

The 2014 New Hampshire Mock Trial Case

originally authored by the
SUBCOMMITTEE ON THE PROBLEM
YLD HIGH SCHOOL MOCK TRIAL COMMITTEE
STATE BAR OF NEW HAMPSHIRE

IN THE SUPERIOR COURT
OF NAYAK COUNTY
STATE OF NEW HAMPSHIRE

State of New Hampshire)	
)	Criminal Action
v.)	No. 2014-MT
)	
Sam Cunningham)	

NOTE: All characters, names, events, places, and circumstances in this mock trial case are fictitious.

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INTRODUCTION



Richie Cunningham came from common stock. He moved to the coastal New Hampshire town of Miltonville in 1929 to seek his fortune in the lucrative shrimping industry. After finding only day labor for several weeks he was fortunate enough to be hired by Abby Walter to operate her newly obtained shrimp boat, the *Jodocus*. The *Jodocus* was a small vessel. It seemed old, but everything was fully functional. It was meant to be operated by a small crew of no more than five, but as few as two people could operate the boat easily.

Walter was a local tycoon who enjoyed dangerous living and risky ventures. Walter wasn't a shrimper, she won the small boat in a game of five card stud from Annie Wang, a mysterious person who told stories of the boat's good luck and invulnerability. With the right people on the boat, Wang said, a shrimp haul unlike any other could be harvested. Each large harvest would be preceded by a dream of a man with a pilgrim's staff in his hand and a crown at his feet. Wang also warned that things could be very dangerous if someone manned the boat with an impure heart...that "the harvest would dry up and the seas would reclaim the magical boat." Walter would often talk about how she was predestined to win the boat, while her

poker hand was poor, it turned out that Wang folded on a bluff.

Richie worked the shrimp boat for Walter as well as he could, but he did not seem to find the great harvests that Wang had promised. He never had the dream that would signal the bountiful harvest. All in all, it seemed to be a lean shrimping season that year.

What nobody could predict was that Walter would lose most of her earnings in the stock market crash of October 1929. The crash devastated the entire economy of Miltonville; everyone was worried about what would happen to the local shrimping industry. Nobody was more worried than Richie Cunningham, whose whole livelihood rested on Walter. Walter, it turns out, was answering several margin calls.

One day Walter called Cunningham into her office. Cunningham was expecting the worst. He worried that the *Jodocus* was going to be sold to help pay some of the enormous debts Walter had amassed. However, Walter had other plans. She told Cunningham that he wanted to give him the boat, but her creditors would seek to void the transfer. Therefore, Walter and Cunningham played a single hand of five card stud, with the boat as the pot. Cunningham's heart sank when he saw his poor draw. As he was about to play them, Walter interrupted him and said, "This game is too rich for me, I fold." As she handed over the ownership papers, Walter advised Cunningham to take the boat and sail up the coast to start anew in another town. Cunningham left with a handshake and a sincere thanks.

Cunningham wound up in Campbell Shores with very little fuel and no money. Soon after he arrived in Campbell Shores, he met John Smith at a local bar, the Dew Drop Inn. Smith also lost much of his wealth in the crash, but had managed to keep some capital. The two spent hours discussing the possibility of a partnership. Smith said it was a match made in heaven, Cunningham had the street savvy and muscle, while Smith has some start-up capital and connections. When no agreement was reached that night, Cunningham went back to his modest apartment to sleep on it. That night he had the prophesied dream of the man with a pilgrim's staff in his hand and a crown at his feet. Early the next morning Richie and John agreed to set out that very day to try their luck at shrimping. While Smith was not skilled at shrimping, he held his own. They returned to port with a huge load of shrimp and a handshake partnership agreement.

Despite the economy, the modest shrimping company became profitable. Eventually, Cunningham moved into the house next door to Smith. Cunningham and Smith were 50/50 partners, but Smith was always telling his family that they should have more...after all, it was his money on the line, not Cunningham's. Smith had some great ideas that could put all of them in the most expensive houses on Easy Street. Cunningham, on the other hand, was always bringing home stories of the underhanded ideas Smith came up with. He was always afraid that the ideas could wind them up in jail...Cunningham liked to think of himself as the conscience of the company.

As the years went by both Richie and John married and had families. Richie's oldest child, Sam and Jude, John's oldest child, grew up as best friends. Sam and Jude were like their fathers in many ways, and by the time Richie and John died, leaving the company to Sam and Jude, they had fallen into the same patterns of conflict that had plagued their fathers.

STIPULATIONS

1. All exhibits included in the problem are authentic and accurate in all respects, and no objections to the authenticity of the exhibits shall be entertained.
2. The signatures on the witness statements and all other documents are authentic.
3. There are no costume options permitted.
4. The Charge of the Court is accurate in all respects; no objections to the charge shall be entertained.
5. Chain of custody for evidence is not in dispute.
6. No demurrer to the indictment shall be allowed.
7. Exhibits 3, 6, 7 and 10 were kept in the ordinary course of business or as part of the ordinary conduct of an organization or enterprise where it was part of the ordinary business of that organization, business, or enterprise, to compile the data or information. The information was made for the purpose of recording the occurrence of an event, act, condition, opinion, or diagnosis that takes place in the ordinary course of the business or enterprise, the entry in the record or the compiling of the data was made at or near the time when the event took place, and the recording of the event was made by someone who has personal knowledge of it. The person whose name appears on the document either is the custodian of the records or should otherwise be found qualified by the Court to admit the exhibit into evidence. The custodian of Exhibit 6 is Amelia/Al Clark.
8. Sam Cunningham and Jude Smith are the same gender.
9. Sam Cunningham is right-handed.
10. A *Jackson v. Denno* hearing was conducted, and the statements made by Sam Cunningham were found to be voluntary.
11. The knife pictured in Exhibit 2 is taken from Robert Peck's *Toolmarks and Bitemarks Through the Ages* and is a close approximation of the knife that Sam Cunningham inherited from his/her father.
12. No objection or argument may be made as to the absence of the life preserver at trial, gold pendant or empty knife sheath.
13. The information provided in the Introduction is of no legal consequence in terms of the trial and is not admissible for impeachment purposes or for any other purpose.
14. When the squall hit the *Jodocus*, the boat was one mile off the shore of Nayak County, New Hampshire.
15. Stipulations cannot be contradicted or challenged.
16. The Defendant has plead not guilty. No changes to this plea will be considered.
17. Should a party wish to introduce evidence covered by rule 609(b), they may alert the court and opposing counsel to their intention during pre-trial matters, in lieu of the advanced written notice required by the rules.

WITNESSES

The following witnesses are available to be called by the parties.

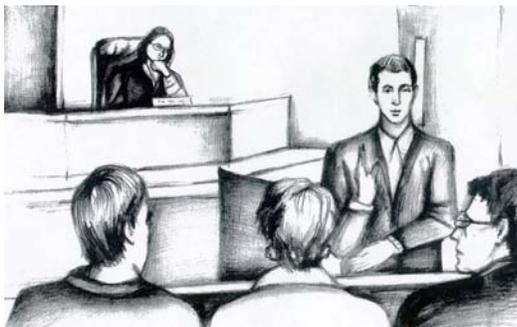
For the Prosecution—

Chief Marty Brody, M.D.
Amelia/Al Clark
J. "Salty" Golding

For the Defense—

Sam Cunningham, defendant
Al Durkin
Dr. Corinne Ruth, M.D.

All witnesses may be female or male.



EXHIBITS

Teams in competition may use the following exhibits. They are pre-marked and are to be referred to by number, as follows:

<u>Exhibit No.</u>	<u>Exhibit Description</u>
1	Childhood IOU
2	Photo of Antique Knife from R. Peck's <i>Toolmarks & Bitemarks Through the Ages</i>
3	Admission/Progress/Discharge Report for Sam Cunningham
4	Transcript of Sam Cunningham's first statement to Chief Marty Brody
5	Transcript of Sam Cunningham's second statement to Chief Marty Brody
6	Transcript of Radio Transmission
7	Incident Report
8	"Salty" Golding's conviction
9	Al Durkin's conviction
10	Medical Examiner's Report



MEDICAL TERMS DEFINED

Abrasions = Scrapes

Anterior = The front of something.

AOB = Alcohol On Breath

Aspiration = The act of drawing a substance in or out by suction.

Atraumatic = undamaged

Avulsion = The state of something being torn forcefully from a structure

Auscultation = The clinical procedure of listening to something.

Bilaterally = On both sides

BS = Breath sounds

Calvarium = top portions of the skull

Carotid vessels = major blood vessels in the neck that carry blood to the brain.

CN = Cranial nerves

Cricoid = a type of cartilage in the lower trachea.

CTA = Clear To Auscultation

CVAT = CostoVertebral Angle Tenderness

Cyanotic = Dusky or bluish in color

DTR = Deep Tendon Reflexes

Ecchymotic = Bruised, areas of bruising

ED = Emergency Department

EMS = Emergency Medical Services

Epidural, subdural and subarachnoid hemorrhage = blood in the spaces between the coverings of the brain and spinal cord.

Epiglottis = the piece of tissue at the back of the throat that closes the trachea while swallowing (which is why you can't breath and swallow at the same time).

Erythema = Redness, being reddened.

Exudates = Drainage, can be like water or pudding in consistency, its presence may indicate infection.

Flexor = The state of being flexed, the opposite of being extended.

Grossly Intact = Totally without abnormality

HD = Hospital Day

Hepatosplenomegaly = Enlargement of the liver and spleen

Hyoid = a bone under the jaw just behind the chin

Hypothermia = A condition that can lead to shock or even death in which body temperature is lowered below normal.

Lacerations = Cuts

Lividity = skin discoloration, from pooling of blood - blood pools at the lowest point in the body if there is no circulation, i.e. death.

MAE = Moves All Extremities

Mandible = jaw

MS = Musculoskeletal

Normocephalic = Normal shaped head.

O₂ Saturation = A measure of how saturated the body's hemoglobin is with oxygen. Can be measured non-invasively or with lab tests.

Orbital bones = bones around the eyes.

Oropharynx = The mouth and back of the throat.

PE = Physical Examination

Perineum = genital area

PERRLA = Pupils Equal, Round, and Reactive to Light and Accommodation.

Plantar Response = A primitive reflex to test spinal cord function.

Posterior = The back of something.

Rigor mortis = the stiffness occurring in dead bodies

RRR = Regular Rate and Rhythm.

Sclera = The white part of the eyes.

Thumb = finger number one.

Thyroid = a gland in the lower portion of the neck

Trachea = windpipe



**IN THE SUPERIOR COURT OF NAYAK COUNTY
BILL OF INDICTMENT**

COUNT ONE: MURDER (O.C.N.H.A. § 16-5-1 (a))

THE GRAND JURORS selected, chosen and sworn for the County of Nayak, to wit:

- | | |
|--------------------------|----------------------|
| 1. Alexander Feiock | 2. Geoffrey Burch |
| 3. Wendy Cai | 4. Laura Dwyer |
| 5. Kate Orazem | 6. Andrew Harrison |
| 7. Amarto Bhattacharryya | 8. Brian Jackson |
| 9. Kyle J. Skinner | 10. Marian Roessling |
| 11. John C. Carbo III | 12. Lindley Shutz |
| 13. Katherine Powers | 14. Marcia Spencer |
| 15. Anna Cox | 16. Walter Stahr |
| 17. Daniel Meadors | 18. Dick Vassar |
| 19. Stephen Silva | 20. Andrew Cox |
| 21. Lionel Rodriguez | |

In the name and behalf of the citizens of New Hampshire, charge and accuse SAM CUNNINGHAM with the offense of MURDER, for that the said SAM CUNNINGHAM, in the territorial waters of the County of Nayak and State of New Hampshire, on or about October 27, 2013, did unlawfully and with malice aforethought, cause the death of Jude Smith, contrary to the laws of the State of New Hampshire, the good order, peace and dignity thereof.

COUNT TWO: FELONY MURDER (O.C.N.H.A. § 16-5-1 (e))

And the jurors aforesaid, in the name and behalf of the citizens of New Hampshire, further charge and accuse SAM CUNNINGHAM with having committed the offense of FELONY MURDER, for that the said SAM CUNNINGHAM, in the County and State aforesaid, on or about October 27, 2013, did unlawfully cause the death of Jude Smith, during the commission of a felony, to wit: aggravated assault, contrary to the laws of the State of New Hampshire, the good order, peace and dignity thereof.

COUNT THREE: POSSESSION OF A KNIFE DURING THE COMMISSION OF A CRIME (O.C.N.H.A. § 16-11-106)

And the jurors aforesaid, in the name and behalf of the citizens of New Hampshire, further charge and accuse SAM CUNNINGHAM with having committed the offense of POSSESSION OF A KNIFE DURING THE COMMISSION OF A CRIME, for that the said SAM CUNNINGHAM, in the County and State aforesaid, on or about October 27, 2013, did unlawfully possess a knife having a blade of three inches or more in length during the commission of a felony, to wit: murder, contrary to the laws of the State of New Hampshire, the good order, peace and dignity thereof.

COUNT FOUR: POSSESSION OF A KNIFE DURING THE COMMISSION OF A CRIME (O.C.N.H.A. § 16-11-106 (c))

And the jurors aforesaid, in the name and behalf of the citizens of New Hampshire, further charge and accuse SAM CUNNINGHAM with having committed the offense of POSSESSION OF A KNIFE DURING THE COMMISSION OF A CRIME, for that the said SAM CUNNINGHAM, in the County and State aforesaid, on or about October 27, 2013, did unlawfully possess a knife having a blade of three inches or more in length during the commission of a felony, to wit: felony murder, contrary to the laws of the State of New Hampshire, the good order, peace and dignity thereof.

STATEMENT OF CHIEF MARTY BRODY, M.D.

1. My name is Chief Marty Brody, M.D. I am the chief of police and chief medical examiner in Campbell Shores in Nayak County, New Hampshire. I grew up here in Campbell Shores and have spent most of my life here. I've always had an interest in science, particularly in biology. How I remember my childhood collecting shells on the beach and studying the tiny sea animals that lived in tidal pools! Throughout most of high school, my dream was to become a marine biologist. I even spent a few summers working on local shrimp boats to study how the fish swam together in schools. Don't let these shrimpers fool you, they know a lot more about weather and the way fish behave than you might think. They don't call it science, but it is.

2. When I went off to college at Yale University, I studied a lot more biology and I found myself getting more and more interested not only in human biology, but in forensic science: the way we determine what happens to a body after an event changes it. I soon switched my major to pre-med, and graduated at the top of my class. I became truly fascinated with forensic medicine in medical school. While most of my friends found working with cadavers disgusting, I thrived on it, taking all of my elective courses in the area of forensic pathology. After graduating with honors from Duke University Medical School, I did my residency in forensic pathology at Crawford Long Hospital in Atlanta, Georgia.

3. While I loved the intellectual stimulation of the teaching hospital, the wear and tear of Atlanta traffic took its toll on me. I was really excited when the New Hampshire legislature decided to fund a position for a forensic medical examiner through the New Hampshire Bureau of Investigation Crime Lab here in Campbell Shores. I have been Campbell Shores' Chief Medical Examiner for the last 30 years. Because we are just a community of 50,000 people, I soon discovered how inadequate our resources were for investigating deaths. As medical examiner, I was and am asked to perform autopsies in all cases in which the manner of death is questioned, not just in criminal matters. It was my job to bring our equipment and methods of investigation into the 20th and now the 21st century.

4. We have had a surprisingly high number of suspicious deaths here in Campbell Shores. I'm no sociologist, but the fact that most of our economy is based on shrimping, which is an industry wholly dependent on the weather, doesn't help. When money gets tight, tempers flare. Anyway, I have investigated several thousand deaths in my time as medical examiner. About 300 or so have actually involved criminal charges, but I have testified in the Superior Court of this County and every time I have been qualified as an expert in the area of forensic pathology.

5. For the first 18 years that I was medical examiner, I worked closely with our Chief of Police, Sam Quincy. Chief Quincy was very open to my ideas for updating the police approach to investigating all kinds of crimes, including deaths. Since we only have 20 police officers in Campbell Shores, it soon became obvious that the City wouldn't fund the training necessary to have any police officers qualified as forensic experts. I did the extra training necessary to become an expert in fingerprint comparison, trace evidence comparison, and toolmark comparison. In the course of this training, I also became familiar with the science of crime scene reconstruction.

6. Two years ago Sam Quincy was diagnosed with inoperable cancer. It was his dying wish that I take over as Chief of Police, a wish the City Council granted. I don't see any conflict between my duties as Chief Medical Examiner and Chief of Police. Really, one just seems to be a natural extension of the other. I would never let my duties as Police Chief cloud my scientific judgment. After all, it is my responsibility in both capacities to investigate cases to the best of my ability and determine whether or not there is sufficient

evidence to prove that any laws have been violated. I certainly don't get paid any differently if no one in a case is charged or convicted. Anyway, in my two years as police chief we've only had five suspicious deaths. This is the first one in that time that I've determined as medical examiner is a homicide.

6. Naturally, I've known Jude and Sam for years, and am well familiar with how Jude treated Sam. As police chief, the Harbor Master called me to break up a fight between the two a year or so ago. Even though it was clear from Sam's cut lip that Jude had been getting the better of the fight, Jude acted very self-righteous and accused Sam of being a drunk and attacking him/her. Sam did seem inebriated, but I felt like this was just a minor scuffle between two old rivals. I decided not to arrest either one of them and told them to go home. This seemed to infuriate Jude, who claimed s/he would use his connections to take away my badge. Of course, nothing came of it.

7. Anyway, I well remember the bad squalls we had last October 27th. As sometimes happens, violent squalls will hit us that weather people don't predict, and this was one of those times. This storm was one of the worst to hit our area, and several ships were damaged at their moorings. The *Jodocus* was the only boat from our area that was completely lost. The evening of the squalls I received several reports that Sam Cunningham and Jude Smith were missing in the storm. I contacted the Coast Guard, who was already scouring the area for wreckage.

8. I was called out to Amity Hospital at about one in the morning on the 28th. Sam Cunningham had been found clinging to some wreckage offshore, but Jude could not be found. I wanted to talk to Sam about what had happened on the boat. When I arrived at the hospital, I was told that Sam had a mild case of shock, so I postponed my interview. Later that morning the doctors told me that Sam had recovered, so I went back to the hospital to talk to him/her. When I saw Sam, s/he seemed awake and attentive, although clearly the worse for wear. S/he recognized me, and I asked how s/he felt. Throughout the conversation that followed, Sam clearly understood that I was there to find out what had happened to Jude. I made sure Sam knew that s/he wasn't under arrest, and that I would leave him/her alone if asked.

9. Sam seemed anxious to talk about his/her experience. S/he told me that s/he had gone out on the *Jodocus* looking for shrimp, but the nets kept coming up empty. Sam kept mentioning that Jude was verbally abusive of him/her and of his/her father's memory. Sam said that after several hours of fruitless searching, they decided to head back to port. It was then that the storm hit. The *Jodocus* was an older ship, and began to take on water. According to Sam, both s/he and Jude were afraid the ship would sink. Both of them ran to get life preservers, but there was only one in the chest. At that point, Sam said that Jude grabbed the only life preserver and pulled out his knife. Sam claimed that Jude swung at him/her a few times, telling Sam that s/he should ride the *Jodocus* to Davy Jones' locker if Sam loved the boat so much. Sam said that s/he lunged for the radio and tried to call for help, but Jude cut the cord with a knife.

10. Sam claimed that Jude suddenly put the knife to his/her throat and said, "I should kill you now, but I'll let the sea do my dirty work." Jude then put on the life preserver and went out on the deck. A huge wave immediately swept Jude overboard and Sam was alone. Sam said s/he dug through the cabin, but couldn't find any flotation devices. Sam said s/he was frantic because the boat was taking on a lot of water, so s/he went out on the deck. According To Sam, s/he was quickly washed overboard, and swimming for his/her life. S/he said s/he didn't know how s/he found the floating debris that saved his/her life, and remembered little of what happened in the water. After I talked to Sam, I thanked the doctors and left. I was told Sam was discharged later that day.

11. Two days later some beachcombers found a body on the beach, tangled in some seaweed. Naturally, I was called out to the scene and I instantly recognized the necklace Jude often wore; it was like a pendant

with his/her name, “Jude”, written in a cursive gold script on a short, thick gold chain. I also noticed an empty knife sheath on Jude's belt.

12. There were clearly some post-mortem injuries to the right extremities of the body and the face, which I attributed to exposure to days in the ocean and on the beach. I noticed that there was a life preserver tangled in the seaweed, so I recovered it as well. Jude's body was taken to the morgue, where I performed an autopsy. First, I retrieved Jude's fingerprints from his/her left hand and dental molds for identification purposes, which confirmed Jude's identity. Then I examined Jude's body thoroughly and found three stab wounds—one in the upper chest just to the right of the midline, and two in the upper left side of the back. None of the wounds punctured any major organs, but the left lung was nicked slightly. There was serious internal bleeding evident, as well as large amounts of seawater in the stomach and sinus cavities.

13. The stab wounds had an unusual pattern to them: jagged on one side. I consulted the definitive work on tool marks, Robert Peck's *Comparative Markings: Toolmarks and Bitemarks Through the Ages*. The serrations to the wounds matched the type of antique fishing knife Sam had inherited from his/her father. The knife has an 11” blade with a jagged or serrated edge on one side. Sam always carried that knife, according to what I was told. Interestingly, the life preserver had a jagged puncture in the chest, which roughly corresponded to the chest wound I found on Jude. Due to the damage to the preserver, I could not determine whether the knife caused that puncture, especially since there was no blood on the preserver.

14. Although Jude was stabbed, I couldn't determine whether the drowning or the stabbing was the preeminent cause of death. It was obvious, though, that the stab wounds severely weakened Jude's body. That combined with the damage to the lungs would contribute to his drowning. I ruled the death a homicide.

15. I went back to talk to Sam Cunningham after the autopsy. Based on what I had found, I felt that Sam was now a suspect in this homicide, so I read Sam his/her *Miranda* warnings. I asked Sam to tell me what happened, and s/he said that s/he had already told me everything about the incident. When I explained to Sam that Jude's body had been found on the beach, s/he said s/he wanted to talk to an attorney. I stopped questioning right away, and went to the judge to swear out warrants for Sam's arrest for murder.

16. I have read Dr. Ruth's affidavit, and her/his medical “opinions” about Cunningham's condition and the angle of the stab wound. While I like Corinne as a person, it is obvious that the psychiatric opinions are way out of her/his field of expertise. Corinne has no psychiatric training whatsoever. Also, the angle of knife wounds determining whether a blow was delivered in self-defense? Pure speculation. I think Corinne has been watching too many episodes of *Quincy*. I've been in this position for long enough to know that self-defense is a legal determination. As a scientist, without witnessing an altercation myself or having more evidence, I couldn't decide a homicide was self-defense. What boils down to is Corinne thinks I have some sort of conflict being both Chief of Police and Medical Examiner, and wants the medical examiner's job to her/himself. In fact, I hear that Corinne is putting pressure on the NHBI to fire me and appoint her/him, and may be using this case to try and show me up.

STATEMENT OF AMELIA/AL CLARK

1. My name is Amelia/Al Clark, and I live in Campbell Shores, in Nayak County, New Hampshire. I grew up in Campbell Shores and went to high school at Nayak County High with both Sam Cunningham and Jude Smith, although I was not a close friend of either one of them. My father was the Harbor Master for Nayak County, and since my father had that job, I grew up listening to the stories the sailors would tell, about the sea, the storms and the relationship between the Smith's and the Cunningham's.

2. After high school, I enlisted in the Coast Guard and was trained as a radio operator. As a radioman, I was trained in all forms of audio communications and how to operate all land based and shipboard radio equipment, as well as how to monitor all radio traffic. After my tour of duty in the Coast Guard was finished, I was asked by my father to return to Campbell Shores to be the assistant Harbor Master, as boat traffic had increased dramatically since I departed for the service. My father said that the increased boat traffic was due primarily to the incredible success of Palpatine & Tarkin, the large commercial shrimping company. They had been buying out the local shrimpers. I worked as assistant Harbor Master for about fifteen years and then my father passed away and I took over the full-time position.

3. The job of Harbor Master is very demanding and time consuming. The Harbor Master is required to keep a travel log of all vessels that would leave or arrive in Campbell Shores. Furthermore s/he is required to keep a ledger of all registered vessels that are moored in Campbell Shores, and every time they depart for a trip, s/he is required to have each crew member sign the ledger. The ledger is required to verify how many crew members are on each ship when the ship departs and then to verify that the same crew members return when the vessel was once again moored in Campbell Shores. Shrimping is a very dangerous business, and this ledger helps to identify all persons who may be missing if a ship is lost at sea. The Harbor Master is also responsible for monitoring all radio dispatches for the Nayak County portion of the New Hampshire coastline, to insure that if a boat is in trouble in the area, the Coast Guard is notified immediately, so that they may render assistance.

4. Being the Harbor Master pays pretty good, but I like to make a few extra dollars on the side whenever I can. Sometimes I hire myself out to clean boats while they're in port or paint them when they're in dry dock. Jude usually paid better than anyone else at the marina, so s/he was always at the top of my list when s/he called. I usually do these extra jobs on the weekends, so in the early morning hours of the 27th, when I got a call from Jude asking me to stop by his/her dock at the marina and swab down the decks of the *Jodocus*, it wasn't unusual. S/He said s/he hoped to take her out for a spin later that morning and wanted her to be ship-shape. I didn't have to go into work as the Harbor Master until 1 o'clock, and thought "what the heck, it'll only take me a little while to clean her", so I put on my work clothes and met Jude at the marina. We chatted about the weather for a couple of minutes and I asked Jude exactly what s/he wanted me to do on the boat and after s/he had finished telling me what needed doing, s/he said something that I didn't think was important the time, but now I think it was a little weird. S/he said "Yeah, Amelia/Al, get this ol' girl looking good for me, will ya? Sam and we're gonna take her out for a spin this mornin' and I want it to be a trip to remember!" You know, it seemed a little strange to me that they would want to go out by themselves. Everyone in town knew that tensions were high between the two of them since Jude still refused to sell the *Jodocus* back to Sam. It also seemed strange that the two of them would sail alone, as Jude wasn't much of a seafarer, and they would obviously need assistance if they had a good catch. Well, I don't get paid to speculate, so I just kept my mouth shut and started working and Jude left.

5. Yeah, I did check the storage locker where the life jackets are stored, that's where Jude also stored the mops. I guess there were about four or five jackets lying in a heap in the locker that morning. I finished up with the *Jodocus* in time for breakfast, and headed to Dew Drop Inn before my shift as Harbor Master started. As I walked from the marina to the Inn, I passed Sam on his/her way down to the marina. I thought about telling him/her to have a good trip, but s/he look so focused and preoccupied that I didn't bother. It was pretty early, but I don't remember the exact time.

6. During the afternoon and evening on October 27th, I was working in the office and monitoring the bad squalls that had been reported by the National Weather Service. I also monitored all radio traffic to ensure the safety of all boats. As I monitored the radio transmission, I decided to review the departure logs of all vessels that had sailed from Campbell Shores on the 27th and had not been reported as having returned. I noticed then that the *Jodocus*, Ship I.D. #NH101101, had not returned.

7. Shortly thereafter, I began to hear broken communications coming in on the radio. It sounded as if someone was calling "Mayday" and requesting assistance. I picked up the receiver and acknowledged the signal and attempted to make contact with the person sending the signal. The communication was disrupted by heavy static and I was unable to make out the vessel's complete identification number, although I did hear the person state, "This is N-H-1-0 ... (static interruption) ... -0-1", and then the static interrupted the rest of the transmission. I was also unable to make out the name of the person attempting to send the communication. While I was trying to communicate with the vessel, or a member of its crew, the static continued to engulf the transmission and I lost the signal.

8. A few minutes later, as I continued to monitor the radio, I again heard broken communication in between all the static. I could hear two distinct voices, and could make out that the two individuals were shouting at one another. At one point, I thought I heard one of the voices say "I'm sorry, I'm sorry! Please put down the knife!" I heard the other voice stating "I have had enough of you, and now it's time for you to pay..." I then heard the sounds of screaming and suddenly the communication ceased and all I could hear was the static. I'm not sure, but the voice I heard begging sounded like Jude.

9. I immediately contacted Chief Marty Brody and the Coast Guard to report the incident and the Coast Guard acknowledged hearing the Mayday signal, but told me they had never been able to re-acquire communications.

WITNESS ADENDUM

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

Signed,

_____/s/_____
AMELIA/AL CLARK

SIGNED AND SWORN to me before 8:00 a.m.
on the day of this round of the 2014 New Hampshire Mock Trial Competition.

_____/s/_____
Ho Kyeong Jang, Notary Public
State of New Hampshire
My Commission Expires: 05/01/2014

STATEMENT OF SALTY GOLDING

1. My name is Salty Golding. Yes, Salty is my nickname – I’ve been called Salty so long, I can’t remember my real first name. I’ve been shrimping since I was 14, and that was 70-some-odd years ago.
2. I’ve known Jude Smith and Sam Cunningham all their lives. I knew their fathers, too. In fact, I worked very closely with Richie Cunningham and John Smith. Richie would tell me stories of how he won the *Jodocus* from some rich person named Abby Walter who had won it from some mysterious gal named Annie Wang.
3. Richie also loved to tell stories about how special the *Jodocus* was – something about certain dreams preceding great hauls. I remember mornings where he would run to the dock talking about having some special dream and we needed to get out and cast in a certain spot. He said the dream would be of a man with a pilgrim’s staff in his hand and a crown at his feet. We’d sail to where he’d tell us to sail, and sure enough most of the time there were plenty of shrimp to be had at that location.
4. John didn’t seem particularly interested in this sort of mumbo-jumbo – as long as the shrimp came in, he was happy. Richie would warn John not to mock these beliefs, as things could be very dangerous if someone manned the boat with an “impure heart” or something like that. In that event, Richie warned John that “the harvest would dry up and the seas would reclaim the magical boat.”
5. There was always friction between John and Richie about who was more important to the partnership. John was the money man, and Richie had the boat and the savvy. Occasionally, John would come up with some idea that would make money but wasn’t exactly on the up-and-up. They were things like shrimping in restricted waters...nothing “bad” illegal, but it could certainly get us in trouble, if we were caught. Richie would have none of that. Be that as it may, there was a real connection between John and Richie that made working for them very special. It’s like they had some sort of common bond that transcended petty squabbles and disagreements, and they could (almost) always decide what was best for the company.
6. Sam Cunningham and Jude Smith were best friends growing up. They usually played well together, but Sam would get a little whiny when Jude would taunt him. Well, that got worse and worse until they hardly played together any more. They seemed to get along when they were working on the boat, though. Jude never looked too comfortable with the labor-end of the business, and didn’t particularly seem to enjoy going out and shrimping. He didn’t like Richie’s stories about the magical properties of the *Jodocus*, either, although Sam was obviously rapt.
7. After Richie and John died and left the business to Jude and Sam, that’s when I decided to find other work. Why? Well, the shrimping business has changed over the years, with new environmental laws and more competition, and I wasn’t sure that the kids were ready for it. Besides, I didn’t feel the magic connection that was there between John and Richie.
8. When it comes to shrimping operations around here, there’s small, there’s big, and then there’s Palpatine & Tarkin. They try to buy every small shrimper around. I refused to owe my soul to the company store, so I went to work for a “Mom ’n Pop” operation run by Gene Simmons and Paul Stanley. I’d still see Sam and Jude around, but every time I saw them they were fighting about one thing or another.

9. I remember running into Jude one day, and s/he told me that their business had dissolved. When s/he said that s/he had taken a job with Palpatine & Tarkin, I wasn't too surprised. After all, they never seemed to get along or agree on any business decisions.

10. Sam really struggled with keeping the remains of the business afloat but ended up declaring bankruptcy. I spoke with him/her at the Dew Drop Inn (a watering hole for shrimpers – it is just a noisy hall with a nightly brawl) shortly after bankruptcy was filed, and s/he was all torn up. S/he felt guilty about allowing the family business to be destroyed, and was incredibly angry with Jude for abandoning it. I had never seen Sam like this before. I told Sam it was too bad that s/he didn't have those harvest dreams like Richie did, to which Sam replied, "I guess I didn't inherit that ability from Dad. Besides, I never believed in all that." Knowing Sam was on the skids, I put in a good word with Gene and Paul and got him/her some occasional work with us. It wasn't regular, but I think Sam had enough odd-jobs to make ends meet.

11. It broke Sam's heart when the *Jodocus* was sold at auction. What made matters worse was that Jude was the one who bought her! Jude had already left Palpatine & Tarkin after making a boatload of money, and opened his/her own shrimping business. Sam told me s/he thought that the breakup of their company was plotted by Palpatine & Tarkin. Sam guessed that Jude was given a large sum of money to sink the company, then allowed to open his/her own business with secret price-fixing and market sharing agreements. I told Sam that s/he was acting a little paranoid.

12. Sam's stint as a day laborer seemed truly humbling. I admit that Gene and Paul used to bend the rules, kinda like John wanted to way back when. Since Sam was not the boss, he found him/herself with little choice in the matter. S/he'd bite his/her lip and cash the paycheck.

13. I admit I've had my share of run-ins with the law, but it was always stuff that other people do just as much, but they never get caught. The only charge that ever stuck was when I was with Gene and Paul – a measly theft charge due to my tipping the scales when we sold shrimp to the wholesalers. I pled guilty, paid my fine, and was ultimately rewarded for my loyalty to Gene and Paul since I "took one for the team". Let he who is without sin ... right? After all, it's hard to be a saint in this town.

14. Sam scrimped and saved for years with the intention of buying back the *Jodocus*. When Sam was ready to negotiate, I went with him/her for moral support to see Jude. Jude laughed in Sam's face! The offer was modest but reasonable in my opinion. Jude had several boats by now, but just wouldn't let go of this one for some reason. Jude said s/he doesn't even use the *Jodocus* for shrimping...s/he uses her for pleasure trips. Actually, I've seen Jude on these trips – seems like Jude would make a point of sailing by where Sam and I were working. After Jude made some choice comments about how weak Richie was when it came to business and how Sam must have inherited that gene (and some other comments I can't repeat in mixed company), we left.

15. The night before they went out on the *Jodocus*, I was on my way to have a drink at the Dew Drop Inn. Right before I went in, I was knocked down by the door being violently pushed open from inside. It was Sam, who was leaving in quite a huff. S/he stopped to help me up and apologize for knocking me down. I asked what was wrong, and all s/he said was "Smith." As S/he walked away, I heard Sam mutter "You'll pay for this. Your time is gonna come, and soon." I don't think I've ever seen Sam that angry.

16. All that getting knocked down made me thirsty, so I went into the bar. I saw Jude talking to Durkin about whatever had just happened with Sam. Jude was his/her smart-alecky self, brushing it all off as Sam being really drunk. Jude then left pretty quickly. I thought about it, and Sam didn't seem drunk when I saw him/her at the door.

STATEMENT OF SAM CUNNINGHAM

1. My name is Sam Cunningham. I am giving this statement as best I can recall events aboard *Jodocus*. I didn't mean to kill Smith, but I can't say I regret it; I wouldn't be here to give a statement otherwise.

2. It's strange to think Smith and I were "best friends" growing up. Smith, like his/her father, John, is a cheat and a scoundrel. If I'd paid more attention to that, maybe I'd have had better sense than to have gone back, once I'd lost *Jodocus*. I've come to believe my visions --dreams, really-- about the man with a pilgrim's staff and a crown: harbinger of a good catch. So I should've paid attention to my conscience telling me Smith was embroiling me in conduct I knew was wrong. Instead, I allowed my "friend" to corrupt me. What happened out there in the storm is the result.

3. My father Richie acquired the ship in a poker game, years ago; I've always thought of *Jodocus* as my legacy. Maybe that's why I couldn't give her up, that's why I felt such anger at the way Smith stole her. When we were young, Smith and I were always competing (but Smith usually cheated); an example was the "penny-ante" poker game that somehow ended up with me wagering my future interest in the ship. Smith kept my IOU, taunting me. The way Smith used the *Jodocus* for "pleasure" rather than shrimping, it's clear s/he only wanted the boat to "get" me. Our parents had been partners in a shrimping business--my family put up the *Jodocus*; the Smiths put up the working capital to fund the enterprise--and after the "old folks" died, Jude and I stepped into their shoes and Jude's youthful bad behavior bled into his/her business practices.

4. There was scandal brewing --I won't go into it here-- and Smith "decided" to leave the family business to go to work for Palpatine & Tarkin, an outfit as foul as Smith him/herself. Smith wanted me to settle up for much more than I did --like his/her father, Smith's greedy, never thinking enough's enough-- but left with what the business could "afford." P&T had tried to buy us out, but I had the *Jodocus*, and I wouldn't sell (which was one reason Smith didn't get more).

5. Maybe I should've sold, but I couldn't let go of my inheritance --and the only way of life I know. After paying off Smith (except for that doggoned IOU), the business was under-funded --even with the boat mortgaged to the hilt. Not being willing to do business the way Smith had done (at least not until I got really desperate --and then half-heartedly, since I was so ashamed of myself), I sank deeper and deeper. I despaired that I lacked the vision my father had; I thought the pilgrim with the staff had deserted me -- or maybe I deserted him. Anyway, I grew bitter... and cynical about doing whatever it took. Finally, the business went broke. The ship went up for auction.

6. Smith, strangely flush with cash after two years at P&T, bought the *Jodocus* for a fraction of what she was worth. I don't know how, but the fact the sale took our company out of competition with P&T makes me suspect there was some deal "under the table." Otherwise, why did Smith leave Palpatine & Tarkin to go "independent" again? How did Smith get our old customers back in the face of P&T's "competition"? It all left me depressed, humiliated and angry.

7. While Smith started shrimping again, I wandered the docks, glad for any work I could find, resorting to just "skimming and shaving" (in order to survive between steady jobs) like I'd damned Smith for doing when we were "partners". Still, I reconciled with my conscience, and slept at night. Over time, I managed to put away a little savings. Finally, I had enough for an offer on the *Jodocus*. I took Salty Golding with me for support, but that... "so-and-so" wouldn't sell her back to me!

8. Smith laughed in my face: clearly s/he didn't need the *Jodocus* --s/he had other boats, by then, and only used that one for "pleasure" but Smith wasn't going to give me the chance to get back on my feet. Instead, I suffered silently while Smith insulted my late father's memory. One night, at the Dew Drop Inn admittedly, with too much alcohol inside me-- I'd had enough.

9. I called Smith a slime. I demanded to know why s/he wouldn't sell. It was stupid --I made a fool of myself in front of Durkin (who had walked in with Smith) and everyone else-- but I couldn't take the insults any more. Family honor is important in our community, and mine was as frayed as my nerves.

10. Smith smirked across the rough-hewn table in the wharf-front bar. S/he said that, while s/he wasn't going to sell the ship (at least not to me), s/he was willing to wager the *Jodocus* and the dog-eared IOU I'd stupidly given Smith in our youth (and, of course, had never had the wherewithal to discharge) against my pledge to come to work on the ship: to indenture myself to Smith indefinitely, in other words. I was so desperate, I took the offer (forgetting how I'd been burned before). Of course, I lost.

11. I flew across the table in a rage, calling Smith every name in the book. Threatening all kinds of things, I gather. I can't remember just what through the alcoholic fog and the mist of my anger. I do remember Smith throwing arms into the air Rocky-style as other patrons pulled me off him/her. I do remember two cards falling to beer-soaked boards beneath the deal table as s/he did so. The "couple of good punches" I got in hardly seemed enough. I also remember literally running into Salty Golding as I left.

12. The next day, headache throbbing and vision cloudy as the smoke, booze and adrenaline cleared, I thought better of the episode. I didn't want to leave things as I'd done: the threats, the recriminations. I wanted to "clean my side of the street" at least. I also needed a job, and it seemed that the wild way I'd acted word spreads quick on the wharves, and other captains wouldn't want a loose cannon on-board-- Smith was the only game in town.

13. Somewhere amidst the stupor of the prior night's "sleeping it off," I'd had my old dream. I reminded Smith of its good omen for a catch, and pleaded for the chance to put to sea in the *Jodocus*. I could make enough off one really good day to put myself straight, I said; otherwise, I was tapped out for good. Strangely, this time, Smith listened. S/he agreed, provided we go together and split the harvest of fish. That wasn't a problem; I was used to hard work, and I knew I could handle the ship with just us two. I had a "sixth sense" of where Fate had the shrimp waiting for us, and I was eager to get there ahead of the larger fleets.

14. We set sail in less than an hour, my head as clear as the salty morning sea breeze.

15. But the shrimp weren't where I'd thought. My arms ached from putting out and bringing in nets. My ears ached from Smith's griping how I was "wasting our time." The ocean was as "out of sorts" as I myself; the sky was growing gray. I hardly needed the metallic voice over the outside radio speaker to know a squall was brewing. Good sense, I suppose, would've said to turn back then, but it was only mid-afternoon and we hadn't nearly enough catch. This was my last chance, and I was determined to squeeze all I could from it before Smith insisted we return.

16. I waited too long. I was distracted by my obsession --and Smith's constant bellyaching (about how I was as big a "failure" as my parent before me) -- and the squall was upon us w-a-a-y too quickly. The little boat tossed about, and I could hardly get in the gear. Some of it I had to cut free just to be able

to turn the boat for home. I tried to keep things under control. I think I sent another "Mayday" then. Maybe I told Smith to do it; in the chaos, I can't recall exactly who did what when.

17. I do recall going for life preservers and emergency lights --and one of those things that makes ink-slicks on the surface so the Coast Guard helicopters can spot you in the water. I recall because I remember the cold feeling up my spine as I realized there was one life-vest and nothing more. I'd kept the locker stocked and maintained when I'd owned the boat; sometime later, Smith must have let safety precautions deteriorate. From the groaning and cracking around me in the cabin, the equipment locker wasn't the only thing to have been neglected since my legacy had been stolen. By then, I was pretty sure the *Jodocus* was a goner.

18. Smith must've known what s/he'd done. As I turned around, Smith was there, grabbing for the single Mae West. I could feel anger burning blue and cold in my face as I confronted him/her with his/her neglect --treachery even. But there was no time to argue; unlike the night before, my mind was focused on more than Smith. Death stood beside us in that cabin.

19. I lurched for the radio set, sending another alarm call, hoping against hope some other ship had come our way (although, ironically, I'd deliberately tried to distance us from our competitors, just hours before) and would hear me. I thought I heard something through the static and the howling wind outdoors... then silence. Smith had cut the radio cable. S/he stood there, his/her late father's antique gutting knife shimmering with salt water and fish oil in the rapid lightening flashes.

20. "If you love this ship so much...Captain," s/he taunted, waving the knife, "then you should be willing to go down with her." I'd always kept the hooks and knives razor-sharp, and I had to conclude that that hadn't changed with Smith's carelessness. I looked all about, keeping my balance against the roiling of the boat, yet trying to stay away from Smith's knife. "I should kill you now," s/he said, "but I'll let the sea do my dirty work." I began backing towards the hatch, looking for someplace to run. (Although, by then, it seemed, only from Charybdis to Scylla). Smith followed me out onto the deck.

21. As I backed into the thick spray, the radio cord dangling impotently from my fist, a huge wave came over the deck. The deck was tipped half-over, the swamped boat low in the waves, and all was slick with foam and slime. It didn't take much for the sea to carry Smith overboard. S/he had the only life vest with him/her. I looked, grabbed, for some flotation device to throw, for something to use myself --my fingernails ripped on the bright work -- but there was nothing. Another wave came. The world went green, then black... and cold.

22. I don't remember being in the sea very well. It was as though I regained consciousness to feel sodden clothing squeezing me, salt water burning the thousand scrapes on my skin. Tired lungs weakly fought for breath. I hung over a bit of wood --some part of the *Jodocus*, I suppose-- mostly in the water, but just far enough above it to escape drowning or hypothermia. In a daze, I recall the voices and horn of the Coast Guard cutter. The hands reaching for me. The blanket.

23. They took me to the hospital, asking me questions on the way. I don't recall all I said then. I'm a bit better at remembering the talk I had with the doctor as s/he warmed me up and tended my wounds. I told them Smith had been lost, that I'd tried to find him/her, but couldn't amidst the turbulence. There was a blurry vision (not unlike the dream I'd had, somewhere the night before, about the figure with the staff and crown) of myself battling the waves for some glimpse of Smith. My hands were torn by what must've been my attempt to climb the gunwales of the ship --or maybe the larger wreckage as it

floundered-- and my voice was shredded by the exertion of shouting over the storm for Smith. The investigator came and went. When the doctor decided I was ready, I left too.

24. Three or four days later, the investigator came back. Smith's body had washed up, s/he said. I said I'd told everything I knew. The authorities gave me that warning you always hear on TV cop shows. I decided that, unlike on television, if they said I had the right to a free lawyer before answering questions, I'd better use it. So I did.

25. While I was waiting to talk to my court-appointed attorney, I racked my brain for anything else I could remember. Some of it came back to me in another dream; more, I reconstructed by piecing together what bits I could recall as my head slowly cleared from the ordeal of being lost. I remembered Smith coming back to the *Jodocus*, my pulling him/her aboard. What else could I do? Smith was there, still alive, but his/her eyes were burning like coals in a grate: fear or just pure evil? Smith, like his/her ancestors, had a long and sordid career to answer for. S/he had reason to be nervous!

26. Grabbing the gaff I'd just employed to fish him/her out, Smith came at me once more. The life vest clutched under Smith's arm had vanished into the foam and we two stood alone, trapped on the doomed *Jodocus*, faced off like the final act of some morality play. S/he swung, I dodged, then went at him/her with my bare hands --and what few fingernails I still had. I supposed Smith still had the knife, as well, although (in cloudy retrospect) I can't remember seeing it. I just recall hearing something hard hit the deck as we struggled, and grabbing for it --for anything with which to defend myself. There was a moment's break, a little distance, and I swung blindly.

27. I felt a dull contact --like gaffing a tuna to haul it over the gunwale-- but saw no blood. I'm not sure I would've seen much before it washed away in the spray. Smith staggered backwards against lightening flashes and swirling black storm clouds. There was water everywhere, as though Smith were backing towards a waterfall, not the railing. One bright flash and peal of thunder later, the only thing where Smith had stood was a flicker of disappearing rubber boot heel.

28. No, I didn't dive in after Smith. Rather, the *Jodocus* was sinking away beneath me, and I knew her suction could draw me down too. As the water came to meet me, I half-plunged, half-washed in, and swam for what little I was worth. After that, it was as I'd told the investigator before. I did look about and I did call out.

29. I didn't tell everything to the investigator right away because, in shock, I'd blacked out some of it to be candid, I suppose I was also scared. Everything I did --or might've done-- was in self-defense, but Smith had always found a way to pervert my good intentions in life, and I must have been afraid that s/he would do the same to me in death.

STATEMENT OF AL DURKIN

1. My name is Al Durkin. I am 21 years old and I have lived in Campbell Shores as long as I can remember. My parents moved here when I was a baby, but my Uncle Robert and my Aunt Josephine raised me, after my parents' sailboat was lost at sea the day after I turned five years old.
2. Uncle Robert was the keeper of the old lighthouse off Danger Pointe, and we lived in a small plank house set off from the lighthouse tower. Uncle Robert dedicated his life to keeping the light "burning and turning" and from him I learned to honor and respect the sea and its sometimes "mystical" ways. My parents would have wanted it that way, he said.
3. Growing up I had three pastimes – swimming, boating, and fishing. Most days I did all three. As a young teenager, I began hanging around the wharf. Several shrimpers promptly put me to work cleaning the boats and washing the catches. I quickly advanced, serving as a deck hand, a lookout and a first mate, all before my 16th birthday. I worked for nearly all the shrimpers, including Palpatine & Tarkin, and I learned my way around their boats and their businesses. I know practically everyone in Campbell Shores, especially if they work in the shrimping industry. Yes, I have known both Sam Cunningham and Jude Smith since my early days on the boats, and I worked for a time on the *Jodocus*, when Sam and Jude were running it.
4. I went back to work for Jude after s/he left Palpatine & Tarkin and started her/his own business. With Jude leading me on, I began to believe I was ready to run my own show, to be my own captain. This was to the chagrin of Aunt Josephine, who harbored a desire for me to go to the University of New Hampshire on an academic and athletic scholarship. I had graduated high school near the top of my class, despite my work on the boats, and even won a state championship or two in swimming. When the ocean is your backyard, a few quick laps around the pool is nothing.
5. I like Jude well enough, and you can say I kind of looked up to her/him. I admired Jude's ambition and smarts – s/he could always make a buck. But Jude could be devious and spiteful, too. Jude promised me s/he would help me get my own boat, but s/he never followed through. I would always seem to lose a bet to Jude and I would have to work off my IOU before we would discuss my captainship plans again. Gosh, Jude was tricky! I can't say s/he cheated, but I would only play cards with her/him in the summer – short sleeves required!
6. Jude treated Sam like dirt and had no appreciation for Sam's attachment to the *Jodocus*. Sam, like my Uncle Robert, honored the "spirits" of the ocean and the traditions of seamen before her/him. I respected Sam for that. Unfortunately, Sam also liked other types of "spirits", the kind you find at the Dew Drop Inn, where the shrimpers meet to drink and tell their fish stories.
7. I went to the Dew Drop with Jude the night before the accident at sea. Her/His act was starting to wear thin on me, and I think Jude sensed that. I had just turned 21, and we, according to Jude, were going to discuss some "monumental changes in her/his shrimping business". I thought my time to be a captain had finally come.
8. By the looks – and the smell – of her/him, Sam must have been at the Dew Drop a while before Jude and I walked in. "You sssssssssllimme," Sam slurred in Jude's direction, "Why won't yyyou ssssell it to mmmeee. The *Jodocus* should be mine!" As usual, Jude grinned at Sam's sad display and seized yet another opportunity to taunt Sam. Jude said something like "Not as long as I'm alive!" Jude

STATEMENT OF DR. CORINNE RUTH

1. My name is Dr. Corinne Ruth. I received my B.A. from the University of New Hampshire where I had a double major in biology and anatomy. I received my medical degree from Wake Forest University and did my residency at Johns Hopkins. I am board certified in emergency medicine/trauma and thoracic surgery. I was an attending physician at the Yale University School of Medicine with staff privileges at Grady Memorial Hospital for the first five years after I completed my residency. I worked for the next 10 years with the Federal Bureau of Investigation as a forensic scientist. Three years ago, I decided to leave the FBI and the big city, and I accepted a position as the head of the Emergency Department staff at Amity Hospital. I have extensive experience with knife wounds, gunshot wounds and blunt force trauma. In my experience, I have investigated hundreds of criminal cases involving gunshot and knife wounds. I have testified in dozens of cases both in federal and state court as an expert witness.

2. I was the physician on duty on the evening of October 27th when Sam Cunningham was brought into the Emergency Room. I observed Sam Cunningham's behavior and physically examined him/her the night that the *Jodocus* sank in the squall. Sam had numerous scrapes and bruises that were treated and bandaged, but nothing serious. He was also suffering from shock and hypothermia. Sam was so dazed and confused that he could not coherently answer my questions about what had happened to him/her. With a far off and dazed look in his/her eyes, Sam slowly mumbled the words "boat...sink...Jude...storm" a few times, then dropped his/her head and started sobbing. I tried to ask Sam who was Jude and where was this Jude person, but Sam just shook his/her head and kept mumbling the same words through his/her sobs. Since I feared a ship may have been lost with other hands on board, I directed a staff member to notify local law enforcement authorities.

3. At approximately 1:00 a.m. on the morning of October 28th, Chief Marty Brody, M.D. of the Campbell Shores Police Department appeared at the Amity Emergency Department and seemed very anxious to interview Sam Cunningham. I advised Chief Brody that Sam was suffering from hypothermia and a mild case of shock and was in no condition to answer questions. Chief Brody seemed very irritated that the interview would have to be put off, and the Chief said that he/she would "be back soon" because he/she wanted "to talk to Sam at the earliest opportunity." Later that morning, Chief Brody returned to the hospital and was demanding to be allowed to interview Cunningham. I reminded Chief Brody that Sam had undergone a tremendous ordeal, but s/he was now resting comfortably with the help of a mild sedative and would make a full recovery, at least physically. However, I did agree to let Chief Brody see Sam after the Chief promised "just to pop in and see how Sam was doing."

4. I discharged Sam from the hospital on the afternoon of October 28th. I prescribed a sedative and told Sam to stay home and rest for a few days. I also told Sam to call me or his/her family physician if there were further problems or discomfort. As the attending physician, I observed Sam Cunningham while Sam was a patient, and I subsequently reviewed the statements Sam gave to the police. As an experienced ED physician, I have observed that persons who suffered traumatic ordeals will remain dazed and confused for several days following the event. These people report that their recollections of the events seem "dreamlike" and their memories are, at best, sporadic to details. In fact, in my experience, many people have no recollection of the traumatic events whatsoever. Depending upon the person's psychiatric makeup and the severity of the traumatic event, others may suffer post-traumatic stress syndrome, a clinically recognized and diagnosed mental disorder. Although I'm not a psychologist, based on my education and experience in emergency medicine/trauma as well as my criminal investigation background, it is my opinion, that Sam Cunningham is suffering from stress-related shock due to the traumatic and life threatening events surrounding the sinking of

the *Jodocus* in the squall and the death of Jude Smith. In my opinion, this explains Cunningham's inconsistencies and lack of clarity when questioned about the incidents.

5. I also examined Jude Smith's body when it was brought to the hospital on October 31st. I signed the death certificate, but did not perform the autopsy. The body was then sent to the morgue for Chief Marty Brody, M.D. who is also the County Medical Examiner, to do an autopsy. I have reviewed Chief Brody's Medical Examiner's Report on Smith and the photographs of the body. Smith's body exhibited post-mortem decomposition and bloating consistent with several days exposure in the ocean. Smith had two stab wounds in the upper left shoulder area of the back. Neither of these stab wounds punctured any major organs or arteries and could be described as superficial since they were not very deep. Smith also had one stab wound on the left side of the chest between the third and fourth ribs. This stab wound was generally horizontal to the body and entered the rib cage at a slightly upward angle. The stab wounds had a jagged pattern on one side indicating that the knife blade was jagged or serrated, a rather unusual knife in my experience. The Medical Examiner's Report indicated that the stab wound missed the heart and aortic artery, but punctured the left lung.

6. While the stab wound to Smith's chest was not immediately fatal, it would have had debilitating effects. The punctured and collapsed left lung would have greatly limited Smith's strength and stamina. The wound would also severely limit Smith's use of his/her left arm as stretching or reaching with it would have caused severe pain. Based upon my own observation of Smith's body and the Medical Examiner's Report, in my opinion the actual cause of death was asphyxiation from drowning.

7. Due to the sideways and slightly upward angle of the knife wound, the stab wound was inflicted with a jagged or serrated knife to a penetration depth from the surface of four inches. The entrance wound on Smith's body is consistent with his/her standing erect and leaning slightly forward while the knife was swung side armed and slightly upward by a right-handed person. Based on my experience as a forensic scientist, my sub-specialty in emergency medicine and thoracic surgery, it is my opinion, to a reasonable degree of medical certainty, that the knife wound on Smith's body was made in self-defense. I base this conclusion upon the forensic evidence indicating that the knife wound was horizontal and slightly upward on Smith's body. A murderer stabs his/her victim with an overhead thrust that comes down on the victim resulting in vertical incisions in virtually all cases involving a frontal knife attack.

8. It is true I spoke to several friends at the NHBI about the inherent conflict of Chief Brody being both the Chief of Police and the Medical Examiner. Maybe they investigate the crime scene and handle the forensics on the *X-Files*, but that is not how it works in real life. I do not believe anyone can effectively wear both "hats." Good forensic science must be conducted properly and thoroughly, by a highly trained expert, but it must also be performed quickly so that the victim's body can be released to the family. At the same time, police work needs to be done thoroughly and quickly while the evidence trail is "still hot." Campbell Shores is a small town with a small police force, and Marty cannot investigate the crime scene and do a thorough medical exam at the same time. Marty may also discount my conclusion that Sam Cunningham acted in self defense, but Marty does not have my experience and background. I guess it is true that we mock what we do not understand. Perhaps s/he feels a little threatened and intimidated having someone of my background and experience now living in the same town where s/he has been the "kingfish" all these years.

WITNESS ADENDUM

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

Signed,

_____/s/_____
DR. CORINNE RUTH

SIGNED AND SWORN to me before 8:00 a.m.
on the day of this round of the 2014 New Hampshire Mock Trial Competition.

_____/s/_____
Ho Kyeong Jang, Notary Public
State of New Hampshire
My Commission Expires: 05/01/2014

Jude Smith
Iou the Jodocus.
Sam Cunningham

photo taken from Robert Peck's *Toolmarks & Bitemarks Through the Ages*



Dimensions and Specifications:

Knife:

Approx. 17 1/2" Overall Length.
Approx. 3 1/4" at the Widest Point.
Full Metal Frame.

Blade Size:

Approx. 11 7/8" Full Length.
Approx. 10 1/4" Cutting Edge.
Approx. 2 3/8" at the Widest Point.
Approx. 3/16" at the Thickest Point.

Handle:

Real Bone with Black, Navy and Scarlet Trim.
Approx. 5 1/4" X 1 1/4" X 1 1/2" at the Widest Point.

Brass Hand Guard and Top Trim.

Sheath:

Approx. 17" Long.
Approx. 3 1/4" Wide, 1/2" Thick.
Etched Genuine Black Leather with Hunting Scene.
Handle Collar with Snap Button.
Large Belt Loop.

Amity Hospital
5969 Main Street
Campbell Shores, New Hampshire 00000-2014
(603) 123-5555

Date: 10/27/13Admissions Note – E.D. Attending

Chief Complaint Patient, Sam Cunningham, is a 58-year old person who presents to Amity Hospital via EMS for evaluation and treatment of symptoms following exposure to the elements. The patient was found by the Coast Guard clinging to debris 2 miles offshore from Campbell Shores. Patient's time in the water is unknown.

Subjective: "Boat.... sink.... Jude.... Storm"

Objective Vital Signs: Temperature at 97°F
Respiratory Rate: 24
Heart Rate: 100
Blood Pressure: 100/50
O₂ Saturation: 97%

Physical Examination

General: Patient, Sam Cunningham, is a well-nourished person in no acute distress. There is no AOB. The patient's clothes were wet on admission, but the patient now wears a hospital gown. There are numerous ecchymotic areas and abrasions on the hands.

H.E.E.N.T.: Head: Normocephalic. Ecchymosis noted under left eye
Ears: TM's intact – bony structures easily visualized
Eyes: PERRLA @ 4mm, bruising under left eye as above
Nose: mild erythema = exudates
Throat: Oropharynx reddened. No exudates voice is hoarse, lips are mildly cyanotic

Cardiovascular: RRR S1, S2. No murmurs/rubs/gallops

Lungs: BS equal bilaterally. Fine crackles noted in bases bilaterally.

Gastrointestinal: Soft, nonextended normal active bowel sounds. No hepatosplenomegaly resonant to percussion. Rectal exam negative for blood

GV: Deferred. No CVAT

Skin: Cool to touch. There are numerous areas of ecchymosis on the hands. There is partial avulsion of the nails of the 2nd, 3rd, and 4th fingers of the right hand, also the 1st and 2nd fingers of the left hand. Nailbeds cyanotic on other fingers. Superficial lacerations noted on all surfaces of the hands, the anterior chest, anterior thighs and face

Musculoskeletal: MAE X 4. 5/5 strength in all muscle groups. Normal tone

Neuro: Stuporous, with sobbing. Minimally responsive to questioning and follows all commands slowly, but appropriately. Speech is difficult to assess as patient says only "boat... sink... Jude... storm", but patient articulates these words well. CN II - XII grossly intact. DTRs are 2+ throughout. Plantar responses are flexor.

Assessment: 1) Mild hypothermia in 2° exposure to environmental elements
2) Mild shock 2° hypothermia
3) Altered mental status
4) Superficial skin lacerations

Plan: Admit for further observation, considering current vitals, prognosis is good. Altered mental status is most likely the result of shock and should improve. Monitor vitals for aspiration pneumonia. Routine wound care. Patient is currently very tearful and will probably benefit from a mild sedative. Patient was transferred to the ward in stable condition.

_____/s/
Dr. Corinne Ruth, M.D.

(Exhibit 3 continued)

10/28/01
1:00AM

Record of Conversation

Spoke to Chief Brody who wanted to speak with patient, Sam Cunningham. I told Chief Brody that the patient was under mild sedation and resting comfortably and that the Chief could speak to the patient after 7 a.m. rounds were complete.

/s/

Dr. Corinne Ruth, M.D.

Date: 10/28/13

Progress Note

HD #1

Subjective:

Patient, Sam Cunningham, "I feel sore..."

Objective:

Temperature: 98°F

RR: 20

HR: 84

BP: 120/74

O₂ SAT: 100%

General:

No apparent distress

H.E.E.N.T.:

Head: Normocephalic

Ears: TM's clear

Eyes: Sclera reddened, optic discs sharp

Nose: Mild erythema

Throat: Posterior pharynx reddened

Cardiovascular:

RRR: S1S2. No murmurs/rubs/gallops

Lungs:

CTA bilaterally

Gastrointestinal:

Soft nontender. Bowel sounds normoactive.

GV:

No CVAT

Skin:

warm and dry, bruising under left eye, partial avulsion of nails as per admit note

Neuro:

Oriented X 3, answers questions slowly, recall 2/3 objects, DTR 2+, toes downgoing.

Musculoskeletal:

MS: 5/5 strength, tone normal

Diagnostic testing:

None

Assessment:

1) Hypothermia – resolved

2) Shock – improving

3) Altered Mental Status – improving – result of sedatives?

4) Superficial lacerations – stable

Plan:

Patient is improving. Vitals are stable. Mental status is improving, but slower than expected. (?) effect of sedative re: poor recall on exam. Expect patient to make a full recovery. Possible D/C to home later today.

/s/

Dr. Corinne Ruth, M.D.

10/28/01
8:25AM

Record of Conversation

Spoke to Chief Brody who again wanted to speak with patient, Sam Cunningham. Agreed to let Chief Brody see patient as Chief promised to "just pop in and see how Sam was doing."

/s/

Dr. Corinne Ruth, M.D.

Discharge Summary

Reason for Admission: Hypothermia and shock

Hospital Course: Patient, Sam Cunningham, was admitted after being found by Coast Guard approximately 2 miles off shore. Patient was stuporous and minimally communicative initially in ED, but became emotional and required mild sedation. Vitals and PE were consistent with mild hypothermia and shock following exposure. On HD #1, the patient's mental status improved to full orientation with good recall and vital signs normalized as did physical examination, apart from superficial lacerations and abrasions.

Physical Examination: Temperature: 98°F
RR: 20
HR: 84
BP: 120/74
O₂ SAT: 100%
Head: Normocephalic
Ears: TM's clear
Eyes: Sclera reddened, optic discs sharp
Nose: mild erythema
Throat: Posterior pharynx reddened
RRR: S1S2. No murmurs/rubs/gallops.
Lungs: CTA bilaterally
GI: Soft nontender
GV: No CVAT
Skin: warm and dry, bruising under left eye, partial avulsion of nails as per admit note
Neuro: Oriented X 3, answers questions slowly, recall 3/3 objects, DTR 2+, toes downgoing.
Musculoskeletal: 5/5 strength, tone normal
Diagnostic testing: None

Assessment

- 1) Hypothermia – resolved
- 2) Shock – resolved
- 3) Altered Mental Status – resolved
- 4) Superficial Skin Lacerations – stable

Plan: Patient, Sam Cunningham, was discharged to home in stable condition with a mild sedative. Patient was instructed to follow-up with regular family physician or myself should an increase in discomfort occur. Of note, this patient is at high risk for post traumatic stress syndrome and should be monitored for such in the future.

_____/s/_____
Dr. Corinne Ruth, M.D.

Transcript of First Interview with Sam Cunningham

- Chief Brody: This is the interview of Sam Cunningham, conducted by Chief Brody at Amity Hospital, beginning at 8:30 a.m. on October 28, 2013. Just to make sure, you know we are recording this, right?
- Sam: Yeah, I can see the tape recorder right there, Chief. (Laughter)
- Chief Brody: Nothing wrong with your eyesight, Sam. I also want to make sure you know you are not under arrest, and if you want to stop the interview, just say the word.
- Sam: This is starting to sound like *Dragnet*. Ask me anything you want, Chief.
- Chief Brody: How are you feeling today?
- Sam: I'm exhausted, but I'm doing ok considering the circumstances.
- Chief Brody: I spoke with Dr. Ruth and s/he said it was OK to talk with you now, if you feel up to it.
- Sam: Sure, we can talk.
- Chief Brody: Can you give me a little insight as to what happened yesterday?
- Sam: Well, Jude and I were out shrimping on the *Jodocus*. We spent hours looking for shrimp, but we kept coming up empty. We were both getting pretty frustrated, I mean who wouldn't, but it looked like Jude was getting really, really hot under the collar about all of this, and s/he was really getting mad and...
- Chief Brody: I'm sorry to interrupt, but what were the two of you doing out there in the first place?
- Sam: Oh, right. I needed the money, so I asked Jude if we could go out just for one day and split the haul.
- Chief Brody: OK. Please continue.
- Sam: Where was I?
- Chief Brody: Jude was getting mad.
- Sam: Yeah. It seemed like an eternity out there, empty net after empty net. We were both getting pretty frustrated, I mean who wouldn't, but it looked like Jude was getting really, really hot under the collar about all of this, and s/he was really getting mad and kept telling me that I was wasting his/her time, and s/he kept saying things about my father, which Jude knew was the quickest way to get under my skin, and then we hear a squall warning come across the radio.

Chief Brody: What happened once you heard that report?

Sam: Jude had already been yelling at me, saying we needed to go back in, and now s/he said we needed to get back in due to the weather. I was trying one last cast, just hoping for some shrimp, when the squall hit like a ton of bricks. I had no idea it would hit us that quickly.

Chief Brody: You need a drink of water?

Sam: No, I'm OK. Anyway, we lost that last net because I couldn't haul it in – it was too tough once the storm hit. Plus, it was making the boat list, so I got rid of it. All of a sudden we started taking on more water than I've ever seen on the *Jodocus*...that's when I really started to get worried. We sent an SOS on the radio, and ran to the rescue chest to get the life preservers.

Chief Brody: Which one of you sent the distress call?

Sam: I think I told Jude to do it...I think I was cutting the tangled net so we didn't capsize right then and there. Anyway, We sent an SOS on the radio, and ran to the rescue chest to get the life preserves, but there was only one life jacket in the chest. I went to send another distress call, and that's when Jude got crazy.

Chief Brody: How so?

Sam: S/he cut the radio cable. Then s/he grabbed the life jacket and pulled that knife on me. S/he told me that if I loved the *Jodocus* so much I could ride it to Davy Jones' locker. Then Jude put the knife to my throat and said s/he oughta kill me now. Then s/he smiled and said that s/he would let the sea do the dirty work.

Chief Brody: Jude said that?

Sam: Yeah...I thought I was dead for sure. I started backing out of the cabin and onto the deck, Jude following and still waving that knife at me. Then this huge wave hit. The boat listed again, and Jude was washed overboard. Once the *Jodocus* righted herself, I went to the side of the boat to look for Jude, then I guess I was blindsided by another wave. I don't remember much after that...holding on to something floating just to keep my head above water, and being pulled into a large boat. The rest of it is really blurry.

Chief Brody: So Jude was going to kill you?

Sam: It sure looked like it to me.

Chief Brody: Did you try to defend yourself at all?

Sam: Other than backing out onto the deck, no. I mean, I was looking for some way out, and I was running out of room. I guess I was stalling, really, hoping I could talk some sense into Jude and find a way out for both of us. The wave hit so quickly, I never had time for any of that.

Chief Brody: So the last time you saw Jude...

Sam: ...was when the wave took him/her over the side.

Chief Brody: I think that is about all I need right now, Sam. You get better now, ok?

Sam: Will do, Chief.

INTERVIEW ENDED

Transcript of Second Interview with Sam Cunningham

Chief Brody: This is the interview of Sam Cunningham, conducted by Chief Brody at Sam's house, beginning at 2:00 p.m. on October 30, 2013. I've got the recorder on again, ok?

Sam: Sure, but I already told you everything I remember.

Chief Brody: Now before I ask you any questions, I'm gonna read you your rights. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you. Do you understand these rights?

Sam: Yeah, but I don't see the point of going over all of this again.

Chief Brody: We found Jude. His/Her body washed up on the beach.

Sam: I guess I need to talk to a lawyer.

INTERVIEW ENDED

Transcript of Radio Transmissions

FIRST TRANSMISSION: 27 October 2013, 16:52

Voice: Mayday! Mayday!

Clark: This is the Harbor Master. What is you call sign and location?

Voice: This is N-H-1-0. 0-1.

[static]

Clark: Say again.

Voice: We're caught going down.

TRANSMISSION TERMINATED

SECOND TRANSMISSION: 27 October 2013 17:00

Voice 1: I'm sorry! I'm sorry!

[static].

Voice 1: Please put down the knife!

[static].

Voice 2: I have had enough of younow it's time for you to pay

[static].

[screams]

TRANSMISSION TERMINATED

Incident Report:
Date: October 28, 2013

At 5:13 p.m. Oct. 27th, I received a call from Amelia/Al Clark, Harbor Master for Campbell Shores. Ms./Mr. Clark reported that he/she had been monitoring the shipping channels and had heard a radio transmission of a Mayday request. Ms./Mr. Clark stated that he/she had been unable to make out the vessel's identification number due to static. She/he was also unable to make radio contact with the distressed vessel. She/he stated that according to the harbor departure logs, the *Jodocus* was the only known vessel which had departed from Campbell Shores Harbor and was still at sea. Sam Cunningham and Jude Smith were believed to be the only crew on the *Jodocus*.

Ms./Mr. Clark stated that about ten minutes later he/she had received a second, partial transmission on the same channel of what appeared to be a knife fight between Smith and Cunningham. He/she reported that the transmission abruptly ceased following several loud screams. I was told that the Coast Guard had been notified and I asked to be kept informed of further developments.

At 9:40 p.m. on October 27th, I received a call from the radio dispatcher that Sam Cunningham had been rescued by the Coast Guard. According to the dispatcher, Sam had been found clinging to some wreckage about a mile off the coast near the Palpatine & Tarkin lighthouse. The dispatcher stated that Sam was being taken to Amity Regional Hospital for examination.

About 12:55 a.m. on October 28th, I arrived at Amity Hospital. Dr. Corinne Ruth stated that Sam was unable to answer questions at this time.

At 8:17 a.m. on October 28th, I returned to Amity Hospital and interviewed Sam Cunningham. A transcript of this interview is in the case file.

Reporting Officer: Chief Marty Brody, M.D. /s/ _____
Case No. 0121LM1975

Incident Report
Date: October 30, 2013

At 7 a.m. on October 30th, I received a call from the police dispatcher that two tourists had found a body on Campbell Shores City Beach. I arrived on the scene at 7:15 a.m. The clothed body lay face down in a small tidal pool approximately 1000 feet south of the public pier. The body was entangled in a large mass of seaweed. Initial examination after removal of the restraining seaweed showed signs of post-mortem injuries to the right extremities and face

as well as evidence of possible sharp force wounds to the chest and back. The body was severely bloated consistent with post-mortem decomposition during immersion in water. A necklace I recognized as worn regularly by missing shrimp boat captain Jude Smith, was found around the corpse's neck. I observed a torn life preserver, three feet away from the feet, also wrapped in seaweed. This life preserver was removed for examination as potential evidence. An empty knife sheath was fastened to the corpse's belt, but the knife was not located in the immediate area.

As the body was being removed for further examination, I interviewed Jaye Davidson and Steven Ray, the individuals that had discovered the body. Ms. Davidson gave her address as 17 Fado Place, Atlanta, New Hampshire and stated that she and Mr. Ray had been staying at the Campbell Beach Motel for several days. Mr. Ray gave his address as 21 Reggie's Lane, Atlanta. He stated that they had gone for a walk on the beach at approximately 6:30 a.m. to search for seashells. Mr. Ray stated that they had first noted a strong, unpleasant smell coming from the mass of seaweed and had walked closer to investigate. Upon observing the corpse's hand and arm through the seaweed, Mr. Ray stated that he sent Ms. Davidson to call the authorities. Mr. Ray stated that he remained with the corpse until the first officer arrived at the scene. Both Ms. Davidson and Mr. Ray stated that they had not touched anything on the scene.

After conclusion of the autopsy of Jude Smith, I examined the torn life preserver removed from the area around the body. Much of the preserver is torn or ripped. There is, however, a more regular, jagged cut through the preserver on the right side, approximately 7 1/2 inches from the shoulder. Cause of the cut is indeterminate given the damaged state of the preserver. No blood was observed in or around the cut or on any other portion of the preserver. The preserver has been placed in a plastic bag, marked with the case number and placed in the police evidence locker.

At 1:57 p.m., I drove to Sam Cunningham's house at 145 Charley Lane. Sam was home and initially willing to be interviewed. After reading the *Miranda* warnings, I informed Sam that Jude Smith's body had been found. Sam immediately indicated that he/she wished to speak with an attorney. In accordance with police department procedures, I terminated the interview at that time.

Reporting Officer: Chief Marty Brody, M.D. /s/
Case No. 0121LM1975

IN THE SUPERIOR COURT
OF NAYAK COUNTY
STATE OF NEW HAMPSHIRE

State of New Hampshire)	
)	Criminal Action
v.)	No. 1999-MT
)	Theft by Deception
J. "Salty" Golding)	

NEGOTIATED PLEA DISPOSITION FORM

WHEREAS, the above-named defendant has entered a negotiated guilty plea to the above-stated offense, WHEREUPON, it is ordered and adjudged by the Court that said defendant is hereby sentenced to confinement for a period of 4 years in the State Penal System or such other institution as the Commissioner of the New Hampshire Department of Corrections may direct, to be computed as provided by law. However, it is further ordered by the Court that the above sentence may be served on probation.

The defendant, having been granted the privilege of serving all or part of the above-stated sentence on probation, hereby is sentenced to the following general conditions of Probation:

- 1) Do not violate the criminal laws of any government unit.
- 2) Avoid injurious and Vicious habits-especially alcoholic intoxication and narcotics and other dangerous drugs unless prescribed lawfully.
- 3) Avoid persons or places of disreputable or harmful character.
- 4) Report to the Probation officer as directed and permit such officer to visit him (her) at home or elsewhere.
- 5) Work faithfully at suitable employment insofar as may be possible.
- 6) Do not change his (her) present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor.
- 7) Support his (her) legal dependents to the best of his (her) ability.
- 8) Pay fines, restitution and probation fees in the amount of \$1,000.00 as directed by the State Probation Office.

IT IS THE FURTHER ORDER of the Court, and the defendant is hereby advised that the Court may, at any time, revoke any conditions of this probation and/or discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law after deducting therefrom the amount of time the defendant has served on probation.

This 24 day of February, 1999

Peter J. Daughtery /s/
Judge, Nayak County Superior Court

Receipt acknowledged by:

“Salty” Golding /s/
Defendant

/s/
Attorney for Defendant

IN THE SUPERIOR COURT
OF NAYAK COUNTY
STATE OF NEW HAMPSHIRE

State of New Hampshire)	
)	Criminal Action
v.)	No. 2013-MT
)	False Information to
Al Durkin)	Law Enforcement Officer

NEGOTIATED PLEA DISPOSITION FORM

WHEREAS, the above-named defendant has entered a negotiated guilty plea to the above-stated offense, WHEREUPON, it is ordered and adjudged by the Court that said defendant is hereby sentenced to confinement for a period of 12 months in the State Penal System or such other institution as the Commissioner of the New Hampshire Department of Corrections may direct, to be computed as provided by law. However, it is further ordered by the Court that the above sentence may be served on probation.

The defendant, having been granted the privilege of serving all or part of the above-stated sentence on probation, hereby is sentenced to the following general conditions of Probation:

- 1) Do not violate the criminal laws of any government unit.
- 2) Avoid injurious and Vicious habits-especially alcoholic intoxication and narcotics and other dangerous drugs unless prescribed lawfully.
- 3) Avoid persons or places of disreputable or harmful character.
- 4) Report to the Probation officer as directed and permit such officer to visit him (her) at home or elsewhere.
- 5) Work faithfully at suitable employment insofar as may be possible.
- 6) Do not change his (her) present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor.
- 7) Support his (her) legal dependents to the best of his (her) ability.
- 8) Pay fines, restitution and probation fees in the amount of \$100 as directed by the State Probation Office.

IT IS THE FURTHER ORDER of the Court, and the defendant is hereby advised that the Court may, at any time, revoke any conditions of this probation and/or discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law after deducting therefrom the amount of time the defendant has served on probation.

This 5 day of May, 2013.

Ross J. Adams /s/
Judge, Nayak County State Court

Receipt acknowledged by:

Al Durkin /s/
Defendant

/s/
Attorney for Defendant

Medical Examiner's Report

Autopsy Report
Jude Smith
Case #2013-020123

Date and Time of examination:

Under the provisions of the state death investigation statute, an autopsy is performed at the city morgue on October 30, 2013, commencing at 9 a.m. with the assistance of autopsy technician Ace Frehley.

Presentation, clothing and personal effects

The decedent was transported to the morgue in a black body bag. Post-mortem decomposition is evident and there is extreme soft-tissue bloating. Extremities, head and trunk have post-mortem injuries characteristic of fish. Face, front of extremities and of trunk also exhibit limited post-mortem injuries characteristic of insects and crustaceans.

A dark navy chamois shirt-jacket and white cotton undershirt remain on the trunk and upper extremities. Tattered blue jeans remain on the abdomen and lower extremities. A gold chain approximately ten inches in length with a pendant of the name "JUDE" in cursive gold script was twisted around the neck. An empty leather knife sheath was fastened to the corpse's belt

There are a number of uneven rips and material strain in both shirts consistent with separation of the material due to the considerable soft tissue bloating of the body in post-mortem decomposition. Both shirts also show evidence of at least three more regular, serrated cuts. On the navy shirt, the largest such cut is approximately four inches in length, located three inches to the right from the fifth button on the jacket, running at an upward angle of 20°. Two smaller defects with some evidence of the same regular serration appear on the left shoulder of the back of the shirt: one starting two and a half inches from the left shoulder, running at an angle of 25° for three inches and the other located two and half inches further down and approximately three inches to the right of the prior cut, running at an upward angle of 35° for five inches. Similar, partially serrated, regular edge cuts appear on the tee shirt in the same locations. The initial length of all defects is indeterminate given indications of ripping caused by possible contact with unknown objects as well as post-mortem expansion of the body.

The jeans also show evidence of uneven rips and material strain due to post-mortem bloating as well as possible contact with unknown objects. Several wads of paper were removed from the left pocket.

Each piece of clothing, the pocket contents, the knife sheath and the pendant have been placed in a separate plastic bag, marked with the case number, and placed in the Nayak County Police Evidence Locker.

X-ray examination:

X-rays of the chest and abdomen fail to reveal projectile or metallic densities. Fluid is detected in the stomach and sinus cavities.

Postmortem Changes:

Rigor mortis has passed. There is no pattern of lividity, probably due to sustained post-mortem immersion in water. Post-mortem decomposition is evident in the form of light to dark green or black patterns on the

body and marbling. Decomposition accompanied by extreme soft tissue bloating due to post-mortem gas expansion. Right extremities, right side of trunk and left side of back, and head exhibit post-mortem injuries characteristic of those caused by fish. Front of trunk and face also exhibit minor post-mortem injuries characteristic of exposure to insects and crustaceans, consistent with limited exposure of the body in tidal pool.

Diagnostic and therapeutic artifacts:

The clothing has been partially torn or cut away from the body as previously described. There are no needle marks or other signs of diagnostic or therapeutic intervention.

Features of identification:

The body measures 5'8" in height and weighs 145 pounds. The physique is muscular. The hair is light brown and measures about four and half inches in greatest. The teeth are in good repair and are natural. Eye color is green. A vertical, four-inch long tattoo of a coiled snake begins one inch down on the right shoulder. Other distinctive marks are absent.

Fingerprints were removed from the left hand and dental molds made for identification purposes. Identification as Jude Smith was confirmed by Nayak County Police fingerprint records and by Mr. Smith's personal dentist, John Hurtsalot, DDS.

EXTERNAL EXAMINATION OF THE BODY:

After complete removal of apparel, three penetrating wounds were determined: one on the upper right chest, approximately two inches below the sternum, and two on the upper left back and shoulder, approximately two and a half inches apart. All three wounds had been exacerbated by post-mortem injuries characteristic of those caused by fish and other sea life. Due to the decompositional state of the body, external examination as to the possible existence of sharp force trauma in these areas was limited. Confirmation of the existence of said injuries is based on internal examination as detailed below.

The head exhibits considerable post-mortem injuries characteristic of those caused by fish. There is also insect infestation around mouth, eyes and nasal passages consistent with several hours exposure in a tidal pool post-mortem. Eyes exhibit characteristics of blunt force injury. Hair pulls out easily due to post-mortem decomposition.

The neck shows no evidence of contusion, abrasion, or other abnormality.

The torso and back shows considerable bruising around the wounds previously described.

The upper and lower extremities exhibit post-mortem injuries consistent with fish and insect interference previously noted.

The genitalia appear normal. The perineum and ano-rectal regions are normal and atraumatic.

INTERNAL EXAMINATION OF THE BODY:

Head:

The skin of the scalp is reflected in the usual manner. The calvarium is intact, and upon its removal, epidural, subdural and subarachnoid hemorrhage are absent. Small localized hemorrhage around both of the orbital bones consistent with the blunt force trauma noted in the external examination. The brain weighs 1280 grams and is normal when sectioned. The base of the skull is intact. Water is present in the sinus cavity.

Neck:

The skin of the neck is dissected up to the angle of the mandible. No evidence of injury is seen. The thyroid, hyoid, and cricoid are normal and atraumatic. The carotid vessels are pliable. The anterior cervical spine is intact. The epiglottis is swollen and there is water in the major airways and trachea.

Chest, Abdomen and Pelvis:

There is extensive hemorrhaging underneath the skin in the upper chest and left shoulder regions. On the chest, a stabbing instrument has penetrated through the right throacoabdominal wall just below the right third rib. The wound track extends through to a small 1/8-inch nick on the left lung. A measuring rod was inserted sideways and upward in the chest wound to a penetration depth from the surface of four inches. The back of the left shoulder also exhibits penetration by a stabbing instrument. Two wounds appear approximately two and half inches apart. The wound tracks measure two inches and two and half inches deep, respectively. Neither track has penetrated a major artery, vein or organ.

The chest cavity contains approximately a liter of water, other fluid and clotted blood. The abdominal cavity contains another liter of water, fluid and clotted blood.

The internal organs are examined in situ, then removed and examined individually. Organ weights are as follows:

- Heart 380 grams
- Left lung 350 grams
- Right lung 354 grams
- Spleen 80 grams
- Liver 1800 grams
- Kidneys 380 grams combined.

The heart contains blood in the left ventricle and atrium. The lungs are of normal weight, and aside from the nick previously recorded on the left lung, show no signs of injury. The spleen, kidneys and liver are unremarkable. The adrenals, thyroid and pancreas are normal. The small bowel, appendix, large bowel and rectum are normal. The stomach cavity contains approximately 2 liters of water, fluid and clotted blood. The lymph nodes are not enlarged and the musculoskeletal system is normal. The urinary tract is normal and the bladder is empty.

PROCEDURES AND EVIDENCE:

- 1) Blood for toxicology and typing
- 2) Fingerprints of left hand for identification
- 3) Dental molds for identification
- 4) Documentary photographs
- 5) Clothing

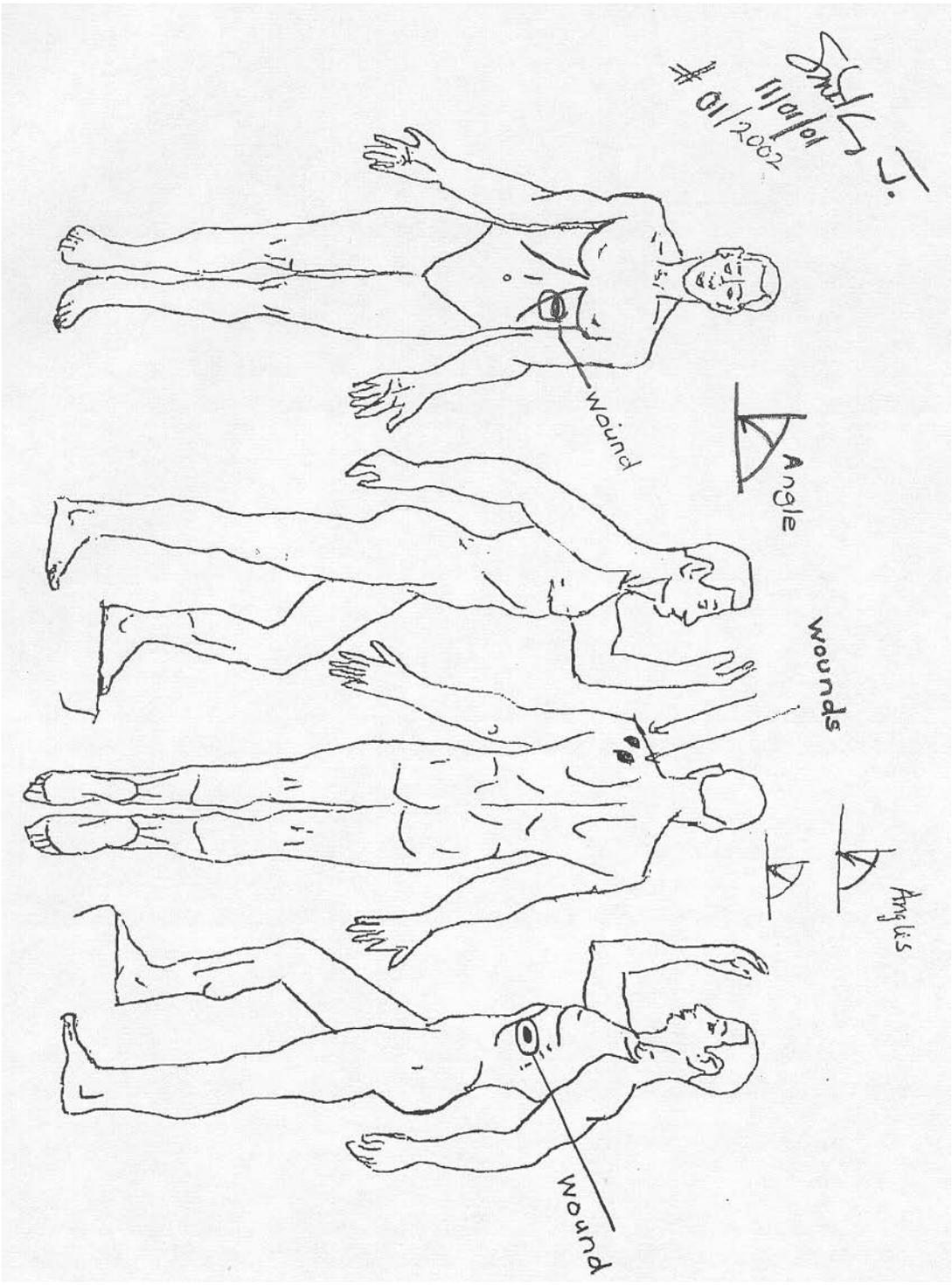
CAUSE OF DEATH:

Cause of death is indeterminate. Penetrating wounds to chest and back caused extensive internal hemorrhaging and cannot be excluded as a cause of death. The presence of considerable water and other fluids in the airways, sinus passages, chest, abdominal and stomach cavities indicate that drowning is also a possible contributing factor.

MANNER: Homicide

Marty Brody, M.D. _____/s/_____
Medical Examiner
Nayak County

Dr. J. S. ...
11/10/01
01/2002



LEGAL AUTHORITIES

STATUTES

OCNHA § 16-5-1. Murder; felony murder

- (a) A person commits the offense of murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being.
- (b) Express malice is that deliberate intention unlawfully to take the life of another human being which is manifested by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart.
- (c) A person also commits the offense of murder when, in the commission of a felony, he causes the death of another human being irrespective of malice.
- (d) A person convicted of the offense of murder shall be punished by death or by imprisonment for life.

OCNHA § 16-5-21. Aggravated assault

- (a) A person commits the offense of aggravated assault when he or she assaults:
 - (2) With a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury.

OCNHA § 16-11-106. Possession of a knife during the commission of a felony

- (b) Any person who shall have on or within arm's reach of his or her person a firearm or a knife having a blade of three or more inches in length during the commission of, or the attempt to commit:
 - (1) Any crime against or involving the person of another

and which crime is a felony, commits a felony and, upon conviction thereof, shall be punished by confinement for a period of five years, such sentence to run consecutively to any other sentence which the person has received.

OCNHA § 16-3-20. Justification

The fact that a person's conduct is justified is a defense to prosecution for any crime based on that conduct. The defense of justification can be claimed:

- (1) When the person's conduct is justified under Code Section 16-3-21...

OCNHA § 16-3-21. Use of force in defense of self or others; evidence of belief that force was necessary

- (a) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force; however,...a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.
- (b) A person is not justified in using force under the circumstances specified in subsection (a) of this Code section if he:
 - (1) Initially provokes the use of force against himself with the intent to use such force as an excuse to inflict bodily harm upon the assailant;
 - (2) Is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(3) Was the aggressor or was engaged in a combat by agreement unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force.

16-2-2. Effect of misfortune or accident on guilt

A person shall not be found guilty of any crime committed by misfortune or accident where it satisfactorily appears there was no criminal scheme or undertaking, [or] intention.

43 USCA § 1312

The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary.

FROM CASE LAW

The following excerpts are from Case Law concerning the legal issues raised in this Mock Trial Case. Only portions of the opinions are provided, and only those portions may be used in the course of the trial. Citations and internal quotation marks are omitted in the excerpts of the cases that follow.

The crime of malice murder is committed when a person unlawfully causes the death of another human being while acting with express or implied malice. In this definition of the crime, the concept of malice incorporates the intent to kill. Thus, in New Hampshire, the crime of malice murder is committed when the evidence shows either an express or, in the alternative, an implied intent to commit an unlawful homicide. This meaning of malice murder is consistent with the general rule that crimes which are "defined so as to require that the defendant intentionally cause a forbidden bad result are usually interpreted to cover one who knows that his conduct is substantially certain to cause the result, whether or not he desires the result to occur." Thus, a malice murder can be shown not only by evidence that the defendant acted with the "deliberate intention unlawfully to take the life of another human being which is manifested by external circumstances capable of proof," but also by evidence that the defendant acted "where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart." In other words, evidence that the defendant acted with implied malice is, for purposes of demonstrating his guilt of the crime of malice murder, no less probative than proof that he acted with a specific intent to kill.

Parker v. State, 270 NH 256 (1998)

As to the question of malice, there is no requirement of premeditation or a preconceived intention to kill; "malice aforethought can be formed instantly."

Wynn v. State, 272 NH 861 (1999)

Malice imports the absence of all elements of justification or excuse and the presence of an actual intent to cause harm.

Stiles v. State, 242 NH App. 484 (2012)

Motive is not an essential element of the crime of malice murder. Although motive may be relevant to the issues of intent and malice, it is not a separate element of the crime which must be proven by the state.

Coates v. State, 255 NH 183 (1985)

While motive is not an essential element in the proof of the crime of murder, the State is entitled to present evidence to establish that there was a motive.

Johnson v. State, 260 NH 457 (1990)

Felony murder involves a nonintentional killing committed in the prosecution of a felony. It is still murder and is subject to the same penalties as "malice murder." The only difference is the absence of intent and malice.

Burke v. State, 234 NH 512 (1975)

Under New Hampshire law "[a] person . . . commits the offense of murder when, in the commission of a felony, he [or she] causes the death of another human being, irrespective of malice." Malice means the intent to take a life without legal justification or mitigation. Thus, malice, or the intent to kill, is not an element of felony murder. Proof of felony murder does not require proving malice or the intent to kill, but only that the defendant had the requisite criminal intent to commit the underlying felony.

Tessmer v. State, 273 NH 220 (2012)

When a defendant presents evidence that he was justified in using deadly force, the burden is on the State to disprove the defense beyond a reasonable doubt.

Andrews v. State, 267 NH 473 (1997)

Two elements must be present before the use of deadly force is justified under that statute: (1) the danger to either the actor or a third person must be imminent; and (2) the actor must reasonably believe that such force is necessary to prevent death or great bodily injury to himself or a third person.

Coley v. State, 201 NH App. 722 (1991)

Generally, either accident or self defense will be involved in a case, but not both. However, the facts of a case will, at times, present a situation where a party who is armed with a weapon contends that while he was defending himself from another party, his weapon accidentally discharged and killed that other party. Just such a situation is involved in the present case. [Defendant] contended that while he was trying to defend himself from the victim's knife attack, he and the victim began struggling over [Defendant]'s gun and, during that struggle, the gun accidentally discharged. [Defendant] never contended that his gun was intentionally fired. Under the facts of this case, the trial court's refusal to charge the law of accident, when specifically requested to do so, was error.

Turner v. State, 262 NH 359 (1992)

There is no hard and fast rule, in a homicide case, that the law of accident and of self defense are always "mutually exclusive." Whether both are involved is initially a question of law for the trial court. Where the court finds evidence of the involvement of both, and there has been a timely request for instruction as to both, the court should charge the jury as to both.

Sellers v. State, 245 NH App. 621 (2012)

It is fundamentally unfair and a violation of due process of law for a state to permit cross-examination of a defendant as to [his] silence where the defendant has been informed of his rights under Miranda, or to permit [any witness to] comment thereon, since the giving of the Miranda warnings might induce silence by implicitly assuring a defendant that his silence will not be used against him.

Chapman v. State, 263 NH 393 (1993)

[The defendant] argues that the officer's testimony concerning his invocation of his right to counsel should not have been presented to the jury as a comment on his exercise of his right to remain silent. [This is incorrect, as] the defendant did not remain silent. He discussed the crime, and then he invoked his right to a lawyer.

Williams v. State, 258 NH 281 (1988)

The purpose of a *Jackson v. Denno* hearing is to allow the trial court in the first instance, as a matter of law, and the jury, ultimately, as a matter of fact, to assure themselves of the voluntariness of a statement.

Hart v. State, 193 Ga. App. 834 (1989).

IN THE SUPERIOR COURT
OF NAYAK COUNTY
STATE OF NEW HAMPSHIRE

State of New Hampshire)
)
v.) **Criminal Action**
) **No. 2014-MT**
)
Sam Cunningham)

THE CHARGE OF THE COURT
[Not to be read in open court]

You are considering the case of the State of New Hampshire versus Sam Cunningham. The defendant in this case has been indicted by the grand jury of this county for the offenses of murder and felony murder.

The indictment reads as follows:
(Cover allegations of indictment.)

This indictment was returned into court on the ____ day of _____, 20____.

Issue and Plea of Not Guilty

To this indictment, the defendant has entered a plea of not guilty, and this makes the issue which you have been selected, sworn, and empaneled to try.

Indictment and Plea; Not Evidence

I caution you that the fact that this accused has been indicted by the grand jury is no evidence of his/her guilt. You should not consider the indictment as evidence or implication of guilt. Neither is the plea of not guilty to be considered as evidence.

Presumption of Innocence; Burden of Proof; Reasonable Doubt

This defendant is presumed to be innocent until proven guilty. The defendant enters upon the trial of the case with a presumption of innocence in his/her favor. This presumption remains with the defendant until it is overcome by the state with evidence which is sufficient to convince you beyond a reasonable doubt that the defendant is guilty of the offense charged.

No person shall be convicted of any crime unless and until each element of the crime is proven beyond a reasonable doubt.

The burden of proof rests upon the state to prove every material allegation of the indictment and every essential element of the crime charged beyond a reasonable doubt.

There is no burden of proof upon the defendant whatever, and the burden never shifts to the defendant to prove innocence. When a defense is raised by the evidence, the burden is on the state to negate or disprove it beyond a reasonable doubt.

However, the state is not required to prove the guilt of the accused beyond all doubt or to a mathematical certainty. A reasonable doubt means just what it says. It is a doubt of a fair-minded, impartial juror, honestly seeking the truth. It is a doubt based upon common sense and reason. It does not mean a vague or arbitrary doubt, but is a doubt for which a reason can be given, arising from a consideration of the evidence, a lack of evidence, a conflict in the evidence, or any combination of these.

If after giving consideration to all the facts and circumstances of this case, your minds are wavering, unsettled or unsatisfied, then that is a doubt of the law, and you should acquit the defendant; but, if that doubt does not exist in your minds as to the guilt of the accused, then you would be authorized to convict the defendant.

If the state fails to prove the defendant's guilt beyond a reasonable doubt, it would be your duty to acquit the defendant.

Credibility of Witnesses

You must determine the credibility or believability of the witnesses. It is for you to determine what witness or witnesses you will believe and which witness or witnesses you will not believe, if there are some you do not believe.

In passing upon their credibility, you may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their interest or lack of interest, their means and opportunity for knowing the facts which they testify about, the nature of the facts which they testify about, the probability or improbability of their testimony, and of the occurrences which they testify about. You may also consider their personal credibility insofar as it may legitimately appear from the trial of this case.

Conflicts in Testimony

When you consider the evidence in this case, if you find a conflict, you should settle this conflict, if you can, without believing that any witness made a false statement. If you cannot do this, then you should believe that witness or those witnesses you think best entitled to belief.

You must determine what testimony you will believe and what testimony you will not believe.

Defendant's Option to Testify

The defendant in a criminal case is under no duty to present any evidence tending to prove innocence and is not required to take the stand and testify in the case. If the defendant elects not to testify, no inference hurtful, harmful, or adverse to the defendant shall be drawn by the jury, nor shall such fact be held against the defendant in any way.

However, when a defendant does testify in his own behalf, then you have no right to disregard his/her testimony merely because he is accused of crime; that when s/he does so testify s/he at once becomes the same as any other witness, and his/her credibility is to be tested by and subjected to the same tests as are legally applied to any other witness; and in determining the degree of credibility that shall be accorded to his/her testimony, you have a right to take into consideration the fact that s/he is interested in the result of the prosecution, as well as his/her demeanor and conduct upon the witness stand.

Jury; Judges of Law and Facts

Members of the jury, it is my duty and responsibility to ascertain the law applicable to this case and to instruct you on that law, by which you are bound. It is your responsibility to ascertain the facts of the case from all the evidence presented. It then becomes your duty and responsibility to apply the law I give you in the charge to the facts as you find them to be.

Definition of Crime

This defendant is charged with a crime against the laws of this state. A crime is a violation of a statute of this state in which there is a joint operation of an act, or omission to act, and intention.

Intent

Intent is an essential element of any crime and must be proved by the state, beyond a reasonable doubt.

Intent may be shown in many ways, provided you, the jury, believe that it existed from the proven facts before you. It may be inferred from the proven circumstances or by acts and conduct, or it may be, in your discretion, inferred when it is the natural and necessary consequence of the act. Whether or not you draw such an inference is a matter solely within your discretion.

No Presumption of Criminal Intent

This defendant will not be presumed to have acted with criminal intent, but you may find such intention, or the absence of it, upon a consideration of words, conduct, demeanor, motive, and other circumstances connected with the act for which the accused is being prosecuted.

Evidence

Evidence is the means by which any fact which is put in issue is established or disproved. Evidence includes all the testimony of the witnesses and the exhibits admitted during the trial. It also includes any facts agreed to by counsel. It does not include the indictment or the opening statements and closing arguments by the attorneys.

Direct and Circumstantial Evidence

Evidence may be either direct or circumstantial or both.

Direct evidence is evidence which points immediately to the question at issue.

Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. Circumstantial evidence is the proof of facts or circumstances, by direct evidence, from which you may infer other related or connected facts which are reasonable and justified in the light of your experience.

To warrant a conviction on circumstantial evidence, the proven facts must not only be consistent with the theory of guilt, but must exclude every other reasonable theory other than the guilt of the accused.

The comparative weight of circumstantial evidence and direct evidence, on any given issue, is a question of fact for the jury to decide.

Expert Witness

Testimony has been given by certain witnesses who, in law, are termed experts. The law permits persons expert in certain areas to give their opinions derived from their knowledge of that area. The weight which is given to the testimony of expert witnesses is a question to be determined by the jury. The testimony of an expert, like that of any other witness, is to be received by you and given only such weight as you think it is properly entitled to receive. You are not required to accept the opinion testimony of any witness, expert or otherwise.

Witness, Impeached by

To impeach a witness is to prove the witness is unworthy of belief. A witness may be impeached by:

- a. Disproving the facts to which the witness testified;
- b. Proof of general bad character;
- c. Proof that the witness has been convicted of a crime involving dishonesty or false statement; or
- d. Proof of contradictory statements, previously made by the witness, as to matters relevant to the witness's testimony and to the case.

If it is sought to impeach a witness by "b," "c," or "d," above, proof of the general good character of the witness may be shown. The effect of the evidence is to be determined by the jury.

If any attempt has been made in this case to impeach any witness by proof of contradictory statements previously made, you must determine from the evidence:

- a. First, whether any such statements were made;
- b. Second, whether they were contradictory to any statements the witness made on the witness stand; and
- c. Third, whether it was material to the witness's testimony and to the case.

If you find that a witness has been successfully impeached by proof of previous, contradictory statements, you may disregard that testimony, unless it is corroborated by other creditable testimony, and the credit to be given to the balance of the testimony of the witness would be for you to determine.

It is for you to determine whether or not a witness has been impeached and to determine the credibility of such witness and the weight the witness's testimony shall receive in the consideration of the case.

Prior Inconsistent Statement; Substantive Evidence

Should you find that any witness, prior to the witness's testimony in this case from the witness stand, has made any statement inconsistent with that witness's testimony from the stand in this case, and that such prior inconsistent statement is material to the case and the witness's testimony, then you are authorized to consider that prior statement not only for purposes of impeachment, but also as substantive evidence in the case.

Offenses Charged

This defendant is charged with the offenses of murder and felony murder. These offenses are defined as follows:

Malice Murder; Defined

A person commits murder when that person unlawfully and with malice aforethought, either express or implied, causes the death of another human being. Express malice is that deliberate intention unlawfully to take away the life of another human being, which is shown by external circumstances capable of proof. Malice may, but need not, be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart. It is for the jury to decide whether or not the facts and circumstances of this case show malice.

To constitute murder, the homicide must have been committed with malice. Legal malice is not necessarily ill will or hatred, but it is the unlawful intention to kill without justification, excuse, or mitigation.

If a killing is done with malice, no matter how short a time the malicious intent may have existed, such killing constitutes murder.

New Hampshire law does not require premeditation, and no particular length of time is required for malice to be generated in the mind of a person. It may be formed in a moment, and instantly a mortal wound may be inflicted. Yet, if malice is in the mind of the accused at the time of the doing of the act or killing, and moves the accused to do it, such is sufficient to constitute the homicide as murder.

Premeditation; Defined

Premeditation, as the term is usually used, means a prior determination or plan to commit an act. Premeditation is not an element of the offense of murder, and therefore need not be proven by the state to establish malice aforethought. However, any evidence of premeditation, or lack of it, may be considered by you insofar as it related to the existence, or nonexistence, of malice at the time of the alleged killing.

Felony Murder; Defined

A person also commits the crime of murder when, in the commission of a felony, that person causes the death of another human being irrespective of malice. Under our law, aggravated assault is a felony, and is defined as follows:

An assault is an attempt to commit a violent injury to the person of another.

A person commits the offense of aggravated assault when that person assaults another person with a deadly weapon, or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury.

Motive

Proof of particular motive is not essential to constitute the crime of murder. Evidence of motive, if any, is admitted for your determination as to whether or not it establishes the state of the defendant's mind at the time of the alleged homicide.

Affirmative Defense; Definition; Burden of Proof

An affirmative defense is a defense that admits the doing of the act charged, but seeks to justify, excuse, or mitigate it. Once the issue of an affirmative defense is raised, the burden is on the state to disprove it beyond a reasonable doubt.

Justification; Generally

If you find that the defendant's conduct was justified, this is a defense to prosecution for any crime based on that conduct.

Use of Force in Defense of Self

A person is justified in threatening or using force against another person when, and to the extent that, he/she reasonably believes that such threat or force is necessary to defend himself/herself against the other's imminent use of unlawful force. A person is justified in using force which is intended or likely to cause death or great bodily harm only if that person reasonably believes that such force is necessary to prevent death or great bodily injury to himself/herself or to prevent the commission of a forcible felony.

The state has the burden of proving beyond a reasonable doubt that the defendant was not justified.

A person is not justified in using force, if that person:

- a. Initially provokes the use of force against himself/herself with the intent to use such force as an excuse to inflict bodily harm upon the assailant; or
- b. Is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or
- c. Was the aggressor or was engaged in a combat by agreement, unless the person withdraws from the encounter and effectively communicates his/her intent to withdraw to the other person, and the other person still continues or threatens to continue the use of unlawful force.

Forcible Felony, Definition

A forcible felony means any felony which involves the use or threat of physical force or violence against any person.

Aggravated assault is a felony, and I have previously defined it for you.

Doctrine of Reasonable Beliefs

In applying the law of self-defense, a defendant is justified to kill another person in defense of self. The standard is whether the circumstances were such that they would excite not merely the fears of the defendant but the fears of a reasonable person. For the killing to be justified under the law, the accused must have really acted under the influence of these fears and not in a spirit of revenge.

What the facts are in this case is a matter solely for you, the jury, to determine under all the facts and circumstances of this case.

Retreat (No Duty to Retreat to Be Justified)

One who is not the aggressor is not required to retreat before being justified in using such force as is necessary for personal defense, or in using force which is likely to cause death or great bodily harm, if one reasonably believes such force is necessary to prevent death or great bodily injury to himself/herself or to prevent the commission of a forcible felony.

Justification; Threats, Menaces Causing Reasonable Beliefs of Danger

It is not essential, to justify a homicide, that there should be an actual assault made upon the defendant.

Threats, accompanied by menaces, though the menaces do not amount to an actual assault, may, in some instances, be sufficient to arouse a reasonable belief that one's life is in imminent danger, or that one is in imminent danger of great bodily injury, or that a forcible felony is about to be committed upon one's person.

Provocation by threats or words alone will in no case justify the homicide or be sufficient to free the accused from the crime of murder when the killing is done solely in resentment of the provoking words.

Whether or not the killing, if there was a killing, was done under circumstances which would be justifiable or was done solely as a result of, and in resentment of, threats or provoking words alone is a matter for you, the jury, to determine.

If you believe that the defendant was justified under the instructions which the court has given you, then it would be your duty to acquit the defendant.

Excessive Force

The use of excessive force or unlawful force, while acting in self-defense, is not justifiable, and the defendant's conduct in this case would not be justified if you find that the force used exceeded that which the defendant reasonably believed was necessary to defend against the victim's use of unlawful force, if any.

Revenge for Prior Wrong

A person has a right to defend himself/herself, but a person is not justified in deliberately assaulting another person not to prevent any impending wrong, but solely in revenge for a past or previous wrong, regardless of how serious the past or previous wrong might have been, when the episode involving the previous wrong has ended. Such person is not justified in revenge by deliberately seeking out and assaulting the alleged wrongdoer.

If you find from the evidence in this case that the defendant used force against the alleged victim named in this indictment in order to prevent an impending wrong which the defendant reasonably believed was about to be committed by such other person, and that the defendant reasonably believed that such force was necessary in order to prevent such impending wrong (death or great bodily injury to the defendant, or to prevent the commission of a forcible felony), then that use of force would be justified, and it would be your duty to acquit the defendant.

On the other hand, if you believe beyond a reasonable doubt from the evidence in this case that the defendant used force against the alleged victim named in the indictment (in the way and manner alleged in the indictment) for the sole purpose of avenging a past or previous wrong, regardless of how serious such previous wrong may have been, and not for the purpose of preventing an impending wrong (death or great bodily injury to the defendant, or to prevent the commission of a forcible felony), then you would be authorized to convict the defendant.

Verdict

If you find and believe beyond a reasonable doubt, under all the evidence and the court's instructions, that the defendant is guilty of the offense of murder with malice aforethought, then you must specify such in your verdict, and the form of your verdict in that event would be: "We, the jury, find the defendant guilty of malice murder."

If you find and believe beyond a reasonable doubt, under all the evidence and the court's instructions, that the defendant is guilty of the offense of felony murder, then you must specify such in your verdict, and the form of your verdict in that event would be: "We, the jury, find the defendant guilty of felony murder."

Not Guilty Verdict Form

If you do not believe that the defendant is guilty of either of these offenses, or if you have any reasonable doubt as to the defendant's guilt, then it would be your duty to acquit the defendant, in which event the form of your verdict would be: "We, the jury, find the defendant not guilty."

Responsibility for Sentencing

You are only concerned with the guilt or innocence of the defendant. You are not to concern yourselves with punishment.

Unanimous Verdict

Whatever your verdict is, it must be unanimous, that is, agreed by all. The verdict must be signed by one of your members as foreperson, dated, and returned to be published in open court.

Deliberations

One of your first duties in the jury room will be to select one of your number to act as foreperson, who will preside over your deliberations and who will sign the verdict to which all twelve of you freely and voluntarily agree.

You should start your deliberations with an open mind. Consult with one another and consider each other's views. Each of you must decide this case for yourself, but you should do so only after a discussion and consideration of the case with your fellow jurors. Do not hesitate to change an opinion if convinced that it is wrong. However, you should never surrender an honest opinion in order to be congenial or to reach a verdict solely because of the opinions of the other jurors.

Court Has No Interest in Case

By no ruling or comment which the court has made during the progress of the trial has the court intended to express any opinion upon the facts of this case, upon the credibility of the witnesses, upon the evidence, or upon the guilt or innocence of the defendant.

Retire to Jury Room

You may now retire to the jury room, but do not begin your deliberations until you receive the indictment and any evidence which has been admitted in the case.

Bailiff, escort the jury to the jury room.