against the **insured** for loss of revenue, caused by the loss of use of data processing records, during restoration of such data processing records, resulting from the **named insured's** negligence, failure to perform, or products. This exclusion applies only to **insureds** engaged in the business of providing data processing services for others;
20. **bodily injury or property damage** caused by the dumping, discharge or escape of irritants, pollutants or contaminants. This exclusion does not apply if the discharge is sudden and accidental.

Under Insuring Agreement 2 Stop-Gap Employers' Liability:

This insurance does not cover:

- any premium, assessment, penalty, fine, benefits, liability, or other obligation imposed by the Federal Employer's Liability Act, Jones Act, or any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;

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2. **bodily injury** suffered or caused by any person knowingly employed by the **insured** in violation of any law as to age, or under the age of 14 years regardless of any such law;
3. aircraft operation or the performance of any duty in connection with aircraft while in flight;
4. any claim for **bodily injury** with respect to which the **insured** is deprived of any defense or defenses or is otherwise subject to penalty because of default in premium payment, or any other failure to comply with the provisions of any workers' compensation law;
5. any liability assumed by the **insured** under any contract of agreement;
6. any injury sustained because of any act committed intentionally by or at the direction of the **named insured** and, if the **named insured** is a corporation or partnership, by an executive officer, director, stockholder or partner thereof.

Exclusions 1 and 6 above shall not exclude coverage for the legal liability of the **insured**, other than benefits of compensation provided for under any workers' compensation act, resulting from the deliberate intentional act of an employee or agent (other than an executive officer, director, stockholder or partner) to produce injury or death to another employee when such act is committed within the scope of employment.

Under Insuring Agreement 3 Premises Medical Payments:

This insurance does not cover:

1. **bodily injury** if excluded by Exclusions, Under Insurance Agreement 1;
2. **bodily injury**
 - a. included within the **completed operation hazard** or the products **hazard**;
 - b. arising out of operations performed for the **named insured** by independent contractors other than (i) maintenance and repair of the **insured premises** or (ii) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;
 - c. including within the **war hazard**;
3. **bodily injury**
 - a. to the **named insured**, any partner therein, any tenant or other person regularly residing on the **insured premises** or any employee of any of the foregoing if the **bodily injury** arises out of and in the course of his employment therewith;
 - b. to any other tenant if the **bodily injury** occurs on that part of the **insured premises** rented from the **named insured** or to any employee of such a tenant if the **bodily injury** occurs on the tenant's part of the **insured premises** and arises out of and in the course of his employment for the tenant;
 - c. to any person while engaged in maintenance and repair of the **insured premises** or alteration, demolition, or new construction at such premises;
 - d. to any person if any benefits for such **bodily injury** are payable or required to be provided under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
 - e. to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest;
4. any **medical expenses** for services by the **named insured**, any employee thereof or any person or organization under contract to the **named insured** to provide such services.

LIMITS OF LIABILITY

For the purpose of determining the limit of the company's liability, all **bodily injury, property damage, personal injury** and **advertising injury** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

Regardless of the numbers of **insureds** under this policy the Company's liability is limited as follows:

1. The limit expressed in the Declarations as applicable to "each **occurrence**" is the total limit of the Company's liability under the **bodily injury, property damage, personal injury** and **advertising injury** liability coverages combined for all damages as the result of any one **occurrence** provided:
 - a. with respect to all damages included within the (i) **completed operations hazard**, and the (ii) **products hazard**, or arising out of **advertising injury**, such limit of liability during each annual policy period as the result of one or more than one **occurrence**;
 - b. with respect to all damages arising out of **property damage** (other than the **completed operations hazard**, or the **products hazard**) such limit of liability shall be the total limit of the Company's liability during each annual policy period as the result of one or more than one **occurrence**, but said limit of liability shall apply separately to each project with respect to operations being performed away from premises owned by or rented to the **insured**.
2. The limit of liability for Premises Medical Payments Coverage stated in the Declarations as applicable to "each person" is the limit of the Company's liability for all **medical expense for bodily injury** to any one person as the result of any once accident but subject to the above provision respecting "each person," the total liability of the Company under Premises Medical Payments Coverage for all **medical expense for bodily injury** to two or more persons as the result of any one accident shall not exceed the limit of liability stated in the Declarations as applicable to "each accident."

DEFINITIONS

When used in this policy (including endorsements forming a part hereof):

“advertising injury” means injury which arises out of one or more of the following offenses committed in the course of the **named insured’s** advertising activities:

- a. libel, slander or defamation;
- b. any infringement of copyright, title or slogan;
- c. piracy or unfair competition;
- d. idea misrepresentation under implied contract;
- e. invasion of right of privacy;

“automobile” means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), it does not include **mobile equipment**;

“bailment” means a delivery of personal property by any person to the **insured** for some purpose beneficial to either the **insured** or such person or both under a contract, express or implied, for the **insured** to carry out such purpose and to redeliver such property or otherwise dispose of it as provided;

“bodily injury” means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

“completed operations hazard” includes **bodily injury** and **property damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the **named insured**. “Operations” include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- a. when all operations to be performed by or on behalf of the **named insured** under the contract have been completed;
- b. when all operations to be performed by or on behalf of the **named insured** at the site of the operations have been completed; or
- c. when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The **completed operations hazard** does not include **bodily injury** or **property damage** arising out of

- a. operations in connection with the transportation of property, unless the **bodily injury** or **property damage** arises out of a condition in or on a vehicle created by the loading or unloading thereof;
- b. the existence of tools, uninstalled equipment or abandoned or unused materials;

“insured” means any person or organization qualifying as an insured in the “Persons Insured” provision of the applicable insurance coverage. The insurance afforded applies separately to each insured against whom claim is made or **suit** is brought, except with respect to the limits of the Company’s liability;

“insured premises” means all premises owned by or rented to the **named insured** with respect to which the **named insured** is afforded coverage for **bodily injury** liability under this policy, and includes the ways immediately adjoining on land;

“medical expense” means expenses for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services;

“mobile equipment” means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (a) not subject to motor vehicle registration, or (b) maintained for use exclusively on premises owned by or rented to the **named insured**, including the ways immediately adjoining or (c) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

“named insured” means the person or organization named in the Declarations of this policy;

“named insured’s products” means goods or products manufactured, sold, handled or distributed by the **named insured** or by other trading under his name, including any container thereof (other than a vehicle), but **“named insured’s products”** shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

“non-owned private passenger automobile” means a four-wheel, self-propelled vehicle which is not owned, leased, hired or borrowed by the **named insured** and which is one of the following types:

- a. a private passenger vehicle, such as a sedan, station wagon, or jeep-type vehicle;
- b. a pick-up or panel truck not used primarily in the occupation, business or profession of the owner;

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- c. a utility automobile designed for personal use as a camper or motor home or for family recreational purpose but a utility automobile does not include any such automobile used primarily
 1. in the occupation, profession or business of the owner or
 2. for the transportation of passengers;

“**occurrence**” means:

- a. an event including continuous or repeated exposure to conditions, which results in **bodily injury** or **property damage**, or
- b. with respect to **personal injury** or **advertising injury**, the commission of an offense or a series of similar or related offenses which is neither expected or intended from the standpoint of the **insured**. **Occurrence** also includes any intentional act by or at the direction of the **insured** which results in **bodily injury**, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property;

“**personal injury**” means injury which arises out of one or more of the following offenses committed in the conduct of the **named insured’s** business:

- a. false arrest, detention or imprisonment, or malicious prosecution;
- b. the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual’s right of privacy, except publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the **named insured**;
- c. wrongful entry or eviction, or other invasion of the right of private occupancy;

“**policy territory**” means anywhere in the world, provided, however, that (a) resulting claims are asserted within the United States of America, its possessions, or Canada, and (b) it shall apply to **suits** and judgments for damages resulting therefrom only if **suit** is commenced in a court in the United States of America, its possessions or in Canada;

“**product hazard**” includes **bodily injury** and **property damage** arising out of the **named insured’s products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs away from the premises owned by or rented to the **named insured** and after physical possession of such products has been relinquished to others;

“**property damage**” means (a) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (b) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **occurrence** during the policy period;

“**suit**” includes an arbitration proceeding to which the **insured** is required to submit or to which the **insured** has submitted with the Company’s consent;

“**war hazard**” includes all **bodily injury** and **property damage** due to war, whether or not declared: civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing.

GENERAL CONDITIONS

CONDITIONS APPLICABLE TO SECTIONS I & II

1. Action Against Company

No action shall lie against the Company unless there shall have been full compliance with all of the terms of this policy nor until the amount of the **insured’s** obligation to pay shall have been finally determined whether by judgment against the **insured** after actual trial or by written agreement of the **insured**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by the policy. No person or organization shall have any right under this policy to join the Company as a party in any action against the **insured** to determine the **insured’s** liability, nor shall the Company be impleaded by the **insured** or his legal representative. Bankruptcy or insolvency of the **insured** or of the **insured’s** estate shall not relieve the Company of any of its obligations hereunder.

2. Insured’s Duties in the Event of Occurrence, Claim or Suit

- a. In the event of an **occurrence**, written notice containing particulars sufficient to identify the **insured** and also reasonably obtainable information with respect to the time, place and circumstances thereof and the names and addresses of the **insured** and of available witnesses shall be given by or for the **insured** to the Company or any of its authorized agents as soon as practicable.
- b. If claim is made or **suit** is brought against the **insured**, the **insured** shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.
- c. The **insured** shall cooperate with the Company and, upon the Company’s request, assist in making settlements, in the conduct of **suits** and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **insured** because of injury or damage with respect to which insurance is afforded under this policy; and the **insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **insured** shall not, except at his own cost, voluntarily make any payment, assume any obligations or incur any expense other than for first aid to others at the time of the accident.

3. Other Insurance

If, applicable to the loss, there is any valid and collectible insurance, whether on a primary, excess or contingent basis, available to the **insured** (in this or any other carrier), there shall be no insurance afforded hereunder as respects such loss; except that if the applicable limit of liability of this policy is in excess of the applicable limit of liability provided by the other insurance, this policy shall afford excess insurance over and above such other insurance in an amount sufficient to afford the **insured** a combined limit of liability equal to the applicable limit of liability afforded by this policy. Insurance under this policy shall not be construed to be concurrent or contributing with any other insurance which is available to the **insured**.

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4. **Nuclear Exclusion**

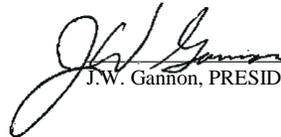
This policy does not apply.

5. **Medical Reports: Proof and Payment of Claim (Applicable to Premises Medical Payments)**

As soon as practicable the injured person or someone on his behalf shall give to the Company written proof of claim, under oath if required, and shall, after each request from the Company, executed authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the Company when and as often as the Company may reasonably require. The Company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the Company.

This policy has been signed for the company by its president and secretary and shall not be valid unless countersigned by an authorized representative of the Company.


W.D. Hammersley, SECRETARY


J.W. Gannon, PRESIDENT

SAPO INSURANCE COMPANY OF AMERICA

Home Office: 5081 Macintosh St. N., Jamner, Major 98462
(A Stock Insurance Company)

READY REFERENCE TO YOUR HOMEOWNERS POLICY

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* Pages not applicable to the *Summers v. Hard* lawsuit are not included

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BILL CODE	AGENT NO. 90312	COMM.	RATE	AMOUNT	RATE	AMOUNT
FIRE TERR.						

SAPO
Insurance Company
HOMEOWNERS DAILY REPORT
POLICY NUMBER

RENEWAL OF NUMBER

INT.	DATE
R	
U	
C	

L	AMOUNT
O	LOSS DATE
S	TYPE
S	AMOUNT
E	LOSS DATE
S	TYPE

Named Insured and P.O. Address
EDWARD T. HARD
1492 WEST ST.
RUSTON, MAJOR 98319

Agent and Address
RON WHALLEY, 3001 ALASKA ST., RUSTON

1 Years 7/17/20XX Inception 7/17/20XX+1 Expiration

The described residence premises covered hereunder is located at the above address unless otherwise stated herein.
SAME FRAME JAMNER CO. CL.2

Insurance is provided only with respect to the following Coverages for which a limit of liability is specified.

Coverages And Limit of Liability	SECTION I				SECTION II		
	A. Dwelling	B. Appurtenant Structures	C. Unscheduled Personal Prop.	D. Additional Living	E. Personal Liability Each Occurrence	F. Medical Payments to Others	
	200,000	15,000	30,000	5,000	200,000	10,000	25,000
Premium	Basic Policy Premium		Theft Extension	Additional Premiums	Total Prepd.	Premium Installment	Payable:
	1000				1000		
	Premium for Scheduled Personal Property						

DEDUCTIBLE SECTION I: any loss by perils insured against under Section I of this policy is Subject to a deductible.

Deductible applicable only to loss caused by the peril of windstorm or hail (Clause 1)

Deductible applicable to loss caused by other perils (Clause 2)

Special Loss Deductible Clause
X
\$ 500

Special State Provisions: Valuation Clause \$ _____ Coinsurance Clause Applies \$ _____

Section II - Additional residence premises, if any, located: (No., Street, City, County, State, Zip)

Mortgagee(s) Name and Address N/A

Countersignature Date 7/30/20XX Agency at Ruston, Major Agent Ron Whalley

RATING INFORMATION	NO. OF FAMILIES	NOT TOWNHOUSE	TOWNHOUSE	HO - 4 SELF RATING	YEAR OF CONSTRUCTION	ZONE
CONSTRUCTION						
PROTECTION					FIRE DIST. OR TOWN	
PREM. GR. NO.		DEDUCTIBLE				
STATISTICAL REPORTING INFORMATION Snowmobiles Watercraft Outboard Motors ALL OTHER PREMIUMS			PREMIUM PREPAID:	INSTALLMENT	INCEPTION	ANNIVERSARY

COVERAGE A – BUILDINGS

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

DEFINITIONS

Throughout this policy, “you” and “your” refer to the “named insured” shown in the Declarations and the spouse if a resident of the same household, and “we,” “us” and “our” refer to the Company providing this insurance. In addition, certain words and phrases are defined as follows:

1. **“actual cash value”**
 - a. When the damage to property is economically repairable, “actual cash value” means the cost of repairing the damage, less reasonable deduction for wear and tear, deterioration and obsolescence.
 - b. When the loss or damage to property creates a total loss, “actual cash value” means the market value of property in a used condition equal to that of the destroyed property, if reasonably available on the used market.
 - c. Otherwise, “actual cash value” shall mean the market value of new, identical or nearly identical property, less reasonable deduction for wear and tear, deterioration and obsolescence.
2. **“bodily injury”** means:
 - a. bodily harm, sickness or disease, including required care, loss of services and death resulting therefrom;
 - b. personal injury arising out of one or more of the following offenses:
 - i. false arrest, detention or imprisonment, or malicious prosecution;
 - ii. libel, slander or defamation of character; or
 - iii. invasion of privacy, wrongful eviction or wrongful entry.

As used in this paragraph, 2.b. personal injury coverage does not apply to:

- i. liability assumed by any **insured** under any contract or agreement except any indemnity obligation assumed by the **insured** under a written contract directly relating to the ownership, maintenance or use of the premises;
- ii. injury caused by a violation of a penal law or ordinance committed by or with the knowledge or consent of any **insured**;
- iii. injury sustained by any person as a result of an offense directly or indirectly related to the employment of this person by an **insured**;
- iv. injury arising out of the **business** pursuits of any **insured**; or
- v. civic or public activities performed for pay by any **insured**.

Except as stated in paragraph 2.b., **Section II – Exclusions** does not apply to personal injury coverage.

3. **“business”** includes trade, profession or occupation.
4. **“insured”** means you and the following residents of your household:
 - a. your relatives;
 - b. any other person under the age of 21 who is in the care of any person named above.

Under Section II, **“insured”** also means:

- c. with respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person included in 4.a. or 4.b. A person or organization using or having custody of these animals or watercraft in the course of any **business**, or without permission of the owner is not an **insured**;
 - d. with respect to any vehicle to which this policy applies:
 - i. any person while engaged in your employment or the employment of any person included in 4.a. or 4.b.; or
 - ii. any other person using the vehicle on an **insured location** with an **insured’s** permission.
5. **“insured location”** means:
 - a. the **residence premises**;
 - b. that part of any other premises, other structures and grounds, used by you as a residence and which is shown in the Declarations or which is acquired by you during the policy period for your use as a residence;
 - c. any premises used by you in connection with the premises included in 5.a. or 5.b.;
 - d. any part of a premises not owned by any **insured** but where any **insured** is temporarily residing;
 - e. vacant land owned by or rented to any **insured** other than farm land;
 - f. land owned by or rented to any **insured** on which a one or two family dwelling is being constructed as a residence for any **insured**;
 - g. individual or family cemetery plots or burial vaults of any **insured**;
 - h. any part of a premises occasionally rented to any **insured** for other than **business** purposes.
 6. **“occurrence”** means an accident, including exposure to conditions which results, during the policy period, in **bodily injury** or **property damage**.
 7. **“property damage”** means physical injury to or destruction of tangible property, including loss of use of property.
 8. **“residence employee”** means an employee of an **insured** who performs duties in connection with the maintenance or use of the **residence premises**, including household or domestic services, or who performs duties elsewhere of a similar nature not in connection with the **business** of any **insured**.
 9. **“residence premises”** means:
 - a. the one or two family dwelling, other structures and grounds; or
 - b. that part of any other building where you reside and which is shown in the Declarations.

SECTION I – PROPERTY COVERAGE

COVERAGE E – PERSONAL LIABILITY

If a claim is made or a suit is brought against any **insured** for damages because of **bodily injury** or **property damage** caused by an **occurrence** to which this coverage applies, we will:

1. pay up to our limit of liability for the damages for which the **insured** is legally liable; and
2. provide a defense at our expense by counsel of our choice even if the allegations are groundless, false or fraudulent. We may make any investigation and settle any claim or suit that we decide is appropriate.

COVERAGE F – MEDICAL PAYMENTS TO OTHERS

We will pay the necessary medical expenses incurred or medically ascertained within three years from the date of an accident causing **bodily injury**. Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage does not apply to you or regular residents of your household other than **residence employees**. As to others, this coverage applies only:

1. to a person on the **insured location** with the permission of any **insured**; or
2. to a person off the **insured location**, if the **bodily injury**:
 - a. arises out of a condition in the **insured location** or the ways immediately adjoining;
 - b. is caused by the activities of any **insured**;
 - c. is caused by a **residence employee** in the course of the **residence employee's** employment by any **insured**; or
 - d. is caused by an animal owned by or in the care of any **insured**.

ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

1. **Claim Expenses.** We pay:
 - a. expenses incurred by us and costs taxed against any **insured** in any suit we defend;
 - b. premiums on bonds required in a suit defended by us, but not for bond amounts greater than the limit of liability for Coverage E. We are not obligated to apply for or furnish any bond;
 - c. reasonable expenses incurred by an **insured** at our request, including actual loss of earning (but not loss of other income) up to \$50 per day, for assisting us in the investigation of defense of any claim or suit;
 - d. interest on the entire judgment which accrues after entry of judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.
2. **First Aid Expenses.** We will pay expenses for first aid to others incurred by any **insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **insured**.
3. **Damage to Property of Others.** We will pay on a replacement cost basis up to \$500 per **occurrence** for **property damage** to property of others caused by any **insured**.

We will not pay for **property damage**:

- a. to the extent of any amount recoverable under Section I of this policy;
 - b. caused intentionally by any **insured** who is 13 years of age or older;
 - c. to property owned by or rented to any **insured**, a tenant of any **insured**, or a resident in your household; or
 - d. arising out of:
 - i. **business** pursuits;
 - ii. any act or omission in connection with a premises owned, rented or controlled by any **insured**, other than the **insured location**; or
 - iii. the ownership, maintenance, or use of aircraft, watercraft or motor vehicle or any other motorized land conveyances.
4. **Credit Card, Fund Transfer Card, Forgery and Counterfeit Money.**

We will pay up to \$1,000 for:

- a. the legal obligation of any **insured** to pay because of theft or unauthorized use of credit cards issued to or registered in any **insured's** name.
- b. loss resulting from theft or unauthorized use of a fund transfer card used for deposit, withdrawal or transfer of funds, issued to or registered in any **insured's** name.

We do not cover the use by a resident of your household, a person who has been entrusted with the credit card or fund transfer card or any person if any **insured** has not complied with all terms and conditions under which the credit card or fund transfer card is issued.

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- c. loss to **insured** caused by forgery or alteration of any check or negotiable instrument; and
- d. loss to any **insured** through acceptance in good faith of counterfeit United States or Canadian paper currency.

All loss resulting from a series of acts committed by any person or in which any one person is concerned or implicated is considered to be one loss.

We do not cover loss arising out of **business** pursuits or dishonesty of any **insured**.

Defense:

- a. We may make any investigation and settle any claim or suit that we decide is appropriate.
- b. If a suit is brought against any **insured** for liability under the Credit Card or Fund Transfer Card Coverage, we will provide a defense at our expense by counsel of our choice.
- c. We have the option to defend at our expense any **insured** or any **insured's** bank against any suit for the enforcement of payment under the Forgery Coverage.

SECTION II – EXCLUSIONS

- 1. **Coverage E – Personal Liability and Coverage F – Medical Payments to Others** do not apply to **bodily injury** or **property damage**:
 - a. which is expected or intended by any **insured**;
 - b. arising out of **business** pursuits of any **insured** or the rental or holding for rental of any part of any premises by any **insured**

This exclusion does not apply to:

- i. activities which are ordinarily incident to non-**business** pursuits;
- ii. the rental or holding for rental of a residence of yours:
 - a. on an occasional basis for the exclusive use as a residence;
 - b. in part, unless intended for use as a residence by more than two roomers or boarders; or
 - c. in part, as an office, school, studio or private garage;
- iii. employment as a clerical office employees, salesmen, collectors, messengers or teachers (including activities of a teacher in inflicting corporal punishment);
- c. arising out of the rendering or failing to render professional services;
- d. arising out of any premises owned or rented to any **insured** which is not an **insured location**;
- e. arising out of the ownership, maintenance, use, loading or unloading of:
 - i. aircraft. This exclusion does not apply to model aircraft. Any aircraft designed for carrying persons or cargo is not a model aircraft.
 - ii.
 - a. motor vehicles or all other motorized land conveyances, including any trailers, owned or operated by or rented or loaned to any **insured**; or
 - b. entrustment by any **insured** of a motor vehicle or any other motorized land conveyance to any person.

This exclusion does not apply to:

- a. a trailer not towed by or carried on a motorized land conveyance;
- b. a motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration and owned by any **insured**, while on an **insured location**;
- c. a motorized golf cart; or
- d. a motorized land conveyance designed for assisting the handicapped or for the maintenance of an **insured location**, which is:
 - a. not designed for travel on public roads; and
 - b. not subject to motor vehicle registration.
- f. caused directly or indirectly by war, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.

- 2. **Coverage E – Personal Liability** does not apply to:

- a. Liability:
 - i. for your share of any loss assessment charged against all members of an association of property owners;
 - ii. under any contract or agreement in connection with any **business** of any **insured**;
 - iii. under any other contract or agreement except contracts directly relating to the maintenance or use of the **insured location** not excluded in (1 or 2) above or elsewhere in this policy;
- b. **property damage** to property owned by any **insured**;
- c. **property damage** to property rented to, occupied or used by or in the care of any **insured**. This exclusion does not apply to **property damage** caused by fire, smoke, explosion or water;
- d. **bodily injury** to any person eligible to receive any benefits required to be provided or voluntarily provided by any **insured** under:
 - i. any workers' or workmen's compensation;
 - ii. non-occupational disability; or
 - iii. occupational disease law;
- e. **bodily injury** or **property damage** for which any **insured** under this policy is also an insured under a nuclear energy liability policy or would be an insured but for its termination upon exhaustion of its limit of liability. A nuclear energy liability policy is a policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors;
- f. **bodily injury** to you and any **insured** within the meaning of part a. or b. of Definitions, 4. "insured."

- 3. **Coverage F – Medical Payments to Others** does not apply to bodily injury:

- a. to a **residence employee** if it occurs off the **insured location** and does not arise out of or in the course of the **residence employee's** employment by any **insured**;
- b. to any person, eligible to receive any benefits required to be provided or voluntarily provided under any workers' or workmen's compensation, non-occupational disability or occupational disease law;
- c. from any nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these;
- d. to any person, other than a **residence employee** of any **insured**, regularly residing on any part of the **insured location**.

SECTION II – CONDITIONS

1. **Limit of Liability.** Regardless of the number of **insureds** claims made or persons injured, our total liability under Coverage E stated in this policy for all damages resulting from any one **occurrence** shall not exceed the limit of liability for Coverage E stated in the Declarations.

Our total liability under Coverage F for all medical expenses payable for **bodily injury** to one person as the result of one accident shall not exceed the limit of liability for Coverage F stated in the Declarations.

2. **Severability of Insurance.** This insurance applies separately to each **insured**. This condition shall not increase our limit of liability for any one **occurrence**.

3. **Your Duties After Loss.** In case of an accident or **occurrence**, the **insured** shall perform the following duties that apply. You shall cooperate with us in seeing that these duties are performed:

- a. Give written notice to us or our agent as soon as practicable, which sets forth:
 - i. the identity of the policy and **insured**;
 - ii. reasonably available information on the time, place and circumstances of the accident or **occurrence**;
 - iii. names and addresses of any claimants and available witnesses; and
 - iv. in case of loss under the Credit Card or Fund Transfer Card coverage also notify the Credit Card or Fund Transfer Card Company;
- b. forward to us every notice, demand, summons or other process relating to the accident or **occurrence**;
- c. at our request, assist in:
 - i. making settlement;
 - ii. the enforcement of any right of contribution or indemnity against any person or organization who may be liable to any **insured**;
 - iii. the conduct of suits and attend hearings and trials;
 - iv. securing and giving evidence and obtaining the attendance of witnesses;
- d. under the coverage – Damage to the Property of Others – submit to us within 60 days after the loss, a sworn statement of loss and exhibit the damaged property, if within the **insured's** control;
- e. submit within 60 days after the loss, evidence or affidavit supporting a claim under the Credit Card, Fund Transfer Card, or Forgery and Counterfeit Money coverage, stating the amount and cause of loss;
- f. the **insured** shall not, except at the **insured's** own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of the **bodily injury**.

4. **Duties of an Injured Person – Coverage D – Medical Payments to Others.** The injured person or someone acting on behalf of the injured person shall:

- a. give us written proof of claim, under oath if required, as soon as practicable;
- b. execute authorization to allow us to obtain copies of medical reports and records.

The injured person shall submit to physical examination by a physician selected by us when and as often as we reasonably require.

5. **Payment of Claim – Coverage F – Medical Payments to Others.** Payment under this coverage is not an admission of liability by any **insured** or us.

6. **Suit Against Us.** No action shall be brought against us unless there has been compliance with the policy provisions.

No one shall have any right to join us as a party to any action against the **insured**. Further, no action with respect to Coverage E shall be brought against us until the obligation of the **insured** has been determined by final judgment and agreement signed by us.

7. **Bankruptcy of any Insured.** Bankruptcy or insolvency of any **insured** shall not relieve us of any of our obligations under this policy.

8. **Other Insurance – Coverage E – Personal Liability.** This insurance is excess over any other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.

SECTION I AND SECTION II – CONDITIONS

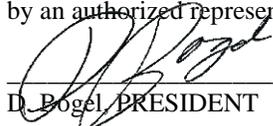
1. **Policy Period and Changes.**

- a. The effective time of this policy is 12:01 A.M. Standard Time at the **residence premises**. This policy applies only to loss under Section I, or **bodily injury** or **property damage** under Section II, which occurs during the policy period. This policy may be renewed for successive policy periods if the required premium is paid and accepted by us on or before the expiration of the current policy period. The premium will be computed at our then current rate for coverage then offered.
- b. Changes:
 - i. Before the end of any policy period, we may offer to change the coverage provided in this policy. Payment of the premium billed by us for the next policy period will be your acceptance of our offer.

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- ii. This policy contains all agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us. If a change requires a premium adjustment, we will adjust the premium as of the effective date of change. Additional or return premium of \$3.00 or less will be waived.
- 2. **Concealment or Fraud.** We do not provide coverage for any **insured** who has:
 - a. intentionally concealed or misrepresented any material fact of circumstance; or
 - b. made false statements or engaged in fraudulent conduct relating to this insurance.
- 3. **Liberalization Clause.** If we revise this policy to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.
- 4. **Cancellation**
 - a. You may cancel this policy at any time by returning it to us or by notifying us in writing of the date cancellation is to take effect.
 - b. We may cancel this policy only for the reasons stated below by notifying you in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations. Proof of mailing shall be sufficient proof of notice.
 - i. When you have not paid the premium, whether payable to us or to our agent or under any finance or credit plan, we may cancel at any time by notifying you at least 20 days before the date cancellation takes effect.
 - ii. When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by notifying you at least 31 days before the date cancellation takes effect.
 - iii. When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel if there has been a material misrepresentation of fact which if known to us would have caused us not to issue the policy or if the risk has changed substantially since the policy was issued. This can be done by notifying you at least 31 days before the date cancellation takes effect.
 - c. When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded. When you request cancellation, the return premium will be based on our rules for such cancellation. The return premium may be less than a full pro rata refund. When we cancel, the return premium will be pro rata.
 - d. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

This policy has been signed by the Company by its President and shall be valid when also countersigned by an authorized representative of the Company.



D. Bogel, PRESIDENT

PSYCHOLOGICAL EVALUATION
CONFIDENTIAL

Name: Summers, Deborah
DOB: 8/8/20xx-21
SSN: 123-45-6

Dates of Evaluation: 12/27/20XX+1 – Consultation with F. C. Fank, plaintiffs' attorney in
Summers v. Hard
1/7/20XX+1 – Interviews of Deborah Summers
1/15/20XX+ 1
1/21/20XX+ 1

Referral: Ms. Summers is a 21-year old ethnically Caucasian American female referred by attorney for plaintiffs in *Summers v. Hard* to evaluate her claims of Post-Traumatic Stress Disorder (PTSD). Counsel is requesting an evaluation of Ms. Summers to determine if she is currently suffering from PTSD.

Ms. Summers witnessed the fatal shooting of her husband on September 3, 20XX. Ms. Summers was observed to exhibit and described suffering severe anxiety and dissociative symptoms within a week following the incident. The symptoms continue to date. Ms. Summers' stepson Ronnie Summers also referred for evaluation and was seen separately on 1/ 7 and 15/XX+1.

Specific questions to be addressed:

Does Ms. Summers suffer from Post-Traumatic Stress Disorder (PTSD) according to the Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV-TR)?

CONFIDENTIAL
Personal Background and Education

Deborah Summers was approximately 21 years old at the time Bruno Summers, her husband, was shot. She married him on August 27, 20XX; he died of a gunshot wound on September 7, 20XX. She has lived with her parents in Ruston her entire life. She has two brothers, ages 33 and 31, and two sisters, ages 27 and 23. She attended the Northwest Elementary School and completed three years at the Major Beach High School.

At the age of fifteen she had contact with the Juvenile Court for the following: truancy; violation of the Uniform Controlled Substance Act (possession of cocaine); and burglary. On the truancy matter, she was referred by the Juvenile Court probation officer to a high school counselor. For the possession of .03 grams of cocaine and a school burglary (both happened when she was 15 years old), she was placed on probation and ordered by the Juvenile Court to perform community service work. The Juvenile Court,

because of her emotional difficulty, also ordered that she have psychological counseling. During the counseling, it was revealed that Deborah Summers had been sexually abused by her father since a young girl, and threatened with harm to her or another family member if she said anything. The therapist determined that, as a result, Ms. Summers suffered from acute Post-Traumatic Stress Disorder (PTSD). Since leaving high school at age 15 1/2, Ms. Summers has worked.

A little less than a week after the incident, Ms. Summers described experiencing an intrusive and disturbing waking visualization of the incident. She described a variety of physical symptoms typical of a panic attack, including "my heart was just pounding," "I was shaking all over. I couldn't breathe, my palms were sweating, and I just couldn't catch my breath." Thereafter, including last week, Ms. Summers described recurring nightmares of the incident, although she denied any repetition of her waking moment "flashback." Ms. Summers also described a decrease in her appetite, citing how food tasted "like cardboard" to her, "even ice cream," which she described as her perennial favorite. Ms. Summers described withdrawing from all social contacts. Normally looking forward to the sense of belonging and safety she usually derived from being around her family and friends, she actively found herself making excuses not to be around anyone. She finally described just "camping out at home" and becoming completely isolated from other people; she feels "completely detached" from others. She described being unable to sleep; yet unable to stay focused on any one activity for very long, being unable to either sit still or to be productively active ("I couldn't even do the laundry.")

Ms. Summers reports these symptoms to continue to date. She had indicated that shortly after the incident she received valium which helped her anxiety, but that her prescription had run out, and she could not find a doctor willing to order a refill.

Summary

CONFIDENTIAL

Does Ms. Summers suffer from Post-Traumatic Stress Disorder according to the Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV)?

Yes.

Ms. Summers meets the criteria for a diagnosis of chronic Post-Traumatic Stress Disorder according to the criteria of the DSM-IV-TR. Ms. Summers has met the criteria for Acute Stress Disorder beginning in the weeks immediately following the incident in September 3, 20XX.

Ms. Summers describes symptoms characteristic of PTSD. For the past three plus months, Ms. Summers has re-experienced the traumatic incident of 20XX through as sleep disturbing nightmares; she has avoided stimuli associated with the 20XX incident (avoiding driving past the Garage tavern); and she has experienced persistent

symptoms of increased arousal that she had not experienced prior to the incident (difficulty sleeping, difficulty concentrating). These symptoms have caused her significant discomfort, both at work and in her interpersonal interactions.

CONCLUSIONS

Ms. Summers suffered an Acute Stress Disorder (DSM-IV-TR Axis I: 308.3) as the result of her witnessing the fatal shooting of her husband on 9/3/20XX. Ms. Summer's symptoms have been consistent with a diagnosis of chronic Post-Traumatic Stress Disorder (DSM-IV-TR Axis I: 309.81) as they have persisted at least three months following the shooting incident.

Before I conclude, I want to make mention of Ms. Summer's depression and suicidal behavior when she was 15-years old. I would first note that there is no indication in her records of any depression in the past five years, up until the time of the shooting. As to past Post-Traumatic Event (i.e., PTSD as a result of sexual abuse by her father), the literature indicates that past episodes of PTSD make a person more susceptible to subsequent episodes.

On a more probable than not basis, Ms. Summer's symptoms meet the full criteria for a diagnosis of chronic Post-Traumatic Stress Disorder (DSM-IV-TR, Axis I: 309.81).

I hope you find this information helpful. Please contact me if you have any further questions or if my responses are unclear.

CONFIDENTIAL

I thank you for the referral.

Pat Gage

Date: February 21, 20XX+1

Dr. Pat Gage, M.D.
Clinical Psychiatrist

In accordance with the requirements of the Americans with Disabilities Act, only information relevant and necessary to evaluate the referral question(s) has been included in this report. This assessment is to be used only in connection with the referral question(s). It is inappropriate and unethical to use this report in any other circumstance.

THERAPIST: P. GAGE

PATIENT: Deborah Summers

FILE NOTES

01/7/20XX+1

Patient presented low affect. Saw new husband murdered by ex-boyfriend. Since then "falling to pieces" feels "numb." Prior to fatal shooting, patient described self as "happy-go-lucky" and "fun-loving."

Patient describes weight loss, depression since shooting. "Constant anxiety." "Cries all the time" – "nervous wreck" – "Can't do a thing; can't eat, sleep, concentrate."

11/15/20XX+1

Same condition. Taking new route to visit her parents to avoid passing "Garage Tavern" – new route much longer! "takes much more time."

Patient revealed that when 15 years old got in trouble: juvenile court (burglary, possession of cocaine). Juvenile Court ordered therapy. Once probation over, refused further counseling. Tried suicide twice (overdose aspirin; drowning). Depressed for three years after she got off probation.

01/21/20XX+1

Same condition. Revealed that Mother and Aunt took antidepressants.

Patient also revealed had previously been diagnosed with PTSD. Resulted from prolonged sexual abuse by father coupled with threats of harm to her and other family members if she said anything.

Patient indicates she has been dating a man since November, who she's thinking about marrying. "I just need someone to take care of me, protect me; and he's very kind and responsible." (Last session with patient)

SUPPLEMENTAL PSYCHOLOGICAL EVALUATION

CONFIDENTIAL

Name: Summers, Ronnie
DOB: 4/11/20XX-8

Dates of Evaluation: 12/27/20XX+1 – Consultation with F. C. Fank, plaintiffs' attorney in
Summers v. Hard
1/7/20XX+1 – Interviews of Deborah Summers and Ronnie Summers
separately
1/15/20XX+1 – Follow-up interview of Ronnie Summers

SUMMARY OF EVALUATION AND CONCLUSIONS

Referral: I evaluated both Deborah and Bruno Summers' son, Ronnie Summers. I met with both on the same date, but interviewed each of them separately. Ronnie's grandmother, Gretchen Summers, also accompanied him to the interviews. Ronnie was referred by the attorney for plaintiffs in *Summers v. Hard* to evaluate claims that Ronnie suffers from Post-Traumatic Stress Disorder (PTSD).

Ronnie Summers witnessed his father, who had been shot, being lifted off the floor of the Garage tavern and onto a stretcher. There was blood all over his father's chest, and he was groaning. Ronnie watched as the EMTs took his father to the ambulance. Since then, Ronnie has exhibited symptoms of PTSD that continue to this date.

Specific questions to be addressed:

Does Ronnie Summers suffer from Post-Traumatic Stress Disorder (PTSD) according to the Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV)?

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Symptoms

Since the night of the shooting, Ronnie reports having "bad dreams" and he wakes up screaming for his father. He can't remember what he is dreaming about, but it scares him. Ronnie does not want to talk about his father, and when he is pressed to do so, he looks down and goes silent. At other times, when asked about his father, he has outbursts of anger. He has trouble concentrating and cannot sit still. Ronnie has experienced "flashbacks" where he visualizes seeing his parents in the Garage tavern with Deborah screaming and his father's chest covered with blood while he moans in pain.

CONCLUSIONS

Does Ronnie Summers suffer from Post-Traumatic Stress Disorder according to the Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV)?

Yes.

Ronnie Summers meets the criteria for a diagnosis of chronic Post-Traumatic Stress Disorder according to the criteria of the DSM-IV. He has met the criteria for Acute Stress Disorder beginning in the weeks immediately following the incident on September 3, 20XX.

Ronnie Summers describes symptoms characteristic of PTSD. For the past three plus months, he has re-experienced the traumatic incident through sleep disturbing nightmares and flashbacks; he resists talking about his father, and when asked about his father goes silent or has uncontrollable outbursts. He has extreme difficulty concentrating.

I hope you find this information helpful. Please contact me if you have any further questions or if my responses are unclear.

I thank you for the referral.

Pat Gage

Dr. Pat Gage, M.D.
Clinical Psychiatrist

Date: February 21, 20XX+1

In accordance with the requirements of the Americans with Disabilities Act, only information relevant and necessary to evaluate the referral question(s) has been included in this report. This assessment is to be used only in connection with the referral question(s). It is inappropriate and unethical to use this report in any other circumstance.

To: D. L. Hass, Attorney at Law for the defense in *Summers v. Hard*
From: Dr. Ennis Martinez, Ph.D.
Re: Evaluation of Report by Dr. Pat Gage
Date: April 1, 20XX+1

Dear Mr. Hass:

You have asked me to review a report and file notes created by Dr. Pat Gage to assess Dr. Gage's determination that Deborah Summers suffers from chronic Post-Traumatic Stress Disorder, as defined by DSM-IV. The following explains my conclusions that Dr. Gage's diagnosis is not supportable under the information reported and the standards of our profession:

1. Dr. Gage's entire analysis is based upon her subjective clinical judgment, relying on her observations and the self-reporting of Ms. Summers. While clinical assessment is certainly an appropriate part of a diagnosis, Dr. Gage fails to have Ms. Summers take any of the psychological tests that are standard instruments in the diagnosis of PTSD:
 - Personality Assessment Inventory (PAI)
 - Minnesota Multiphasis Personality Inventory-2 (MMPI-2)
 - Beck Depression Inventory-II (BDI-II)
 - Posttraumatic Stress Disorder Scale (PDS)
2. While self-reporting of the patient is normal in such a diagnosis, there are particular concerns with the source of information in this case. Ms. Summers did not seek Dr. Gage for treatment, but as the result of arrangement made by her attorneys in a civil damages lawsuit. Ms. Summer's motivation to exaggerate her symptoms and dissemble is obvious in this situation where the doctor is being sought solely to make a diagnosis for use in enhancing a damage claim. That Ms. Summers has previously suffered from PTSD which according to some literature is a predisposing factor in future PTSD episodes) makes such possible manipulation of Dr. Gage even more of a concern since Ms. Summers would be intimately familiar with the symptoms of PTSD.
3. Ms. Summers has a history of depression, and a genetic predisposition to depression (her mother and aunt both take antidepressants). Her symptoms, to the extent that they are authentic, are likely to result from her life-long malady, rather than witnessing the fatal shooting of her new husband.

4. Ms. Summer's dating and ideation of remarriage within two months of the shooting is in absolute contradiction to any forensic claim that Ms. Summers is experiencing a "feeling of detachment or estrangement from others," or a "restricted range of affect (e.g., unable to have loving feelings)." DSM-IV, §309.81(c)(5)(6).

Please contact me if I can be of any further assistance.

Ennis Martinez, Ph.D.

Dr. Ennis Martinez, Ph.D.
Clinical Psychologist

OPERATIONS PRACTICES REPORT

The Garage Bar, Pool Hall, and Bowling Alley
Regarding *Summers v. Hard*

By

Dr. Dale Thompson
Dorian Tower
1962 Pioneer St.
Suite 401
Reno, NV 13432

As part of my evaluation of the operations of The Garage Bar, Pool Hall, and Bowling Alley, known as the Garage, in regards to *Summers v. Hard*, I reviewed the following materials:

- The Complaint;
- Answer by Edward Hard;
- Answer by Davola, Donaldson, and Apple;
- Ruston Police Department reports concerning the shooting of Bruno Summers
- Major State Liquor Control Board's records, including:
 - Premises Description;
 - Administrative Activity;
 - Criminal Statistics; and
 - Major State Liquor Control Board—Violation/Training History
- Mercy Hospital medical records for Bruno Summers;
- Deborah Summers medical records;
- Report of Ben Kaplan;
- Interview with Thomas Donaldson;
- State of Major Statutes and Liquor Board Regulations;
- Major State Liquor Control Board Enforcement and Entertainment Division training materials; and
- State of Major pattern jury instructions.

In addition, I conducted a site inspection of the Garage and spoke with D.L. Hass, counsel for Mr. Davola, Mr. Donaldson, and Ms. Apple. I also spoke with Sergeant Rex Walther.

Training

Ben Kaplan's report concluded that the Garage management failed to adopt written policies and that this fell below industry standard. While the Major State Liquor Control Board Enforcement and Education Division recommends that management "establish and follow a policy of refusing service to apparently intoxicated persons," it neither recommends nor requires the adoption of written policies. In any event, to put such policies into written form would be an unnecessary act because overservice is forbidden by statute regulations and the policies and procedures are part of the MSLCB Enforcement and Education Division's written training materials.

While Thomas Donaldson, The Garage's bartender on the night of the shooting, has a lapsed Class 12 permit on September 3, 20XX, that does not mean that his work performance that night was below the standard of care for the industry. Mr. Donaldson held a valid permit until February 15, 20XX when it expired. Permits must be renewed every five years. My interview of Mr. Donaldson showed that he is an experienced bartender who is knowledgeable about both recognizing apparently intoxicated patrons and handling them. He told me that he had an ailing mother whom he was caring for during the spring and summer of 20XX, and this caused him to neglect to renew his permit. In October 20XX, his permit was renewed, and when I interviewed him, he was still gainfully employed at the Garage.

Overservice

Bartender Donaldson, who served Hard on September 3, 20XX and knew him as a frequenter of The Garage, did not perceive that Hard was intoxicated. Although Mary Apple in 20/20 hindsight told Detective Tharp that she thought Hard was intoxicated on September 3rd, she at the time just before the shooting took no steps to refuse service to Hard. Mary Apple held a valid alcohol server's permit on the night of September 3rd, and she had been trained on how to identify apparently intoxicated persons and how to refuse service to them.

Although Hard did have a .16 breathalyzer reading, it was administered two and a half hours after the shooting and after Hard had consumed three beers in his home. According to the Blood Alcohol Concentration Chart that is appended to this report, the consumption of three drinks at his body weight would have elevated his blood alcohol level by .07. Subtracting that from his .16 reading, Hard could well have had a .09 level when he was at the Garage. This level would be well below the .12 to .14 level that is the accepted level for someone to be apparently intoxicated.

Therefore, in my opinion, the evidence does not support a claim that Edward Hard was obviously intoxicated when he was in the Garage tavern on September 3, 20XX.

Duty to Protect

It is important to recognize that owners of establishments do not act as insurers for patrons. They only have a duty to provide a safe environment. I have reviewed the record of the number of Ruston Police service calls to the Garage over a 12-year period, and it is not at all remarkable. It reflects an average of a little over three calls per year. This is normal for such an establishment.

I reviewed the four disorderly conduct incidents and discussed them with Mr. Donaldson. He and Ms. Apple were only familiar with the incident in May 20XX when a man displayed a firearm in the Garage. Mr. Donaldson ordered the man out of the Garage and called the police. He performed his job in a satisfactory manner. The October 20XX-1 disorderly conduct incident was almost a year old by the date of the shooting. That leaves the two other disorderly conduct calls in January 20XX. Both were minor in nature. One involved a mentally ill man who was yelling and pounding on a pool table. The other involved what was described as a "domestic shouting and pushing match." On both occasions, the Garage employees called the police, and both matters were disposed of without an arrest. Sergeant Walther and a liquor enforcement officer did speak with Davola at the beginning of February 20XX, not because they believed that Garage employees were at fault in handling the disturbances but to make recommendations on how to avoid them, if possible. Both officers were satisfied that Davola understood their concerns and he and his employees would be prepared for any further troublesome patrons.

Regarding the conflict between Hard and Summers on August 20, 20XX, it was a fight that was quickly over. No weapon was involved. Mr. Donaldson took immediate remedial action by ejecting both men from The Garage. On September 3rd, Donaldson heard Hard, who had been the aggressor on the 20th say that he did not want Summers

coming near him and Summers avoiding contact with Hard by going to sit away from him in a booth near the front of the tavern. No reason existed for not permitting the two men to remain as long as they continued to act peacefully.

Conclusion

It is my opinion based upon my experience in the hotel, restaurant, and tavern industry and based upon my findings in this case that the Garage did not fall below the industry standard of reasonable care. While it is indeed unfortunate that Mr. Bruno Summers was shot in the Garage on September 3, 20XX, the operation of the Garage was not the cause of the shooting. The Garage was not, as is well established, required to be an insurer of a patron's safety.

Avoid an alcohol meltdown!

Small amounts of alcohol can put you at risk

BLOOD ALCOHOL CONCENTRATION CHARTS (BAC)

Drinks Per Hour	MALE Body Weights								Legal Limit 0.08 BAC
	100	120	140	160	180	200	220	240	
0	ONLY SAFE DRIVING LIMIT								
1	.04	.03	.03	.02	.02	.02	.02	.02	At Risk
2	.08	.06	.05	.05	.04	.04	.03	.03	
3	.11	.09	.08	.07	.06	.06	.05	.05	
4	.15	.12	.11	.09	.08	.08	.07	.06	
5	.19	.16	.13	.12	.11	.09	.09	.08	Over Limit
6	.23	.19	.16	.14	.13	.11	.10	.09	
7	.26	.22	.19	.16	.15	.13	.12	.11	
8	.30	.25	.21	.19	.17	.15	.14	.13	
9	.34	.28	.24	.21	.19	.17	.15	.14	

Drinks Per Hour	FEMALE Body Weights								Legal Limit 0.08 BAC
	100	120	140	160	180	200	220	240	
0	ONLY SAFE DRIVING LIMIT								
1	.05	.04	.03	.03	.03	.02	.02	.02	At Risk
2	.09	.08	.07	.06	.05	.05	.04	.04	
3	.14	.11	.10	.09	.08	.07	.06	.06	
4	.18	.15	.13	.11	.10	.09	.08	.08	
5	.23	.19	.16	.14	.13	.11	.10	.09	Over Limit
6	.27	.23	.19	.17	.15	.14	.12	.11	
7	.32	.27	.23	.20	.18	.16	.14	.13	
8	.36	.30	.26	.23	.20	.18	.17	.15	
9	.41	.34	.29	.26	.23	.20	.19	.17	



Major State
Liquor Control Board

www.liq.wa.gov

BEN KAPLAN
President, Kaplan and Associates
1500 Smith Tower
Suite 431
Neva, Major 98443

March 15, 20XX +1

F.C. Fank
Attorney at Law
Law Offices of F.C. Fank
2200 Gordon Arms Bldg.
Ruston, Major 98103

Dear Mr. Fank:

**THE GARAGE BAR, POOL HALL, AND BOWLING ALLEY
ASSESSMENT OF OPERATIONS**

The following report is an assessment of The Garage Bar, Pool Hall, and Bowling Alley (hereafter Garage) located in the city of Ruston, Jammer County, State of Major, LCB license number 023454. The assessment was contracted by F.C. Fank for the purposes of establishing the level of management, control, and compliance with laws and industry standards predating and on September 3, 20XX, the date of the shooting of Mr. Bruno Summers.

Qualifications of Ben Kaplan:

I have a Ph.D. in Hotel and Restaurant Management from Cornell University. I am an Emeritus Professor at Major State University, where I taught Hotel and Restaurant Management for 29 years. I continue to teach in the Westbrook School of Hotel and Restaurant Management Department of Major State University on a part time basis. I also have been a hotel and restaurant management expert and consultant for the past 30 years as president of my limited liability corporation. I have served as a consultant for hotels and restaurants across the United States and internationally, including The Winn Corporation, NV and Widely World Enterprises, CA. Both plaintiffs and defendants have hired me to testify as an expert on hotel, restaurant, and tavern management, and I have testified over 400 times. Areas of expertise for which I have been accepted as a qualified expert witness in both Federal and state courts (California, Major, New York, Florida, Nevada, and Wyoming to name a few), among others include: alcohol service, restaurant and tavern security, and management protocols and procedures. I have been certified by the Northeast Traffic Institute on alcohol consumption and alcohol related felony traffic offenses.

Procedure:

On January 24, 20XX+1, I traveled to Ruston where I met with you and your investigator. At that time you presented me with file materials including among other documents: Ruston Police

Department reports concerning the September 3, 20XX shooting, the Complaint and related legal documents, and medical records for Bruno Summers.

After our initial meeting, my additional investigation included among other tasks: reviewing the Major State Liquor Control Board's records regarding the Garage (the Premises Description, Administrative Activity, Criminal Statistics and Major State Liquor Control Board—Violation/Training History recited below were derived from the MSLCB); conducting a site visit of the Garage; and interviewing Ruston Police Sergeant Walther and Letty Prout, Program Manager of the MSLCB Enforcement and Education Division (interviews are discussed later in this report).

Overview of Incident:

At approximately 8:00 p.m., Edward Hard and two friends entered the bar area of The Garage. They had been drinking before they arrived in the bar area. There, the bartender Thomas Donaldson served them several rounds of drinks. At about 9:00 p.m. Bruno Summers, his wife Deborah and a friend came from the bowling side of the Garage to the bar area. At the entry to the bar area, they saw Hard and decided to go to the front of the tavern and sit in a booth. They did this because on August 20th, Bruno Summers had gotten in a fight with Hard in the bar area and the bartender had ejected them from the tavern.

Around 9:00 p.m., Bruno Summers went to the restroom. Shortly after that, Hard left the bar area and headed towards the restroom also. Just as Summers exited the men's room, Hard confronted him. There was an exchange; Hard drew a .22 caliber revolver and shot Summers. Summers collapsed, and Hard fled from the Garage. Summers was taken to Mercy Hospital where he died on September 9th.

After Hard left the Garage on September 3rd, he went to his home. At approximately 10:30 p.m., Hard was arrested in his home. He gave a statement to the police admitting that he shot Summers. He claimed that Summers threatened to kill him and reached for his pocket, and that when he (Hard) pulled his revolver to protect himself, it accidentally discharged.

At 11:40 p.m. on September 3, Ruston Police Officer Yale conducted a breathalyzer test on Hard, resulting in a .16 reading. Yale observed that Hard had an odor of alcohol about him, his eyes were red and watery, and his speech was slurred. When Hard was arrested three empty beer cans were found in his living room.

Premises Description:

The Garage Bar, Pool Hall, and Bowling Alley is licensed as tavern.

Licensee of Record—M.C. Davola

Original Date of Licensing—September 1, 20XX-12

Subsequent License Renewals—20XX-7 and 20XX-2 with no objections by local authorities; two late renewals resulting in late fee penalty, 20XX-7 and 20XX-2.

Administrative Activity:

Dept. of Revenue, withhold and deliver, 20XX, 18 months arrears B&O released by payment 20XX. One month licensing delay.

Dept. of Health, food service violations 4 warnings 2 citations. Corrected and in compliance. No penalty assessed.

Ruston Fire Dept.—Stop business order, 20XX—Emergency exit not operational, overcrowding—Repaired and paid \$1000 fine.

City of Ruston—All licenses current.

Criminal Statistics:

Ruston Police Department—Calls for Service/Crime Reports 20XX-12 to 9/03/20XX

Assaults	11	Arrests	5
Weapons Involved	4	Arrests	3
Disorderly	10	Arrests	2
Theft	3	Arrests	0
Narcotics/Drugs	3	Arrests	1
Administrative	4	N/A	
Drunk in Public	5	Arrests	3 (1/8 mile radius)
Traffic	2	Arrests	3 (1 single, 1 double DUI accidents)

Law Enforcement Interview:

On February 28, 20XX+1, I met with Sergeant Rex Walther of Ruston PD. Sergeant Walther stated that officers in his Precinct had made visits to the Garage premises on four occasions during the year from September 20XX-1 to September 20XX. In October of 20XX-1, and twice in January 20XX+1, they made visits regarding disorderly conduct calls to the Garage tavern. On May 5, 20XX, Sergeant Walther and other officers responded to the call of a disturbance with a firearm involved and subsequently arrested a suspect matching the original description at a nearby park. The subject was in possession of a Glock 40 caliber handgun. Sergeant Walther later advised the licensee of the arrest.

Sergeant Walther reports that after the two disturbance calls in January 20XX, he met with the licensee Davola to discuss the increased police service requirements, and he gave the licensee advice as to how to avoid overservice and disorderly conduct. He states that a liquor enforcement officer was present at the meeting at his request.

Washington State Liquor Control Board—Violation/Training History:

10/05/20XX-12: Initial Licensee Briefing —Licensee M.C. Davola
7/04/20XX-10: Verbal Warning—Minor allowed in restricted area
6/19/20XX-2: Written Warning—Overservice

10/02/20XX-1: Administrative Violation Notice (AVN)—Allowing Disorderly Conduct – Aggravated, licensee failed to call police after injury assault. \$1000.00 paid in lieu of 5 day suspension.

3/15/20XX: Verbal Warning—MAST (Mandatory Alcohol Server Training) permits – Employee Thomas Donaldson

6/15/20XX: Written Warning—MAST Permits – Employee Thomas Donaldson

7/21/20XX: AVN—MAST permit. Server Donaldson expired permit (Permit not valid as of September 3, 20XX)

CONCLUSIONS

The practices and operation of the Garage were assessed to determine whether the premises was operated in accordance with the law of the state of Major and industry standards for safety, protection of patrons, and service of clientele. I determined that Garage practices and operations were deficient in several respects.

Alcohol Server Training:

An establishment licensed as a tavern, according to industry standards, needs to adopt written policies and to conduct regular training of servers of alcohol. Over the past decade, most licensed premises in Ruston have adopted written policies for their employees. No such written policies had been adopted for The Garage.

Under the State of Major Statute 77.20.010, a manager, bartender, or server of alcohol must have a permit. On September 3, 20XX, the Garage's owner and manager M.C. Davola held valid Class 12 permits authorizing him to sell, or mix alcohol, spirits, wines or beer for consumption, and waitress Mary Apple held a valid Class 13 permit, which is required for servers of alcohol. However, bartender Thomas Donaldson's Class 12 permit had lapsed. He had received two warnings, a verbal one on March 15, 20XX and a written warning on June 15, 20XX. When the warnings did not provoke action on his part, a liquor enforcement officer issued an Administrative Violation Notice (AVN) to him on July 21, 20XX. Even that did not cause Mr. Donaldson to renew his permit, and on the day of the incident he still did not have a valid permit.

Mr. Donaldson's failure to renew his permit was not a mere administrative matter. The Class 12 permit is issued by a state certified provider of alcohol server training, and the permit is only granted to someone who completes the curriculum. The permit must be renewed every five years, and thus employee Donaldson had not gone through training by a certified provider for over five years from when he first received his permit. This absence of training coupled with the Garage's failure to provide written guidance meant that Mr. Donaldson was not up to date in his training on critical server requirements, including overservice of patrons and ways to deal with problem customers, to stop service, and to handle belligerent customers.

Overservice:

State of Major Alcoholic Beverage Administrative Regulation 2.3(a) and State of Major Statute 2.1 prohibit a licensee from supplying liquor to any person apparently under the influence of liquor. My interview of MSLCB Enforcement and Education Division Program Manager Letty Prout covered proper standards and practices for management and servers. These standards and practices are

routinely taught during the bartender and server training programs required for a permit, and they are contained in the Appendix to this report, entitled “Recognizing and Dealing with Apparently Intoxicated Persons.”

The Garage’s alcohol servers, Thomas Donaldson and Mary Apple, failed to comply with the regulation, statute, and standards and practices regarding overservice. When Mary Apple, who served Ed Hard on September 3, 20XX, was telephonically interviewed by Ruston Police Detective Tharp on September 9, 20XX, she said that she thought Hard’s speech was slurred and that “Hard was intoxicated” on September 3.

Mary Apple’s opinion is supported by Hard’s breathalyzer reading of .16 at 11:40 p.m. that night. While .08 is the level of blood/alcohol for driving while intoxicated, it is accepted industry practice that a reading of .10 to .14 is necessary before it can be said that a person would be “apparently under the influence of liquor.” Hard exceeded that level.

It might be contended that Hard consumed alcohol (three beers) after the shooting and his .16 reading can be attributed to that consumption. However, it is unlikely that the mere three beers would have elevated his blood/alcohol level to .16. Rather, he reached that level while at the Garage and the alcohol had not burned off by the time of the breathalyzer test.

Bartender Donaldson and server Apple failed to follow the steps for refusing service that are outlined in Appendix A when dealing with Edward Hard; specifically they did not count his drinks, chat with him to determine his level of sobriety, and stop service and remove his drinks when it became clear that he was intoxicated.

The Garage alcohol servers overserved the apparently intoxicated Edward Hard leading to tragic consequences.

Duty to Protect Patrons:

Industry standards for an establishment serving alcohol require licensees to protect patrons, and State of Major Alcohol Beverage Administrative Regulation 2.2 explicitly forbids a licensee from permitting a “disorderly or boisterous person” from being on the premises. The mandatory training for alcohol servers specifically covers intervention with problem patrons, including terminating service, eviction of disorderly patrons, and hiring security.

The Garage has a history of over 40 criminal incidents associated with the establishment. More to the point, within the year prior to the shooting, there had been four police responses to the Garage for disorderly conduct incidents, an escalation of such incidents. The situation was so serious that the Ruston Police Precinct’s Sergeant along with a liquor enforcement officer met with Davola and instructed him on dealing with these situations. Despite these incidents and police intervention, Davola did not hire security.

Within the context of these disorderly conduct reports, no action was taken that might have prevented the shooting of Bruno Summers. The hostility between Ed Hard and Bruno Summers was well known to Garage employees Donaldson and Apple. On August 20th, just a couple weeks before the shooting, they had observed a fight between Hard and Summers. Because of the disorderly conduct, bartender Donaldson ejected them from the Garage. Hard was known to

Donaldson as an aggressive and belligerent customer. Donaldson described Hard's behavior on August 20th as "acting loud and obnoxious." On the 20th, both Donaldson and Apple saw Hard jump Summers from behind.

On September 3rd, Donaldson overheard Hard remark to his friend that "That Nazi (referring to Summers) had better not come near me again." This remark was made when Hard saw Summers in the Garage on the 3rd. With Hard fueled by an overservice of alcohol and a prior violent conflict between the two men, action should have been taken. Service of alcohol should have been refused and the apparently intoxicated Hard should have been ejected from the premises.

APPENDIX

Major State Liquor Control Board Enforcement and Entertainment Division

RECOGNIZING AND DEALING WITH APPARENTLY INTOXICATED PERSONS

THE LAW

SMS 2.1 (a liquor law) and MAB 2.3(a) (a liquor administrative rule) prohibit the selling, serving or supplying of liquor to an apparently intoxicated person. Intoxicated persons may remain on a licensed premises as long as they are not disorderly, or boisterous, and **do not consume or possess** liquor.

SIGNS OF INTOXICATION

1. Overly friendly
2. Bragging
3. Talks loudly
4. Sudden or unexplained mood changes
5. Annoys other customers
6. Complains about strength of drink or slowness of service
7. Consumes drinks faster than usual; gulps drinks; orders doubles
8. Argues with employees or other customers
9. Uses foul language
10. Sullen, doesn't want to communicate except to order drinks
11. Buys rounds for strangers or the house
12. Lights more than one cigarette at a time
13. Unable to light cigarette
14. Eyes glassy, dilated pupils, lack of focus
15. Loss of train of thought (stops talking in mid-sentence)
16. Slurred speech or speaking very slowly and deliberately
17. Unable to pick up money or drops money; unable to count out correct amount for drink
18. Spills drink; misses mouth with glass
19. Head bobs, eyelids drooping, looks sleepy
20. Stagger, sways while attempting to stand still; holding on to bar, chair, etc.

Alcohol affects each individual differently. The same number of drinks may affect an individual differently at various times depending on the person's mood, the time of day, amount of food in the stomach, how fast drinks are consumed, mixer used (carbonated mixers speed the passage of alcohol into the bloodstream), medications, gender (women are affected by alcohol more quickly than men), reasons for drinking, etc.

Just because a person “holds his/her liquor” well sometimes, doesn’t mean that will be true all the time.

REFUSING SERVICE

Get to know your customers to ensure any refusal of service is based on their state of sobriety, not a disability. It is important to be careful not to confuse a disability characteristic with a sign of intoxication. Determine if the symptoms of apparent intoxication could mimic symptoms of a disability or medical condition. Isolate and evaluate each symptom in order to determine if there is a possible disability or medical condition. If questions still remain, where possible, interview the apparently intoxicated person in as discreet a way as possible.

Federal and state laws prohibit discrimination against a person due to a disability. If a disability appears to explain a sign of intoxication—unsteady walking due to leg braces, muscular dystrophy, cerebral palsy, etc., or drooping eyelids due to blindness, stroke, head injury, etc.—look for additional signs of intoxication.

Drinking can put people on the offensive. It gives them a sense of power and a false sense of security. You are no longer dealing with the logical, rational person of *several* drinks ago, because judgment is the first faculty affected.

1. Be courteous but firm, avoid confrontation and don’t bargain or back down.
2. Don’t make statement that will embarrass or provoke a customer, such as “you’re drunk,” or “you’re eighty-sixed,” or “you’ve had too much.”
3. Don’t give the customer the impression you know what’s best for him/her.
4. Count drinks, but also be aware that new customers may have been drinking elsewhere.
5. Chat briefly with customers to help determine their sobriety. If the intoxicated person is part of a group, suggest to a sober member that the person be taken home (not allowed to drive home).
6. Slow the frequency of service down when a customer orders rapidly.
7. When a customer begins to show signs of intoxication, do not continue to serve weakened (feathered) drinks. No amount of liquor may be served to an apparently intoxicated person and any drinks an apparently intoxicated person has **must be removed.**

Suggested Statements

- a. I’d really appreciate it if you don’t order another drink.
- b. The Liquor Control Board is (local police are) cracking down, and I can’t serve you another drink.
- c. You’re welcome to stay—you can order coffee or food, but I can’t serve you another drink (**or allow you to keep this drink**). (Coffee will not sober someone up, but it will buy time, and time is the only thing that will bring about sobriety.)

- d. I might lose my job (permit or license) if I serve you another drink.

REMEMBER: After telling a customer that you cannot serve him/her another drink, *remove any existing drinks and walk away*. It is harder for a person to argue when you're not there.

SOME TIPS FOR MANAGEMENT

1. Establish and follow a policy on refusing service to apparently intoxicated persons.
2. Make all employees aware of their responsibility, and your responsibility, for seeing that apparently intoxicated persons are not served and are not allowed to possess liquor. Ensure all staff have their required permits.
3. Owners and managers should back any employee who refuses service, even if the employee's decision is questionable.
4. The toughest call of all: back your employee's refusal to serve even when the drinker is a steady customer who may threaten to take his/her business elsewhere. Remember, their judgment is impaired; when sober later, they may thank you.

LAW OFFICES OF F.C. FANK
2200 GORDON ARMS BUILDING
RUSTON, MAJOR
(206) 248-3222

June 1, 20XX+1

FILE COPY

Mrs. Roberta Montbank
Stillwater Retirement Home
1812 East 9th Street
Ruston, Major

Dear Mrs. Montbank:

Thank you for personally meeting with plaintiffs' investigator, Mr. Peter Nye last week. Both Peter and I were delighted to meet with you.

We appreciate your efforts to locate the written statement that you gave to defendant's insurance company. We also understand your inability eight months later, to recall the details in your statement. Naturally, we understand your reluctance to have us request or you to directly request a copy of your statement from defendant Davola or his insurance company since you are still a regular patron at The Garage tavern.

If you change your mind about requesting the statement, please telephone us at 248-3222.

Keep well, and we will be speaking with you further.

Sincerely,



F.C. Fank
Attorney for plaintiffs

DEWEY, CHEATUM, AND KOCH
CERTIFIED PUBLIC ACCOUNTANTS

D.L. Hass
 Attorney for M.C. Davola
 983 Senator Way
 Jamner, Major 98606

August 12, 20XX

Dear Mr. Hass:

In order to comply with your request for an analysis of the financial position and results of operations of The Garage Billiard Hall for the eight years ending July 31, 20XX, it was necessary for me to prepare compiled financial statements.

A compilation is limited to presenting, in the form of financial statements, information that is the representation of management. I have neither audited nor reviewed the compiled financial statements. Accordingly, I do not express an opinion or any form of assurance on them.

The following is a pro forma synopsis of the compiled financial statements of The Garage Billiard Hall for the eight years ending July 31, 20XX.

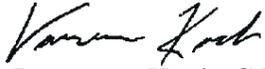
GARAGE BILLIARD HALL
PRO FORMA STATEMENT OF PROFIT AND LOSS
FOR THE EIGHT YEARS ENDING JULY 31, 20XX
 (in thousands)

	20XX-8	20XX-7	20XX-6	20XX-5	20XX-4	20XX-3	20XX-2	20XX-1
Sales	346	333	336	345	330	333	324	294
Cost of Sales	245	236	235	242	234	240	233	212
20% GP	101	97	101	103	96	93	91	82
Operating Expense	47	50	53	55	53	57	51	46
General and Admin.	12	11	11	13	10	10	11	10
Profit	42	36	37	35	33	30	29	26
% of Sales	12	11	11	10	10	9	9	9

Sales show a declining trend over the eight years ending July 31, 20XX. As a result, profit as a percentage of sales has declined slightly but averaged 10.13% over the eight year period.

It has been our pleasure to provide this information for you. If we can be of any further assistance, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence Koch". The signature is written in a cursive style with a large initial "L".

Lawrence Koch, C.P.A.
DEWEY, CHEATUM AND KOCH

LK/rt

DEWEY, CHEATUM, AND KOCH
CERTIFIED PUBLIC ACCOUNTANTS

August 13, 20XX

GARAGE BILLIARD HALL
PRO FORMA STATEMENT OF PROFIT AND LOSS
FOR THE PERIOD OF AUGUST 1, 20XX TO
OCTOBER 15, 20XX
(in thousands)

	August, 20XX	September, 20XX	October, 20XX
Sales	24	20	9
Cost of Sales	17.5	15	7
20% GP	6.8	5.5	2.4
Operating Expense	3.7	3.0	1.3
General and Admin.	.83	.75	.35
Profit	2.1	1.8	.8
% of Sales	8.5	7.8	3.7

LK/rt

DEWEY, CHEATUM, AND KOCH
CERTIFIED PUBLIC ACCOUNTANTS

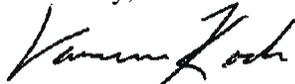
August 13, 20XX

GARAGE BILLIARD HALL
PRO FORMA BALANCE SHEET
ENDING JULY 31, 20XX
(in thousands)

ASSETS	
Current Assets	\$ 28
Property and Equipment	215
Non-Current Assets	4
TOTAL ASSETS	<u>\$ 247</u>
LIABILITIES	
Current Liabilities	\$ 21
Long Term Liabilities	64
TOTAL LIABILITIES	<u>\$ 85</u>
OWNER'S EQUITY	
Capital Stock	\$ 25
Retained Earnings	137
TOTAL OWNER'S EQUITY	<u>\$ 162</u>
TOTAL LIABILITIES AND OWNER'S EQUITY	<u>\$ 247</u>

The current ratio for The Garage Billiard Hall at July 31, 20XX, is 1.33 showing the ability to service current debt. The debt to equity ratio is .52, which we believe to show little indebtedness compared to the industry.

Sincerely,



Lawrence Koch, C.P.A.

DEWEY, CHEATUM, AND KOCH

LK/rt

Entry 50: Dr. David Bowman, Psychologist-1 of 1

Curriculum Vitae

Dr. David Bowman, Ph.D.*
2443 Alder
Ruston, Major 98406
(206) 473-7733

Personal:

57 years old, married, 2 grown children.

Education:

University of Texas, at El Paso
B.S. Degree: Psychology

University of Texas, El Paso
Ph.D.: Clinical Psychology (6 years to earn degree)
Dissertation: "Situation Specific Behavior Relating to Aggression Tendencies."

Internship:

Western State Hospital, Ruston, Major (1 year 20XX-20 Supervisor: Dr. G. Campbell).

Employment:

Western State Hospital, Ruston, Major (19 years). Chief Psychologist for past 10 years in charge of a staff of 50 including 10 psychologists, residents, and interns. Began as a staff member; after 3 years promoted to deputy chief and then to chief psychologist.

Awards, Honors, Licenses:

Henry Baine Fellowship—awarded to one Ph.D. candidate at the University of Texas, El Paso, for achieving the highest grades in graduate psychology courses.

Teaching Assistant—University of Texas, El Paso (5 years as Teaching Assistant).

Licensed 19 years as a Clinical Psychologist by the State of Major.**

Certified Clinical Psychologist by the American Board of Examiners in Clinical Psychology.

Invited guest lecturer in the Pacific Coast Small College Guest Lecture Series.

Publications:

Bowman, "A Behaviorist's View of Criminal Behavior," 5 Journal of Mental Health 18 (20XX-15).

* Dr. Bowman is a behaviorist, a school of psychological theory made famous by B.F. Skinner. Behaviorists believe that under certain circumstances human behavior may be predicted.

** The State of Major follows the same licensing procedure as other jurisdictions.

Curriculum Vitae

Dr. Sherman Croup, M.D.
3669 N. Filbert
Ruston, Major 98113

Education

Undergraduate: Arizona State University
Degree: B.S. Biological Sciences, 20XX-24.

Medical School: University of Southern California School of Medicine
Degree: M.D., 20XX-20.

Internship and
Residency: Ruston General Hospital, Ruston, Major
Specialty: family practice and family counseling, 20XX-20
through 20XX-16.

Employment

Neva County Medical Services Clinic, Ruston, Major (20XX-9 through present).

Orange County Practice Clinic, Irvine, California (20XX-15 through 20XX-9).

Associations and Affiliations

Member: Heart Association of America local chapter.

Family Practice Institute of Ruston (20XX-5).

Curriculum Vitae

BRUCE DAVID HANN

OFFICE ADDRESS

Department of Economics
University of Willow Bay
Ruston, Major 98416
(206) 786-8188

HOME ADDRESS

20 Cedar Street
Ruston, Major 98408
(206) 859-2898

EDUCATION

20XX-8

Indiana University, Bloomington, Indiana, Ph.D. Economics

20XX-10

Indiana University, Bloomington, Indiana, M.A. Economics

20XX-14

Antioch College, Yellow Springs, Ohio, B.A. Economics

RESEARCH AREAS

Urban Economics
Real Estate Economics
Human Capital Theory
Labor Economics

EMPLOYMENT HISTORY

20XX-4 through present	Associate Professor, Department of Economics, University of Willow Bay
20XX-9 through 20XX-4	Assistant Professor, Department of Economics, University of Willow Bay
20XX-11 through 20XX-10	Associate Instructor, Department of Economics, Indiana University
20XX-14 through 20XX-13	Urban Economist (Peace Corps Volunteer), Department of City Planning, Teheran, Iran
20XX-14	Research Assistant, Brookings Institution

PUBLICATIONS AND PRESENTATIONS

“Moderate Rent Controls: A Microeconomic and Public Choice Analysis” (with M. Veseth), American Real Estate and Urban Economics Association Journal, Volume 11, No. 3, Fall 20XX.

“The Influence of School Busing on House Values,” in Research in Real Estate, C.F. Sirmens (Editor), Volume 2, 20XX.

“Report on the Northwest: Economic Review” (with D. Goodman), Pacific Northwest Outlook, Piper, Jaffray, & Hopwood, Jamner, MJ, October 20XX-2.

“Pacific Northwest Retailing: Economic Review” (with D. Goodman), Pacific Northwest Outlook, Piper, Jaffray, & Hopwood, Jamner, MJ, October 20XX-2.

“The Costs of Growth,” Major Association of Realtors, Olympia, MJ, April 20XX-2.

“Exercises in Intermediate Microeconomics” (with E. Combs), Department of Economics, University of Puget Sound, September 20XX-2.

“A Review of Housing Market Policies and a Suggested Program,” Washington Coalition for Affordable Housing, July 20XX-3.

“Methods of Analysis of Unsold Speculative Housing Inventory,” Presentation to the Real Estate Research Conference of the Twelfth District Federal Home Loan Bank, 20XX-3.

Study to Accompany Bradley’s Macroeconomics, Scott, Foresman, Chicago, IL, 20XX-4.

“The Apartment Market: An Economic Approach” (with James Hubert), The Cain and Scott Apartment Report, Volume 3, No. 2, Summer 20XX-5.

“The Use of Regression Analysis in Property Value Determination,” Presentation to the Society of Real Estate Appraisers Seminar, 20XX-6.

“New Influences on Persian Cities: A Case Study of Kerman, Iran” (with R. Frieden), in The Architects’ Yearbook, Wiley-Halstead Publishers, 20XX-6.

“Education and Equality of Opportunity,” Presentation at the Southern Economics Association Meeting, 20XX-6.

Introduction to Microeconomics, Indiana University Continuing Education, Bloomington, Indiana, 20XX-10 (revised 20XX-9).

Introduction to Macroeconomics, Indiana University Continuing Education, Bloomington, Indiana, 20XX-10 (revised 20XX-9).

BOOK REVIEWS

Workers and Incentives, by Murat R. Sertel, North Holland Publishing Company, Amsterdam, 20XX-2: Under review for Kyklos.

Studies in Labor Markets, edited by Sherwin Rosen, University of Chicago Press for the National Bureau of Economic Research, Chicago, 20XX-1: Kyklos, Volume 36, Fasc. 2, 20XX-1.

WORKING PAPERS—DEPARTMENT OF ECONOMICS

“Employee Discrimination: An Alternative ‘Neoclassical’ Framework,” with D.W. Hands, 20XX-2.

“The Use of Creative Financing in Jamner County, Major: Some Preliminary Findings,” with James Hubert, 20XX-2.

“Moderate Rent Controls: A Microeconomic and Public Choice Analysis,” with M. Veseth, 20XX.

“The Effect of Creative Financing on the Value of Single Family Homes,” with James Hubert, 20XX.

EDITORIAL BOARD MEMBERSHIP

Editor, Tacoma Real Estate Trends, 20XX-9 to present

Editorial Board Member, Investor Profile Study, Cain and Scott, Inc., 20XX-5 to present

PROFESSIONAL MEMBERSHIP

American Economics Association

American Real Estate and Urban Economics Association

Lambda Alpha, Land Economics Honorary Society

CONFERENCES AND WORKSHOPS

Recent Development of Applied Economics, Graduate School of Business, University of Chicago, Summer 20XX-5.

Workshop on the Liberal Arts, Lilly Endowment, Colorado College, Colorado Springs, Summer 20XX-2.

Teacher Training Workshop, Joint Council on Economic Education, University of Colorado, Boulder, Summer 20XX.

RELATED ACTIVITIES

Jamner Real Estate Research Committee.

Growth Policy Association of Jamner County (20XX-8 through 20XX-3) (Vice President, 20XX-4; Executive Committee 20XX-5 through 20XX-3).

Congressman Norm Dicks’ Policy Advisory Panel, 20XX-4 through present.

Federal Home Loan Bank of Jamner, Research Award Advisory Committee, 20XX-3 through present.

Jamner County Economic Development Board, Technical Advisory Committee, 20XX-5 through 20XX-2.

CONTRACT RESEARCH

A Fiscal Impact Analysis for the City of Camas: The Annexation for the Fisher Basin Area, December 20XX.

An Economic Assessment of Jamner County, Major, for the Ruston-Jamner County Economic Development Board, 20XX.

Economic Analysis of Shadow Run Residential Development, Everett, Major, 20XX.

Fiscal Impact Statement for Knoll Center Development, Bothell, Major, 20XX-3.

Fiscal Impact Statement of Northshore Residential Development, Lacey, Major, 20XX-5.

Cost-Benefit Analysis for Sewage Service to Bay Estates Mobile Home Park, Gig Harbor, Major, 20XX-5.

Fiscal Impact Statement for Woodcreek Residential Development, Jamner County, Major, 20XX-5.

An Economic Analysis of the Section 8 Housing Program, Puget Sound Council of Governments, Jamner, Major, 20XX-6.

Economic Analysis of Partnerships in the Practice of Podiatric Medicine, Ruston, Major, 20XX-6.

An Economic Study of the Puyallup Valley-South Hill Area of Jamner County, Major, Jamner County Planning Department, Ruston, Major, 20XX-7.

Economic Impact Study of a Residential Nursing Care Facility, Ruston, Major, 20XX-7

LOST EARNINGS – CONSULTING

Attorney

Leon B. Lawlyer

John B. McCarty

Boff and LaCross

James D. Bobson

Samuel F. Rancher

F.A.O. Frotander

Client

Joan C. Lake

Lilla Grey (1)

Dorian McMurray (1)

Lucy Gallagher (1)

Lynn Barvill

Jane Hentel

LeRoy Flynn

Victor K. Snow

John Garland

Entry 53: Dr. Bruce D. Hann, Economist-5 of 5

Lawrence K. Cross
Michelle B. Lynn
Michael D. Romble

Harry Lass
Eve Slokum
Fran Johnson
Larry S. Livery
Vincent Bow
Alfred A. Anderson

June Season (1) (2)
Dennis Margo (1)
Robert Powell
Beatrice L. Lapitz
Shaw Green
Helen Marcello
Ron Down (1) (2)
Hermina Lawson
Paula Stubbs
Daniela Noble (1)

(1) Deposition Taken
(2) Trial Testimony Given

Entry 54: Dr. Hollis Lufkin, Psychiatrist-1

Curriculum Vitae

Dr. Hollis Lufkin, M.D.*
4433 23rd N.E.
Ruston, Major 98105

Education

Undergraduate: Wellesley College, Wellesley, Massachusetts
Degree: B.S. Biological Sciences, 20XX-18 to 20XX-14.

Medical School: Johns Hopkins University, Baltimore, Maryland
Degree: M.D., 20XX-14 to 20XX-10.

Internship & Residency: College of Physicians and Surgeons at the Presbyterian Medical Center in New York, 20XX-10 to 20XX-7.

Post-Doctoral Study: Visiting Scholar in Residence—University of Major Medical School. Granted National Institute of Health (NIH) Fellowship for Young Scientists to obtain Ph.D., 20XX-7 to 20XX-6.

Honors, Awards, Associations

Board certified as a psychiatrist—American Psychiatric Association.

Professional Activities

Affiliated Professor of Research, Johns Hopkins Medical School (6 months), 20XX-1.

Assistant Professor of Medicine in Psychiatry, Johns Hopkins Medical School, 20XX-6 to 20XX-3.

Associate Professor of Medicine in Psychiatry, Johns Hopkins Medical School (tenure since 20XX-1) (on leave for 2 years).

Private Psychiatric Practice, Deer Park, Maryland—3 days per week, 20XX-4 to present.

Publications

Lufkin & Skelly, "The Developmental Psychologist's Response to Psychoanalytical Status," 54 Proceedings of Psych. 821 (20XX-1).

* Dr. Lufkin is a follower of the psychodynamic school of psychiatry. The psychodynamic school of thought emphasizes that behavior cannot be predicted successfully.

Curriculum Vitae

Dr. Ennis Martinez, Ph.D.
92 So. Elm
Ruston, Major 98406

EDUCATIONAL BACKGROUND:

20XX – 12 to 20XX – 7 Ph.D. in Clinical Psychology; New York
University, New York, N.Y.

20XX – 12 M.A. in Clinical Community Psychology; New
York University, New York, N.Y.

20XX – 13 B.S. in Biology, Major State; Adamville, Major.

EMPLOYMENT EXPERIENCE:

Clinical

20XX – 5 to present Department Psychologist, Ruston Police
Department, Ruston, Major

20XX – 7 to 20XX – 5 Staff Psychologist/Adolescent Clinic Coordinator,
South Community Health Center, Syracuse, N.Y.

20XX – 10 to 20XX – 7 Psychology Intern, William A. Thorne Clinic for
Children, Syracuse, N.Y.

Consultation

20XX – 5 to present Ruston Fire Department

LICENSE/CERTIFICATION:

20XX – 5 Licensed Psychologist, Major

PROFESSIONAL ORGANIZATIONS/ORGANIZATIONAL AFFILIATIONS:

20XX – 5 to present Major State Psychological Association

20XX – 4 American Red Cross Disaster Mental Health Servicer

20XX – 5 International Association of Chiefs of Police,
Associate Member Status

Entry 55: Dr. Ennis Martinez, Psychologist-2 of 2

20XX – 6 American Psychological Association (APA), Member
APA Division 18, Police Psychology Secretary,
20XX – 3 to present

PRESENTATIONS:

20XX – 1 “Hurricane Katrina: Disaster Mental Health Response.”
Major State Psychological Association

20XX – 3 “Critical Incident Impacts on Firefighter Families.”
Presentation to Major State Psychological Association

20XX – 4 “Disaster Mental Health: An Update.” Presentation to
Major State Psychological Association

PUBLICATIONS:

Dr. R. Marks, Ph.D., “Police Officers, ‘Suicide by Cop,’ and Post-Traumatic
Stress Disorder,” 76 J. Police Psych. 57 (20XX – 3).

Curriculum Vitae

Thomas Monday
179 Pine Road
Dash Point, Major
(206) 976-3727

Personal: Age: 41; Divorced; Health: Excellent

Education: University of California, Berkeley
Ph.D. Economics, 20XX-10
University of California, Berkeley
M.A. Economics, 20XX-17
Stanford University, Palo Alto, Cal.
B.A. Economics, 20XX-21

Research Areas: Macro Economics
Urban Economics

Employment History:

20XX-5 to present	Professor, Department of Economics, University of Santa Laura
20XX-8 to 20XX-5	Associate Professor, Department of Economics, University of Santa Ana
20XX-12 to 20XX-8	Urban Economist, State Department

Publications:

“Public Sector Labor Relations: A Macro-economic Analysis,” Journal of American Economics, Volume 9, No. 2, Fall 20XX.

“Replacement Cost Accounting in Private Industry,” Report for the Department of State, 20XX-1.

“A Review of Urban Growth Potential,” American Real Estate and Urban Economics Association Journal, Volume 6, No. 5, Spring 20XX-2.

Professional Associations:

American Economics Association
American Real Estate and Urban Economics Association
Economics Analysts Association

Curriculum Vitae

Dr. Edward Risseen, M.D.
1296 S. Goodman
Ruston, Major 98408

EDUCATION

Undergraduate: University of Oregon
B.S. Biological Sciences, 20XX-22 to 20XX-19.

Medical School: University of Southern California School of Medicine
Degree: M.D., 20XX-19 to 20XX-15.

Internship: Oregon State Health Services, Portland, Oregon, 20XX-15
to 20XX-14.

Residency: Jamner County Community Health Clinic, Ruston, Major,
20XX-14 to 20XX-10.

ASSOCIATIONS AND AFFILIATIONS

The Heart Association Fund Drive, 20XX-5.
Member: Fort Stylcom Exercise Association.

EMPLOYMENT

United States Army, Captain, 20XX-10 to 20XX-6.

The Jamner County Community Health Clinic, 20XX-6 to present. 3006 37th
Ave., Ruston, Major 98402 (206) 732-8177.

DR. DALE THOMPSON
HOSPITALITY EXPERTS
Dorian Tower
1962 Pioneer St.
Suite 401
Reno, NV 13432

PROFESSIONAL EXPERIENCE SUMMARY

- Fifteen years experience in the hospitality industry.
- Five years experience in liquor law enforcement.
- Drafted operating standard and procedures for managers of restaurants, hotels, and taverns.
- Expert witness on operational practices, including procedures and protocols for businesses involved in the hospitality industry.
- Deposed as an expert in approximately 75 cases.
- Testified in 19 trials for both plaintiffs and defendants.

PROFESSIONAL EXPERIENCE

(20XX-5) – Present President, Hospitality Experts LLC, Reno, NV

- Provide expert testimony and consulting services to attorneys and their clients relating to hotels, resorts, restaurants, taverns, and other hospitality enterprises.
- Testify at depositions and trial providing expert opinions regarding hospitality policies, practices, and standards of care.

(20XX-9) – (20XX-6) VP, Director of Marketing, SKYLER HOTELS®, Modesto, NM

- Supervised marketing and sales for five SKYLER HOTELS® in the Southwest.
- Hired, trained, and provided ongoing support for all sales departments.

(20XX-12) – (20XX-8) Sales Manager, Hula Hotel, Maui, HI

- Solicitation of travel agents and corporate accounts.
- Supervised sales staff.

(20XX-14) – (20XX-11) Assistant Manager, Hula Hotel, Maui, HI

- Front desk management of staff and operations.
- Restaurant host and supervisor.
- Training of new hotel staff.

Entry 58: Dr. Dale Thompson-2 of 2

(20XX-18) – (20XX-15) Sandpoint High School Teacher, Sandpoint, ID

- Taught 9-10 grades in English and Social Studies.

(20XX-24) – (20XX-23) Liquor Enforcement Officer 4, Supervisor, Wyoming State Liquor Control Board, Casper, Wyoming

- Supervised six Liquor Enforcement Officers.
- In charge of Education and Enforcement.

(20XX-27) – (20XX-24) Legal Liquor Enforcement Officer 2, Wyoming State Liquor Control Board, Casper, Wyoming

(20XX-28) – (20XX-27) Legal Liquor Enforcement Officer 1, Wyoming State Liquor Control Board, Casper, Wyoming

EDUCATION

B.A., History, Gonzaga University, 20XX-29

Ph.D, Vast Canyon College, 20XX-19

DEPOSITION EXCERPTS: DR. SHERMAN CROUP

Dr. Sherman Croup's deposition was taken by defendant Hard's attorney on October 20, 20XX+1. Present at the deposition were plaintiffs' attorney; attorneys representing Davola, Apple and Donaldson pursuant to Davola's insurance; Davola's personal attorney; Hard's insurance company attorney; and Hard's personal attorney.

[Page 1]

- 1 Q: Have you ever had your deposition taken before?
2 A: No.
3 Q: Let me describe briefly what is going to take place. My name is Jane
4 Green, and I am one of the attorneys representing Ed. Hard, a defendant in
5 the Summers family action. I am going to ask you some questions about
6 Deborah Summers. All of my questions, your answers, and all the
7 attorneys' comments will be taken down word-for-word by the court
8 reporter. At a later date, all of that will be transcribed in a booklet form
9 which will be referred to as your depositions. Do you understand that?
10 A: Yes.
11 Q: You have been placed under oath so that everything you say will be under
12 penalty of perjury and your answers will have the same force and effect as
13 if you were in a court of law. Is that clear to you?
14 A: Yes.
15 Q: If any of my questions are unclear, Dr. Croup, or if you do not understand
16 any of my questions for any reason, please tell me, so that you will not be
17 placed in the position of answering questions that you do not understand.
18 Is that agreed?
19 A: Yes.

[Page 2]

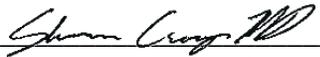
- 1 Q: Please describe your personal background and education.
2 A: I am 45 years old. I am married and have one daughter, age 18. I have
3 practiced at the clinic for nine years. In addition to my medical duties, I
4 have had seven years experience as a family counselor while at the clinic.
5 I have counseled on a regular basis at the clinic for the past three years.
6 I especially enjoy counseling since I believe the family unit must be
7 fostered, encouraged, and nourished especially in this era that we live in.
8 Although not emphatic, I would rather not prescribe drugs when physical
9 or emotional problems can be remedied through other methods.
10 As to my education and employment, please refer to my Curriculum Vitae.
11 Q: Please describe your relationship and professional experience with Ms.
12 Summers.
13 A: On October 3, 20XX, Ms. Summers visited me at the Neva County
14 Medical Services Clinic. Ms. Summers is not a regular patient at the Neva
15 County Clinic. This is the first time I saw her. It is not unusual to have
16 patients come to the clinic on a one-time basis for prescription refills. Ms.
17 Summers came to me to obtain a refill of her Valium prescription,
18 explaining that she had fallen to pieces and was numb ever since her
19 husband, Bruno, had been shot. She said that another doctor had told her

20 that she was in shock or something.
21 After examining Ms. Summers and interviewing her, I decided against
22 prescribing Valium. I diagnosed Ms. Summers as a mild hysteric. In my
23 examination, which

[Page 3]

1 lasted 15 minutes, she exhibited hysteric tendencies and hysteria-related
2 physical trauma. In my opinion, Ms. Summers' physical/emotional
3 trauma would not be mitigated effectively by Valium. Ms. Summers'
4 agitated condition is not the product of a short-term phenomenon, but
5 rather, part of her personality type. In other words, Ms. Summers would
6 be likely to react adversely the same way given any highly stressful
7 situation.

8
9
10
11


Sherman Croup, M.D.

Department of Public Safety – Ruston, Major	STATEMENT
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Victim	Witness	X	DATE\TIME 11/3/20XX 2250	CASE NO.
TAKEN BY				SERIAL
STATEMENT OF Roberta Montbank				AGE 78 years
ALIAS				
ADDRESS Stillwater Retirement Home, 1812 E 9th St.			ZIP	PHONE 583-2200
DATE AND PLACE OF BIRTH				
OCCUPATION AND EMPLOYER Retired Schoolteacher				BUSINESS PHONE

ENTER STATEMENT BELOW

This is a true and correct statement given by me to Officer Rule, #1441. I am 78 years old and a retired schoolteacher.

On 9/3/20XX at about 8:00 p.m., I had dropped into the neighborhood bar, The Garage, which is just around the block from the Stillwater Retirement Home.

I was sitting on a stool near the pool tables near the front of the Garage when a man walked from the bar area towards the men’s room. I would describe this man as about 30 years old, 5’7” tall, and wearing a shiny black jacket. A couple minutes later, I heard a noise and looked up and saw this same man, who I’d seen earlier, facing another taller man, about 6’4”. When I looked up, I heard the shorter man in the black jacket say, “It’s about time.” They were about 15 feet apart. Right after the short man spoke, he quickly took a gun out of his jacket pocket, and pointed it at the taller man. Then I heard a gunshot and saw the tall man fall down. I did not see the taller man move or do anything to provoke the man with the gun.

The man with the gun ran right out of the Garage very fast. The man who was shot lay on the floor moaning. A young woman who had been at the front part of the Garage started screaming, “He murdered my husband! He murdered my husband!” Then the aid people and police came and worked on the man, and they took him away.

I think I could identify the man with the gun who shot the other man if I saw him again.

I declare, under penalty of perjury under the laws of the State of Major, that the statement above is true and correct to the best of my knowledge.

11/3/20XX
Date

Roberta Montbank
Signature

EXCERPTS FROM STATE OF MAJOR CRIMINAL STATUTES

Major Penal Code

§236 Assault Defined – 1st, 2nd, and 3rd Degree

Assault Defined. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

(1) **Assault in the 1st Degree** is an assault done with a firearm, or deadly weapon or instrumentality, or by a force or means likely to inflict grievous bodily injury or death.

(2) **Assault in the 2nd Degree** is an assault done with a weapon or other instrument or thing likely to inflict bodily injury.

(3) **Assault in the 3rd Degree** is an assault accomplished without a weapon or instrumentality, but done with the intent of inflicting bodily injury.

§241 Murder – 1st and 2nd Degree

All murder which is perpetrated by means of a destructive device or explosive, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, mayhem, is murder of the first degree; and all other kinds of murders are of the second degree, including death resulting from a wanton act done with reckless indifference to human life.

§244 Manslaughter – Voluntary, Involuntary, and Vehicular

Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

(a) **Voluntary** – upon a sudden quarrel or heat of passion

(b) **Involuntary** – in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without

due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle.

(c) **Vehicular.** [deleted]

§246 Excusable Homicide

Homicide is excusable in the following cases:

(1) When committed by accident and misfortune, . . . or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.

§291 Penalties for Homicide

Penalties for homicide shall be as follows:

(a) **1st-degree Murder** – life imprisonment in state prison.

(b) **2nd-degree Murder** – 20-50 years imprisonment in state prison.

(c) **Voluntary Manslaughter** – 10-20 years imprisonment in state prison.

(d) **Involuntary Manslaughter** – 5-10 years imprisonment in state prison.

Where a penalty provides a range (e.g., 20-50 years), the trial court will set the exact sentence along the range. The parole board may then parole a defendant when he or she has served one-half of the minimum term except, as to life terms, a defendant becomes eligible for parole in 25 years.

Entry 61: Criminal Statutes (Excerpts)-2

§307 Enhancements

(3) **Use of a Firearm.** Anyone found to have used a firearm during the commission of a crime punishable by imprisonment in state prison shall be sentenced to an additional 5 years in prison. Such additional term is to commence upon the completion of the sentence for the underlying crime.

EXCERPTS FROM STATE OF MAJOR CIVIL STATUTES*

§1.1 Wrongful death

(a) **Right of action.** When the death of a person is caused by the wrongful act, neglect or default of another, his personal representative may maintain an action for damages against the person causing the death, and although the death shall have been caused under such circumstances as amount, in law, to a felony.

(b) **Beneficiaries of action.** Every such action shall be for the benefit of the wife, husband, child or children, including stepchildren, or the parents, sisters or brothers, who may be dependent upon the deceased person for support.

(c) **Survival of actions**

(1) All causes of action by a person or persons against another person or persons shall survive the personal representative of the decedent.

(2) Where death or an injury to person or property, resulting from a wrongful act, neglect or default, occurs simultaneously with or after the death of a person who would have been liable therefore if his death had not occurred simultaneously with such death or injury or had not intervened between the wrongful act, neglect or default and the resulting death or injury, an action to recover damages for such death or injury may be maintained against the personal representative of such person.

(d) **Imputation of contributory fault.** The contributory fault of the decedent shall be imputed to the claimant in the action.

(e) **Recovery.** In every such action the jury may give such damages as, under all circumstances of the case, may to them seem just. The personal representative shall be entitled to recover damages for pain and suffering personal to and suffered by a deceased.

§1.2 Action for personal injury

An action for personal injury to any person occasioning death shall survive if such person has a surviving spouse, child living, including stepchildren, or parents, sisters or brothers dependent upon the deceased for support at the time of decedent's death. Such action may be commenced and prosecuted, by the executor or administrator of the deceased, in favor of any of the named survivors. All damages as may, under the circumstances, be just may be awarded, including pain and suffering that the decedent suffered.

§2.1 Sales to persons apparently under the influence of liquor

(a) No person shall sell any liquor to any person apparently under the influence of liquor.

(b) Violations of law. Every person who violates any provision of this title or the accompanying liquor board regulations shall be guilty of a violation of this title, whether otherwise declared or not, and is subject to a fine of \$1,000. Violation of this statute is not a criminal offense.

§3.1 Nature of liability, right of contribution – indemnity

If more than one person is liable to a claimant on an indivisible claim for the same injury, death or harm, the liability of such persons shall be joint and severable.

A right of contribution exists between or among two or more persons who are jointly and severally liable upon the same indivisible claim for the same injury, death or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution among liable persons is the comparative fault of each such person.

* Though statutes in this section have application for civil liability, some also define misdemeanor criminal liability.

§4.1 Definitions – health care provider

A “health care provider” means

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician’s assistant, midwife, osteopathic physician’s assistant, nurse practitioner, or physician’s trained mobile intensive care paramedic.

(2) An employee or agent of a person described in part (1) above, acting in the course and scope of his employment.

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in part (1) above, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent acting in the course and scope of his employment.

§4.2 Elements of proof standard of care

The following shall be necessary elements of proof that injury resulted from the failure of the health care provider to follow the accepted standard of care:

(1) The health care provider failed to exercise that degree of care, skill and learning expected of a reasonably prudent health care provider at the time in the profession or class to which he belongs, in the state of Major, acting in the same or similar circumstances.

(2) Such failure was a proximate cause of the injury complained of.

(3) No award shall be made in any action or arbitration for damages for injury occurring as the result of health care unless the plaintiff establish one or more of the following propositions:

(a) That injury resulted from the failure of a health care provider to follow the accepted standard of care;

(b) That a health care provider promised the patient or his representative that the injury suffered would not occur;

(c) That injury resulted from health care to which the patient or his representative did not consent. The plaintiff shall have the burden of proving each fact essential to an award by a preponderance of the evidence.

§5.4 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

§6.1 Definitions – firearms terms

(1) “Short firearm” means any firearm less than twelve inches in length.

(2) “Crime of violence” means: Any of the following felonies, as now existing. Any felony defined under any law as a class A felony or an attempt to commit a class A felony; criminal solicitation of or criminal conspiracy to commit a class A felony, voluntary manslaughter, involuntary manslaughter, indecent liberties if committed by forcible compulsion, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, burglary in the second degree, and robbery in the second degree.

(3) “Firearm” means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

§6.2 Carrying firearm

Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed weapon.

§6.3 Aiming or discharging firearms

Every person who shall aim any gun, pistol, revolver or other firearm, whether loaded or not, at or towards any human being, or who shall willfully discharge any firearm, air gun or other weapon, or throw any deadly missile in a public place, or in any place where any person might be endangered thereby, although no injury result, shall be guilty of a misdemeanor punishable by \$5,000 and/or up to one year in the Major state penitentiary.

§6.4 Unlawful possession of a short firearm or pistol

(1) A person is guilty of the crime of unlawful possession of a short firearm or pistol, if, having previously been convicted in this state or elsewhere of a crime of violence or of a felony in which a firearm was used or displayed, the person owns or has in his possession any short firearm or pistol.

A person has been "convicted" at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings. A person shall not be precluded from possession if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(2) Unlawful possession of a short firearm or pistol shall be punished up to five years in the state penitentiary and/or a fine of \$5,000.

§7.1 Duties of the prosecuting attorney

(6) Institute and prosecute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of felonies when the prosecutor has information that any such offense has been committed.

(13) Send to the state of Major liquor control board at the end of each year a written report of all prosecutions brought under the state liquor laws in the county during the preceding year, showing in each case the date of trial, name of accused, nature of charges, disposition of case, and the name of the judge presiding.

(14) Seek to reform and improve the administration of criminal justice and stimulate efforts to remedy inadequacies or injustice in substantive or procedural law.

§8.1 Definitions – products liability

(1) "Product seller" means any person or entity that is engaged in the business of selling products, whether the sale is for resale, or for use or consumption. The term includes a manufacturer, wholesaler, distributor, or retailer of the relevant product.

(2) "Manufacturer" includes a product seller who designs, produces, makes, fabricates, constructs, or remanufactures the relevant product or component part of the product before its sale to a user or consumer. The term also includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer.

A product seller acting primarily as a wholesaler, distributor, or retailer of a product may be a "manufacturer" only to the extent that it designs, produces, makes, fabricates, constructs, or remanufactures the product for its sale. A product seller who performs minor assembly of a product in accordance with the instructions of the manufacturer or did not participate in the design of a product and that constructed the product in accordance with the design specifications of the claimant or another product seller shall not be deemed a manufacturer.

(3) “Product” means any object possessing intrinsic value, capable of delivery either as an assembled whole or as a component part or parts, and produced for introduction into trade or commerce.

(4) “Product liability claim” includes any claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, testing, warnings, instructions, marketing, packaging, storage or labeling of the relevant product. It includes, but is not limited to, any claim or action previously based on: strict liability in tort; negligence; breach of express or implied warranty; breach of, or failure to, discharge a duty to warn or instruct, whether negligent or innocent; misrepresentation, concealment, or nondisclosure whether negligent or innocent; or other claim or action previously based on any other substantive legal theory except fraud, intentionally caused harm.

(5) “Claimant” includes any person or entity that suffers harm.

(6) “Harm” includes any damages recognized by the courts of this state.

§8.2 Liability of manufacturers

(1) A product manufacturer is subject to liability to a claimant if the claimant’s harm was proximately caused by the negligence of the manufacturer in that the product was not reasonably safe as designed or not reasonably safe because adequate warnings or instructions were not provided.

(a) A product is not reasonably safe as designed, if, at the time of manufacture, the likelihood that the product would cause the claimant’s harm or similar harms, and the seriousness of those harms, outweighed the burden on the manufacturer to design a product that would have prevented those harms and the adverse effect that an alternative design that was practical and feasible would have on the usefulness of the product.

(b) A product is not reasonably safe because adequate warnings or instructions

were not provided with the product, if, at the time of manufacture, the likelihood that the product would cause the claimant’s harm or similar harms, and the seriousness of those harms, rendered the warnings or instructions of the manufacturer inadequate and the manufacturer could have provided the warnings or instructions which the claimant alleges would have been adequate.

(c) A product is not reasonably safe because adequate warnings or instructions were not provided after the product was manufactured where a reasonably prudent manufacturer should have learned about a danger connected with the product after it was manufactured. In such a case, the manufacturer is under a duty to exercise reasonable care to issue warnings or instructions concerning the danger.

§9.3 Liability of product sellers other than manufacturers

(1) A product seller other than a manufacturer is liable to the claimant only if the claimant’s harm was proximately caused by:

(a) The negligence of such product seller; or

(b) Breach of an express warranty made by such product seller; or

(c) The intentional misrepresentation of facts about the product by such product seller or the intentional concealment of information about the product by such product seller.

§9.4 Length of time subject to liability

A product seller shall not be subject to liability to a claimant for harm under this chapter if the product seller proves by a preponderance of the evidence that the harm was caused after the product’s “useful safe life” had expired unless other representations were made.

If the harm was caused more than twelve years after the time of delivery, a presumption

arises that the harm was caused after the useful safe life. This presumption may be rebutted by a preponderance of the evidence. No claim under this chapter may be brought more than three years from the time the claimant discovered or in the exercise of due diligence should have discovered the harm and its cause.

§10.1 Arbitration authorized

Two or more parties may agree in writing to submit to arbitrate any controversy.

§10.2 Motion to compel arbitration

(a) A party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration may make application to the court for an order directing the parties to proceed with the arbitration in accordance with their agreement.

(b) Either party shall have the right to demand the immediate trial by jury of any such issue concerning the validity or existence of the arbitration agreement or the failure to comply therewith.

§10.3 Appointment of arbitrators by court

Upon the application of any party to the arbitration agreement, and upon notice to the other parties, the court shall appoint an arbitrator, or arbitrators, in any of the following cases:

(1) When the arbitration agreement does not prescribe a method.

(2) When the arbitration agreement does prescribe a method for the appointment of arbitrators, and the arbitrators, or any of them, have not been appointed and the time within which they shall have been appointed has expired.

(3) When any arbitrator fails or is otherwise unable to act, and his successor has not been appointed.

(4) Where the arbitration agreement is silent as to the number of arbitrators, no more than three arbitrators shall be appointed by the court.

§10.4 Notice of intention to arbitrate – content

When the controversy arises from a written agreement containing a provision to settle by arbitration a controversy thereafter arising between the parties . . . the party demanding arbitration shall serve upon the other party, personally or by registered mail, a written notice of his intention to arbitrate.

§10.5 Hearing by arbitrators

The arbitrators shall appoint a time and place for the hearing and notify the parties and may adjourn the hearing from time to time as may be necessary, and either party, for good cause, may postpone the hearing to a time not extending beyond the date fixed for making the award.

All the arbitrators shall meet and act together during the hearing but a majority of them may determine any question and render a final award.

§10.6 Failure of party to appear

If any party neglects to appear before the arbitrators after reasonable notice of the time and place of hearing, the arbitrators may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before them.

§10.7 Time of making award

If the time within which the award shall be made is not fixed in the arbitration agreement, the award shall be made within thirty days from the closing of the proceeding, unless the parties,

in writing, extend the time in which that award may be made.

§10.8 Representation by attorney

Any party shall have the right to be represented by an attorney at law in any arbitration proceeding or any hearing before the arbitrators.

§10.9 Witnesses

The arbitrators, or a majority of them, may require any person to attend as a witness, and to bring any book, record, document or other evidence. The fees for such attendance shall be the same as the fees of witnesses in the superior court. Each arbitrator shall have the power to administer oaths.

Subpoenas shall issue and be signed by the arbitrators, or any one of them, and shall be directed to the person and shall be served in the same manner as subpoenas to testify before a court of record in this state. If any person summoned to testify shall refuse or neglect to obey such subpoenas, the court may compel the attendance of such person before the arbitrators, or punish said person for contempt in the same manner provided for in the courts.

§10.10 Depositions

With the arbitrator's approval, depositions may be taken in the same manner and upon the same grounds as provided in suits pending in the courts.

§10.11 Form of award

The award shall be in writing and signed by the arbitrators or by a majority of them. The arbitrators shall promptly upon its rendition deliver a copy of the award to each of the parties or their attorneys.

§10.12 Vacation of award – rehearing

In any of the following cases the court shall after notice and hearing make an order vacating the award upon the application of any party to the arbitration:

(1) Where the award was procured by corruption, fraud or other undue means.

(2) Where there was evident partiality or corruption in the arbitrators or any of them.

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly performed them that a final and definite award upon the subject matter submitted was not made.

(5) If there was not a valid submission or arbitration agreement and the proceeding was instituted without either serving a notice of intention to arbitrate or serving motion to compel arbitration.

An award shall not be vacated upon any of the grounds set forth under subdivisions (1) to (4), inclusive, unless the court is satisfied that substantial rights of the parties were prejudiced thereby.

Where an award is vacated, the court may, in its discretion, direct a rehearing either before the same arbitrators or before new arbitrators to be chosen in the manner provided in the agreement for the selection of the original arbitrators.

§10.13 Modification or correction of award by court

In any of the following cases, the court shall, after notice and hearing, make an order modifying or correcting the award, upon the application of any party to the arbitration:

(1) Where there was an evident miscalculation of figures, or an evident mistake

in the description of any person, thing or property referred to in the award.

(2) Where the arbitrators have awarded upon a matter not submitted to them.

(3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy.

§10.14 Judgment – costs

Upon the granting of an order confirming, modifying, correcting or vacating an award, judgment or decree shall be entered in conformity therewith. Costs of the application and of the proceedings subsequent thereto, not exceeding twenty-five dollars and disbursements, may be awarded by the court in its discretion.

MANDATORY ARBITRATION OF CIVIL ACTIONS

§11.0 Authorization

The superior court of the county, by majority vote of the judges or the county legislative authority, may authorize mandatory arbitration of civil actions under this chapter.

§11.1 Actions subject to mandatory arbitration

All civil actions, except for appeals from municipal or justice courts, which have authorized arbitration, where the sole relief sought is a money judgment, and where no party asserts a claim in excess of ten thousand dollars, or if approved by the superior court of a county by two-thirds or greater vote of the judges therefore, up to twenty-five thousand dollars, exclusive of interest and costs, are subject to mandatory arbitration.

§11.2 Decision and award – appeals

Following a hearing as prescribed by court rule, the arbitrator shall file his decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, an aggrieved party may file a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. Such trial de novo shall be held, including a right to jury, if demanded.

If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment shall be entered and may be presented to the court by any party, on notice, which judgment when entered shall have the same force and effect as judgments in civil actions.

§11.3 Costs and attorneys' fees

The Supreme Court may by rule provide for costs and reasonable attorney's fees that may be assessed against a party appealing from the award who fails to improve his position on the trial de novo.

§12.0 Payment of wages due to employee ceasing work to occur at end of pay period

When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period.

It shall be unlawful for any employer to withhold or divert any portion of an employee's wages unless the deduction is:

- (1) Required by state or federal law; or
- (2) Specifically agreed upon orally or in writing by the employee and employer; or
- (3) For medical, surgical or hospital care or service.

§12.1 Penalty for noncompliance

Any person, firm, or corporation which violates any of these provisions shall be guilty of a misdemeanor.

**EXCERPTS FROM STATE OF
MAJOR ALCOHOLIC
BEVERAGE (MAB)
ADMINISTRATIVE
REGULATIONS**

**MAB 2.2 Conduct on licensed
premises**

No licensee, or employee thereof, shall be disorderly, boisterous or intoxicated on the licensed premises, or on any public premises adjacent thereto which are under the licensee's control, nor shall any licensee, or employee thereof, permit any disorderly or boisterous person to be thereon; nor shall any licensee, or employee thereof, use or allow the use of profane or vulgar language thereon.

**MAB 2.3 No sale of liquor to
minors, intoxicated
persons, interdicted
person**

(a) No retail licensee shall give or otherwise supply liquor to any person under the age of 21 years, either for his own use or for the use of his parent or of any other person; or to any person apparently under the influence of liquor; or to any interdicted person (habitual drunkard); nor shall any licensee or employee permit any person under the said age or in said condition or classification to consume liquor on his premises, or on any premises adjacent and under his control, except where liquor is administered to such person by his physician or dentist for medicinal purposes.

(b) Violation of any of these regulations will result in a fine of \$1,000 to the licensee or employee who violates sections 2.2 or 2.3, and/or suspension or forfeiture of the violator's alcoholic beverage license.

§12.2 Attorney's fee in action on wages

In any action in which any person is successful in recovering judgment for

wages or salary owed to him, reasonable attorney's fees, in an amount to be determined by the court, shall be assessed against said employer or former employer: Provided, *however*, That this section shall not apply if the amount of recovery is less than or equal to the amount admitted by the employer to be owing for said wages or salary.

**§12.3 Assignment to director of wage
claims – collection by suit**

The director of labor and industries shall, when in his judgment he deems it necessary, take assignments of wage claims and prosecute actions for the collection of wages of persons who are financially unable to employ counsel in cases in which, in the judgment of the director, the claims for wages are valid and enforceable in the courts. The director shall have authority to issue subpoenas, to compel the attendance of witnesses or parties and the production of books, papers or records, and to administer oaths and to examine witnesses under oath, and to take the verification of proof of instruments of writing and to take depositions and affidavits for the purpose of carrying out these provisions. When such assignments for wage claims are taken, no court costs shall be payable by said director for prosecuting such suits. Obedience to subpoenas issued by the director shall be enforced by the courts in any county. The director or his employees shall have free access to all places and works of labor, and any employer, or any agent or employee of such employer, who shall refuse them, or any of them, admission therein, or who shall, when requested by them, or any of them, willfully neglect or refuse to furnish them, or any of them, any statistics or information pertaining to his lawful duties, which may be in his possession or under the control of said employer, or agent, shall be guilty of a misdemeanor.

MOTOR VEHICLE CODE

§12.4 Remedy cumulative

Nothing herein contained shall limit the authority of the prosecuting attorney of any county to prosecute actions, both civil and criminal, for violations of these provisions.

§12.5 Enforcement

It shall be the duty of the director of labor and industries to inquire diligently for any violations and to institute the actions for penalties provided.

§12.6 Employer defined

The word “employer” shall include every person, firm, partnership, corporation, the state of Major, and all municipal corporations.

§12.7 Payment on employee’s death

If at the time of the death of any person, his employer is indebted to him for work, labor, and services performed, and no executor or administrator of his estate has been appointed, such employer shall upon the request of the surviving spouse forthwith pay said indebtedness, in such an amount as may be due not exceeding the sum of two thousand five hundred dollars, to the said surviving spouse or if the decedent leaves no surviving spouse, then to the child or children, or if no children, then to the father or mother of said decedent. In all cases the employer shall require proof of claimant’s relationship to decedent by affidavit, and shall require claimant to acknowledge receipt of such payment in writing. Any payments made by an employer pursuant to these provisions shall operate as a full and complete discharge of the employer’s indebtedness to the extent of said payment.

§14.0 Motor vehicle liability

It is unlawful to operate a motor vehicle while intoxicated. Presumption of intoxication is a reading of .08 blood-alcohol content.

EXCERPTS FROM STATE OF MAJOR PROFESSIONAL RESPONSIBILITY CODE*

MPRC 1.0: Terminology

(a) “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) “Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

(g) “Partner” denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes

the matter in question and that the circumstances are such that the belief is reasonable.

(j) “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) “Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) “Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party’s interests in a particular matter.

(n) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

MPRC 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

MPRC 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

* The MPRC is fictitious, but the excerpts are identical to the ABA Model Rules of Professional Conduct

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(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

MPRC 1.3: Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

MPRC 1.4: Communications

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

MPRC 1.5: Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

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(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

MPRC 1.6: Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any

proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

MPRC 1.7: Conflict of Interest – Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

MPRC 1.8: Conflict of Interest – Specific Rules for Current Clients

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and

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the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

MPRC 1.9: Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

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(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

MPRC 1.14: Client with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

MPRC 1.16: Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

MPRC 2.1: Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

MPRC 3.1: Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

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MPRC 3.2: Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

MPRC 3.3: Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

MPRC 3.4: Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

MPRC 3.5: Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

MPRC 3.7: Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

MPRC 3.8: Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

- (1) the information sought is not protected from disclosure by any applicable privilege;
- (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
- (3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

Comment to Rule 3.8:

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

MPRC 3.9: Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

MPRC 4.1: Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

MPRC 4.2: Communications with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer

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knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

MPRC 4.3: Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

MPRC 4.4: Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

MPRC 5.1: Responsibilities of Partners, Managers, and Supervisory Lawyers

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

MPRC 8.3: Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

MPRC 8.4: Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

STATE OF MAJOR CRIMINAL JURY INSTRUCTIONS

Jury Instruction No. 1

Assault – Defined

Defendant is charged in [Count _____ of] the complaint, with the commission of the crime of assault.

[The crime of] [An] assault is an unlawful attempt, coupled with a present ability, to commit a wrongful act by means of physical force upon the person of another.

In order to prove the commission of the crime of assault, each of the following elements must be proved:

1. That an attempt was made to commit a wrongful act by means of physical force upon the person of another,
2. That such attempt was unlawful, and
3. That at the time of such attempt, the person who made the attempt had the present ability to commit such act.

To constitute an assault, it is not necessary that any actual injury be inflicted, it may be considered in connection with other evidence in determining whether an assault was committed and, if so, the nature of the assault.

Jury Instruction No. 2

Assault in the First Degree

Defendant is charged in [Count _____ of] the complaint, with the commission of the crime of assault in the first degree.

Every person who commits an assault upon the person of another [with a deadly weapon or instrument] **[or]** [by means of force likely to produce great bodily injury] **[or]** [with a firearm] is guilty of assault in the first degree.

In order to prove the commission of such crime, each of the following elements must be proved:

1. That a person was assaulted, and
2. That the assault was committed [by the use of a deadly weapon or instrument] **[or]** [by means of force likely to produce great bodily injury] **[or]** [with a firearm].

As used in this instruction, a deadly weapon is any object, instrument, or weapon which is used in such a manner as to be capable of producing, and likely to produce, death or great bodily injury.

As used in this instruction, great bodily injury refers to significant or substantial bodily injury or damage; it does not refer to trivial or insignificant injury or moderate harm.

As used in this instruction, firearm includes a _____.

Actual bodily injury is not a necessary element of the crime. If such bodily injury is inflicted, its nature and extent are to be considered in connection with all the evidence in determining whether the means used and the manner in which it was used were such that they were likely to produce great bodily injury.

Jury Instruction No. 3

Insulting Words – Not Justification for Assault

No words of abuse, insult or reproach addressed to a person or uttered concerning him, howsoever insulting or objectionable the words may be, if unaccompanied by any threat or apparent threat of great bodily injury or any assault upon the person or any trespass against lands or goods, will justify him in an assault [with a deadly weapon] [or] [by any means of force likely to produce great bodily injury], and the provocation only of such words will not constitute a defense to a charge of having committed an assault.

Jury Instruction No. 4

Deliberate and Premeditated Murder

All murder which is perpetrated by any kind of willful, deliberate and premeditated killing with express malice aforethought is murder of the first degree.

The word “willful,” as used in this instruction, means intentional.

The word “deliberate” means formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action. The word “premeditated” means considered beforehand.

If you find that the killing was preceded and accompanied by a clear, deliberate intent on the part of the defendant to kill, which was the result of deliberation and premeditation, so that it must have been formed upon preexisting reflection and not under a sudden heat of passion or other condition precluding the idea of deliberation, it is murder of the first degree.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not such deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

To constitute a deliberate and premeditated killing, the slayer must weigh and consider the question of killing and the reasons for and against such a choice and, having in mind the consequences, he decides to and does kill.

Jury Instruction No. 5

First-Degree Felony-Murder

The unlawful killing of a human being, whether intentional, unintentional or accidental, which occurs as a result of the commission of or attempt to commit the crime of [robber, burglary, rape, arson] and where there was in the mind of the perpetrator the specific intent to commit such crime, is murder in the first degree.

The specific intent to commit [robbery, burglary, rape, arson] and the commission or attempt to commit such crime must be proved beyond a reasonable doubt.

Jury Instruction No. 6

Unpremeditated Murder of the Second Degree

Murder of the second degree is [also] the unlawful killing of a human being with malice aforethought when there is manifested an intention unlawfully to kill a human being but the evidence is insufficient to establish deliberation and premeditation.

Jury Instruction No. 7

Second-Degree Murder – Killing Resulting from Unlawful Act Dangerous to Life

Murder of the second degree is [also] the unlawful killing of a human being as the direct causal result of an intentional act, [involving a high degree of probability that it will result in death, which act is done for a base, antisocial purpose and with wanton disregard for human life.] **[or]** [the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his conduct endangers the life of another and who acts with conscious disregard for human life.]

When the killing is the direct result of such an act, it is not necessary to establish that the defendant intended that his act would result in the death of a human being.

Jury Instruction No. 8

Second-Degree Felony-Murder

The unlawful killing of a human being, whether intentional, unintentional or accidental, which occurs as a direct causal result of the commission of or attempt to commit a felony inherently dangerous to human life, namely, the crime of [list crime other than one of those enumerated for first-degree felony-murder] and where there was in the mind of the perpetrator the specific intent to commit such crime, is murder of the second degree.

The specific intent to commit _____ and the commission of or attempt to commit such crime must be proven beyond a reasonable doubt.

Jury Instruction No. 9

Voluntary Manslaughter – Defined

Defendant is charged in [Count _____ of] the complaint with the commission of the crime of voluntary manslaughter.

The crime of voluntary manslaughter is the unlawful killing of a human being without malice aforethought when there is an intent to kill.

There is no malice aforethought if the killing occurred upon a sudden quarrel or heat of passion.

In order to prove the commission of the crime of voluntary manslaughter, each of the following elements must be proven:

1. That a human being was killed,
2. That the killing was unlawful, and
3. That the killing was done with the intent to kill.

Jury Instruction No. 10

Sudden Quarrel or Heat of Passion and Provocation Explained

To reduce an intentional felonious homicide from the offense of murder to manslaughter upon the ground of sudden quarrel or heat of passion, the provocation must be of such character and degree as naturally would excite and arouse such passion, and the assailant must act under the smart of that sudden quarrel or heat of passion.

The heat of passion which will reduce a homicide to manslaughter must be such a passion as naturally would be aroused in the mind of an ordinary reasonable person in the same circumstances. A defendant is not permitted to set up his own standard of conduct and to justify or excuse himself because his passions were aroused unless the circumstances in which he was placed and the facts that confronted him were such as also would have aroused the passion of the ordinary reasonable man faced with the same situation. The question to be answered is whether or not, at the time of the killing, the reason of the accused was obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection, and from such passion rather than from judgment.

If there was provocation, but of a nature not normally sufficient to arouse passion, or if sufficient time elapsed between provocation and the fatal blow for passion to subside and reason to return, and if an unlawful killing of a human being followed such provocation and had all the elements of murder, as it has been defined in these instructions, the mere fact of slight or remote provocation will not reduce the offense to manslaughter.

Jury Instruction No. 11

Involuntary Manslaughter – Defined

Defendant is charged in [Count _____ of] the complaint, with the commission of the crime of involuntary manslaughter.

Involuntary manslaughter is the unlawful killing of a human being without malice aforethought and without intent to kill.

In order to prove the commission of the crime of involuntary manslaughter, each of the following elements must be proven:

1. That a human being was killed, and
2. That the killing was unlawful.

A killing is unlawful within the meaning of this instruction if it occurred:

1. During the commission of a misdemeanor which is inherently dangerous to human life, namely the offense(s) of _____; or
2. In the commission of an act ordinarily lawful which involves a high degree of risk of death or great bodily harm, without due caution and circumspection.

Jury Instruction No. 12

Homicide – Proximate Cause – Definition

To constitute [murder] [or] [manslaughter] [or] [negligent homicide], there must be a causal connection between the death of a human being and the criminal conduct of a defendant so that the act [done] [or] [omitted] was a proximate cause of the resulting death.

The term “proximate cause” means a cause which, in a direct sequence, unbroken by any new independent cause, produces the death, and without which the death would not have happened.

There may be more than one proximate cause of a death.

Jury Instruction No. 13

Homicide – Effect of Improper Treatment

Where the original injury is a proximate cause of the death, the fact that the immediate cause of death was the medical or surgical treatment administered or that such treatment was a factor contributing to the cause of death will not relieve the person who inflicted the original injury from responsibility.

Where, however, the original injury is not a proximate cause of the death and the death was proximately caused by such medical or surgical treatment or some other cause, then the defendant is not guilty of an unlawful homicide.

Jury Instruction No. 14

Burden of Proof – Presumption of Innocence – Reasonable Doubt

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The state is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

Jury Instruction No. 15

Self-Defense Against Assault

It is lawful for a person who is being assaulted to defend himself from attack if, as a reasonable person, he has grounds for believing and does believe that bodily injury is about to be inflicted upon him. In doing so he may use all force and means which he believed to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent.

Jury Instruction No. 16

Justifiable Homicide – Defense of Self and Others

It is a defense to a charge of [murder] [or] [manslaughter] that the homicide was justifiable as defined in this instruction.

Homicide is justifiable when committed in the lawful defense of [the slayer] [the slayer's [husband] [wife] [parent] [child] [brother] [sister]] [any person in the slayer's presence or company] when the slayer reasonably believed that the person slain intended to inflict death or great bodily harm and there was imminent danger of such harm being accomplished.

The slayer may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the slayer at the time.

Jury Instruction No. 17

Self-Defense by an Aggressor

The right of self-defense is not immediately available to a person who was originally an assailant, but such person must really and in good faith endeavor to decline further combat and fairly and clearly inform his adversary of his desire for peace and that he has abandoned the contest. After such steps have been taken, if his opponent continues the fight, the rights of the person who was the original assailant, with respect to self-defense, are then the same as the rights of any person assailed by another.

Jury Instruction No. 18

Self-Defense – Actual Danger Not Necessary

Actual danger is not necessary to justify self-defense. If one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation, seeing and knowing the same facts, would be justified in believing himself in like danger, and if the person so confronted acts in self-defense upon such appearances and from such fear and honest conviction, his right of self-defense is the same whether such danger is real or merely apparent.

Jury Instruction No. 19

Insanity at Time of Offense – Definition

In addition to the plea of not guilty, the defendant has entered a plea of insanity existing at the time of the act charged.

Insanity existing at the time of the commission of the act charged is a defense.

For a defendant to be found not guilty by reason of insanity you must find that, as a result of mental disease or defect, the defendant's mind was affected to such an extent that the defendant was unable to perceive the nature and quality of the acts with which the defendant is charged or was unable to tell right from wrong with reference to the particular acts with which defendant is charged.

Jury Instruction No. 20

Insanity – Burden of Proof

The burden is on the defendant to establish the defense of insanity by a preponderance of the evidence.

Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that the proposition on which that party has the burden of proof is more probably true than not true.

If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty by reason of insanity.

Jury Instruction No. 21

Duress – Defense

Duress is a defense to a criminal charge if the defendant participated in the crime under compulsion by threat or use of force which created an apprehension in the mind of the defendant that in case of refusal [the defendant] [or] [another person] would be liable to immediate death or immediate grievous bodily harm and if such apprehension by the defendant was reasonable and if the defendant would not have participated in the crime except for the duress involved.

The defense of duress is not available if the defendant intentionally or recklessly placed himself or herself in a situation in which it was probable that he or she would be subject to duress.

The burden of proof as to the defense of duress is on the defendant. This burden is satisfied if you have a reasonable doubt as to the defendant's guilt based on the evidence of duress.

Jury Instruction No. 22

Intoxication – Defense

No act committed by a person while in a state of voluntary intoxication is less criminal by reason of that condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular kind or degree of crime, the fact of intoxication may be taken into consideration in determining such mental state.

Jury Instruction No. 23

Voluntary Intoxication – When Relevant to Specific Intent

In the crime of _____ of which the defendant is accused in [Count _____ of] the complaint, a necessary element is the existence in the mind of the defendant of the [specific intent to _____] [or] [mental state of _____].

If the evidence shows that the defendant was intoxicated at the time of the alleged offense, the jury should consider his state of intoxication in determining if defendant had such [specific intent] [or] [mental state].

If from all the evidence you have a reasonable doubt whether defendant formed such [specific intent] **[or]** [mental state], you must give the defendant the benefit of that doubt and find that he did not have such [specific intent] **[or]** [mental state].

Jury Instruction No. 24

Involuntary Intoxication – Consideration

Intoxication is involuntary when it is produced in a person without his willing and knowing use of intoxicating liquor, drugs or other substance and without his willing assumption of the risk of possible intoxication.

Proof of the involuntary intoxication of a defendant should be considered in determining whether the defendant had the necessary [criminal intent] **[or]** [mental state] at the time the crime is alleged to have been committed.

STATE OF MAJOR CIVIL JURY INSTRUCTIONS

Jury Instruction No. 1

Negligence

Negligence is the failure to exercise ordinary care. It is the doing of some act which a reasonably careful person would not do under the same or similar circumstances or the failure to do something which a reasonably careful person would have done under the same or similar circumstances.

Jury Instruction No. 2

Negligence Per Se

The violation, if you find any, of a statute or a regulation is negligence as a matter of law. Such negligence has the same effect as any other act of negligence.

The violation of a regulation is actionable negligence only if its violation was a proximate cause of the injury in question.

Jury Instruction No. 3

Duty of Tavern Owner

The keeper of an establishment where intoxicating liquors are dispensed, while not an insurer of the safety of his patrons, owes the duty to his patrons to exercise reasonable care and vigilance to protect them from reasonably foreseeable injury, mistreatment or annoyance at the hands of other patrons.

If you find from the evidence that the defendant, his agents and/or employees knew or should have known the possibility of injury, mistreatment or annoyance by other guests, then it was his duty to exercise reasonable care, vigilance and prudence to protect his patrons from injury from the acts of the defendant.

Jury Instruction No. 4

Infliction of Emotional Distress

A person who through outrageous action causes severe emotional distress to another is liable if each of the following elements is proven by a preponderance of the evidence:

- (a) The defendant owed a duty to the victim;
- (b) The defendant breached that duty;
- (c) The injury to the victim from the outrageous conduct was foreseeable;

- (d) The emotional distress was inflicted upon a plaintiff who was the direct victim of the outrageous conduct or upon a plaintiff in a close relationship to the victim who perceived the injury to the victim and was present at the time of injury or arrived shortly thereafter;
- (e) The plaintiff's mental distress must be the reaction of a normally constituted reasonable person; and
- (f) The emotional distress must manifest itself in objective symptoms.

Jury Instruction No. 5

Intoxication

A person who becomes intoxicated voluntarily is held to the same standard of care as one who is not so affected. Whether a person is intoxicated at the time of an occurrence may be considered by the jury, together with all the other facts and circumstances, in determining whether that person was negligent.

Jury Instruction No. 6

Affirmative Defense

The defendant has the burden of proving the following affirmative defenses claimed by the defendant:

A. Comparative Negligence

Comparative negligence is negligence on the part of a person claiming injury or damage which is a proximate cause of the injury or damage complained of.

If you find comparative negligence, you must determine the degree of such negligence, expressed as a percentage, attributable to the person claiming such injury or damage. The court will reduce the amount of any damages you find to have been sustained by a party who was comparatively negligent by the percentage of such comparative negligence.

B. Self-Defense

You may find that the defendant acted as a reasonably prudent person under the circumstances that existed when the deceased was killed and reasonably believed that killing the decedent was necessary to protect the defendant's own life or to ward off great bodily harm; if so, the defendant's act was excusable and justifiable so as to bar recovery for the plaintiffs. The defendant may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the defendant at the time.

If you find from your consideration of all the evidence that this affirmative defense has been proven, your verdict should be for the defendant.

Jury Instruction No. 7

Principal and Agency

The defendants are sued as principal and agent. The defendant _____ is the principal and the defendants _____ are the agents.

A. An agent is a person employed under an express or implied agreement to perform services for another called the principal, and who is subject to the principal's control or right to control the manner and means of performing the services. The agency agreement may be oral or in writing.

B. One of the questions for you to determine is whether the agents were acting within the scope of employment.

An agent is acting within the scope of authority if the agent is engaged in the performance of duties which were expressly or impliedly assigned to the agent by the principal or which were expressly or impliedly required by the contract of employment. Likewise, an agent is acting within the scope of authority if the agent is engaged in the furtherance of the principal's interests.

If you find the defendant agents are liable, then you must find that the principal is also liable. However, if you do not find that the agents are liable, then the principal is not liable.

Jury Instruction No. 8

Burden of Proof

The plaintiffs have the burden of proving each of the following propositions:

First, that the defendant acted, or failed to act, in one of the ways claimed by the plaintiffs and that in so acting or failing to act, the defendants were negligent;

Second, that the plaintiffs were injured;

Third, that the negligence of the defendants was a proximate cause of the injury to the plaintiffs;

Fourth, the amount of money which will compensate the plaintiffs.

The defendants have the burden of proving both of the following propositions:

First, that the plaintiffs acted, or failed to act, in one of the ways claimed by the defendants, and that in so acting or failing to act, the plaintiffs were negligent;

Second, that the negligence of the plaintiffs was a proximate cause of the plaintiffs' own injuries and was therefore contributory negligence.

When a party has the burden of proof of any proposition, the proposition must be proven by a "preponderance" of the evidence, or if the expression "if you find" is used, it means that you must be persuaded, considering all the evidence in the case bearing on the question that the

proposition on which that party has the burden of proof is more probably true than not true.

Jury Instruction No. 9

Proximate Cause

The term "proximate cause" means a cause, which in a direct sequence, unbroken by any new independent cause, produces the injury complained of and without such, injury would not have happened.

There may be one or more proximate causes of an injury.

Jury Instruction No. 10

Independent Intervening Cause

If you find that a person was negligent but that the sole proximate cause of the alleged injury was a later independent intervening cause that a person, in the exercise of ordinary care, could not reasonably have anticipated as likely to happen, the person's original negligence is superseded by the intervening cause and is not a proximate cause of the alleged injury.

If in the exercise of ordinary care, however, a person should reasonably have anticipated the intervening cause, that independent intervening cause does not supersede the person's original negligence and that original negligence can still be considered a proximate cause of the alleged injury.

It is not necessary that the sequence of events or the particular resultant injury be foreseeable. It is only necessary that the resultant injury fall within the general field of danger which a person should reasonably have anticipated.

Jury Instruction No. 11

Expert Opinion

A witness who has special training, education or experience in a particular science, profession or calling may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness's information, together with the factors already given you for evaluating the testimony of any other witnesses.

Jury Instruction No. 12

Damages

The State of Major permits an award for damages for a survival action, and for an alleged wrongful death.

The following factors should be considered to measure damages in a survival action:

1. The reasonable value of the decedent's lost earnings.
2. Medical and hospital expenses which were reasonably and necessarily incurred by the decedent's estate because of his injuries.
3. Any pain and suffering that the decedent experienced before his death. There are no fixed standards by which to measure pain or suffering. Rather, you must be governed by your judgment, the evidence in the case, and these instructions.

The following factors should be considered to measure damages for wrongful death:

1. Pecuniary loss. In determining "pecuniary loss" you should consider what benefits of pecuniary value, including money and goods and services the decedent would have contributed to the widow and children had the decedent lived.

2. What decedent could reasonably have been expected to contribute to the survivor in the way of support, love, affection, care, services, companionship, society and consortium.
3. What the decedent could reasonably have been expected to contribute to his children in the way of support, love, care, guidance, training, instruction and protection.
4. What the decedent could reasonably have been expected to contribute to his dependent mother and father in the way of support, love, care, guidance, training, instruction and protection.
5. Medical, hospital and funeral expenses which were reasonably and necessarily incurred by the decedent's estate because of his injuries and death (if not claimed in a survival action).

In determining damages you should consider the decedent's age, health, life expectancy, occupation and habits of industry, sobriety and thrift.

(a) According to mortality tables, the average expectancy of life of a male aged 30 years is 71.25 years. This one factor is not controlling, but should be considered in connection with all the other evidence bearing on the same question, such as that pertaining to the health, habits and activity of the person whose life expectancy is in question.

You should also consider the decedent's earning capacity, and in this connection you should consider the actual earnings prior to death, and what earnings might reasonably have been expected in the future, together with the amount which you find the decedent customarily contributed to his spouse and children, and what contribution might reasonably have been expected in the future.

(b) The burden of proving damages rests upon the plaintiffs and you must determine whether pecuniary loss has been proven by a preponderance of the evidence. You should not base damages upon speculation, guess, conjecture, grief or sorrow of or for the survivors.

A

A – assessment.

Antecubital fossa – the longitudinal depression in front of the elbow.

Anterior – situated at or directed toward the front; opposite of posterior.

Anterolateral – situated before and to one side.

Anteromedial – situated in front and on median line.

Apices – plural of apex, the top of a conical part.

Aspect – that part of a surface viewed from a particular direction.

Atelectasis – see *Consolidation*.

Atherosclerosis – a condition characterized by the degeneration and hardening of the walls of the arteries and sometimes the valves of the heart.

Axillary – pertaining to the axilla, or armpit.

B

Basal – situated near a base.

“Blanches with pressure” – color disappears when that area of the body is touched.

Blep – a bulla or skin vesicle filled with fluid.

B/P – blood pressure.

Bruit – abnormal sound or murmur.

Bullous emphysema – air-filled blisters on the surface of the lungs with air present in the connective tissue.

C

Calvaria – domelike skull cap of the cranium.

Carotid – principal artery of the neck.

Cartilaginous – consisting of cartilage.

Catheter – see *Intravenous catheters*.

Cephalothin – semi-synthetic antibiotic administered intravenously or intramuscularly.

Cervical radiculopathy – there are three levels of whiplash injury. Minor whiplash is Cervical Muscular Discomfort; intermediate level: Cervical Radiculopathy; major whiplash injury: Cervical Spondylosis with nerve root or spinal cord compression. Modern treatment consists of two tablets of Parafon Forte by mouth four times a day, and 600 mg Motrin by mouth every four hours.

Chest Tube – tube inserted into pulmonary, pleural to re-expand a collapsed lung.

C/O – complains of.

Conjunctivae – delicate mucous membrane lining the eyelids and covering the eyeballs.

Consolidation – solidification.

Consolidation and atelectasis – solidification into a firm thick mass marked with an absence of gas from the lungs due to a failure of resorption of gas in the lungs alveoli (air sacs).

Cornea – the clear, transparent anterior covering of the eye.

Cortex – the outer layer of an organ or part.

Costochondral – pertaining to a rib and its cartilage.

Costophrenic recess – the indentation where rib and diaphragm meet.

Cutaneous – pertaining to the skin.

D

Dependent Personality Disorder – a psychiatric term used to describe people who are unable to make everyday decisions on their own. Dominant behavioral characteristics are dependency and submissiveness. Feelings of helplessness, low self-confidence, and fear of abandonment are common. This disorder is diagnosed more frequently in females than males.

Dermal – pertaining to the skin.

Diazepam – useful in the symptomatic relief of tension and anxiety states resulting from stressful circumstances or whenever somatic complaints are concomitant with emotional factors. Useful in psycho-neurotic states manifested by tension, anxiety, apprehension, fatigue, and depressive symptoms or agitation. Also marketed under the trade name Valium.

Dorsal – pertaining to the back.

Duodenum – the first division of the small intestine, about ten inches long, plays an important role in digestion of food.

Dura – the fibrous membrane forming the outer envelope of the brain and spinal cord.

E

EKG (electrocardiogram) pads – sensor pads attached to the body and used to monitor the heartbeat.

Emphysema – see *Bullous emphysema*.

Endocardium – the membrane lining the chambers of the heart and covering the cusps of the various valves.

Endocrine – applies to organs whose function is to secrete into the blood or lymph a substance that has a specific effect on another organ or part.

Endotracheal tube – hose-like device inserted into the air passage (wind pipe) extending from the larynx to the lungs.

Epidural – external to the dura.

Etiology – the science dealing with the causes of disease.

Extensor – a muscle which tends to straighten a limb when contracted.

Exudate was . . . legionella – fluid which escapes from immune system as antibodies sent to combat legionella (a genus of bacteria).

F

Fibrous adhesions – connective tissue that develops when an injured area begins to heal.

Fibrous replacement – localized overgrowth of fibrous tissue.

Flurazepam Hydrochloride – hypnotic agent useful in all types of insomnia characterized by difficulty in falling asleep, frequent nocturnal awakenings, and/or early morning awakenings. Can be used effectively in patients with recurring insomnia or poor sleeping habits, and in acute medical situations requiring restful sleep.

Possible Adverse Reactions – Dizziness, drowsiness, lightheadedness, staggering, and falling have occurred in elderly or debilitated persons. Severe sedation, lethargy, disorientation, and coma probably indicative of drug intolerance or overdosage have been reported.

Frontal – pertaining to the forehead.

FU – follow up.

G

Gentamicin – antibiotic used in treating infections of the central nervous system, GI tract, urinary tract, respiratory tract, bone, skin, and soft tissue.

GI tract – gastrointestinal system.

Gyri (plural of gyrus) – the prominent rounded elevations that form the cerebral hemisphere.

H

Hematocrit – the percentage of the volume of a blood sample occupied by erythrocytes.

Hematology specimen – blood sample.

Hemoglobin – the oxygen-carrying primary protein pigment of the blood.

Hemoperitoneum – effused blood in the peritoneal cavity.

Hemorrhage – bleeding, the escape of blood from a ruptured vessel.

Hemostasis – the arrest of the escape of blood by either natural (clot formation) or artificial (compression) means.

Hemothorax – a collection of blood in the pleural (chest) cavity.

Hepatobiliary – liver and bile systems.

Herniation – an abnormal protrusion of an organ or other body structure through a defect or natural opening.

Hypertrophic mottled hypo- and hyperpigmented scar – overgrown scar tissue with some areas that are white and some that are deeply colored.

I

Inferior – situated below or directed downward; reference to the lower surface of an organ or other structure.

Intercostal – situated between the ribs.

Interior – situated inside.

Intravenous catheters – tubes used in administering drugs/solutions directly into the veins.

Involute – to regress; to change to an earlier or more primitive condition.

Irides (plural of Iris) – iris, the colored membrane behind the eye's cornea.

L

Leptomeniges (plural of leptomeninx) – the two most delicate membranes beneath the dura enveloping the brain and spinal cord.

Lesion – any wound or damage to a tissue.

Lividity – the quality of being livid, discolored, black and blue.

Lymphatic – a vessel conveying lymph; one of the systems of absorbent vessels that drain the lymph from various body tissues and return it to the blood stream.

Lymphoreticular system – net of lymphatic tissue.

M

Malleolus – a rounded bone process on either side of the ankle joint.

Massae (plural of massa) – lumps.

Medial – pertaining to the middle.

Mediastinum – a median septum or partition between two parts of an organ or cavity.

Mononeuritis – lesions without inflammation but degenerative in nerve roots or peripheral nerves. May be caused by: mechanical stress, vascular disorder, microorganisms, toxic agents, metabolic disorder, or malignancy. Treatment: Mild cases may recover without treatment; more severe cases need physical therapy and splints. Some cases require surgery, including neurolysis or transplant.

Motrin – a nonsteroidal anti-inflammatory analgesic that reduces joint swelling, pain, and duration of morning stiffness. It is available in 300, 400, and 600 mg tablets for oral administration.

Mucosa – mucus membrane.

Myocardium – the muscular middle layer of the heart.

N

Nafcillin – semi-synthetic antibiotic used in treating bacterial infections.

Nares (plural of Naris) – nostril openings.

O

O – objective diagnosis.

Ora-tracheal tube – a breathing tube inserted into the mouth and down the trachea.

Ovoid – egg-shaped.

P

P – prescription or plan.

Palpable – perceptible by touch.

Parafon Forte – provides symptomatic relief of pain, stiffness, and limitation of motion

associated with most musculo-skeletal disorders through relaxation of muscle spasm by chlorzoxanone, an effective and well-tolerated centrally acting agent. Analgesia by acetaminophen, a nonsalicylate analgesic, is useful in skeletal muscle pain.

Parenchyma – the essential or functional elements or specific cells of an organ, as distinguished from its framework.

Pelves – plural of pelvis; basin-shaped ring of bone at the posterior extremity of the trunk, supporting the spinal column and resting upon the lower extremities.

Pericardium – the fibrous membrane enclosing the heart.

Peritoneal cavity – the space between the two tissue layers of the peritoneum (abdominal cavity).

Petechial – characterized by purplish red spots, indicates hemorrhaging.

Pleura – membrane enclosing the lungs.

Pneumonia – inflammation of the lung due to infection.

Posterior – pertaining to the back.

Post-traumatic Stress Disorder – psychiatric term for describing characteristic symptoms that develop following a psychologically distressing event that is outside the range of usual human experience. Examples of this type of event are natural disasters, military combat, witnessing another person being seriously injured or killed by an accident or physical violence. Symptoms include avoidance of situations, thoughts, or activities associated with the event; feeling detached from others; difficulty sleeping; recurrent nightmares; and depression. Symptoms must persist longer than one month to be diagnosed under this disorder. The disorder is more severe when the stress-inducing event was of human design.

Pt – patient.

R

Renal – pertaining to the kidney.

Respiratory Distress Syndrome – filling of the gas-exchanging units of the lung with protein-rich fluid. This leads to severe reduction in oxygenation of blood passing through the lung.

S

S – subjective diagnosis.

Serosanguineous drainage – systematic withdrawal of a fluid compound of serum and blood from a wound, sore, or cavity.

Staphylococcal – a genus of an infectious bacteria

Striae – streaks or lines

Subcostal region – area below a rib or ribs.

Subcrepitant – characterized by faint crackling or rattling sounds.

Subdural – beneath the dura.

Superior – situated or directed above.

Sutures – stitches.

T

Thoracic – pertaining to the chest.

Thymus – a ductless gland-like body situated in the anterior mediastinal cavity which reaches its maximum development during the early years of childhood.

TID – three times daily (dosage rate).

Trachea – the air passage extending from the throat to the lungs.

Tympanic membranes – a thin, oval membrane that stretches across the ear canal separating the middle ear from the outer ear.

U

Ureter – fibromuscular tube that conveys the urine from the kidneys to the bladder.

V

Valium – see *Flurazepam Hydrochloride*.

W

Whiplash – see *Cervical radiculopathy*.

CRIMINAL RESEARCH MEMORANDA

Research Memorandum #68: Bail

Strack v. Burns, 143 Maj. App. 2d 401 (20XX-28): “The traditional right to freedom before convictions both permits an unhampered preparation of a defense and serves to prevent the infliction of punishment prior to conviction. Without this right to bail, the presumption of innocence would lose its meaning. . . . The right to release before trial is conditioned upon the accused giving adequate assurance that he will stand trial and submit to sentence if found guilty. The purpose of bail is to provide this assurance. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is ‘excessive’ under the 8th Amendment of our Constitution. . . .”

Milburn v. State, 272 Maj. 3d 272 (20XX-4): “Petitioner has been charged with kidnapping the son of a respected civil official for ransom. The case has received a great deal of publicity and engendered a substantial amount of community hostility against the crime and the accused. The Petitioner has pled not guilty, and is thereby cloaked in the presumption of innocence. . . . At the hearing on bail, the trial court set bail at one million dollars, stating, ‘The community wouldn’t tolerate less.’ For Petitioner, a million dollar bail is the equivalent of no bail. . . . Petitioner argues that the trial court applied the wrong standard for bail and didn’t consider relevant factors such as Petitioner’s ties to the community and prior record of appearing in court. While Petitioner concedes that the nature of the crime as well as any prior criminal record may be considered inasmuch as these factors bear upon the likelihood of Petitioner’s appearance for trial and possible sentencing, *Strack v. Burns*, 143 Maj. App. 2d 401 (20XX-28), he contends that the bearing of these factors upon the general community attitude is not relevant. We agree. Bail is to assure a defendant’s appearance, not to assuage the moral mood of the community. *Strack v. Burns*, supra. We remand with instructions that the trial court consider Petitioner’s (1) community ties; (2) prior record of appearances; (3) present crime; and (4)

prior criminal record inasmuch as these factors bear upon the likelihood of Petitioner’s appearance at trial.”

Major Const., Art. 8: “. . . and no excessive bail shall be set or required.”

Major Penal Code §1019: “Every person charged with an offense may be bailed by sufficient sureties, or placed upon his own recognizance [O.R.] if the court sees fit. The amount of bail in each case shall be determined by the Court in its discretion and may from time to time be increased or decreased as circumstances may justify.”

**Research Memorandum #69:
Suppression Hearing Testimony**

L.C. Proof, “Can a Defendant Take the Stand After *Hovie*?” 26 Jamner L. Rev. 306, 314 (20XX-7): “Evidentiary rules and constitutional principles have criss-crossed in *State v. Hovie*, 269 Maj. 3d 342 (20XX-8). For several years prior to *Hovie*, courts have allowed otherwise suppressed evidence, forbidden to be used in the State’s case in chief by the exclusionary rule, to be brought in for impeachment. Trumpeting that ‘a criminal defendant may not use the exclusionary rule as a shield against perjury,’ *Cleaver v. State*, 198 Maj. 2d 315 (20XX-19), courts have permitted illegally seized evidence, *Cleaver v. State*, supra, and illegally obtained statements, *Fitz v. Warden* 199 Maj. 2d 523 (20XX-19), to be brought in to impeach a testifying defendant. Recently, the courts have similarly allowed a ‘Seaman’ statement to be used for impeachment. *Morris v. State*, 17 Maj. App. 3d 621 (20XX-10).

“In *Seaman v. State*, 201 Maj. 2d 137 (20XX-18), the court recognized the dilemma a defendant faces when considering testifying at a suppression hearing. ‘In order to vindicate his 4th Amendment rights at the hearing, defendant risks giving up 5th Amendment rights at trial if the prosecution can use his testimony from the suppression hearing in the case in chief.’ *Seaman v. State*, supra, 201 Maj. 2d at 151. Accordingly, the *Seaman* court developed a prophylactic rule whereby defendant’s testimony at a suppression hearing may not be used in the State’s case in chief.

“In an unrelated line of cases, our courts have held that criminal defendants who take the stand waive their right against self-incrimination as to all appropriate cross-examination, *Brune v. State*, 200 Maj. 2d 34 (20XX-18), which under accepted evidentiary rules includes ‘all areas reasonably indicated by the direct examination.’ *Sprunie v. State*, 143 Maj. App. 2d 751 (20XX-22). Herein is where the *Hovie* criss-cross takes place.

“In *Hovie*, the trial court had suppressed certain narcotics paraphernalia which had been found upon the defendant in what the court found to be an illegal search. Defendant *Hovie* took the stand at trial and denied involvement with the drug conspiracy with which he was charged, but made no mention of the paraphernalia. On cross-examination the

prosecutor examined defendant about his knowledge of the methods of drug dealers and users, leading up to, ‘You know about the kind of paraphernalia that’s used, don’t you? You know about carburetors? You know about . . . ? Etc.’ His denial of special knowledge about a device known as a ‘carburetor’ was followed by a court ruling that the suppressed evidence could be used for impeachment. While the cross-examination arguably was proper under evidentiary rules, permitting the prosecution to set up admission of suppressed evidence by its cross-examination is problematic. After *Hovie*, a defendant on direct examination may be careful not to make a general denial of any knowledge of narcotics or otherwise invite subsequent impeachment with suppressed evidence. Yet the latitude given the cross-examiner under evidentiary rules is so great that this defendant can never take the stand to deny the elements of the charged offense without knowing that somehow the prosecution can set up impeachment with the suppressed evidence on cross-examination.”

Research Memorandum #70: Equal Protection and Right of Indigent to Offset Economic Imbalance

State v. Grift, 204 Maj. 2d 617 (20XX-18): “We have decided that an indigent defendant cannot be denied a free transcript for an appeal. For surely there can be no equal justice when the kind of trial or appeal a man gets depends upon the amount of money he has.”

Concurring opinion: “Of course a State need not equalize economic conditions. A man of means may be able to retain an expensive, able attorney a poor man could not afford. Those are contingencies of life which are hardly within the power, let alone duty, of the State to correct or cushion.”

Lester v. Mack, 212 Maj. 2d 592 (20XX-17): “Petitioner seeks a free verbatim transcript of his trial so his appointed attorney can review it for possible ground for a habeas corpus petition. In our decision, we are guided by certain principles and procedures. First, the principles. The principle established by *State v. Grift*, 204 Maj. 2d 617 (20XX-18), does not guarantee indigents the same treatment afforded wealthy defendants: Rather, it is only necessary that they be given equivalent and fundamentally fair treatment. Equal Protection does then require that indigents have an adequate opportunity to present their claims fairly within the adversarial system. An affluent society ought not be miserly in support of justice, for economy is not an objective of the system. Accordingly, [d]estitute defendants must be given as adequate review of their claims as defendants who have money enough to pay for transcripts.’ *State v. Grift*, supra, 204 Maj. 2d at 624. Now, the procedures. Once the defendant (as here) has made a showing of ‘colorable need’ for the *full* transcript, the State then has the burden of showing that other alternatives would provide adequate appellate review.”

Lester v. Black, 101 Maj. App. 3d 287 (20XX-14): “To interpose any financial consideration between an indigent prisoner of the state and his exercise of a state right to sue for his liberty, is to deny that prisoner the equality of protection of the law. Here, however, petitioner seeks a full transcript at state expense by merely whispering ‘habeas corpus’ as if that had some talismanic quality. There is simply no showing of

any need, colorable or otherwise. Petitioner cannot expect the expenditure of state funds to assuage his curiosity or provide him with some light reading.”

State v. Duggan, 111 Maj. App. 3d 977 (20XX-13): “Indigent appellant seeks an appointed attorney on appeal. The right to an attorney at trial is established (cits. omitted). Here, *State v. Grift*, 204 Maj. 2d 617 (20XX-18), controls. The appointment of appellate counsel is ordered.”

State v. Main, 169 Maj. App. 3d 713 (20XX-10): “Believing that *State v. Grift*, 204 Maj. 2d 617 (20XX-18), applies only to felony cases, the court below has denied preparation of a free transcript in this misdemeanor appeal. While the lower court’s interpretation of *Grift* is wrong and we herein so rule, that is not the end of the inquiry. Other alternatives to a full transcript may be available (e.g., an agreed statement of facts, a full narrative from the trial judge’s minutes, selected relevant portions of the full transcript). Of course, a full transcript is required when it is necessary for as ‘effective’ an appeal as would be available to a wealthy defendant.”

State v. Britt, 202 Maj. App. 3d 367 (20XX-9): “We view the *Grift* principles as requiring that the State, as a matter of equal protection, provide indigent defendants with the basic tools of an adequate defense or appeal, when those tools are available for a price to other defendants. In fairness we must say that the outer limits of this principle are not clear, yet they clearly encompass the request in this case for a free transcript of defendant’s first trial where a second trial must be prepared after there was a mistrial in the first.”

State v. Andrews, 280 Maj. App. 2d 117 (20XX-17): “Indigent defendant asks for money for experts and investigators under Major Penal Code section 40(1) – the “Costs for Experts” statute. Defendant has a constitutional right to an attorney (cits. omitted). The right includes the right to use any experts that will assist counsel in preparing a defense (cits. omitted). Contrary to the contentions of the government, the fact that friends and family have retained counsel for adult defendant does not bar defendant from access to these indigent funds. The contribution of family and friends is only one factor in assessing defendant’s ‘ability to pay.’ “

Research Memorandum #71: Felony-Murder and “Merger”

State v. Iman, 198 Maj. 2d 214 (20XX-28): “Appellant was convicted of felony-murder based upon a death occurring during an assault with a deadly weapon. At trial Appellant tried to present evidence that he did not have the requisite ‘malice’ for murder due to his ingestion of alcohol and medication. The trial court ruled such evidence irrelevant inasmuch as the felony-murder rule itself imputes malice. Appellant’s counsel thereupon objected to the use of the felony-murder rule in a case such as defendant’s. We agree with defendant’s trial counsel. The net effect of the imputation of malice by the felony-murder rule is to eliminate the possibility of finding unlawful killings resulting from the commission of a felony to be manslaughter, rather than murder. Applying the doctrine to a case such as the present one would mean that intentional killings with deadly weapons would always be murders, never manslaughter, since all such killings include *in fact* an assault with a deadly weapon. This kind of bootstrapping finds support in neither logic nor law. We therefore hold that a felony-murder instruction should not be given when it is based upon a felony which is an integral part of the homicide and which the evidence produced by the prosecution shows to be an offense included *in fact* within the offense charged.”

Concurring, Davis, J.: “I agree with the majority, save that they have made their reasoning too obscure. This jurisdiction has spent decades refining the distinctions between intentional killings which we call ‘murder’ and those which, because there exists that elusive quality in the mind of the perpetrator known as ‘heat of passion,’ we call the far less serious offense of ‘manslaughter.’ Now, probably no one outside of a law professor could conceive of an intentional killing that is not carried out by some form of felonious assault (guns, mailing poison, etc.). So all intentional killings could be charged as felony-murder if this underlying assault could be used as the underlying felony. With me so far? Good. The problem is that ‘heat of passion’ has no place in the analytic framework of felony-murder (take my word for it.) It won’t reduce felony-murder to manslaughter. So all intentional killings would be murder, even if there were heat of passion, if the

underlying assault could be used to charge felony-murder. And if that’s the case, why have we spent decades developing the law of ‘manslaughter’ “?

Kern v. Superior Court, 93 Maj. App. 3d 41 (20XX-24): “Cases decided after *State v. Iman*, 198 Maj. 2d 214 (20XX-28), demonstrate the unwillingness of the courts to expand the *Iman* holding – the so-called merger rule – much beyond the *Iman* facts. In *State v. Vipman*, 270 Maj. App. 2d 714 (20XX-21), defendant entered a home to kill his victim. A felony-murder conviction based upon burglary was upheld as the *Vipman* court distinguished *Iman* on the grounds that an assault in one’s home, one’s inner sanctum, is far more likely to have fatal results than one in public such as *Iman*. In *State v. Bruto*, 277 Maj. App. 2d 57 (20XX-19), the court refused to accept an argument that the ‘merger rule’ should apply to robbery because robbery is basically an ‘assaultive’ crime. The *Bruto* court held that, unlike the assault in *Iman*, in the case of a robbery there is an ‘independent felonious purpose’ for committing the assault (i.e., to wrongfully acquire money or property belonging to another). ‘One who embarks upon a course of conduct directed at achieving such felonious purpose falls directly within the prohibition of the felony-murder statute.’ *State v. Bruto*, *supra*, 277 Maj. App. 2d at 59.”

Research Memorandum #72: Fifth Amendment

Fifth Amendment (generally) –

Huvestern v. State, 261 Maj. 529 (20XX-40): “The Fifth Amendment prevents compelled self-incrimination. In this case Mr. Huvestern, a grand jury witness, has refused to answer certain inquiries put to him on the stand while claiming protection of this privilege. In assessing his claim we are mindful that ‘the privilege extends not only to disclosures which would in themselves support a conviction, but also to those which would furnish a link in the chain of evidence needed to prosecute the claimant for a crime.’ *State v. Rodrege*, 260 Maj. 114, 119 (20XX-41).”

Fifth Amendment and prosecution request for notice of alibi and list of alibi witnesses –

Wilson v. Superior Court of Nettle, 256 Nettle App. 3d 917 (20XX-2): “Petitioner contends that the trial court’s order under a Notice of Alibi statute, which requires that he provide the prosecution with notice if he intends to raise an alibi and a list of names and addresses of alibi witnesses, violates his right against compelled self-incrimination. We disagree. Trials are filled with situations which ‘compel’ a defendant to risk incrimination. A strong prosecution case may force a defendant to put on witnesses and/or take the stand. This may, in turn, result in incriminating cross-examination and lead to incriminating rebuttal testimony. Such natural compulsions from our adversary system do not, however, offend the 5th Amendment. The pressures from a pretrial order to provide a notice of alibi and alibi witness, such as here, are not different. The order does not force Petitioner to either choose an alibi defense or prevent him from later abandoning it. The reality of the prosecution’s case, not the pretrial order, will determine that. At most, the order only compels Petitioner to disclose this information at an earlier point than he intended. Nothing in the 5th Amendment privilege entitles a defendant as a matter of constitutional right to await the end of the State’s case before announcing the nature of his defense. Moreover, without such an order the prosecution could surely get a continuance to investigate

Petitioner’s alibi witnesses once they took the stand. Such an order thus both avoids a delay of the trial and protects the State from having an all too easily manufactured alibi sprung upon them at trial.”

Dissent. Lift, J.; Hoist, J.: “Our Constitution has given a criminal accused certain advantages over his powerful government accuser. Today, the majority takes one of those advantages away; for, contrary to the majority’s fiat, the ‘right to await the end of the State’s case before announcing the nature of his defense’ is the essence of the 5th Amendment. That amendment allows the defendant to stand mute and require the government to ‘Prove it!’ at every juncture without his aid. Without the court order here, defendant could listen to the prosecution case, determine that the prosecution cannot carry its burden, and decide not to put on a case. With the court order, petitioner could have made the same decision yet still have been compelled to give names and addresses of witnesses who could provide a ‘link in the chain of evidence needed to prosecute [him].’ *Huvestern v. State*, 261 Maj. 529 (20XX-40).”

Wilts v. Warden, 269 Nettle 3d 1193 (20XX-6): “Due process requires that when an order under the Notice of Alibi Act is made, the prosecution *must* be likewise required to provide reciprocal discovery regarding alibi rebuttal witnesses to the defendant.”

Research Memorandum #73: Police Interrogation

State v. Mintz, 201 Maj. 2d 1 (20XX-27): “Having reviewed the variety of physical and psychological techniques police have used to elicit confessions from suspects, and having analyzed the deleterious effect of these techniques upon the 5th Amendment rights of these suspects, we pronounce the following rules. . . . Statements given without the full constitutional warnings and recitation of rights [which are identical to those in *Miranda*] are inadmissible when such statements are made during interrogation while the suspect is in custody or otherwise deprived of his freedom in a significant way. These warnings provide the opportunity to bring in an attorney who can combat the pressures on a defendant’s 5th Amendment rights which are inherent in this situation. A defendant may, of course, waive these rights if done knowingly and intelligently, without threat or trick. Waiver will not be presumed, however, from a suspect’s mere silence in face of the recitation of rights and warnings. Once a suspect indicates in any manner that he wants an attorney, all questioning must cease. Further, a suspect may ‘cut off’ questioning at any time. On the other hand, statements which are volunteered, and therefore not the product of questioning, do not involve any 5th Amendment concerns.”

State v. Rhodes, 256 Maj. App. 3d 154 (20XX-7): “*Mintz* applies to ‘interrogations’ involving express questioning or its functional equivalent. We define this ‘functional equivalent’ as words or actions on the part of police that police should know are reasonably likely to elicit an incriminating response.”

State v. Moth, 100 Maj. App. 3d 593 (20XX-13): “Appellant gave a confession when questioned at the police station without first being given *Mintz* warnings. Appellant, a parolee, had voluntarily come down to the station in response to a phone call from a detective who was investigating a series of burglaries. When he arrived at the station, he was told that he was not under arrest and was free to go at any time. Under these circumstances, Appellant was neither in custody nor in the coercive atmosphere envisioned by *Mintz*. As such, the *Mintz* warnings are not required.”

State v. Quirk, 257 Maj. App. 3d 406 (20XX-7): “Police arrested the Appellant, who was a

suspect in a shooting, in a public supermarket. At the time of the arrest, the suspect wore an empty shoulder holster. Fearing he had ditched the gun in the market, police asked, ‘where’s the gun?’ without first giving *Mintz* warnings. Nevertheless, we refuse to suppress the weapon which was located in the produce section, relying upon what we will term a ‘public safety’ exception to *Mintz*. The police motive in questioning was public safety and not obtaining incriminating evidence, and time was of the essence.”

Eddy v. Warden, 170 Maj. App. 3d 274 (20XX-19): “In the case before us, police began questioning Petitioner shortly after his arrest. When Petitioner requested an attorney, the police followed the dictates of *Mintz* and ceased their interrogation. However, they came back a few hours later and resumed questioning. This they could not lawfully do. Once a defendant has requested an attorney, police may not again initiate questioning. While a defendant may initiate further discussions with the police, the mere fact that he may respond to renewed police questioning is not sufficient evidence of a valid waiver of counsel on his part.”

State v. Park, 157 Maj. App. 3d 142 (20XX-12): “We have two issues before us. Appellant, a juvenile, confessed to police after the officers denied his request to see his probation officer. Is the request for a probation officer equivalent to a request for an attorney? If not, is a juvenile capable of waiving the right to counsel without advice? As to the first issue, our answer is ‘no.’ In no way does a probation officer stand in a position that can in any way be equated with that of counsel envisioned in *Mintz*. As to the second, our answer is ‘yes.’ While age is a factor, an alleged waiver by a juvenile must be assessed as would be the waiver of an adult, i.e., by looking at the ‘totality of circumstances’ to determine if it was made knowingly and voluntarily. In this regard, the court must evaluate the defendant’s age, experience, background, and intelligence, and assess whether he has the capacity to understand the warnings given him, the nature of the 5th Amendment rights, and the consequences of waiving these rights.”

State v. Thorns, 220 Maj. App. 2d 927 (20XX-25): “While appellant’s request for an attorney was somewhat equivocal, here the police did not try to ‘clarify’ the request, but rather tried to talk the defendant out of having an attorney. That violated *Mintz*.”

Entry 73: Police Interrogation-2 of 2

State v. Monk, 280 Maj. App. 2d 57 (20XX-19): “In the *Thoms* case, defendants’ question ‘Do you think we need an attorney?’ was viewed by the court as ‘ambiguous, but capable of being construed as a request for counsel’ (cit. omitted). We take a similar view of the statement in the case before us – ‘Well, maybe I should talk to my attorney.’ When Detective Crimms ignored that statement and instead continued to discuss the case the police had against Monk, Monk’s subsequent confession was obtained in violation of *Mintz*.”

State v. Buttle, 201 Maj. App. 3d 393 (20XX-8): “Defendant, a graduate of the 11th grade, was given her *Mintz* warnings off a form, told police she understood her rights, and confessed. She now argues that her confession should not have been admitted at her trial because she never made an explicit waiver of her rights. We disagree. While mere silence cannot constitute a waiver under *Mintz*, an explicit statement of waiver is not necessary. Rather, we must look to the ‘totality of the circumstances.’ Here, silence coupled with an understanding of the *Mintz* rights and a subsequent course of conduct indicative of a waiver is sufficient to find a valid waiver.”

Wyke v. Warden, 268 Maj. App. 2d 113 (20XX-22): “Once defendant waived his *Mintz* rights before taking the polygraph, police were free to question him without renewing the warnings.”

State v. Mike, 277 Maj. App. 2d 1143 (20XX-21): “We deal here with a confession which violates due process in that it was involuntary. When appellant was questioned and confessed he was in the intensive care unit of the hospital, there were tubes in his nose, an ‘IV’ in his arm, and he was on strong drugs. Such a situation is not conducive to the exercise of a rational intellect and free will. The confession was not the product of ‘free and rational choice.’ *State v. Gerber*, 230 Maj. 1212 (1940).”

State v. Cult, 151 Maj. App. 3d 727 (20XX-12): “Appellant claims his confession, given to police while in the hospital, was involuntary due to the fact he was on demerol and scopolamine at the time. He cites us to *State v. Mike*, 277 Maj. App. 2d 1143 (20XX-21), and *State v. Gerber*, 230

Maj. 1212 (20XX-46). We first note that there is no expert testimony in the record regarding the effect of these drugs on the ‘exercise of a rational intellect and free will.’ *State v. Mike*, supra. We do not rest on our decision here, however. Rather we deny appellant’s claim based upon the fact that there is nothing in the record before us establishing that he was on these drugs when he was questioned.”

State v. Peters, 147 Maj. App. 3d 59 (20XX-12): “Appellant, a 13-year-old juvenile, attacks his confession as constitutionally involuntary. In this area of law, the prosecution must establish voluntariness ‘beyond a reasonable doubt.’ Further, one’s ‘will can be overborne’ (cit. omitted) by (1) physical or psychological coercion; (2) drugs; (3) insanity. In these later two categories, a defendant may be incapable of making a free and rational choice, although this incapacity is not the fault of the police. Here, during Appellant’s questioning he was vomiting, had the dry heaves, and almost fell out of his chair. He had consumed nine beers shortly before his arrest, and when arrested had an empty beer bottle in his hand. Here, the government has failed to carry its burden that the confession was voluntary.”

**Research Memorandum #74:
Prosecution Discovery and the Work Product Privilege**

Nibbles v. State, 202 Maj. 2d 791 (20XX-25): “Appellant’s investigator took the stand to rebut the testimony of a key prosecution witness she had interviewed. When the prosecutor’s question on cross-examination as to whether she had taken notes of the interview was answered in the affirmative, the prosecution moved, and the court ordered, that the notes be turned over for the prosecution’s inspection. Whereupon, counsel for the defendant raised the Work Product Privilege as a bar to such submission. Initially, we note that the Work Product Privilege applies to criminal as well as civil litigation. This privilege protects certain materials prepared by an attorney. At its core, the work product doctrine shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client’s case. But the doctrine is an intensely practical one, grounded in the realities of litigation in our adversary system. One of those realities is that attorneys often must rely on the assistance of investigators and other agents in the compilation of materials in preparation for trial. It is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself. . . . The privilege derived from the work product doctrine is, however, not absolute. Like other qualified privileges, it may be waived. Here respondent sought to adduce the testimony of the investigator and contrast her recollection of the contested statements with that of the prosecution’s witnesses. Appellant, by electing to present the investigator as a witness, waived the privilege with respect to matters covered in her testimony.”

Entry 75: Prosecution’s Duty to Provide Defendant with Exculpatory Evidence-1 of 1

Research Memorandum #75: Prosecution’s Duty to Provide Defendant with Exculpatory Evidence

Branty v. State, 201 Maj. 2d 86 (20XX-26):

“Appellant and a co-defendant were charged and convicted of first-degree murder, and sentenced to death. At his trial, which had been severed from that of his co-defendant, appellant had conceded participation in the fatal robbery and therefore liability under felony-murder principles. Appellant had, however, unsuccessfully sought to avoid the death penalty by relying upon his unsupported testimony that his co-defendant, and not him, had committed the actual killing. Several weeks after his conviction it was discovered that the prosecution had in its possession a statement of the co-defendant admitting to the killing. Appellant’s trial counsel had requested all extrajudicial statements of the co-defendant. While some statements had been shown to her, this crucial one was never provided. This suppression provides the factual basis for the constitutional issue raised today.

“We have already held that both the deliberate use of perjured testimony and intentional suppression of favorable testimony by the prosecution violates principles of due process. The State argues that where, as in the present case, the suppression was unintentional, no due process violation can occur. We disagree. The basis of our previous holdings in this area was not to punish society for the misdeeds of the prosecution, but to avoid an unfair trial to an accused. Accordingly, we hold that suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or to punishment, irrespective of the good or bad faith of the prosecution. Appellant is entitled to a new trial on the issue of punishment.”

State v. Augle, 228 Maj. 2d 118 (20XX-20):

“This duty to provide exculpatory evidence under *Branty* focuses upon ‘materiality.’ We herein further refine *Branty* by articulating three categories of evidence upon which the prosecutor’s *Branty* duty could focus and the respective standards of materiality which accompany each category:

- (1) perjured testimony that the prosecutor knew or should have known of will always be considered material;
- (2) suppressed information following a specific request for information, such as in *Branty*, will be material if the suppressed information might have affected the outcome of the trial;
- (3) suppressed information following no request for exculpatory information or a general request such as ‘all *Branty* evidence’ (which we find equivalent to no request) will be found material if the omitted evidence creates a reasonable doubt that did not otherwise exist such that its exculpatory nature would be obvious to the prosecution.”

Research Memorandum #76: Search and Seizure

State v. Purgis, 269 Maj. 3d 511 (20XX-5): “An arrest in a home encroaches on many of the same interests as would a search of that same home. Cognizant of the value our Constitution places on the security of one’s home from government intrusion, we hold that all arrests of defendants in their homes require arrest warrants, unless consent is obtained, or true exigency exists (e.g., specific evidence demonstrating a risk of flight, destruction of evidence, danger to police or the community, etc.). We find no such exigencies to excuse the police from obtaining a warrant to arrest the murder suspect in this case.”

State v. West, 269 Maj. 3d 523 (20XX-5): “Because of the sanctity of the home, the circumstances in which the need for an arrest warrant can be excused for ‘exigency’ should be few in number and carefully delineated. No such exigency exists here where police have made a warrantless nighttime entry into the defendant’s home to arrest him for driving while intoxicated, a misdemeanor.”

State v. Lex, 272 Maj. 3d 115 (20XX-4): “The purpose of the exclusionary rule in this state has always been to deter illegal police conduct, not to protect the ‘integrity’ of the courts by denying the use of ill-gotten evidence. That being so, there seems little to gain in suppressing the products of a search warrant under which police acted believing in reasonable good faith it was valid. The case would be different if the police initially applying for the warrant had intentionally or recklessly provided the issuing magistrate with false information, or if no ‘reasonable’ police officer could have believed that there was ‘probable cause’ to support the search.”

State v. Shenk, 143 Maj. App. 2d 75 (20XX-30): “The only issue in a consent search is whether the consent was ‘voluntary’ under the ‘totality of circumstances.’ The burden is on the prosecution to demonstrate that the consent was not the product of coercion, express or implied.”

State v. Brempo, 198 Maj. 2d 703 (20XX-27): “Here police told defendant’s 66-year-old

grandmother that they had a warrant to search the house. As a result, the grandmother ‘consented’ to the police entry. In fact, no evidence that any such warrant existed was ever produced. The government now seeks to justify the search of defendant’s home, which led to discovery of the murder weapon, as consensual. However, where law enforcement claims authority to search a home under a warrant, where they announce to the occupant that the occupant has no right to resist, such a situation is filled with coercion – albeit colorably lawful coercion. Where there is coercion, there cannot be consent.”

State v. Ham, 270 Maj. App. 2d 112 (20XX-21): “In response to the police request to search appellant’s car, he asked if they had a warrant. Officer Biff responded, ‘I can get one,’ and appellant replied ‘OK. You can search.’ We find no legal infirmity in a consent following the threat to get a warrant.”

State v. Bozi, 271 Maj. App. 2d 777 (20XX-21): “We find the consent to search the First Avenue apartment valid. While police did say they would attempt to get a warrant if Appellant did not consent, it is significant to us that Appellant was not in custody, there was no discourtesy, abuse, threat, ruse, or force, and police did not say, ‘You might as well consent, we can get a warrant quickly.’”

Rust v. Warden, 277 Maj. App. 2d 23 (20XX-20): “Petitioner attacks his alleged consent to search the trunk of his car on two grounds. First, he claims that the police statement that they ‘would’ get a warrant if he refused to consent runs afoul of *State v. Brempo*, 198 Maj. 2d 703 (20XX-27). We disagree. This case is plainly distinguishable from the ‘claim of authority’ in *Brempo*. Second, he claims he did not have the capacity to consent. While the record indicates that he was ‘upset and quite nervous’ when arrested, by the time of giving his consent to search at the police station he had ‘calmed down so as to reasonably appear rational’ and thus was capable of understanding the decision to consent.”

State v. Hart, 200 Maj. 2d 951 (20XX-26): “Where, as here, 4-5 police officers came to appellant’s home at 1:45 A.M., dragged him out of bed, and made his wife leave the room, there

is no free and specific consent, but rather a mere 'submission to authority.'

. . . Further, the nighttime entry into Appellant's home in violation of 'knock-notice' requirements itself involves an illegal assertion of authority by police, thereby tainting any consent which follows."

Tex v. Warden, 17 Maj. App. 3d 601 (20XX-18): "Seeing the heroin in defendant's glove compartment when defendant opened the compartment to remove his car registration allowed the officer to make a 'plain view' seizure of the contraband without benefit of a warrant. The only requirements for such a plain view seizure are (1) the officer was standing in a place where she had a legal right to be when she saw the article in question; (2) there was 'probable cause' to associate the item with criminal activity."

A. Sneld, "A Discourse on 'Probable Cause,'" 6 Jamner L. Rev. 312, 313 (20XX-14): "The concept of 'Probable Cause' runs throughout our criminal procedure, with some confusion regarding the difference between Probable Cause to search as opposed to arrest. In both instances, the standard refers to whether a 'reasonable man' must be 'strongly suspicious.' The difference lies in what this man must be suspicious of. In a search, the 'reasonable man' must be strongly suspicious that a particular thing associated with criminal activity is in a particular place at a particular time. In the area of arrest, the suspicion focuses on whether a particular person is associated with a particular crime."

Long v. Superior Court, 93 Maj. App. 3d 816 (20XX-14): "Police entered defendant's car to search for weapons; when they stopped her car on 'reasonable suspicion' of a traffic violation, she could produce no license or registration, and they saw a large hunting knife on the floor. In the course of this cursory, self-protective search of the passenger compartment, police discovered the baggie of marijuana which is the subject of this writ. Our Supreme Court has already approved temporary detentions of persons and autos when there is 'reasonable suspicion' of criminal activity, *State v. Sykes*, 202 Maj. 2d 121 (20XX-26), and has also approved the pat-down (i.e., 'frisk') of persons so detained

for weapons when there is reason to believe the safety of the detaining officer or others is involved. Extending this 'pat-down' rationale to self-protective searches for weapons of the passenger compartments of automobiles which have been temporarily detained seems eminently reasonable to us. Accordingly, we find the officers' conduct lawful, and deny the writ."

State v. Chums, 201 Maj. 2d 191 (20XX-26): "Police arrested defendant in his home and subsequently searched the entire home, finding numerous incriminating items of evidence. The government now seeks to justify the search as 'incident to arrest.' We cannot accept their characterization. Our Constitution requires that all searches be conducted only upon probable cause and with a warrant. The warrant is only to be dispensed with under 'closely circumscribed exigencies' (cit. omitted). An arrest involves such exigencies since the suspect may try to assault the arresting officer or to destroy evidence. These risks, however, plainly justify only the search of the area within the suspect's immediate control or 'wing span.'"

State v. Muncie, 268 Maj. 3d 1003 (20XX-5): "After a murder, police searched the suspect's apartment without a warrant. The Court of Appeals upheld the search finding the need for a warrant obviated by what it called 'the murder scene exception.' We reverse. All agree there was ample 'probable cause.' Yet a warrant can be excused only for true exigency, expressed in closely circumscribed exceptions (*State v. Chums*, 201 Maj. 2d 191 (20XX-26)), not general categories such as 'murder scene' as was attempted here."

Brakes v. Warden, 254 Maj. App. 2d 216 (20XX-23): "Here an illegal search of Petitioner's apartment produced information which led to the buried body. Normally, we would order the evidence suppressed and require a new trial. However, the government opposes suppression, claiming that 'routine police procedures' would have led to discovery of the body without aid of the illegally seized evidence. We agree that the government should have a hearing where it will have the burden to establish a 'reasonable probability' that the body would have been discovered without aid of the illegality and that, therefore, the discovery was 'inevitable.'

Entry 76: Search and Seizure-2 of 3

This comports with other jurisdictions which have considered this issue and held that when the illegal police act merely contributes to the discovery of evidence which would have been acquired lawfully through 'routine police practices,' there is no taint from the illegality (cit. omitted)."

**Research Memorandum #77: "Taint"
Cases**

Solong v. Warden, 261 Maj. 417 (20XX-40): "The State must not be permitted to profit from its own misconduct. Accordingly, all products of illegal 4th Amendment activity, whether direct or indirect, tangible or intangible, must be suppressed as the 'fruit of the poisonous tree.' In the case before us, a Petitioner seeks suppression of a confession which followed an arrest which all parties agree was patently illegal. The confession, however, took place several days after defendant's release following her arrest when she voluntarily returned to the police station to talk to Detective Meyers. Under these circumstances, the relationship between the initial illegality and the eventual confession had become so attenuated so as to dissipate the taint. Appeal denied."

Trucker v. Warden, 253 Maj. App. 2d 1017 (20XX-23): "Defendant was arrested without any cause whatsoever and taken to the station for questioning, whereupon a confession followed immediately upon administration of the *Mintz* warnings [which parallel the *Miranda* warnings]. The State confesses the blatant illegality of this 'dragnet arrest,' but contends that the *Mintz* warnings purge the taint of the initial illegality. We disagree. While the *Mintz* warnings may obviate the 5th Amendment concerns the *Mintz* court dealt with, the warnings do not automatically purge the confession before us from the taint of the 4th Amendment violation (i.e., the arrest) we deal with here. See generally *Solong v. Warden*, 261 Maj. 416 (20XX-40). While administration of the *Mintz* warnings is one factor to consider in deciding whether an ensuing confession has been purged of the taint of an illegal arrest, we must also consider (1) the time between arrest and confession; (2) the purpose and flagrancy of the official police misconduct; and (3) the nature of the intervening circumstances from arrest to confession. . . . Considering all these factors in the case before us, we find the taint of the arrest has not been purged, and accordingly order the confession suppressed."

CIVIL RESEARCH MEMORANDA

Research Memorandum #78: Automobile Negligence

Fox v. City of Benton, 143 Maj. App. 2d 20 (20XX-27): “Modern cases involving rear-end collisions hold that the doctrine of last clear chance is not applicable where the following driver, using ‘reasonable prudence,’ is unable to react in time to prevent the collision.

“The City of Benton trial court correctly held that the last clear chance doctrine was found to be not applicable where the plaintiff driver unexpectedly stopped at a flashing yellow light and the defendant bus driver noticed the plaintiff, from a distance of 90 feet, and applied his brakes, but nevertheless collided into the rear-end of plaintiff’s car.

“Where the defendant driver does, however, have the last clear chance to avoid the accident by swerving, honking, or braking from a great enough distance, the doctrine is applicable.”

Simmons v. Lakewood, 271 Maj. App. 2d 19 (20XX-21): “This is a case involving an intersection collision between a passenger car and truck where the truck driver saw the car 45 feet from the intersection. We hold that the last clear chance doctrine is applicable where the truck driver could have, but failed to, brake or swerve in time to avoid the collision.

“Major law provides that in cases involving rear-end collisions, the rebuttable presumption of negligence is primarily on the following driver. The ‘driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the highway,’ Major Code sec. 46.00.”

Johnson v. Nelson, 256 Maj. App. 3d 100 (20XX-6): “The presumption of negligence was rebutted by defendant in a rear-end collision where plaintiff unexpectedly stopped her vehicle to allow other vehicles access to an arterial. The following driver can rebut a presumption of negligence by claiming that an emergency or unusual condition exists. If a car in front stops suddenly and without warning at a place where a

sudden stop was not to be anticipated, the jury can be instructed that defendant was not following too closely. The plaintiff must give some notice of the intention to stop if there is a reasonable opportunity to do so. Nevertheless, the following driver must reasonably anticipate an emergency situation that can result from ordinary traffic conditions. The defendant pick-up truck, which had been traveling legally at 40 M.P.H., ran into the back of the plaintiff. Defendant claimed that plaintiff failed to sufficiently signal or warn the following driver, and had defective brake lights.

“It is a case of first impression regarding whether alleged defective brake lights create a presumption of negligence in a rear-end collision. Generally, the owner or operator of a motor vehicle does not have an absolute duty to insure the safety of herself or other users of the road from the condition of her vehicle. The owner operator, however, must use reasonable care to see that the vehicle’s condition is safe and in proper working order, and is chargeable with the knowledge that a reasonable inspection would disclose. The State of Major imposes statutory requirements regarding certain aspects of motor vehicles, such as brakes, which must meet certain minimum standards.

“A factor in determining potential negligence regarding defective equipment is the causal relation between the defect and the injury. The injuries incurred must be proximately caused by the defective condition of the vehicle, otherwise a plaintiff cannot claim that the defective condition causally contributed to the accident.

“But we need not decide the issue of defective brake lights since we find that defendant was not negligent. In this case, defendant, faced with an emergency situation, was unable to react in time to avoid the collision.”

Wichman v. United Disposal, Inc., 284 Maj. 3d 817 (20XX-2): “We reverse judgment of the Superior Court of Callam County. This case involves a rear-end collision where defendant truck driver, United Disposal, Inc., negligently tried to pass Wichman, the plaintiff, but could not because of the traffic congestion. Consequently, defendant hit the plaintiff. Defendant United Disposal relies upon *Taylor v. Ganas*, 269 Maj. 3d 1492 (20XX-5). In that case the following driver struck plaintiff’s disabled vehicle on a bridge. In *Taylor*, plaintiff’s car was either stopped or slowly moving but in either case plaintiff failed to use brake lights or other warning signal. Plaintiff was

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found 75% negligent and defendant 25% negligent.

“The facts here are distinguishable. Defendant United Disposal admitted that when he tried to pass plaintiff’s car, that plaintiff either slowed down or was almost stopped. Plaintiff’s inoperable brake lights did not causally contribute to the mishap. Judgment reversed. Case remanded to the Superior Court of Callam County for retrial.”

Research Memorandum #79: Child Custody

Minkon v. Ford, 260 Maj. 3d 10 (20XX-7): “The maternal grandparents requested legal custody or in the alternative, visitation of their daughter’s minor children over the objection of the father and new stepmother (the natural mother was deceased). We conclude that forcing either custody or visitation over parental objection would not be in the best interest of the children. The paramount factor in determining visitation and custody rights of minor children is the best interest of the children. In determining best interests, Major courts consider:

- (a) The wishes of the parents;
- (b) The wishes of the child;
- (c) The interaction and relationship of the child with parent or parents, siblings, friends, and any other person who may significantly affect the child’s best interests;
- (d) The child’s adjustment (or disruption) to home, school, and community;
- (e) The emotional and physical health of all individuals involved; and
- (f) Violence or potential child abuse.

“We unanimously find that since the children were with their natural father and there was no evidence of child abuse, the status quo, custody with the father and mother, should be maintained.

“We now consider the issue of visitation for the grandparents. The controlling rule of law is that if there is only one remaining parent (no adoption by stepparent), the grandparents should have visitation rights. We hold that a grandparent not granted custody is generally entitled to reasonable visitation unless this is not in the best interest of the child. In addition, visitation rights for any person may be ordered if in the best interests of the child.

“In this case, we are reluctant to force visitation against the wishes of the custodial party, the father. Disharmony is not in the best interest of the child. Ordinarily, a parent’s obligation to allow grandparent visitation is moral, not legal. Judicial enforcement might harm parental authority. Nevertheless, on balance, this case involves a natural grandparent. We are persuaded to allow the grandparents reasonable visitation.”

Crocker v. Crocker, 195 Maj. 2d 236 (20XX-28): “Parties may negotiate an agreement awarding custody of minor children unless the agreement is contrary to the best interests of the children. A court will incorporate the agreement into a decree (dissolution cases) or in the case of child custody into an order. But the court is not bound by the terms of the agreement. State of Major courts have the equitable power to intercede if the agreement is not in the best interests of the child. The power of the court to modify the agreement or decree continues throughout the minority of the child.”

Research Memorandum #80: Consumer Actions

Brascher v. Hollydick, 284 Maj. 3d 14 (20XX-2): “Hollydick purchased a 20XX-3 Lyon station wagon from Brascher Auto Deals. Hollydick asserts that the station wagon is a ‘lemon’ and has not been mechanically operative since he bought it. He claims a breach of warranties.

“Any affirmation of fact or promise will create an express warranty. The statement, ‘This car has never been in a wreck,’ created an express warranty. A seller does not have to use the term ‘warrant’ or ‘guarantee.’

“An affirmation merely of the value of the goods, seller’s opinion, or commendation does not create a warranty. Therefore, terms such as ‘A-1,’ ‘mechanically perfect,’ ‘good quality,’ ‘last a lifetime,’ or ‘perfect condition,’ do not give rise to a warranty. They are the seller’s opinion or commendation, and are not a warranty. Likewise, laudatory comments about a product can be merely ‘puffing.’

“The test to decide if statements are warranties was suggested by the Major Supreme Court in *Warkentine v. Cohen*, 198 Maj. 2d 500 (20XX-27). ‘Did the seller assume to assert a fact of which buyer was ignorant, or merely express judgment on something as to which each would have an opinion?’

“In this instance, Brascher, the seller, stated, ‘This car has been driven only 10,000 miles and has been garaged for the past year while the old man was in Hawaii.’ The statement created an express warranty, because it became part of the basis of the bargain.

“In addition to an express warranty, plaintiff Hollydick claims that the seller may be liable under an implied warranty of merchantability. We are in accord. The Uniform Major Commercial Code provides in part:

- (a) goods must pass without objection under the contract description, and
- (b) be fit for the ordinary purpose for which such goods are used.

If Hollydick, the buyer, can show that the goods were not merchantable when sold, he may recover if he can show actual damage.

“A seller may only disclaim the implied warranty of merchantability through specific terms, ‘AS IS.’ In this case, since the car was not

sold, ‘AS IS,’ the plaintiff, Hollydick, might also have a claim for breach of implied warranty of merchantability.”

Aristocratic Foods v. Consumer Action, 284 Maj. 3d 122 (20XX-2): “A nonprofit group, Consumer Action, picketed and leafleted Aristocratic Foods. The consumer group claimed that Aristocratic Foods sells dairy products which are tainted and misrepresents the packaging date on dairy product labels. Aristocratic Foods has requested a preliminary and permanent injunction against the leafleting claiming the leaflets are misleading and interfere with customer access to its store.

“The Supreme Court in the State of Major has recognized that hand billing in front of a business may be the only manner to reach the intended audience. A municipality may, however, impose reasonable time and manner restrictions on the use of sidewalks. A governmental entity may not, however, premise these restrictions on the content of the speech nor may it assess the tastefulness of the handbills, as long as any information is being disseminated. But if the speech is untruthful, that speech, commercial or otherwise, will not be protected. Then a governmental entity may regulate the speech even if it is not provably false, but merely deceptive and misleading.

“We cannot help but comment that in this case such leafleting is protected speech, and not subject to regulation. Leafleting should not interfere with access to the store. It should be restricted to the parking lot and sidewalks and should not block the doors. Likewise, use of a loudspeaker system is protected and only when it is a clear public nuisance is it to be enjoined. An injunction would be issued in the rarest of cases. We are satisfied by the affidavits submitted by Consumer Action that the doors to the store have never been blocked by the leafleters. The movant, Aristocratic Foods, has also failed to prove irreparable harm. The mere assertion that profits declined by 5% per week since the consumer leafleting began can be caused by many factors. Aristocratic must make a more convincing case showing that Consumer Action’s leafleting caused a significant loss of sales per week. Application for a preliminary injunction is denied without prejudice.”

Random v. Quint, 285 Maj. 3d 130 (20XX-1): “Defamation requires communication to a third person. If communication is only to the injured person, no action for defamation arises.

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“The alleged defamation must hold the plaintiff up to hatred, ridicule, or contempt, or cause him to be shunned or avoided. The term ‘crook,’ as heard by others, has been held to be sufficient grounds to give rise to an action for defamation. Publication can be shown by the report of a rumor, if the other elements of defamation are met. Generally, the plaintiff must show actual damages for slander. One of the major exceptions is imputation of crime, even if it is made clear that plaintiff was not to be prosecuted.

“Mr. Random claims that he was defamed when Ms. Quint said the words, ‘I know your kind, anyone prosecuted for murder can’t be trusted.’ Two months prior to the statement, Random was arrested for murder, but subsequently charges were dropped. Since truth is an absolute defense, and plaintiff has shown *no injury*, we dismiss.”

Major Rev. Code §46.37.500 (20XX-2): “It is unlawful for any person to sell, disconnect, turn back or reset the odometer of any motor vehicle with the intent or knowledge that the odometer has been turned back if that person fails to notify the buyer, prior to the time of sale, that the odometer has been turned back or that he has reason to believe that the odometer has been turned back.

“Any person found in violation of this statute is guilty of a misdemeanor and shall, upon conviction, be sentenced to three months in jail and/or a fine of \$300.

“In any suit brought by the purchaser of a motor vehicle against the seller of such vehicle, the purchaser shall be entitled to recover three times the amount of actual damages sustained or \$1,500, whichever is greater, and in the case of a successful recovery of damages, the costs of the action as well as reasonable attorney fees.”

Research Memorandum #81: Discovery

1. Privileges

Bottom Corp. v. Major, 271 Maj. 3d 100 (20XX-3): “This case addresses important questions concerning the scope of the attorney-client privilege and the applicability of the work product doctrine in proceedings to enforce tax summonses.

“Bottom Corporation sells widgets. In January 20XX-3, the corporation discovered that its subsidiary made payments to foreign government officials in order to secure government business. General counsel conducted an internal investigation, sending questionnaires and interviewing corporate officers and employees. In March 20XX-3, the Major Tax Department demanded production of:

all files relative to the investigation conducted under the supervision of counsel to identify payments to employees of foreign governments and any political contributions made by the company or any of its affiliates since January 1, 20XX-17.

The records should include but not be limited to written questionnaires sent to managers of the Company’s foreign affiliates, and memoranda or notes of the interviews conducted with officers and employees of the company and its subsidiaries.

“The company declined to produce the documents specified, claiming they were protected from disclosure by the attorney-client privilege and constituted the work product of attorneys prepared in anticipation of litigation. On August 31, the Major Tax Department filed a petition seeking enforcement of its summons. The trial court ordered the corporation to produce the documents. The Court of Appeals affirmed. We reverse.

“Federal Rule of Evidence 501 provides:

the privilege of a witness . . . shall be governed by the principles of the common law as they may be interpreted by courts in light of reason and experience.

The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law. Its purpose is to encourage full and frank communication between attorneys and their clients, thereby promoting broader public interests in the observance of law and

administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer being fully informed by the client.

“We hold that the communications by Bottom Corporation employees to counsel are covered by the attorney-client privilege as to the responses to the questionnaires and any notes reflecting responses to interview questions.

“The summons reaches further, however, to notes and memoranda of interviews, which go beyond recording responses to questions. This raises the work product privilege. The Tax Department asserts that it has made a sufficient showing of necessity to overcome the work product doctrine protections. The Tax Department relies on the following language in the leading case, *Sickman v. Saylor*, 198 Maj. 2d 503 (20XX-28):

We do not mean to say that all written materials obtained or prepared by an adversary’s counsel with an eye toward litigation are necessarily free from discovery in all cases. Where relevant and nonprivileged facts remain hidden in an attorney’s file and where production of those facts is essential to the preparation of one’s case, discovery may properly be had. And production might be justified where the witnesses are no longer available or may be reached only with difficulty.

“The above-quoted language from *Sickman*, however, did not apply to oral statements made by witnesses whether presently in the form of the attorney’s mental impressions or memoranda. As to such material, the *Sickman* court did ‘not believe that any showing of necessity can be made under the circumstances of this case so to justify production.’ Forcing an attorney to disclose notes and memoranda of a witness’s oral statements is particularly disfavored because it tends to reveal the attorney’s mental processes.

“Rule 26 accords special protection to work product revealing the attorney’s mental processes. The Rule permits disclosure of documents and tangible things constituting attorney work product upon a showing of substantial need and inability to obtain the equivalent without undue hardship. Rule 26 goes on to state:

[I]n ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative concerning the litigation.

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Although this language does not specifically refer to memoranda based on oral statements of witnesses, the *Sickman* court stressed the danger that compelled disclosure of such memoranda would reveal the attorney's mental processes. Some courts have concluded that *no* showing of necessity can overcome protection of work product which is based on oral statements from witnesses.

"We do not decide the issue at this time. It is clear that the wrong standard was applied by the trial court when it concluded that the Government had made a sufficient showing of necessity to overcome the protections of the work product doctrine, articulated by the first part of 26(b)(3). The notes and memoranda sought by the Government here are work product based on oral statements. If they reveal communications, they are, in this case, protected by the attorney-client privilege. To the extent they do not reveal communications, they reveal the attorneys' mental processes in evaluating the communications. As Rule 26 and *Sickman* make clear, such work product cannot be disclosed simply on the showing of substantial need and inability to obtain the equivalent without undue hardship.

"While we are not prepared at this juncture to say that such material is always protected by the work product rule, we think a far stronger showing of necessity and unavailability by other means than was made by the Government or applied by the trial judge in this case would be necessary to compel disclosure."

Jude v. Harvey, 284 Maj. 3d 500 (20XX-2):

"This lawsuit arose from a car collision on a state highway near Judith Lake, Major, on March 15, 20XX-6. Ms. Jude was traveling west when suddenly her car was surrounded by a dense cloud of smoke, causing her to collide with the car ahead. Ms. Jude claims the cloud of smoke and the ensuing collision were caused by Mr. Harvey's negligence in burning grain stubble in an adjacent field.

"At the time of the incident, Mr. Harvey had a liability insurance policy issued by Michael Insurance Company. Under the terms of this policy, Michael was obligated to defend Mr. Harvey against all insured claims. This contractual duty allowed Michael to select and retain an attorney to represent the insured and required the insured to cooperate in his defense.

"Two days after the accident, an investigator and adjuster for Michael contacted Mr. Harvey and tape-recorded his statement relating to the accident. The tape was subsequently transcribed. Several months later Ms. Jude filed a personal injury action against Harvey. Thereafter Mr. Harvey's deposition was taken, at which time he testified about the existence of the statement.

"Counsel for Jude requested a copy of the transcript of Mr. Harvey's statement. Defense counsel objected, claiming attorney-client privilege and work product. Jude requested an order compelling production. The trial court denied the order. The Court of Appeals reversed. The specific issue at hand is whether an insured's statement to his insurance carrier is protected from discovery by State of Major Rule of Civil Procedure 26(b)(3).

"Many federal and state courts have struggled over the proper interpretation of 26(b)(3), commonly referred to as the work product rule. The test for determining whether such work product is discoverable is whether the documents are prepared in anticipation of litigation, and, if so, whether the party seeking discovery can show substantial need and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

"It is difficult in this context to determine whether a document was prepared in anticipation of litigation since an insurance company's ordinary course of business entails litigation. The requirement of having an attorney involved in the case before documents prepared by an insurance carrier are protected is a conclusory determination of the issue and is contrary to the plain language of the rule. On the other hand, broad protection for all investigations conducted by an insurer is likewise an unsatisfactory answer to the problem. Should such a general rule be adopted, it is not hard to imagine insurers mechanically forming their practices so as to make all documents appear to be prepared in 'anticipation of litigation.' We believe the better approach to the problem is to look to those specific parties involved and the expectations of those parties.

"This case involves statements by a defendant. An insured is contractually obligated to cooperate with the insurance company. Such an obligation clearly creates a reasonable expectation that the content of statements made by the insured will not be revealed to the opposing party.

"The insurer on the other hand has a contractual obligation to act as the insured's agent

and secure an attorney. The insured cannot choose the attorney but can expect the agent to transmit the statement to the attorney selected. Without an expectation of confidentiality, an insured may be hesitant to disclose everything known. Such nondisclosure could hinder representation by the selected attorney and the expectation is that statements made by the insured will be held in confidence. Without such protection, the insured would bear many of the burdens of the insurance contract without reaping the benefits. The contractual obligation between insured and insurer mandates extension of this protection to statements made by an insured to his insurance company. Such an extension comports with the policy of maintaining certain restraints on bad faith, irrelevant and privileged inquiries and helps to ensure the just and fair resolution of disputes. Therefore, we hold that a statement made by an insured to an insurer following an automobile accident is protected from discovery under Civil Rule 26(b)(3).

“The question then remains whether respondents have shown substantial need. The determination of this issue is vested in the sound discretion of the trial judge, who should look at the facts and circumstances of each case in arriving at the ultimate conclusion. To justify disclosure, a party must show the importance of the information to the preparation of his case and the difficulty the party will face in obtaining substantially equivalent information from other sources if production is denied.

“The clearest case for ordering production is when crucial information is in the exclusive control of the opposing party. The substantial need standard is not met if the discovering party merely wants to be sure nothing has been overlooked or hopes to unearth damaging admissions. Several courts have held that statements contemporaneous with the occurrence may in some instances be unique and cannot be duplicated by later interviews or depositions, *Douglas v. Dunn*, 269 Maj. 3d 117 (20XX-5). In general there is no justification for discovery of the statement of a person contained in work product materials, when the person is available for deposition. Whether a statement is contemporaneous and unique is a question of fact.

“In light of all these considerations, we are unable to see any error in the trial court’s determination that Jude had ‘substantial need’ of Harvey’s statement. Although the statement was

taken two days after the accident, the passage of time alone is insufficient to allow discovery. Ms. Jude has failed to show any other extenuating circumstances justifying disclosure. The more important fact is that the statement in question is that of the defendant. The defendant is not unavailable; it was in his deposition that the conflict arose. There is no claim that he has no present recollection of the events in question. The primary reason for Ms. Jude wanting the statement in this instance, as we see it, is impeachment. General impeachment, alone, is insufficient to show substantial need. Since Jude made no other argument as to her substantial needs, we hold that Jude has failed to show a substantial need for the statement. We reverse the Court of Appeals and reinstate the ruling of the trial court upholding the work product privilege.”

Dissent. Figment, J.: “I would affirm the Court of Appeals decision finding the statement of the insured to his insurance company is not protected by either the attorney-client privilege, or the work product immunity rule, Civil Rule 26(b)(3).

“I believe it is incorrect to hold that the initial inquiry or involvement by an insurance company regarding the possibility of a potential claim involving one of its insureds is made in anticipation of litigation. The initial inquiry is a gathering of facts from which the insurance company determines whether there may be a claim and if so whether the claim is covered by the insurance contract. I would hold the initial inquiry is always made in the ordinary course of the insured’s business. Only after the initial discussion of the claim can the insured and the insurance company determine whether the incident is covered and whether litigation can be anticipated. If litigation is anticipated, subsequent statements made by the insured would be protected. This determination accords broad and liberal treatment to the discovery rules and achieves the goal of ensuring mutual knowledge of all relevant facts, *Sickman v. Saylor*, 198 Maj. 2d 503 (20XX-28).”

2. Fifth Amendment Privilege in a Civil Case

Skelly v. Sham, 260 Maj. 3d 777 (20XX-6): “This is an appeal of the trial court ruling granting defendant a default judgment. We reverse and remand.

“Plaintiff Skelly brought a libel proceeding alleging that defendant Sham libeled her in a newspaper article which asserted that ‘Darcy Skelly didn’t write her last book; she relied on a ghost writer. She is a fraud.’ Sham denied the libel. Plaintiff Skelly, when served with interrogatories, refused to answer those interrogatories inquiring whether she had sexual intercourse with a married man other than her husband. State of Major statutes declare that adultery and fornication are misdemeanors. Skelly claimed the Fifth Amendment. Defendant Sham convinced the trial court that the inquiry was relevant to the issues [discussion of relevancy omitted]. The trial court, after plaintiff’s invocation of privilege, struck her answer and allowed default judgment against her.

“Generally, the threat of incrimination must be a genuine and present one and is usually used in civil actions where conduct or testimony giving rise to civil liability also makes up an element of a crime. The general American rule is that the Fifth Amendment privilege may be invoked as long as a mere ‘possibility’ of prosecution for the crimes suggested by the response exists. A response or document ‘tends to incriminate’ as long as it might help discover facts that could tie together circumstantial evidence proving the invoker’s criminal conduct.:

“If a criminal threat is not pending, a sufficient ‘penalty’ or ‘forfeiture’ in a civil case may warrant invocation of the privilege. A ‘sufficient penalty’ however, is not clearly defined in civil cases. But proceeding instituted for the purpose of declaring the forfeiture of a person’s property because of offenses committed by him, although they may be in civil form, are in their nature criminal for Fifth Amendment purposes. However, this concept of ‘penalty’ should be ‘strictly construed’ so as to protect the non-invoking party from abuse of the privilege.

“The privilege protects against real dangers and not speculative possibilities. A party or witness must satisfy the court at trial that the claim of privilege is justified and not an abuse of the right.

“The use of the privilege may be asserted at the pretrial or trial state by a civil litigant. We recognize that pretrial discovery may be deterred by the invocation of the privilege that important information necessary for the presentation of a prima facie case or a defense may be at the center

of the discovery attempt which might be obstructed by the exercise of the privilege. But the importance of the privilege to our freedoms is too important to draw a restrictive line between criminal and civil actions. But the exercise of the privilege in a civil case is not absolute. No criminal sanctions can be used, such as contempt, and the usual sanctions for failing to grant discovery are not applicable when discovery is resisted by a good faith claim of the privilege. (The courts have generally declined to strike a civil lawsuit or responsive answer or permit a default judgment.) Courts, however, have been willing to impose lesser sanctions since pretrial discovery is essential for a private civil litigant to develop a case.

“In the instant case, we are convinced that plaintiff really acted in good faith fearing a criminal prosecution. Although the trial court correctly ordered Skelly to comply with the court order to respond to defendant’s interrogatories, the sanction imposed for refusal was improper. Imposition of lesser sanctions would have been proper. A default judgment was unduly harsh. We suggest the trial court consider the availability of broad choices of sanctions when dealing with good-faith exercises of the privilege in civil litigation. Reversed and remanded.”

State of Major Bar v. Hawk, 268 Maj. 3d 244 (20XX-5): “The State of Major Bar brought disciplinary charges for professional misconduct against attorney George Hawk, a member of the

Bar. Hawk refused to produce demanded financial records and to testify at an administrative hearing on the grounds that the records and/or testimony would incriminate him. The judge correctly balanced the prejudice to the defendant against the probative need for the particular information sought in order to make a fair determination.

“We hold that the self-incrimination clause of the Fifth Amendment applies to lawyers. Exercising one’s Fifth Amendment privilege should not be diluted nor penalized by imposing the dishonor of disbarment or the deprivation of livelihood as a penalty for asserting it. But consequences may follow failure to produce information.”

3. Discovery of Expert Witness

Sarah v. Davidel, 283 Maj. 3d 144 (20XX-2): “The question on appeal is whether plaintiff must identify each and every doctor, physician, or medical expert plaintiff’s counsel retain or specially employ during pretrial investigation and preparation. The courts have been divided on the issue. Civil Rule 26(b)(4) governs the scope of discovery concerning experts.

“First we will explore whether discovery of experts informally consulted, but not retained or specially employed, is required by the rule. No provision in Civil Rule 26(b)(4) expressly deals with nonwitness experts who are informally consulted by a party in preparation for trial, but not retained or specially employed in anticipation of litigation.

“In our view, the status of each expert must be determined on an ad hoc basis. Several factors should be considered: (1) the manner in which the consultation was initiated; (2) the nature, type, and extent of information or material provided to, or determined by, the expert in connection with his review; (3) the duration and intensity of the consultation relationship; and (4) the terms of the consultation, if any (e.g., payment, confidential data or opinions, etc.). Of course, additional factors bearing on this determination may be examined if relevant.

“The determination of the status of the expert rests, in the first instance, with the party resisting discovery. Should the expert be considered informally consulted, that categorization should be provided in response. The propounding party should then be provided the opportunity of requesting a determination of the expert’s status based on an in camera review by the court. Inasmuch as the District Court failed to express its views on this question, we deem it appropriate to remand rather than attempt to deal with the merits of this issue on appeal. If the expert is considered to have been only informally consulted in anticipation of litigation, discovery is barred.

“Second, we need to determine if plaintiff needs to give defendant discovery of the identities of experts retained or specially employed. Subdivision (b)(4)(B) of Rule 26 specifically deals with nonwitness experts who have been retained or specially employed by a party in anticipation of litigation. Facts or opinions of nonwitness experts retained or specially employed may only be discovered upon a showing of ‘exceptional

circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.’ Discovery of the identities of the experts, absent a showing of exceptional circumstances, was not expressly precluded by the text of subdivision (b)(4)(B); the District Court found the general provisions of Rule 26(b)(1) controlling. Subdivision (b)(1) provides:

(b) *Scope of Discovery.* Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, . . . including the . . . identity and location of persons having knowledge of any discoverable matter.

“The advisory committee notes to the rule indicate that the structure of Rule 26 was largely developed around the doctrine of unfairness, designed to prevent a party from rebuilding a case by means of his opponent’s financial resources, superior diligence, and more aggressive preparation.

“There are several reasons for overruling the District Court. Once the identities of retained or specially employed experts are disclosed, the protective provisions of the rule concerning facts known or opinions held by such experts are subverted. The expert may be contacted or his records obtained and information normally nondiscoverable, under Rule 26(b)(4)(B), is revealed. Similarly, although perhaps rarer, the opponent may compel an expert retained or specially employed by an adverse party who does not intend to call that expert, to testify at trial. The possibility also exists that a party may call his opponent to the stand and ask if certain experts were retained in anticipation of trial, but not called as a witness, thereby leaving with the jury an inference that the retaining party is attempting to suppress adverse facts or opinions. We also agree with plaintiff’s view that disclosure of the identities of medical consultative experts would inevitably lessen the number of candid opinions available as well as the number of consultants willing to even discuss a potential medical malpractice claim with counsel. . . .

“Lastly, we affirm that the identity, and other collateral information, concerning an expert who is retained or specially employed in anticipation of litigation, but not expected to be called as a

witness at trial, is not discoverable except as 'provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.' Civil Rule 26(b)(4)(B). The party seeking disclosure under Rule 26(b)(4)(B) carries a heavy burden in demonstrating the existence of exceptional circumstances.

"The order of the District Court is vacated and remanded. On remand, the status of the nonwitness experts against whom discovery is sought should be undertaken as a two-step process. First, was the expert informally consulted in anticipation of litigation but not retained or specially employed? If so, no discovery may be had as to the identity or opinions of the expert. Second, if the expert was not informally consulted, but retained or specially employed in anticipation of litigation, but not expected to testify at trial, do exceptional circumstances exist justifying disclosure of the expert's identity, opinions or other collateral information?"

"Vacated and remanded."

4. Discovery of Expert's Report and Notes

Old City v. Bond, 281 Maj. 3d 77 (20XX-2): "Plaintiff brought suit against defendant aircraft manufacturer for personal injuries as a result of an aircraft crash. Plaintiff requested discovery of three reports compiled by defendant's expert witnesses. Plaintiff delivered allegedly defective aircraft parts to defendant for analysis. Defendant's three experts each compiled a report based on examination of the aircraft parts. Defendant supplied plaintiff with one of the three reports.

"Generally, reports and notes of an expert are not discoverable by the opposing party absent a showing of exceptional circumstances demonstrating an undue hardship. Written 'reports compiled by expert employees of defendant manufacturer are not discoverable where the reports were prepared in anticipation of litigation. Plaintiff did not assert that the reports were necessary to build plaintiff's own case-in-chief. While plaintiff asserted that the reports were necessary for cross-examination, this was not a sufficient showing of exceptional circumstances. We conclude that plaintiffs can obtain the

substantial equivalent of the reports by other means without undue hardship."

Williams v. Oakes, 283 Maj. 3d 111 (20XX-1): "This case involves a contract action for damages stemming from the collapse of a giant ore excavating machine. The third party defendant filed a motion to compel production of certain documents compiled by the plaintiff's auditors. The auditors had prepared a settlement proposal for plaintiff, estimating the amount of damages due from the collapse. The proposal was advanced as an alternative claim for damages. Defendant sought discovery of all materials used in formulating assumptions and alternate assumptions.

"Defendant may discover all materials used in arriving at assumptions and alternate assumptions, since the settlement offer had become a formal alternative claim for damages. Since the auditors will testify as to why they have selected the particular proposal, defendant should have access to materials which are relevant to the decisions."

5. Discoverability of Income Tax Records

Neddleman v. Knowles, 274 Maj. 3d 112 (20XX-4): "Plaintiff brought an action for wrongful death asserting that defendant acted willfully and maliciously, claiming punitive damages. Plaintiffs requested copies of defendant's income tax returns for the prior two years.

"It is discretionary with a court in which a civil action is pending to require one party to produce a copy of a federal or state tax return for inspection by the adverse party in a discovery proceeding. Absent unusual circumstances, income tax records are not subject to discovery. Where punitive damages are alleged, the wealth of the defendant is pertinent and material to the issue of the case. Pretrial discovery of a defendant's financial condition is not available to a plaintiff who merely seeks compensatory damages. Plaintiff need only allege punitive damages and need not establish a prima facie case to discover tax records."

6. Discovery of Medical Records

Branson v. Superior Court of Jamner County, 269 Maj. 3d 43 (20XX-5): "Plaintiffs filed a petition seeking extraordinary relief

challenging the superior court order requiring plaintiffs to respond to defendant's interrogatories. Plaintiffs seek damages for diminution of property value, personal injuries, and emotional disturbance allegedly caused by Jamner County's operation of an airport. They complain of noise, vibrations, air pollution, and smoke, caused by the international airport. Defendants in interrogatories requested complete disclosure of each plaintiff's entire lifetime medical histories.

"The patient/litigant exception to the physician/patient privilege allows only a limited inquiry into the confidences of the physician/patient relationship, compelling disclosure of only those matters directly relevant to the nature of the specific condition the patient has disclosed or tendered in the pleading or answer to discovery inquiries. It is a limited waiver concomitant with the purpose of the exception.

"In this case, the trial court's order requiring unlimited disclosure is impermissibly overbroad. Plaintiffs are not obligated to sacrifice all privacy to seek redress for a specific physical, mental, or emotional injury. Plaintiffs are entitled to retain the confidentiality of all unrelated medical or psychotherapeutic treatment they may have undergone in the past. Plaintiffs may not, however, withhold information which relates to any physical or mental lawsuit. For example, if plaintiff claims that airport operations have damaged his respiratory system, he would be obliged to disclose all medical information relating to his respiratory condition and could not limit discovery simply to those airport-related incidents which have allegedly injured his condition."

Roberts v. Superior Court, 268 Maj. 3d 42 (20XX-5): "We affirm the Superior Court order compelling plaintiff to respond to defendant's interrogatories.

"Plaintiff brought a personal injury action against defendant for personal injuries allegedly caused by an automobile collision. Plaintiff claimed that as a result of the collision she was rendered 'sick, distressed, lame, and disabled.' Defendant requested plaintiff's lifetime medical and psychological history and requested a description of the injuries she claimed to have suffered in the collision. Plaintiff refused to disclose any information about her physical or psychiatric history.

"Since plaintiff alleged vague, *unspecified* injuries, i.e., emotional disturbances, personal injuries, defendant should be able to discover a larger scope of records in order to narrow down *specific injuries* allegedly caused by the accident. Where plaintiff is not specific in identifying the injuries, defendant should not be liable for wholesale injuries without regard to whether injuries were caused by defendant. Plaintiff should not be able to claim damages for unspecified injuries and deny defendant access to information relevant in identifying specific injuries."

7. Use of Witness Deposition

Towndale v. Hefty, 276 Maj. 3d 144 (20XX-3): "Defendant contended that plaintiff's deposition was not admissible because plaintiff was mentally incompetent to testify. At the time of the taking of the deposition, the plaintiff was undergoing hip treatment and had a progressive disease involving the hardening of her arteries.

"The trial court ruled the deposition admissible even though at the time of trial the court excluded plaintiff's oral testimony after examining her competency.

"Generally, a deposition is not admissible into evidence if the presence of the deponent nonparty witness can be attained at the trial, see Civil Rule 32. Nevertheless, a deposition can be admissible into evidence at trial if the absence of the deponent at the time of the trial is based upon sufficient grounds. If a deponent is within the jurisdiction and a prescribed distance from the place of the trial but cannot offer competent proof of his inability to attend trial, his deposition is rendered inadmissible. Old age and infirmity, illness, or some other reasonable excuse for his absence are generally sufficient. The general rule, however, is that the deposition of a witness will not be admitted when he has been called and examined at trial or can be examined absent an agreement or waiver.

"Under Major law, a person is competent to testify if, at the time, he understands the oath and can give a correct account of what he has seen and heard. Plaintiff was not competent to testify at trial, but was competent at the time the deposition was taken. The general rule is that a subsequent change in the deponent's competency may render the deposition admissible if, at the taking of the deposition, the competency of the deponent was adequately determined. In this case, the deposition was properly admitted at trial since the competency of the deponent was established in

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the record of the deposition and by the trial judge at the time it was used.”

Lauren v. Michaels, 284 Maj. 3d 164 (20XX-1): “The trial court properly ruled that the deposition of witness Rose was inadmissible.

“A deposition will not be admitted into evidence if the deponent’s attendance could have been attained at trial. Proof which raises a reasonable presumption that the witness is outside the jurisdiction or proof of death is all that is needed. When any uncertainty as to the deponent’s location exists, however, mere statements by the offeree or a returned subpoena is not enough to allow the deposition to be admitted. Plaintiffs in this case failed to provide objective evidence that witness Rose had left the jurisdiction. Affirmed.”

In re Fife, 276 Maj. 3d 222 (20XX-3): “The State Bar found petitioner guilty of violating certain rules governing attorney conduct. Petitioner made a motion to exclude three witness depositions because they were not signed. Petitioner’s motion was denied and the depositions were admitted. We reverse. There is no evidence that the witnesses waived signature. The depositions were therefore inadmissible.”

8. Sanctions

Straight v. Ike, 280 Maj. 3d 8 (20XX-2): “Appellant appeals the trial court’s order granting default judgment against him.

“Respondent Ike sent interrogatories to appellant Straight on September 1, 20XX-5, which Straight represented would be answered by December 1, 20XX-5. Between January 3, 20XX-3 and March 20XX-3 appellant made numerous representations that the interrogatories would be answered. In response to respondent’s motion to compel filed in April 20XX-3, the trial court issued an order compelling appellant Straight to answer the interrogatories. Appellant ignored the order. Civil Rule 37 enumerates sanctions that are not exclusive but are flexible which may be applied in many varied forms at the court’s discretion. The appropriate sanction is determined through analysis of the particular facts of the case grounded in the sound discretion of the trial court.

“A court should consider not only the prejudice to the discovering party but also the

necessity to maintain the power of a court order and the deterrent effect of the sanction.

“Sanctions imposed by a court are only somewhat affected by a party’s willingness or good faith attempt to comply with the discovery order. These are relevant in mitigating the sanction imposed but will not forgo application of

a sanction altogether (unless the party cannot be culpable because of circumstances out of his control).

“Under Civil Rule 37 a court may deem established facts which a plaintiff cannot fairly prove because of the defendant’s refusal to comply with the court’s discovery order. Use of this sanction enables a court to carefully use its order to confront the specific information sought and wrongfully withheld so as to give the responding party due process. Consequently, a party may be deprived of at least one issue. The sanction is not limited, however, to one issue and so the court may find facts dispositive of an entire action and enter summary judgment.

“A court may use Civil Rule 37(b)(2)(B) to stop a party from presenting material into evidence that it did not bring in during discovery, or from presenting evidence backing up certain claims or defenses. A court also may issue an order striking out all or any part of a party’s pleading if the party (or counsel) refuses to obey a discovery order or willfully fails to appear for the taking of his deposition upon proper notice. This sanction is warranted in such cases as where the defendant fails to answer interrogatories, fails to seek a protective order, or moves for an extension of time after the deadline is reached.

“A court may use preclusion of testimony as a sanction. This sanction can be used when a defendant refuses to answer deposition questions by asserting the self-incrimination privilege. Barring testimony is also appropriate where a party does not disclose a witness in response to a discovery request.

“A court has discretion to dismiss an action for failure to comply with a discovery order. Since this sanction is of last resort, it should be strictly construed by the court and a less drastic but as equally effective remedy should be possibly used. A dismissal is appropriate for deliberate, repeated, or persistent failures to answer interrogatories, for filing incomplete or evasive answers, or for intending to disregard further discovery orders.

“The sanction of default judgment is much the same as a dismissal and since it is an extreme

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measure, it should be used only as a last resort.

This sanction is generally appropriate where a party (or counsel) has acted in bad faith in failing to comply with discovery rules or with court orders enforcing the rules.

“In this instance, the trial court did not abuse its discretion when it struck appellant Straight’s answer and granted default judgment for amounts owing. Appellant unreasonably delayed

responding and showed a calculated disregard of the Court Rules.”

Rudolph v. Fibb, 281 Maj. 3d 53 (20XX-2):

“Plaintiff is the surviving spouse, bringing this wrongful death action. She refused to be deposed prior to trial so as not to incriminate herself. Trial court held that it would prohibit plaintiff from testifying if she continued in her refusal to be deposed. The trial court’s sanction is proper, even though plaintiff acted in good faith.”

Research Memorandum #82: Duty to Defend

Major Insurance Code (20XX-1):

Section 12743: Conflict of Interest Problems Arising from Insurer's Duty to Defend. "A conflict of interest may arise if the insured is sued for an amount in excess of the insurance coverage and the insurer assumes the defense of its insured. To avoid this, the insurer must act in good faith and immediately disclose any conflict that arises. The insurer can then withdraw or make arrangements for appointment of counsel to alleviate the conflict."

Section 826: Insured's Duty Under Liability Policy. "The insured is required to comply with his obligations under the policy. Breach of the insured's duties such as the duty to cooperate in his or her defense may relieve the insurer of the duty to defend. The breach must be material or prejudicial."

Prejudice Insurance Company v. Hanson, 260 Maj. 3d 518 (20XX-6):

"The Prejudice Insurance Company refused to defend its insured, Hanson, in an incident involving Hanson and the Wakefield Shipping Company. The insured, covered by a homeowner's policy, brought an action against the yacht policy insurer for recovery of the settlement sum. Insured was awarded the settlement sum, \$500,000; punitive damages of \$200,000; attorney's fees; and costs. The insurance company has appealed the judgment.

"An insurer has four alternatives when presented with notice of a claim against its insured.

"1. The insurer can elect to defend. Under a standard insurance policy, the insurer has exclusive control over the

defense in any action brought against the insured. The insurer may be precluded from asserting the defense of noncoverage or other policy defenses if it assumes the defense and has not obtained a non-waiver agreement or reserved its rights.

"2. The insurer can elect to defend but reserves its right to bring defenses against the insured. A Reservation of Rights is a unilateral offer by the insurer to defend subject to preservation of the insurer's rights to assert policy defenses.

"3. The insurer can elect to defend, but withdraw from the defense before concluding the case. This is only allowed, however, where prejudice to the insured will not result.

"4. The insurer can seek a declaratory judgment in order to determine if it has a duty to defend.

"The State of Major follows the general rule that an insurer's duty to defend is determined from the allegations of the complaint. The test used is whether the facts alleged in the complaint, if proved, would render the insurer liable under the policy. Major courts liberally construe the pleadings, requiring the insurer to defend if there could be *any* interpretation that creates the duty.

"There are four types of allegations in a complaint:

"1. The allegations clearly fall within or outside the scope of the insurance coverage. The insurer has a duty to defend if the facts alleged are within policy coverage. Conversely, the insurer is not under a duty to defend if the facts alleged are outside the policy.

"2. The factual allegations are both covered and not covered under the policy. Where the court cannot separate the claims within and outside the policy coverage, the insurer is under a duty to defend.

"3. The allegations of the complaint are ambiguous or inadequate. If there is an ambiguity or the allegations are inadequate, the insurer may be required to conduct a reasonable investigation.

"4. There is a conflict between the known or ascertainable facts and the facts as alleged in the complaint. The reasonable investigation rule may apply in this situation.

"Thus, the insurer's duty to defend is not always defined by the facts recited in the complaint. The insurer may be required to go beyond the tactical allegations in the complaint and conduct a reasonable investigation into the facts before disclaiming a duty to defend.

"The insurance company's duty arose even though the complaint failed to describe facts which were covered under the policy coverage. Nevertheless, there was a reasonable possibility that facts would arise in the course of the action which would be covered. And, in fact, these facts did arise. Judgment affirmed."

Gloss Insurance v. Dotts, 276 Maj. 3d 32 (20XX-3): "Gloss Insurance Co. (Gloss) issued Harry Dotts a mobile homeowner's liability policy providing personal liability for damages due to bodily injury caused by an 'occurrence.' The policy defines 'occurrence' as:

an *accident*, including injurious exposure to conditions, which results, during the policy term, in bodily injury or property damage.

"The policy excluded from personal liability 'bodily injury or property damage which is either expected or intended from the standpoint of the insured.'

"During early morning hours, Mr. Dotts went to visit his girlfriend. He found his girlfriend with another man,

David McKee. Mr. McKee was sitting on the bed. Dotts and his girlfriend agreed David McKee should leave. Mr. Dotts sat down on the bed next to Mr. McKee and asked him if he would leave. Mr. McKee did not respond nor look at Mr. Dotts. To get Mr. McKee's attention, Mr. Dotts began a motion to slap Mr. McKee with his open palm. Mr. McKee started to lean back, and Mr. Dotts instinctively adjusted the motion of his arm and hand. Thus, the contact between Mr. Dotts' hand and Mr. McKee's face was an open-handed, backhanded slap. The contact did not mark the insured's hand or McKee's face. No other physical contact occurred. Soon, Mr. McKee left the premises, seemingly unaffected by Mr. Dotts' slap. Later that morning, Mr. McKee was taken to a hospital, where he lapsed into a coma. He died five days later without regaining consciousness.

"A county jury convicted Mr. Dotts of involuntary manslaughter and second-degree assault. At the trial, Mr. Dotts testified he did not intend to hurt the deceased and he was not angry with him; Mr. Dotts just wanted to get Mr. McKee's attention.

"James McKee brought a civil suit for damages. Later, Gloss Insurance filed a separate declaratory judgment action seeking a determination it had no duty to defend Mr. Dotts and no duty to pay any judgment. Gloss moved for summary judgment that David McKee's death was not an 'occurrence' covered by the policy. Gloss Insurance Company's motion was granted, and James McKee and Mr. Dotts appeal.

"Appellants maintain coverage exists under an 'occurrence policy' for intentional acts which cause subjectively unintended resultant injuries. Mr. Dotts' policy equates an 'occurrence' with an 'accident.' The longstanding Major rule

in accidental death in all cases except products liability is:

[T]o recover under a policy insuring against death or injury by accidental means, (1) it is not enough that the result was unusual, unexpected, or unforeseen, but it must appear that the *means* were accidental; and (2) *accident is never present when a deliberate act is performed, unless some additional unexpected, independent, and unforeseen happening occurs which produces or brings about the result of injury or death.*

"The appellants claim support from *Zinn v. Pride Insurance Co.*, 130 Maj. 2d 921 (20XX-42). In that case, a doctor intentionally made a small incision in the insured's arm to withdraw blood to evaluate treatment of the insured's high blood pressure. The usual precautions for this routine procedure were taken, but the insured nevertheless developed blood poisoning and died from bacteria introduced into the incision. The court found an accident:

Although the incision which afforded a channel of entry for the germs was intentionally made, the entry of the deadly germs was not normally effected, but was wholly unintentional, unforeseen, and unexpected, and it was the admission of those germs, rather than the intentional act of the doctor, which caused the death. Id. at 923.

In reaching its conclusion, the *Zinn* court articulated the rule which was the majority rule in 20XX-42 as it is today, that 'death is accidental, even though the means are intentional, where the results

are unusual, unexpected, or unforeseen.' *Zinn*, at 927.

"But in this case, Dotts intended to slap McKee. His act and the results were foreseeable.

"Having found no material factual issue of whether Mr. McKee's death resulted from the slap, as a matter of law there was no occurrence within the meaning of the insurance policy. We therefore do not address whether the insured's criminal convictions established he subjectively 'expected' or 'intended' to inflict bodily harm on the decedent.

"The judgment of the Superior Court is affirmed."

Reliance Insurance Company v. Randall, 284 Maj. 2d 174 (20XX-1):

"The Reliance Insurance Company refused to defend Boe in a negligence action, claiming the action as described in the complaint was not covered by Boe's insurance policy. Plaintiffs obtained a default judgment against Boe for one million (\$1,000,000) dollars which was \$500,000 in excess of Boe's insurance policy. Boe claimed that the insurance company negligently and in bad faith breached its duty to defend him. Boe claims punitive damages for the company's tortious breach of contract and for his emotional distress because of the company's failure to defend him. Boe assigned his claim against Reliance Insurance Company to plaintiff Randall.

"The trial court ruled that, in determining whether the insurer was guilty of negligence or bad faith in failing to defend the action and to settle for an amount in excess of the policy limits, the jury should consider whether the insurer calculated its potential liability for failure to defend; investigated the potential recoverable damages; concluded what the settlement value of the case would be

after the default judgment; initiated or pursued settlement negotiations after the default judgment; or sought to enlist a contribution from its insured commensurate with that portion of the settlement which the insured should contribute.

"Major courts have adopted the bad-faith test in cases involving an insurer's refusal to settle within the policy limits, and would likewise apply the bad-faith test to excess judgment cases where the insurer wrongfully refused to defend because of a denial of coverage and refused to settle within the policy limits during the course of the litigation.

"The duty of a liability insurer to defend its insured is distinct from, and broader than, the duty to indemnify; the policy gives the insurer the right to defend and to control the investigation, handling, and settling of a lawsuit; and the duty to the insured in the exercise of those rights is in the nature of a fiduciary one, requiring the exercise of good faith. The concept of bad faith presupposes that the company is not attempting to exercise skill, judgment, and fidelity on behalf of the insured.

"Damages for an insurer's emotional distress, caused by his insurer's bad-faith refusal to defend an action against him, have been allowed on a tort theory, *Great Blue Insurance v. Herron*, 268 Maj. 3d 420 (20XX-5). In *Great Blue Insurance*, an automobile liability insurer initially refused to defend a personal injury action against its insured, claiming noncoverage. The insured then sued the insurer in breach of contract and tort before the personal injury action was tried. The insurer undertook the defense of the action against the insured under a reservation of rights. The *Great Blue Insurance* court held that, although the personal injury action against the insured was still pending, the insured was en-

titled to recover, in tort, for the insurer's breach of the implied covenant of good faith and fair dealing. Damages were allowed for the following injuries: (1) emotional distress resulting from the insurer's initial refusal to defend, and the uncertainty as to whether it would actually defend the personal injury action; and (2) severe emotional distress intentionally inflicted by the insurer. The court stated that to limit the recovery by the insured and the liability of the insurer to the amount of the policy plus attorney's fees and costs in instances in which the insurer has breached its duty to act fairly and in good faith by failing to defend the insured would, in many instances, preclude recovery by the insured for damages for emotional distress.

"Punitive damages for tortious breach of contract and/or emotional distress is recognized by some courts. Major courts, however, have disallowed all but consequential damages for breach of contract. In *Randall's case*, the insurance company undertook extensive investigation before refusing to defend and in good faith refused to defend. The company is liable only for consequential damages since it acted in good faith."

Research Memorandum #83: Motion to Strike

Oakes v. City of Fairhope, 200 Maj. 2d 826 (20XX-26): “A motion to strike will be granted if all or part of a pleading is scandalous or irrelevant to the issues of a case. When a word or statement in a pleading casts a derogatory light on someone (usually a party to the action), then the matter is deemed scandalous or indecent and is stricken from the pleading. A court can strike from the pleadings any matter that is immaterial in developing the issues of a case.

“Material in a pleading is often not stricken because of its relevance and truthfulness in relation to the issues of the case even though the material may embarrass or offend the party against whom the pleading is filed, if it is designed to have a useful and necessary effect upon the case’s outcome and no prejudice would result to the defendant.

“A motion to strike regarding material in a pleading is usually allowed when an allegation is frivolous, unnecessary, sham, impertinent, or scandalous.”

In re Stevens, 144 Maj. 2d 421 (20XX-30): “Statement that father had been previously convicted of carnal abuse of his child under the age of 18 was not a scandalous prejudicial matter unnecessarily inserted in the pleadings. Therefore, the trial court was correct in its ruling to not strike because of its relevance to the issue of the abuse of the child. Judgment affirmed.”

Thompson v. United States, 143 Maj. 2d 17 (20XX-31): “Action by alleged owner of trust deed and note to quiet owner’s title to trust deed and note against the United States. The United States government consequently withheld the deed and note as security for tax purposes. The complaint contained abusive and reproachful language that was not necessary or material to the cause of action.

“The trial judge correctly ordered that the word ‘feloniously’ be stricken wherever found in the complaint and the plaintiff redraft and file an amended complaint. Judgment affirmed.”

Research Memorandum #84: Remarriage

Stuart v. Clark, 260 Maj. 3d 111 (20XX-6):

“*Stuart* is an action to recover for the wrongful death of a telephone utility employee who was electrocuted. The Major Superior Court allowed evidence of the surviving spouse’s remarriage or prospective remarriage. We find that such admissibility was error. We agree with *Wakefield v. Wakefield*, 1 Maj. 4 (20XX-71), which enunciated the rule:

The exclusion of such evidence leaves to the understanding and experience of the jury the possibility of remarriage and avoids *excursions into collateral investigations* which, even if allowed, would leave a jury in no better than a speculative position. If we should enter upon an inquiry as to the relative merits of the new husband as a provider, coupled with his age and employment, unavoidably we should embark upon a realm of *speculation*. Adherence to the rule is consistent with the holding that, upon the death of the first husband, there is an *immediate, final, and absolute vesting* in his widow of a claim on that account. (Id. at 14.)”

Dissent. Fargut and Sleaver, JJ.: “Since formulation of the rule, times have changed. We are in an era of looking at costs, mitigating damages, and allowing recovery for compensation. We no longer, in this era of litigiousness, can afford windfall plaintiff recoveries. Evidence of remarriage is relevant to the measure of damages and more probative than prejudicial, and this evidence should be admissible because it is a change in the conditions on which the suit is based. Such information should be available to the jury to mitigate damages.”

Research Memorandum #85: Wrongful Death; Emotional Distress

Restatement (2d) of Torts §281, State of Major (20XX-1): “An action based on common law negligence requires that there be a duty, a breach of that duty, and that the breach be the proximate cause of harm.”

Meva v. Dalbert, 276 Maj. 3d 60 (20XX-3): “This case raises the issue of liability of a tavern owner for injuries to patrons. In an establishment where intoxicating liquors are sold the tavern owner/operator, while not an insurer of the safety of his patrons, owes a duty to his patrons to exercise reasonable care and vigilance to protect them from foreseeable injury, mistreatment, or annoyance by other patrons. Richard was a patron who had caused a fight earlier in the evening, and was told to leave. Dalbert, an experienced tavern keeper, ‘wise in the ways of pugnacious patrons,’ instructed the bartender to call the police if Richard returned and to pass those instructions on to the bartender coming on shift. The duty of care was breached by the bartender when she did not call the police or eject Richard, who later returned. Richard subsequently injured plaintiff, Meva, a patron in the tavern.

“Foreseeability of risk of harm to plaintiff was established when Dalbert testified at trial, ‘Under the circumstances known to me on the evening in question, and with my experience in the tavern business I guess I could anticipate that Richard might well return to renew his quarrel with Meva.’ See Trial Transcript at 128.”

Dissent. Beaver, J.: “I sharply differ from the majority. A duty of reasonable care requires notice of the peril confronting a guest. There was no actual notice to the tavern operator of peril to his guest where the plaintiff’s injury was caused by a sudden affray on a busy evening. Absent actual notice, there was no foreseeable risk. I would reverse the judgment.”

Nan v. Brady, 280 Maj. 3d 22 (20XX-2): “Brady the tavern owner was not liable to a patron shot by a third person. Nan was a patron at Brady’s tavern. Nan was dancing with the assailant Colby’s estranged girlfriend. The occurrences were so highly extraordinary or improbable as to be wholly beyond the range of foreseeability. We hold that the shooting of Nan

was not foreseeable and therefore there was no breach of any duty owed by the tavern owner to the patron.

“The duty to use care to avoid injury to others arises from the foreseeability of the risk created,’ see *Meva v. Dalbert*, 276 Maj. 3d 60 (20XX-3). The foreseeability of risk was not evident where there was a slapping incident between Nan and Colby two weeks before; the estranged girlfriend had advised Brady of her fear that she would be killed by her ex-boyfriend and the girlfriend had requested Brady to call the police if the boyfriend appeared.

“The factors which we considered in determining that the owner Brady did not breach the duty of reasonable care were that the assailant boyfriend appeared calm (although he had been drinking for four hours previously at another bar and was refused service there); Brady had not seen or served the assailant the night of the shooting; Brady had no personal knowledge of when the assailant had threatened the girlfriend, what the threat was, or that he had a propensity to use a gun; the assailant entered through a back door used mainly by daytime deliverymen; and the incident took fifteen to twenty seconds from the time the assailant confronted the plaintiff until the time the plaintiff was shot. Judgment affirmed.”

Michaels v. Seawind Tavern, Inc., 280 Maj. 3d 116 (20XX-2): “This case concerns a wrongful death action. Plaintiff’s husband was shot while at the Seawind Tavern. The trial court found that the plaintiff’s husband’s injury was not foreseeable even though three weeks earlier the assailant had been removed from the tavern for carrying a concealed weapon. The court held that the tavern owner and his agent were not required to search the assailant every time he entered the tavern.

“We agree with the factors the Court of Appeals used in affirming the trial court judgment that the assailant’s acts were not foreseeable. The assailant appeared quiet and in full control; he had only two drinks in two hours; his gun was concealed (hidden in a shoulder holster under a leather jacket); and the gun discharged accidentally when the assailant attempted to unload it under the table. Because the assailant did not appear intoxicated, there was no notice (or it was not foreseeable) that the assailant posed a threat to other patrons, see dissent in *Meva v. Dalbert*, 276 Maj. 3d 60 (20XX-3). We reject the notion that liability should be imposed because the tavern served intoxicants to an already intoxicated

person. ‘His state of sobriety must be judged by the way he appeared to those about him, not by what a blood test later reveals.’ See *Nock v. Newcity*, 143 Maj. App. 2d 4 (20XX-29).

“Strict liability should not be imposed against one who furnishes liquor to a patron who commits a tort while intoxicated. Here the assailant had a .16 blood-alcohol reading. The common law does not permit liability to attach without a concomitant showing of a violation of an established standard of reasonable care thereby causing foreseeable injury. *Nock v. Newcity*, supra at 917. The defendant’s employees did not have notice that they were furnishing liquor to an individual who was intoxicated where he had ordered only two drinks while in the tavern, he was never boisterous, and he appeared quiet and in full control of his faculties.”

O’Leary v. Johns, 268 Maj. 3d 576 (20XX-5): “The defendant had a Christmas party and supplied food, refreshments, and alcoholic beverages. Mr. Wolf, a friend of the defendant Johns, attended the party and became intoxicated. Wolf later drove away from the party and struck plaintiff, O’Leary. Plaintiffs asserted the defendants were negligent because they furnished alcohol to Wolf knowing that Wolf was already intoxicated and that Wolf would be unable to safely drive away from the party.

“We reject plaintiff’s claim that the furnishing of alcohol to a person already intoxicated was negligence as a matter of law. Plaintiffs relied upon the following statute:

(a) No person shall sell any liquor to any person apparently under the influence of liquor.

(b) Every person who violates any provision of this title or the accompanying liquor board regulations shall be guilty of a violation of this title, whether otherwise declared or not, and is subject to a fine of \$1,000. Violation of this statute is not a criminal offense.

“There is no clear legislative intent to create a right to recover civil damages for those who were engaged in a ‘purely social setting.’ The expansion of such liability is at this time within the province of the legislature. We choose to not address it at this time.”

Smith v. Lice, 269 Maj. 3d 800 (20XX-5): “We affirm the dismissal of plaintiff’s claim upon summary judgment. Both the trial and appellate courts correctly rejected plaintiff’s argument that liquor furnished to one in violation of a statute imposes civil liability.

“Unless the recipient is obviously intoxicated, in a state of helplessness, or within a special relationship to the supplier, any further expansion of liability as a policy decision should be made by the legislature after full investigation, debate, and examination of the relative merits of both positions.

“The trial court found that Smith ‘was not in such a state of helplessness or debauchery as to be deprived of his will power or responsibility for his behavior.’ “

Old v. Bacon Inn, 284 Maj. 3d 777 (20XX-1): “We affirm the Appellate ruling that the violation of a Major statute prohibiting the sale of alcohol to minors constitutes negligence per se. In *Old*, a restaurant owner continued to serve seventeen-year-old Richard Old despite the fact that Old was obviously intoxicated. Old drove away from a cocktail lounge and was killed in a one-car accident. The plaintiffs reasoned that since a specific statute makes the furnishing of alcohol to minors a misdemeanor, the unlawful furnishing constituted negligence per se. We agree.”

Burger v. Calhoun, 274 Maj. 3d 42 (20XX-4): “Contributory negligence of a decedent can be imputed to the heirs in a wrongful death case. But since the adoption of the comparative fault doctrine in our state, we no longer may need to consider assumption of risk as a necessary defense. The appellate court properly ruled that the jury should have been instructed that it should consider contributory negligence of plaintiff’s decedent Burger as being a proximate cause of decedent’s injury and death. Decedent Burger was dancing with defendant Calhoun’s ex-girlfriend at the time decedent Burger was shot. Defendant Calhoun stated, ‘Shove off or I’ll shoot you.’ The girlfriend told Burger to ignore Calhoun. Calhoun repeated his threat and Burger, not knowing Calhoun had a gun, said ‘Bug off, twerp.’ Calhoun then shot Burger.”

Noe v. Flowers, 281 Maj. 3d 400 (20XX-8): “Judgment affirmed for plaintiffs for outrageous infliction of emotional distress (OIED). Plaintiff parents witnessed defendant lifeguard’s

unsuccessful rescue and revival of plaintiffs' four-year-old daughter from the lake into which she fell from a dock. Lifeguards were not equipped with a boat or flotation devices, and this negligence delayed their efforts in attempting to reach and rescue the child. Plaintiffs were present when their daughter went underwater and watched as their recovered child gasped for breath and died during resuscitation attempts. Plaintiffs after the incident suffered from physical and mental injuries: headaches, nervous indigestion, insomnia, and emotional distress.

"Plaintiff must prove the elements of OIED: duty, breach of that duty by outrageous conduct, proximate cause, and damage. We are continually concerned about the genuineness of plaintiffs' emotional distress and the potential scope of defendant's liability. Judicial reluctance to recognize OIED has been grounded in a variety of policy rationales: (1) the difficulty of quantifying intangible injuries by objective standards; (2) the tenuous proximate cause relationship between defendant's conduct and the plaintiffs' subjective emotional response; (3) the specter of a flood of fraudulent claims; and (4) unlimited liability for defendants.

"To address these policy considerations, the Major courts have adopted additional requirements. First, not all acts give rise to the tort of OIED. Only acts which, if considered by a reasonable person, would be outrageous or reckless will be considered to be actionable.

"Second, a defendant has a duty to not inflict emotional distress upon foreseeable plaintiffs. Not all bystanders who observe the bodily injury caused by the defendant's negligence are 'foreseeable plaintiffs.' It would be unreasonable if a defendant who imperiled one person were required to compensate all bystanders whose emotions were disturbed by the conduct. We have held that, as a matter of law, a family member who was present at the scene, as the plaintiffs were here, or arrive shortly thereafter was a 'foreseeable plaintiff' and that others are not.

"Third, also as a product of the policy considerations and common sense, this court has also required that the plaintiff prove that the plaintiff's observations of the injured victim caused emotional distress, that the plaintiff's mental distress must be the reaction of a normally

constituted reasonable person and that distress manifested itself in objective symptoms."

Gordon v. Guterson, 367 Maj. 3d 540 (20XX-4): "Trial court's summary judgment dismissal of an action for outrageous infliction of emotional distress is reversed. Plaintiff, Laura Gordon, is the sister of decedent, Tag Gordon. Tag Gordon and his friend, Seth Cunningham, were driving to Snowpintal Ski Resort. His sister and her boyfriend, Robert Garfield, were following a few miles behind. They planned to spend the morning skiing as a group, but, because Laura Gordon and Robert Garfield intended to return home early in the afternoon, they took separate cars. Tag Gordon pulled over to the side of the road to put on tire chains when defendant Guterson's car drove onto the shoulder of the road, knocking Tag Gordon into the ditch, causing multiple fractures and severe lacerations to his body and face. Within a minute, his sister's car arrived at the scene, and she saw her severely injured brother lying in the ditch, crying out in agony and calling her name. He died while she looked on. Laura Gordon suffered from panic, anxiety, shock, and ongoing emotional distress.

"The appellate standard for reviewing a trial court's ruling on a motion for summary judgment is de novo. Summary judgment should only be granted if the evidence on record establishes that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. It should be granted for the defendant if the plaintiff cannot establish a prima facie case for the elements of the claim. The court considers the facts and inferences in the light most favorable to the nonmoving party.

"In *Noe v. Flowers*, 281 Maj. 3d 400 (20XX-8), we rejected the bright-line proposition that a relative must be present at the time of the accident in order to recover for emotional distress. We have instead adopted the position that a relative may recover if the distress was caused by observing the injured person at the scene shortly after the event and before a substantial change has been made in the victim's condition or location. This reasoning acknowledges the horror of seeing the victim shortly after the injury without creating liability for every grieving relative. In this case, the type of traumatic event and timing required by this tort are present. Laura Gordon arrived immediately after her brother had been struck. She observed his crushed, bleeding body lying in the ditch and that he was crying out in agony. Worse yet, she saw him die.

“For liability to pass to the defendant in an OIED claim, the plaintiff must be able to first prove a causal link between what the plaintiff observed at the scene and the resulting emotional distress. Second, the plaintiff must establish the emotional distress with evidence showing a manifestation of objective symptoms. This requirement may be satisfied by medical evidence and emotional distress susceptible of medical diagnosis. The medical diagnosis must establish that the emotional distress stemmed from the injury to a relative. In the case at hand, psychologist Dr. D. Petrie’s deposition attributed Laura Gordon’s emotional distress to observing her brother’s injuries and death. Dr. Petrie also diagnosed Ms. Gordon’s post-traumatic stress disorder and enumerated the symptomatology of the disorder. This evidence was sufficient to raise a material issue as to this element of OIED.”

Martin v. AJB, Inc., 268 Ill. App. 3d 11 (20XX-1): “During January of 20XX-2, Donovan and James Barnes shot and killed Larry Martin. Plaintiffs seek to recover for the injuries suffered by Martin, but not from the Barnes brothers, who have little or no money. Plaintiffs have filed this action against AJB, the manufacturer of the gun used by the Barnes, alleging that the gun was an unreasonably dangerous product and that AJB was therefore strictly liable for the damage caused by the weapon. The trial court found no support for plaintiffs’ theory in Major law and dismissed the suit for failure to state a cause of action.

“Plaintiffs’ claim, in essence, is that manufacturing and selling handguns to the public is an ultra hazardous activity that gives rise to strict liability for any damage done by the guns.

“Illinois recognizes strict liability under two theories: unreasonably dangerous defective products and ultra hazardous activities. Strict products liability follows the Restatement (Second) of Torts (20XX-23), which imposes strict liability upon one ‘who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property.’ Under Illinois law, a product is ‘unreasonably dangerous’ when it is dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics.

“Plaintiff has not directly pursued a products liability approach here because the gun involved in the shootings was not defective and posed no obvious danger that required warning, and thus was not unreasonably dangerous. Judgment affirmed.”

Olen v. Richardson Guns, Inc., 269 Md. App. 3d 14 (20XX-5): “Olen was injured when an unnamed assailant shot him in the chest during an armed robbery of the grocery store where he was employed. The weapon used in the crime was a Richardson Revolver Handgun, designed, marketed, assembled, and sold by Richardson Guns, Inc.

“Olen and his wife filed a tort action against Richardson Guns, Inc. in the Circuit Court for Mont County, setting forth several theories for recovery. The first claim was strict liability, plaintiffs claiming the handgun was ‘abnormally dangerous.’ Claim two, also strict liability, alleged the handgun was defective in ‘marketing, promotion, distribution and design,’ rendering it ‘unreasonably dangerous.’ Claim three rested on a negligence theory. Claim four, for loss of consortium, was due to negligence.

“The trial court dismissed plaintiffs’ claims for failure to state a claim for relief. We reverse and remand.

“This court has repeatedly said, ‘The common law is not static; its life and heart is its dynamism – its ability to keep pace with the world while constantly searching for just and fair solutions to pressing societal problems.’ *Harris v. Board of Educ.*, 295 Md. 442 (20XX-5). Indeed, we have not hesitated to change the common law to permit new actions or remedies where we have concluded that such course was justified.

“In our view, generally to impose strict liability upon the manufacturers or marketers of handguns for gunshot injuries resulting from the misuse of handguns by others would be contrary to Maryland public policy as set forth by the Legislature.

“There is, however, a limited category of handguns which clearly is not sanctioned as a matter of public policy. To impose strict liability upon manufacturers and marketers of these handguns, in instances of gunshot wounds caused by criminal use, would not be contrary to the policy embodied in the enactments of the General Assembly. This type of handgun, commonly known as a ‘Saturday Night Special,’ presents particular problems for law enforcement officials. Saturday Night Specials are generally characterized

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by short barrels, light weight, easy concealability, use of cheap quality materials, poor manufacture, inaccuracy and unreliability. These characteristics render the Saturday Night Special particularly attractive for criminal use and virtually useless for the legitimate purposes of law enforcement, sport, and protection of persons, property and business.

“The legislative policies of both the United States Congress and Maryland Assembly reflect the view that Saturday Night Specials comprise a distinct category of handguns that, because of their characteristics, should be treated differently from other handguns. See Gun Control Act of 1968, 18 Federal Code §291; Maryland Code §30 (20XX-6).

“Saturday Night Specials are largely unfit for any of the recognized legitimate uses sanctioned by the Maryland gun control legislation. They are too inaccurate, unreliable and poorly made for use by law enforcement personnel, sportsmen, homeowners or businessmen. The chief ‘value’ a Saturday Night Special handgun has is in criminal activity, because of its easy concealability and low price.

“Moreover, the manufacturer or marketer of a Saturday Night Special knows or ought to know that it is making or selling a product principally to be used in criminal activity. For example, a salesman for Richardson Guns, describing what he terms to be a ‘special attribute’ of a Richardson Handgun, was said to have told a potential handgun retailer, “If your store is anywhere near a high crime area, these ought to sell real well. This is more assuredly a crime gun.’

“For the above reason, we conclude that it is entirely consistent with public policy to hold the manufacturers and marketers of Saturday Night Special handguns strictly liable to innocent persons who suffer gunshot injuries from the criminal use of their products. In light of the ever-growing number of deaths and injuries due to such handguns being used in criminal activity, the imposition of such liability is warranted by today’s circumstances.

“Reversed and remanded in accordance with this opinion. Each party to pay its own costs.”

Research Memorandum #86: Expert Techniques or Methodology for Reliability

Dilbert v. Monroe, 23 Maj. 3d. 471 (20XX-5): “Before the jury should be allowed to hear expert testimony – whether of a scientist or a tradesperson – the court must act as ‘gatekeeper,’ ensuring that the testimony is based upon ‘reliable methodology.’ While this inquiry is a flexible one, not rigidly frozen in some litany of approved factors, we find that in making the determination of whether a particular expert’s methodology is sufficiently reliable to be considered by a jury, the court may wish to consider factors such as:

- Whether the technique or methodology can be or has been tested.
- Any known error rate for the technique or methodology.
- The existence of any accepted standards for applying the technique or methodology.
- Whether the technique or methodology has been published in peer-reviewed journals.
- Whether the technique or methodology is “generally accepted” in the relevant scientific community.
- Whether the expert used a technique or methodology he or she would use in his or her daily work.
- Whether any tests relied upon in the expert’s opinion were done in the course of the expert’s regular work, or were done solely in preparation for litigation.
- Whether governmental or private organizations utilize the results of the technique or methodology; whether insurance companies pay for it, etc.”