

The 2011-12 New Hampshire Mock Trial Case

Adapted based on the 2006 Georgia High School Mock Trial case originally authored by the

**SUBCOMMITTEE ON THE PROBLEM
YLD HIGH SCHOOL MOCK TRIAL COMMITTEE
STATE BAR OF GEORGIA**

**IN THE SUPERIOR COURT
OF AMARTO COUNTY
STATE OF NEW HAMPSHIRE**

STATE OF NEW HAMPSHIRE,)	
)	
)	
v.)	Criminal Action No. 2012-MT
)	
)	
ROBIN BANKS)	
)	
)	

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

The Subcommittee on the Problem gratefully acknowledges the team of writers who produced this original case:

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The drawings throughout this publication are by Hanna Cho from Ringgold High School in Ringgold, Ga. Hanna was the state champion in the 2005 Craig Harding Court Artist Contest.

INTRODUCTION

Most of the population of Auraria Springs was ecstatic when the town was chosen to host the four-day global economic summit referred to as the "Gang of Four" on January 11-14, 2005. Auraria Springs used to be a sleepy little mountain town, where time passed slowly and change was just as slow to arrive. However, since retirees and young professionals started purchasing mountain property, the population and economy of Auraria Springs has grown rapidly. The downtown area of Auraria Springs is in the process of being revitalized and the residential area around the old car lot near the railroad tracks has become more and more gentrified. Because of its perfect location and growing importance in the state, high-ranking officials felt that Auraria Springs would be the perfect place to host the summit. On the surface Auraria Springs seemed happy with its newfound prosperity, but some residents resented the newcomers and what they considered the overwhelming sprawl that came with it. This group of residents, led by Robin Banks, began to outline the downside of the booming growth and development, through newspaper articles and peaceful protests. They became very outspoken opponents of the "new order of things" in Auraria Springs.

At the same time, Glutco, a huge conglomerate that manufactures the latest addition to the over-sized SUV market, the Guzzler, had just purchased the abandoned alternative-fuel vehicle dealership on the edge of town, near the railroad tracks. Glutco's plans called for turning the old car lot into a new dealership for their very popular, over-sized SUV, which they considered the perfect vehicle for navigating mountain roads, going off-road, and getting off a snowbound mountain. The Guzzler is bigger than a Hummer, and viewed by many environmentalists as the ultimate in environmental waste and gluttony, but even with gas prices on the rise, Glutco had not seen a downturn in Guzzler sales. Americans love giant automobiles with big engines!

Because of worries over protests, riots and sporadic vandalism at previous Gang of Four summits, security was a major concern for summit planners and local officials began training months in advance to deal with potentially violent protestors. Fires set at Guzzler dealerships punctuated protests in cities that hosted the last two summits, so local officials knew they had to be proactive and Auraria Springs was on edge as residents read about Glutco's plans for the old car lot in the local paper. Lists were made and plans were set for dealing with protestors, both violent and peaceful, and with the media and dignitaries who would visit the area.

An international environmental fringe group called Global Nature Activist Troop (GNAT...they love to remind everybody that the G is silent) claimed responsibility for the two previous "summit fires". However, the national GNAT "organization" was quick to denounce such violent activities. According to information circulating online and by word-of-mouth, GNAT had plans to disrupt the Gang of Four summit scheduled for Auraria Springs and because of these rumors, Glutco decided to hold off on the renovation of the site until after the summit had concluded. They were certain that GNAT would view the new dealership as a target of a bomb attack, as they had other Guzzler dealerships in the past. Local officials and Glutco executives were well aware of Robin Banks and his/her ties, however tenuous, to GNAT. The appearance of Michael/Michelle Collins in Auraria Springs seemed to cement these ties in the minds of local law enforcement officials.

Another issue that faced summit planners and local officials was how to deal with the group of homeless persons who were a constant presence near the railroad tracks in the downtown area. The local paper carried several editorials about this subject, from homeless advocates, as well as from those who wanted to rid Auraria Springs of all homeless persons in advance of the summit. It was well known in town that several homeless persons frequented the abandoned car lot and that a female homeless person, Philipa Newton, and her sibling Larry, were among the most dedicated "residents". It was also widely known that Philipa habitually started fires both for warmth on cold nights and to cook food.

The town was tense as it waited for the summit to start and that tension exploded, along with the abandoned car lot, just as the protestors, dignitaries and the media descended on the town to attend the summit. Now Philipa Newton is dead and Robin Banks has been arrested and charged with her murder. Banks has an alibi, but is it solid enough to combat strong evidence presented by the Prosecution against him/her? As teams prepare and present their cases during the regional and state competitions, we'll come to find out just how strong both the Prosecution and Defense cases really are.

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. Stipulations cannot be contradicted or challenged.
3. The signatures on the witness statements and all other documents are authentic.
4. There are **NO** costume options permitted as an exception to Rule 20.
5. The Charge of the Court is accurate in all respects; no objections to the charge shall be entertained.
6. Chain of custody for evidence is not in dispute.
7. No demurrer to the indictment shall be allowed.
8. The Introduction and the supplemental educational materials and Internet links provided in the Teacher Coach Manual are of no legal consequence in terms of the trial and are not admissible for impeachment purposes or for any other purpose.
9. Philipa Newton, the victim, is female.
10. Exhibits 1, 2, 3, 8 and 9 were composed and compiled by the person whose name appears thereon and were each made in the regular course of business and it was the regular course of business to make such record at the time of the act, transaction, occurrence, or event or within a reasonable time thereafter.
11. Exhibits 4 and 5 are accurate online reproductions of articles published in the *Auraria Springs Nugget*.
12. Exhibit 6 is sufficient to constitute proof of a prior conviction under Rule 609.
13. Exhibit 7 and 12 are admissible without further foundation.
14. Exhibits 10 and 11 fairly and accurately depict the scene, view or geography they purport to depict.
15. After a hearing, the trial judge found that the identification made by Newton at the hospital was admissible, and the ultimate weight to be placed on the identification was for the jury to determine.
16. The word “humyn” (a less accepted spelling of the word “human”) is not to be considered a misspelled word in the statement of Michael/Michelle Collins, but a manifestation of strongly held beliefs on the part of this character.

WITNESSES

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

For the Prosecution—

Chief Brad/Barbara Gray
Laurens/Lauren “Larry” Newton
William/Wilma E. Buy

For the Defense—

Robin Banks, *Defendant*
Michael/Michelle Collins
I.C. Dahdpepal

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.	I.C. Dahdpepal's Internet homepage
2.	Memo from Maximus Glut
3.	Memo to Maximus Glut
4.	Article from <i>Auraria Springs Nugget</i> newspaper online: "Homelessness on Rise in Growing City"
5.	Article from <i>Auraria Springs Nugget</i> newspaper online: "Uproar at City Council Meeting"
6.	Newton Plea Agreement
7.	Medical Examiner's Report
8.	Arson Investigation Report
9.	Arson Investigation Report – <i>Addendum</i>
10.	Site Plan – Downtown Auraria Springs
11.	Floor Plan – Glutco dealership
12.	GBI Lab Report

PRONUNCIATION GUIDE

- A. Auraria (au-RARE-ee-ah) Springs: from the Latin word "aurarius" meaning "golden" or "of gold".

**IN THE SUPERIOR COURT
OF AMARTO COUNTY
STATE OF NEW HAMPSHIRE**

State of New Hampshire)	
)	Criminal Action
v.)	No. 2011-MT
)	
Robin Banks)	

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

Pleadings

You are considering the case of the State of New Hampshire versus Robin Banks. The grand jury has indicted the defendant with the offenses of felony murder, arson in the first degree and arson in the second degree.

Issue And Plea Of Not Guilty

The defendant has entered a plea of not guilty to this indictment. The indictment and the plea form the issue that you are to decide.

Neither the indictment nor the plea of not guilty should be considered as evidence.

Presumption Of Innocence; Burden Of Proof; Reasonable Doubt

The 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 favor. This presumption remains with the defendant until it is overcome by the State with evidence that 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 as charged 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 whatsoever, and the burden never shifts to the defendant to introduce evidence or to prove innocence.

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. A reasonable doubt is a doubt of a fair-minded, impartial juror honestly seeking the truth. A reasonable doubt 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, or a conflict in the evidence.

After giving consideration to all of the facts and circumstances of this case, if 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 which witness or witnesses you believe or do not believe, if there are some whom you do not believe.

In deciding credibility, you may consider all of the facts and circumstances of the case, the manner in which the witnesses testify, their intelligence, their interest or lack of interest in the case, their means and opportunity for knowing the facts about which they testify, the nature of the facts about which they testify, the probability or improbability of their testimony, and the occurrences about which they testify. You may also consider their personal credibility insofar as it may have been shown in your presence and by the evidence.

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 so, then you should believe that witness or those witnesses whom you think are best entitled to belief.

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

Witness, Impeached by

To impeach a witness is to prove that 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,
- (d) proof of contradictory statements, previously made by the witness about 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) whether any such statements were made,
- (b) whether such statements were contradictory to any statements the witness made on the witness stand, and
- (c) whether such statements were relevant 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 supported by other creditable testimony. 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 has made any other 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 other statement not only for purposes of impeachment, but also as substantive evidence in the case.

Jury; Judges of Law and Facts

Members of the jury, it is my duty and responsibility to determine the law that applies to this case and to instruct you on that law. You are bound by these instructions. It is your responsibility to determine the facts of the case from all of the evidence presented. Then you must 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; Generally

Evidence is the means by which any fact that is put in issue is established or disproved. Evidence includes all of the testimony of the witnesses and the exhibits admitted during the trial. It also includes any stipulations, which are facts agreed to by the lawyers. It does not include the indictment, the plea of not guilty, opening statements or closing arguments by the lawyers, or the questions asked by the lawyers.

Direct And Circumstantial Evidence

Evidence may be either direct or circumstantial or both.

Direct evidence is evidence that 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 that 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 also 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 who are expert in certain areas to give their opinions derived from their knowledge of that area. The weight that 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.

Venue; Generally

The law provides that criminal actions shall be tried in the county in which the crime was committed.

Venue is a jurisdictional fact that must be proved by the State beyond a reasonable doubt just as any element of the offense. Venue must be proved by direct or circumstantial evidence, or both.

Offenses Charged

The defendant is charged with the offenses of felony murder, arson in the first degree, and arson in the second degree.

Felony Murder; Defined

A person commits the crime of murder when, in the commission of a felony, that person causes the death of another human being with or without malice. Under the laws of New Hampshire, arson in the first degree is a felony and is defined as follows:

A person commits the offense of arson in the first degree when, by means of fire or explosive, he or she knowingly damages any building or other structure under such circumstances that it is reasonably foreseeable that human life might be endangered.

Murder; Felony, during Commission of

If you find and believe beyond a reasonable doubt that the defendant committed the homicide alleged in this bill of indictment at the time the defendant was engaged in the commission of the felony of arson in the first degree, then you would be authorized to find the defendant guilty of murder, whether the homicide was intended or not. In order for a homicide to have been done in the commission of this particular felony, there must be some connection between the felony and the homicide. The homicide must have been done in carrying out the unlawful act and not collateral to it. It is not enough that the homicide occurred soon or presently after the felony was attempted or committed. There must be such a legal relationship between the homicide and the felony so as to cause you to find that the homicide occurred before the felony was at an end or before any attempt to avoid conviction or arrest for the felony. The felony must have a legal relationship to the homicide, be at least concurrent with it in part, and be a part of it in an actual and material sense. A homicide is committed in the carrying out of a felony when it is committed by the accused while engaged in the performance of any act required for the full execution of the felony.

First Degree Arson

Since the offense of first degree arson also constitutes a separate count in the indictment, I will repeat the elements of that offense. A person commits the offense of arson in the first degree when, by means of fire or explosive, he or she knowingly damages any building or other structure under such circumstances that it is reasonably foreseeable that human life might be endangered.

Second Degree Arson

The defendant is also charged with the offense of arson in the second degree. A person commits the offense of arson in the second degree as to any building or other structure when, by means of fire or explosive, he or she knowingly damages any building or other structure of another without his or her consent.

Arson; Presumption of Accidental Cause

The burden rests upon the State to prove beyond a reasonable doubt that the building described in the indictment was damaged by fire, the burning was caused by a criminal act, and the accused was the person doing the burning or was a party to it.

The law presumes every fire to be accidental or naturally caused until the State shall prove beyond a reasonable doubt that such fire was the result of a criminal act. A criminal act will not be presumed, and the burden is upon the State to

overcome the presumption that the fire was accidentally or naturally caused by proof of the criminal act beyond a reasonable doubt.

Bare Suspicion

Facts and circumstances that merely place upon the defendant a grave suspicion of the crime charged or that merely raise a speculation or conjecture of the defendant's guilt are not sufficient to authorize a conviction of the defendant.

Alibi

The defendant contends that he/she was not present at the scene of the alleged offense at the time of its commission. Alibi, as a defense, involves the impossibility of the defendant's presence at the scene of the alleged offense at the time of its commission. Presence of the defendant at the scene of the crime alleged is an essential element of the crime set forth in this indictment, and the burden of proof rests upon the State to prove such beyond a reasonable doubt.

Any evidence in the nature of alibi should be considered by you in connection with all of the other evidence in the case. If, in doing so, you should entertain a reasonable doubt as to the guilt of the accused, it would be your duty to acquit the defendant.

On the other hand, if you believe from the entire evidence that the defendant is guilty beyond a reasonable doubt, you may convict.

Identification; Reliability

Identity is a question of fact for you to determine. Your determination of identity is dependent upon the credibility of the witness or witnesses offered for this purpose. You should consider all of the factors previously charged you regarding credibility of witnesses.

Some, but not all, of the factors you may consider in assessing reliability of identification are the opportunity of the witness to view the alleged perpetrator at the time of the alleged incident, the witness's degree of attention toward the alleged perpetrator at the time of the alleged incident, the possibility of mistaken identity, whether the witness's identification may have been influenced by factors other than the view that the witness claimed to have, and whether the witness on any prior occasion did not identify the defendant in this case as the alleged perpetrator.

Identification; Burden of Proof

It is for you to say whether, under the evidence in this case, the testimony of the witnesses and the facts and circumstances of the case sufficiently identify this defendant beyond a reasonable doubt as the perpetrator of the alleged crime. It is not necessary that the defendant show that another person committed the alleged offense.

If you do not believe that the defendant has been sufficiently identified as the person who committed the alleged crime, or if you have any reasonable doubt about such, then it would be your duty to acquit the defendant.

The burden of proof rests upon the State to prove, beyond a reasonable doubt, the identity of this defendant as the person who committed the crime alleged in this bill of indictment.

Verdict

If, after considering the testimony and evidence presented to you, together with the charge of the court, you should find and believe beyond a reasonable doubt that the defendant in Amart County, New Hampshire, did on or about the date alleged commit the offense as alleged in the indictment, you would be authorized to find the defendant guilty. In that event, the form of your verdict would be, "We, the jury, find the defendant guilty."

If you do not believe that the defendant is guilty, 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."

Court Has No Interest in Case

By no ruling or comment that 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.

Sentencing; Responsibility for

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

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 you are 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.

Unanimous Verdict

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

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 that has been admitted in the case.

Bailiff, escort the jury to the jury room.

IN THE SUPERIOR COURT OF AMARTO COUNTY
BILL OF INDICTMENT

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

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

1. **Brian Jackson**
2. **Erin Beaulieu**
3. **Alyce Loesch**
4. **Peter Barrett**
5. **Richard Vassar**
6. **Laura Dwyer**
7. **Dave Alcox**
8. **Eric August**
9. **Richard Vassar**
10. **Terri Corigliano**
11. **Geoff Burch**
12. **Walter Stahr**

In the name and behalf of the citizens of New Hampshire, charge and accuse ROBIN BANKS with the offense of FELONY MURDER, for that the said ROBIN BANKS, in the County and State aforesaid, on or about January 10, 2005, did unlawfully cause the death of Philipa Newton, during the commission of a felony, to wit: arson in the first degree, contrary to the laws of the State of New Hampshire, the good order, peace and dignity thereof.

COUNT TWO: ARSON IN THE FIRST DEGREE (O.C.N.H.A. § 16-7-60)

And the jurors aforesaid, in the name and behalf of the citizens of New Hampshire, further charge and accuse ROBIN BANKS with having committed the offense of ARSON IN THE FIRST DEGREE, for that the said ROBIN BANKS, in the County and State aforesaid, on or about January 10, 2005, did unlawfully by means of fire or explosive, knowingly damage the building located at 1948 First Street, Auraria Springs, New Hampshire under such circumstances that it was reasonably foreseeable that human life might be endangered, contrary to the laws of the State of New Hampshire, the good order, peace and dignity thereof.

COUNT THREE: ARSON IN THE SECOND DEGREE (O.C.N.H.A. § 16-7-61)

And the jurors aforesaid, in the name and behalf of the citizens of New Hampshire, further charge and accuse ROBIN BANKS with having committed the offense of ARSON IN THE SECOND DEGREE, for that the said ROBIN BANKS, in the County and State aforesaid, on or about January 10, 2005, did unlawfully by means of fire or explosive, knowingly damage the building located at 1948 First Street, Auraria Springs, New Hampshire without the consent of the owner, contrary to the laws of the State of New Hampshire, the good order, peace and dignity thereof.

____ TRUE ____ BILL
____ February ____, 20 05
____ /s/ _____
Foreperson
____ 1st ____ day of
1 February ____, 20 05 .
____ /s/ _____
Zoe Greenberg
Clerk,
Superior Court of
Amarto County, New Hampshire

Defendant, on ____ February 15, 2005 ____, being in open court, pleads ____ NOT GUILTY ____.
____ Robin Banks /s/ _____
____ /s/ _____
Defendant
Defendant's Attorney
____ /s/ _____
Prosecuting Attorney

STATUTES

OCNHA § 16-7-60 Arson in the first degree.

(a) A person commits the offense of arson in the first degree when, by means of fire or explosive, he or she knowingly damages or knowingly causes, aids, abets, advises, encourages, hires, counsels, or procures another to damage:

(1) Any dwelling house of another without his or her consent or in which another has a security interest, including but not limited to a mortgage, a lien, or a conveyance to secure debt, without the consent of both, whether it is occupied, unoccupied, or vacant;

(2) Any building, vehicle, railroad car, watercraft, or other structure of another without his or her consent or in which another has a security interest, including but not limited to a mortgage, a lien, or a conveyance to secure debt, without the consent of both, if such structure is designed for use as a dwelling, whether it is occupied, unoccupied, or vacant;

(3) Any dwelling house, building, vehicle, railroad car, watercraft, aircraft, or other structure whether it is occupied, unoccupied, or vacant and when such is insured against loss or damage by fire or explosive and such loss or damage is accomplished without the consent of both the insurer and the insured;

(4) Any dwelling house, building, vehicle, railroad car, watercraft, aircraft, or other structure whether it is occupied, unoccupied, or vacant with the intent to defeat, prejudice, or defraud the rights of a spouse or co-owner; or

(5) Any building, vehicle, railroad car, watercraft, aircraft, or other structure under such circumstances that it is reasonably foreseeable that human life might be endangered.

(b) A person also commits the offense of arson in the first degree when, in the commission of a felony, by means of fire or explosive, he or she knowingly damages or knowingly causes, aids, abets, advises, encourages, hires, counsels, or procures another to damage anything included or described in subsection (a) of this Code section.

(c) A person convicted of the offense of arson in the first degree shall be punished by a fine of not more than \$50,000.00 or by imprisonment for not less than one nor more than 20 years, or both.

OCNHA § 16-7-61 Arson in the second degree.

(a) A person commits the offense of arson in the second degree as to any building, vehicle, railroad car, watercraft, aircraft, or other structure not included or described in Code Section 16-7-60 when, by means of fire or explosive, he or she knowingly damages or knowingly causes, aids, abets, advises, encourages, hires, counsels, or procures another to damage any building, vehicle, railroad car, watercraft, aircraft, or other structure of another without his or her consent or in which another has a security interest, including but not limited to a mortgage, a lien, or a conveyance to secure debt, without the consent of both.

(b) A person also commits the offense of arson in the second degree as to any building, vehicle, railroad car, watercraft, aircraft, or other structure not included or described in Code Section 16-7-60 when, in the commission of a felony, by means of fire or explosive, he or she knowingly damages or knowingly causes, aids, abets, advises, encourages, hires, counsels, or procures another to damage any building, vehicle, railroad car, watercraft, aircraft, or other structure of another without his or her consent or in which another has a security interest, including but not limited to a mortgage, a lien, or a conveyance to secure debt, without the consent of both.

(c) A person convicted of the offense of arson in the second degree shall be punished by a fine of not more than \$25,000.00 or by imprisonment for not less than one nor more than ten years, or both.

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 § 16-3-40 Alibi.

The defense of alibi involves the impossibility of the accused's presence at the scene of the offense at the time of its commission. The range of the evidence in respect to time and place must be such as reasonably to exclude the possibility of presence.

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.

Wendy Cai v. State, 250 NH. App. 80 (2001).

Arson has three basic elements: (1) damage by fire or explosion; (2) the intentional act or direction of the defendant knowing that it will damage a protected structure; (3) lack of the owner's consent.

Annie Wang v. State, 205 NH. App. 671 (1992)

On a trial for arson, if nothing appears but the mere fact that the house was consumed by fire, the presumption is that the fire was the result of accidental, natural, or providential cause. The corpus delicti may be proved by circumstantial evidence, as well as by direct evidence.

Amelia Clark & Abby Walter Tournament Co. v. State, 195 NH. 870 (1943)

Appellant enumerates the general grounds, urging that the evidence is insufficient to authorize a finding that, under the circumstances, it was "reasonably foreseeable that human life might be endangered." The fire was set in a carpet plant where appellant was employed. At the time the fire was set, the plant was occupied by several employees. Although a wall separated the employees from the actual fire, they were in close proximity thereto and toxic smoke filled the area. This evidence clearly established the reasonable foreseeability of danger to human life . . .

Leslie Lambert v. State, 195 NH. App. 788 (1990)

[Defendant Leslie] Lambert argues that the evidence was insufficient to support the arson conviction. We disagree. In this case, a jury was authorized to find that on the night of November 25, 1991, Leslie Lambert awoke when she heard her son Manny crying for her. Entering the bedroom, she found her four-year-old son Manny lying bloody and motionless in his bed. Suspecting that her seven-year-old son had stabbed his brother and thinking that she could cover up the cause of the wounds by starting a fire, she turned on the burners on her stove, ignited newspapers and placed the burning papers along with a canister of flammable spider pesticide under a couch. She then left the room, with the fire burning, and went back to bed. She got up again only to see why the fire alarm had not gone off; at this time the fire was out of control and the apartment was engulfed in flames. Her son Manny was killed, her son Chris suffered third degree burns, lacerations and a punctured lung, and ten units in the apartment complex were destroyed in the fire. Under O.C.N.H.A. § 16-7-60, a person commits first degree arson when she knowingly damages a dwelling under such circumstances that it is reasonably foreseeable that human life might be endangered. Here, the evidence clearly authorized a jury to find Lambert guilty of arson. Lambert argues that she did not intend to endanger a life. Even if she did not specifically intend to endanger a life, she did, as she admitted, set the fire, and damage apartments in the complex, under circumstances that endangered human life, and that is all that the statute requires be proved.

Corinne v. State, 265 NH. 65 (1995)

The true effect of an alibi defense is to traverse the state's proof that the defendant committed the crime. The charge that the burden is on the state to prove that the defendant committed the crime beyond a reasonable doubt itself necessarily covers the question of whether the evidence of alibi was sufficient to create a reasonable doubt.

Hesh v. State, 250 NH. 288 (1982)

A person who commits a felony may be convicted for any murder that occurs as a result of the commission of that felony, without regard as to whether he commits, intended to commit, or acted to commit the murder of the victim.

Eric Baudry v. State, 257 NH. 180 (1987)

On appeal, Baudry argues that the trial court should have suppressed Isaac Park's identification of him during the one-on-one show up outside of the apartment. Although "a one-on-one show up is inherently suggestive," an identification produced from a show up is not necessarily inadmissible. When assessing the admissibility of such identification evidence, [w]e apply a two-part test. First, we determine whether the identification procedure was impermissibly suggestive. If it was, we then consider the totality of the circumstances to determine whether a very substantial likelihood existed of irreparable misidentification. In making this determination, we consider the witness' opportunity to view the suspect at the time of the offense, the witness' degree of attention, the accuracy of the witness' prior description, . . . and the length of time between the crime and the identification. Baudry contends that the circumstances surrounding the show up "were highly suggestive." Baudry claims that he was handcuffed when police asked Park whether he could identify him. But even assuming that the show up was impermissibly suggestive, the identification evidence should be excluded only if a substantial likelihood of irreparable misidentification exists.

Thomas v. State, 269 NH. App. 116 (2004).

It has been held to be fundamentally unfair to simultaneously afford a suspect a constitutional right to silence following arrest and yet allow the implications of that silence to be used against him for either substantive or impeachment purposes. Doyle v. Ohio, 426 U.S. 610, 619 (1976). In Mallory v. State, 261 NH 625 (1991), our Supreme Court extended the holding in Doyle to prohibit comment upon a defendant's silence "even where the defendant has not received Miranda warnings and where he takes the stand in his own defense." Mallory prohibits "any testimony touching upon the silence of an accused, because the prejudicial impact of such testimony is far greater than its minimal probative value."

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 Physical Significance of Bloodstain Evidence—Elmira College Graduate School (1989)
 Clairvoyant Training Program of the Psychic School (1999)

Member of:

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 National Association of Private Investigators
 Inner Circle Society of the International Ghost Hunter Society

INTEROFFICE MEMORANDUM

TO: W. E. Buy, Acquisition Team
Katherine Orazem, Esq., Legal Department
Becca Steinberg, Accounting Department
Rhia Catapano, Risk management/Insurance Department

FROM: Maximus Glut, President

DATE: December 18, 2004

RE: *Purchase of Former Johnson Family Car Dealership Building, 1948
First Street, Auraria Springs, NH (the "Property")*

This memo was dictated and not reviewed by Mr. Glut. Typed by Ms. Gold

I drove in the new Guzzler model 2MCH out to Auraria Springs last week to look at the site. It was a great drive, although the roads are far too narrow up there. Several cars nearly ran into me during the trip! Ms. Gold, would you please check with the general contractor to see if he can get someone out there to make those roads wider; when were they designed, in the horse and buggy days?

Where was I? Oh yeah, I went to the site last week and found that a stiff wind would knock over that building. Maybe the building was something special in 1950, or whenever it was built, but we want something modern out there. I want our new dealership to scream to the customer that the Guzzler has arrived! I want shiny steel and glass and concrete. I don't want anything old or used anywhere. I want everything that was here to be thrown away and all new stuff to come in. I had to look at all sorts of old stuff in those antique stores they have up there. My wife, Arziki, bought so much stuff that I thought that it wouldn't all fit into even the new Guzzler model; but, of course, it did! Did you know that Arziki insisted that we ride horses through the mountains? I think that horse was way too small. Have horses always been so small? My backside smarted for several hours after that horse ride. We did have a delicious dinner in the bed and breakfast. I had a steak that was so tender, oh . . . sorry.

Uh, let's see, let's buy it, tear it down, and build something new and different. Guzzler has arrived!

was chained and locked, but the back door lock appeared to have been forced open. The former showroom contains walls of glass, nearly all of which have been broken. Many of these holes have been boarded up, but there remain several openings into the facility. The Property was vacant on the date of inspection and did not appear to have any current utility service.

Lead-Based Paint and asbestos containing materials were noted inside and outside the building structure. Since lead content of paint were not reduced until 1978 and asbestos containing materials was not regulated until 1973 to 1978, the dates of construction of various improvements are of concern. Proper precautions should be taken with regard to the removal of any lead-based paint or asbestos containing materials.

Due to the use of the Property as an automobile repair shop, there may be subsurface petroleum impacts on the soil and surrounding area. SPEWI did not believe that this would trigger any significant regulatory liability. No abutting or proximate sites were found that would suggest any significant current environmental concerns on the Property. Review of the environmental regulatory database listings did not find any listings for the Property or properties, which are abutting or proximately located to the Property.

Graffiti has been painted on the exterior of the building. There appears to be a significant amount of garbage and discarded items on the Property and inside the dilapidated building (see attached pictures of the site extracted from the environmental report). There are two (2) 50-gallon steel storage tanks which contain old rags with oil residue, five (5) empty steel drums (one of which has charring inside), several shopping carts filled with discarded household items, food cans and cartons, and other general debris.

SPEWI noted that there is an entrance to some of the many local underground caverns near the rear of the Property. These caverns are known to house homeless people. SPEWI believes that the building is, also, possibly being used by homeless people for shelter.

In conclusion, the SPEWI report stated that within the tasks included in a Phase 1 environmental assessment, they did not locate any known releases or environmental conditions that would impose a liability, restrict the use, limit the development, or impact the value or marketability of the Property.

3. Utility Availability:
 - a. Water – available through City of Auraria Springs.
 - b. Sewer – available through City of Auraria Springs.
 - c. Telephone – available through New Hampshire Bell.
 - d. Electricity – available through City of Auraria Springs.
 - e. Zoning – Zoned for general commercial use by the City of Auraria Springs.

4. Demographics:
 - a. Population:
 - i. Population Figures:
 1. Within 1 mile of site 3,107 people
 2. Within 3 miles of site 7,099 people
 3. Within 5 miles of site 14,443 people
 - ii. Population Age Range:
 1. 27.49% - 18-24 years
 2. 27.06% - 25-44 years
 3. 16.77% - 45-64 years
 4. 12.36% - 65+
 - iii. Projected Growth (*next 5 years*):
 1. Within 1 mile of site - 4.41%
 2. Within 3 miles of site – 8.22%
 3. Within 5 miles of site – 10.85%

Note: The population is roughly 46% male and 54% female.

- b. Average Household Income:
 - i. Within 1 mile of site \$95,130/year/household

- ii. Within 3 miles of site \$101,260/year/household
 - iii. Within 5 miles of site \$105,060/year/household
- c. New home developments:
- i. **Benevides Estates** – a new development consisting of 3,000-5,000 square foot single-family homes on 3-acre lots (sales prices starting at \$1,000,000).
 - ii. **Alex-Jing Condos** – a combination of new development and redevelopment of the old lumberyard and mill consisting of 1,500-2,000 square foot layouts (sales prices starting at \$250,000).
 - iii. **Billy's Big Bear Timeshare** – a new development of 2,000 - 3,000 square foot time-share and hotel space (sales prices start at \$20,000 for off-season weeks and \$35,000 for prime weeks (Fall) or nightly rental of unused/unsold weeks at a rate of \$500 per week for off-season and \$2,000 per week for prime season (Fall)), marketed toward retired MySpace celebrities.
- d. Neighboring retail – All major retail stores are either in place or are planned to be located within 2 miles of the site. Within the next 3 years this formerly quaint mountain town will be inundated with 3 grocery stores, 2 national “super” stores, 2 home improvement stores, 3 bargain stores (99¢ stores), 8 drug stores, 12 banks, 3 video stores, 14 gas stations, 5 coffee shops (inside and outside of bookstores), 6 fine restaurants, and 18 fast food restaurants. Guzzler will fit right in!!
5. Survey of Property and Title Work to be reported upon by Kate Orazem, Esq. in the Legal Department.

Based upon the Acquisition Team's review of these reports and information, we have the following recommendations:

1. Rhia Catapano in the accounting department recommends that the Property be purchased before the end of the year 2004, for accounting purposes.
2. We recommend the purchase of a terrorism rider to the property's insurance policy.
3. Becca Steinberg recommends hiring a caretaker or part-time watchman for the Property to run off any homeless people who may turn up.
4. I recommend the careful removal of the mural for use in the new building.
5. Becca Steinberg and Kate Orazem recommend destruction of the building located on the Property.
6. Becca Steinberg and I recommend construction of the new car dealership building to commence in the early spring, 2005, to be completed by June 2005.
7. New vehicles should deliver in June 2005.

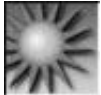
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WEATHER



43°

HOMELESSNESS ON RISE IN GROWING CITY

By Amalia Akshaya

original publication date: Friday, 15 October 2004

A recent report by the Amarto County Coalition Against Homelessness states that the number of homeless in Auraria Springs is growing rapidly. The report criticizes the local government for not ensuring enough accommodation for vulnerable people.

In the past five years, Auraria Springs has become the fastest growing city in Amarto County. Unfortunately, the number of homeless in Auraria Springs has also risen. According to Ella Yasser, director of Amarto County Coalition Against Homelessness, the homeless population of Auraria Springs has increased thirty percent since 2003.

"Many growing cities have to deal with the increase of a homeless population. The accurate response from the city is to provide adequate shelters and services to assist in helping these people get back on their feet. Auraria Springs hasn't done that. There are no resources or shelters set up to help people who have become homeless," said Yasser.

Nowhere to go

The lack of shelters in Auraria Springs is starting to become a major concern for the residents and businesses of Auraria Springs as well. As the weather becomes colder in the New Hampshire Mountains, homeless people are looking for warmth and shelter wherever they can find it.



"Philipa" (right) relaxes inside the abandoned car dealership on First Street with an unidentified homeless man.

One homeless woman, who only identified herself as Philipa, stated that many of her friends, end up sleeping "rough" because there is nowhere else to go. Sleeping "rough" is a term used to describe sleeping on the street, making due with whatever you can find.

Philipa told us that she and her sibling have a favorite spot – the old abandoned alternative-fuel vehicle dealership in downtown Auraria Springs. "It's empty right now and there is this beautiful mural on the wall that makes me feel like I'm home. Plus, there are some abandoned tubs we use to light a fire and heat up



Poll

Does a case theory in which London Bennett kills Venessa Sullivan make any sense?

No. No it does not.

Yes. I am crazy.

WE ARE THE 99%!

whatever food we can find," said Philipa. Local companies, however, are not happy that people like Philipa are using their properties as makeshift residences.

A local security guard, who asked to remain anonymous, stated that Glutco, which owns the property Philipa calls home, has taken steps to discourage the homeless from using their property. The company recently had him remove furniture and appliances that were left on the property by the previous owners.

Other local businesses are also voicing their frustration over the homeless problem.

Lionel Sophie, a local bookstore owner, feels that the situation is an embarrassment. "With the Gang of Four coming here soon, the local government should be more concerned about the growing homeless problem. It makes our great city look bad when we have people sleeping on the streets and in abandoned properties".

Local Government Claims Issue Addresses Before Summit

"There is an unusually high number of homeless in Auraria Springs area because of the city's rapid growth - but plans are under way to help them," stated Auraria Springs Councilman Amarto Bhattacharyya. "The government aims to persuade developers to build more low cost housing in new developments."

The Amarto County Coalition Against Homelessness report is based on their studies of their own shelters such as the one they have in Auraria Springs, which has space to sleep 25 people. However, this shelter is currently the only shelter offering overnight accommodations for the homeless in Auraria Springs.

Director Yasser estimates that there are currently over 500 homeless living in Auraria Springs. "We are working to get another shelter up before the Gang of Four Summit," responds Bhattacharyya. "I know that is a big concern for many of my constituents. Right now, the city is growing rapidly and we are trying to respond to that growth".

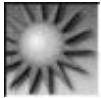
Hopefully those shelters will come sooner rather than later. In the case of Philipa and her sibling, the abandoned building that they call home is scheduled to become a Guzzler dealership later this winter.



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WEATHER



41°

Poll

Who is your favorite child star, whose life is most likely to imitate art?

- Justin Zaremby
- Justin Zaremby
- Justin Zaremby
- Justin Zaremby

Vote

UPROAR AT CITY COUNCIL MEETING

By Laura Danielle

original publication date: Wednesday, 15 December 2004

At Tuesday evening's City Council meeting, Robin Banks, a local artist and environmental activist created quite an uproar during the public comment portion of the meeting.

Banks, 36, rose early in the meeting to express concern that the plan to confine demonstrators at the upcoming "Gang of Four" Summit to a park far from the meeting site violates the First Amendment. Banks tried to address the council for a second time when it considered Glutco's request for a permit to demolish the old Johnson car dealership on First Street, near the railroad tracks. Glutco, manufacturer of the "Guzzler", has recently purchased the property on First Street and has plans to turn it into a glitzy new dealership for the newest and largest addition to their SUV family.

Banks' told the council that Glutco's plans "will ruin our downtown, clog up our streets with those over-sized behemoth vehicles and pollute the air we must breathe to live!" Speakers during the public comment portion of each Council meeting are allotted three minutes to make their comments.

However, Banks not only sought to speak twice, but also went over the time limit during his/her first speech on the "Gang of Four" summit, ignoring the buzzer that indicated three minutes was up. Banks reluctantly sat down and several more residents stood to make comments on various other issues. In a few moments, however, Banks rose again and approached the microphone, muttering something indiscernible at the Council in general when it took up the Glutco issue.



Robin Banks resists an Auraria Springs police officer on Tuesday evening at City Hall. No charges will be filed against Banks.

Banks take Banks was fighting officer

At that point, Council President, Fred Merkle, informed that his/her time had already expired and requested that s/he his/her seat. Banks refused and a scuffle ensued between and three uniformed Auraria Springs police officers. Banks dragged bodily from the Council chamber screaming and the officers. At one point, Banks dropped to the floor and one dragged him/her by his/her leg across the carpet.

“I have never seen a scene like this in all my 20 years of serving on the City Council,” said Merkle after the meeting had concluded, “Banks was totally out of line.” For his/her part, Banks stated after the officers had deposited him/her on the sidewalk outside City Hall, “All I wanted was to make one more point. They had no right to rough me up like that, just because I wanted to say one more thing. When I see a government body that is so totally against citizens, like me, who support government, it scares me! They’re just afraid that Glutco will pull out if there’s any opposition to the company’s plans and the city’s tax receipts will decrease. The way they treated me, you’d think they thought I was a terrorist! They owe me an apology.”

When asked for a response, Merkle said, “S/he flagrantly disobeyed the rules of the meeting. Speakers are only allowed one three-minute spot on the agenda, no more. S/he cursed the Council members and attacked the officers. The officers had no choice but to physically remove him/her. No charges will be filed against Mr./Ms. Banks, but we will not apologize for doing what was necessary to maintain order during the meeting.”

IN THE STATE COURT OF AMARTO COUNTY, NH

STATE OF NEW HAMPSHIRE

Criminal Case No. MT-200601

vs.

Offense(s) THEFT BY SHOPLIFTING (four cans of paint thinner valued at \$300 or less)

LARRY NEWTON

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 common jail of Said County, 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, specifically including trespassing.
- 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) Obtain suitable employment.
- 8) Pay fines, restitution and probation fees in the amount of (fees waived) 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 already served on probation.

This the 29th day of November 2004

Vinay Nayak /s/
Judge, Amarto County State Court

Receipt acknowledged by:

"Larry" Newton /s/

Defendant

/s/

Attorney for the Defendant

**State of New Hampshire
New Hampshire Bureau of Investigations
Division of Forensic Sciences
Record of Medical Examiner**

CITY: Auraria Springs COUNTY: Amarto CASE NO. 2005-002

NAME OF DECEASED: **Philipa Newton**

RESIDENCE OF DECEASED: None

AGE: 34 DOB: 02/24/71 HEIGHT: 65" WEIGHT: 125 lbs.

MANNER OF DEATH:

Natural () Homicide (X) Suicide () Accident () Undetermined () Other ()

CAUSE OF DEATH: Asphyxiation

LAST SEEN: Date: 01/10/05 Hour: 0330 Place: 1948 First Street (Glutco)

FOUND: Date: 01/10/05 Hour: 0330 Place: 1948 First Street (Glutco)

INJURY: Set forth below:

PRONOUNCED: Date: 01/10/05 Hour: 0400 Place: Amarto County Hospital

BODY IDENTIFIED BY: Fingerprints (x) Car Registration () Photographs () Family (x)
(Larry Newton)

AUTOPSY AUTHORIZED BY: County Coroner CORONER NOTIFIED: Yes

PRESENT AT AUTOPSY: George Carley, M.D. Medical Examiner & Chief B. Gray, Investigator

SUSPECT(S): _____

NAME OF MORGUE: _____ DATE RECEIVED: _____ HOUR: _____

BODY REMOVED FROM: Amarto County Medical Center Morgue

AUTOPSY: (X) LIMITED DISSECTION () EXTERNAL EXAM () HISTORY REVIEW ()

PERFORMED BY: George Carley, M.D. DATE: 01/12/05 TIME: 0900 hours

SIGNED: _____/s/_____ DATE: 01/12/05

APPROVED: _____/s/_____ DATE: 01/12/05

In accordance with the New Hampshire Death Investigation Act, an autopsy is performed on the body of **Philipa Newton** at the Amarto County Morgue in Auraria Springs, New Hampshire on Wednesday, January 12, 2005, commencing at 0900 hours.

External Examination:

The body appears to be that of an adult female, approximately 65” in height and weighing 125 lbs, consistent with the stated age of 34 years and information concerning decedent’s manner of living in elements.

The body is received wrapped in a black zippered body bag, is identified by an attached name tag, and is clad in the following articles of clothing:

1. Faded olive pants, worn patches on seat, knees, multiple tears along right side from knee to ankle, some with fraying evident of age. Multiple stains of unknown origin and age overlap front, with some testing a faint positive for the presence of blood. Much dirt present in lower legs and edges, with wet mud smeared along back of legs and seat.
2. Torn and well-worn panties bearing slogan – “Tuesday’s Child is Full of Woe.”
3. Long sleeved tee shirt of unknown color, extensive staining, with evidence of multiple sources of unknown origins and ages. Rip along front right sleeve and fresh wet stain extending ¼ to ½ in along all edges testing positive for human blood.
4. Faded olive U.S. Army jacket, all major seams bearing signs of age and wear. Multiple tears, but with fraying evident of age along front. Rip along back shoulder area. Back coated in mud with distinctive horizontal drag pattern. Large fresh rip in front right sleeve approximately 5 in from right shoulder. Rip is wet and testing positive for human blood. Long stains also testing positive for human blood extend downward right sleeve from rip.

All clothing bears strong smell of acrid smoke. The clothing is marked with the case number and inspector’s initials (GC) and is retained as evidence.

X-Ray examination:

No x-rays were performed.

Postmortem Changes:

Rigor mortis has passed. Lividity is dorsal and easily blanches with pressure and is the usual violaceous color. Other decompositional changes are absent.

Diagnostic and therapeutic artifacts:

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

Features of identification:

The body measures 5'5" in height and weights 125 pounds. The hair is light brown and measures about 15 inches at longest. The teeth are in poor condition, and are natural. Eye color is brown. Other distinctive marks are absent.

Fingerprints were removed from the right hand for identification purposes. Identification as Philipa Newton was confirmed by Larry Newton, sibling and by fingerprints on file for Pvt. Philipa Newton with DEERS, the Pentagon's automated system.

External Examination of the Body:

After complete removal of apparel, visual examination discloses numerous scars of undeterminable age.

The head, neck and torso show no evidence of contusion, abrasion or other abnormality.

The back and upper shoulders and arms show considerable bruising, with large 2 in. discolorations along the left shoulder and left upper arm, consistent with the body being pulled across uneven surfaces.

The external genitalia appear normal for age. There are no foreign objects in the vagina and there is no evidence of vaginal injury or hemorrhage. 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. The brain weighs 1200 grams and is normal when sectioned. The base of the skull is intact.

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 widely patent. The anterior cervical spine is intact. The epiglottis is inflamed and there is smoke/ash residue evident in major airways and trachea.

Chest, Abdomen and Pelvis:

No evidence of injury is seen. There are no abnormal fluid collections in the chest or abdomen.

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

Heart: 350 grams
Left lung: 340 grams
Right lung: 330 grams
Spleen: 80 grams

Liver: 1800 grams
Kidneys: 380 grams combined

The heart contains blood in left ventricle and atrium. Tissue in the lungs appears bright red with soot in the airway, consistent with smoke inhalation. Three samples of foreign residue are taken from the right lung, first, second and fourth quadrants, for further chemical analysis. The spleen and kidneys are unremarkable. The liver shows evidence of advanced cirrhosis. The adrenals, thyroid and pancreas are normal. The cavity contains 5 grams of partially digested food. The lymph nodes are not enlarged and 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 right hand for identification
- 3) Documentary photographs
- 4) Clothing
- 5) Samples of smoke residue from right lung for analysis

Results:

Toxicology tests show a blood alcohol level of 0.23gm% and a carbon monoxide level of 43 percent.

Cause of Death

Cause of death is asphyxiation.

 /s/ George Carley, M.D.
Medical Examiner
Amarto County

**INITIAL INVESTIGATION: FIRE REPORT
AURARIA SPRINGS FIRE SERVICES**

INCIDENT #3155
1948 First Street
Auraria Springs, New Hampshire

Date of Incident: 10 January 2005
Alarm Time: 0330 Hours
First Responder Arrival Time: 0341 Hours
Weather: Clear / Light Wind 5-10 knots SW
Temperature: 39° F.

#1. Fire Services Action

Engine 1, Truck 1, EMS 2, Command Unit 1 responded to the above address as requested by communications. Upon arrival, Command Unit 1 established First Street Command. Involved was a single story, commercial structure of metal joist construction over poured cement slab with a composite roof. Interior separation walls were of metal joist construction protected with 2 hour gypsum wallboard. No carpet or floor covering was observed over finished cement slab. The structure was a non-occupied premises previously used as an automobile dealership.

Auraria Springs EMC provided standard commercial service to a service panel on the NW exterior of the building and there was an interior 300 amperes sub-panel protected with over-current protection in the form of commercial circuit breakers. The EMC reports that electrical service to the structure was not provided at the time of the incident.

Suppression Activities:

The following activities generally cover the operations of suppression companies:

ENGINE 1 – Heavy smoke and flames were observed prior to arrival of Engine 1. Upon arrival firefighters observed heavy smoke and interior flames extending from the central portion of the interior of the building which appeared to have been dedicated office space. This area was the most significantly involved with the garage/bay and showroom areas being less involved.

Engine one dropped a five-inch supply line from the hydrant approximately 135 yards west of the structure but within the fenced premises of the property involved. Two crews from Engine one and Truck one using one and one-half inch, pre-connect hose lines were taken through the front door of the showroom area and the garage/bay area, respectively and were extended to the central area of the structure where the main body of the fire was located. Fire fighting operations were successful in containing the fire to this area.

Severe fire damage occurred to the central office area of the structure. Heavy to moderate fire, heat and smoke damage extended into the showroom and light to moderate heat and smoke damage was sustained in the garage/bay area.

#2 Alarm History

The Johnson Automobile Dealership has been abandoned for several years although Glutco recently purchased it for renovation/demolition.

A concerned citizen first reported the fire to Auraria Springs Fire Services at 0330 Hours. The citizen reported that a distraught homeless person who reported that his sister had been injured in a fire at the old car dealership had flagged him down. Dispatch notified the Auraria Springs Police Department and routed the above units to the scene.

Auraria Springs Police Officer R.S. Mann was the first responder. Officer Mann contacted EMS Unit 2 and assisted an onlooker in removing a female victim who had apparently been overcome by smoke inhalation to the EMS unit. Another onlooker told Officer Mann (who forwarded the report to Command Unit 1) that two individuals had been observed “starting” a fire.

#3 Additional Details

Command 1 was dispatched by communication to the scene at 0330 Hours and arrived on scene and established command at 0355 Hours. Engine 1 and Truck 1 had effectively extinguished the fire by 0400 Hours. A standard “walk-around” established that the fire began in the office area and low burn patterns were evident in the office area. A burn pattern approximately 10 inches square was observed in the concrete floor of the middle of the office area. Officer Mann had located an empty can of what appeared to be a commercial paint thinner in the same general area. Samples were collected from the burn area and the overturned can and submitted to the New Hampshire Bureau of Investigation State Crime Lab.

Heavy charring and calcinations were observed on the interior of the gypsum wall board in the central office area and convection current smoke patterns and radiant heat markings indicated the above referenced 10 inch square burn area to be the point of origin for the fire.

Accidental Ignition Sources:

Accidental ignition sources in the area of origin were not evident. No other accidental ignition sources were observed and electrical sources were eliminated due to EMC report that no service was active at the premises.

PROBABLE CAUSE:

The most probable cause of this fire is arson originating from the ignition point at, or immediately adjacent to, the 10 inch square burn pattern observed in the central office area of the structure. However, based upon the rate of involvement of the remainder of the structure, the intensity of the radiant heat patterns and the involvement of adjacent areas, accidental origin has been eliminated. Pending verification from the GBI Crime lab, the other most likely other accelerant would be paint thinner from the cans located by Officer Mann. All other accidental sources of ignition have been examined and eliminated.

The assessment on the cause is based on the assessment of the physical evidence present at the scene and the elimination of all other accidental and incendiary sources.

END OF REPORT

_____/s/_____

Brad/Barbara Gray—Investigator
Auraria Springs Fire Department

Date Submitted: 28 January 2005

Final Investigation: Fire Report

Auraria Springs Fire Services

INCIDENT #3155

1948 First Street
Auraria Springs, New Hampshire

Date of Incident: 10 January 2005
Alarm Time: 0330 Hours
First Responder Arrival Time: 0341 Hours
Weather: Clear / Light Wind 5-10 knots SW
Temperature: 39° F

#1. Fire Services Action

Engine 1, Truck 1, EMS 2, Command Unit 1 responded to the above address as requested by communications. Upon arrival, Command Unit 1 established First Street Command. Involved was a single story, commercial structure of metal joist construction over poured cement slab with a composite roof. Interior separation walls were of metal joist construction protected with 2-hour gypsum wallboard. No carpet or floor covering was observed over finished cement slab. The structure was a non-occupied premises previously used as an automobile dealership.

Auraria Springs EMC provided standard commercial service to a service panel on the NW exterior of the building and there was an interior 300 amperes sub-panel protected with over-current protection in the form of commercial circuit breakers. The EMC reports that electrical service to the structure was not provided at the time of the incident.

Suppression Activities:

The following activities generally cover the operations of suppression companies:
 ENGINE 1--Heavy smoke and flames were observed prior to arrival of Engine 1. Upon arrival firefighters observed heavy smoke and interior flames extending from the central portion of the interior of the building, which appeared to have been dedicated office space. This area was the most significantly involved with the garage/bay and showroom areas being less involved.

Engine one dropped a five-inch supply line from the hydrant approximately 135 yards west of the structure but within the fenced premises of the property involved. Two crews from Engine one and Truck one using one and one-half inch, pre-connect hose lines were taken through the front door of the showroom area and the garage/bay area, respectively and were extended to the central area of the structure where the main body of the fire was located. Fire fighting operations were successful in containing the fire to this area.

Severe fire damage occurred to the central office area of the structure. Heavy to moderate fire, heat and smoke damage extended into the showroom and light to moderate heat and smoke damage was sustained in the garage/bay area.

#2 Alarm History

The Johnson Automobile Dealership has been abandoned for several years although Glutco recently purchased it for renovation/demolition.

A concerned citizen first reported the fire to Auraria Springs Fire Services at 0330 Hours. The citizen reported that a distraught homeless person who reported that his sister had been injured in a fire at the old car dealership had flagged him down. Dispatch notified the Auraria Springs Police Department and routed the above units to the scene.

Auraria Springs Police Officer R.S. Mann was the first responder. Officer Mann contacted EMS Unit 2 and assisted an onlooker in removing a female victim who had apparently been overcome by smoke inhalation to the EMS unit. Another onlooker told Officer Mann (who forwarded the report to Command Unit 1) that two individuals had been observed starting a fire.

#3 Additional Details

Command 1 was dispatched by communication to the scene at 0330 Hours and arrived on scene and established command at 0355 Hours. Engine 1 and Truck 1 had effectively extinguished the fire by 0400 Hours. A standard walk-around established that the fire began in the office area and low burn patterns were evident in the office area. A burn pattern approximately 10 inches square was observed in the concrete floor of the middle of the office area. An overturned can of commercial cooking, gelatin based, portable heating product (Sterno) was observed adjacent to the burn area. Officer Mann had located an empty can of what appeared to be a commercial paint thinner in the same general area. Samples were collected from the burn area and the overturned can and submitted to the New Hampshire Bureau of Investigation State Crime Lab.

Heavy charring and calcinations were observed on the interior of the gypsum wall board in the central office area and convection current smoke patterns and radiant heat markings indicated the above referenced 10 inch square burn area to be the point of origin for the fire.

Accidental Ignition Sources:

Except for the above referenced gelatin based, portable heating product, accidental ignition sources in the area of origin were not evident. No other accidental ignition sources were observed and electrical sources were eliminated due to EMC report that no service was active at the premises.

PROBABLE CAUSE:

The most probable cause of this fire is arson originating from the ignition point at, or immediately adjacent to, the 10 inch square burn pattern observed in the central office area of the structure. However, based upon the rate of involvement of the remainder of the structure, the intensity of the radiant heat patterns and the involvement of adjacent areas, accidental origin has been eliminated. It is equally unlikely that the gelatin based, portable heating product was the sole accelerant present. In order to create the incendiary speed, burn and smoke patterns and other involvement an additional accelerant would be required. The NHBI Crime Lab confirmed the accelerant as paint thinner, most likely from the cans located by Officer Mann. All other accidental sources of ignition have been examined and eliminated.

The assessment on the cause is based on the assessment of the physical evidence present at the scene and the elimination of all other accidental and incendiary sources.

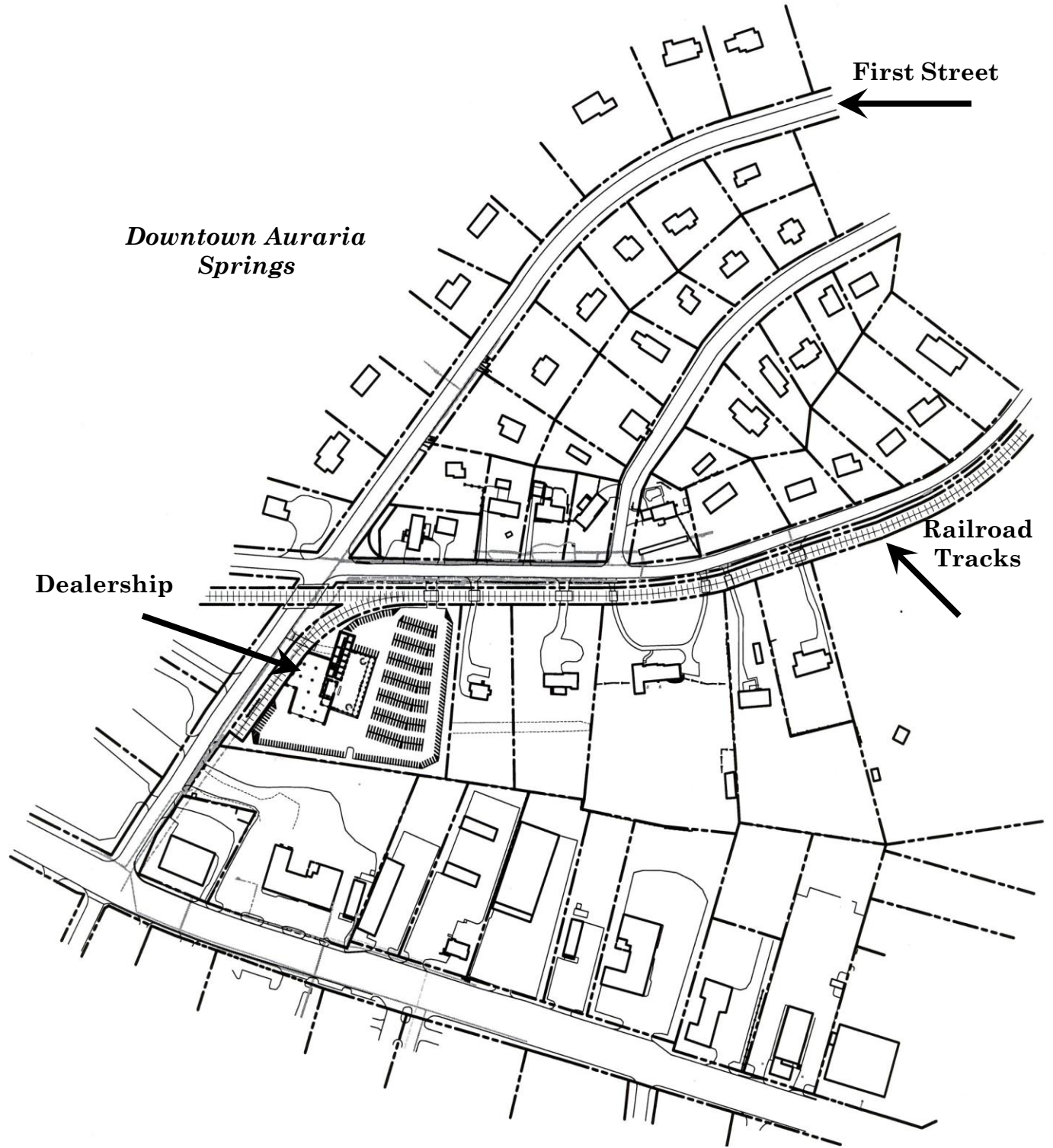
END OF REPORT

_____/s/
Brad/Barbara Gray--Investigator
Auraria Springs Fire Department

Date Submitted: 10 April 2005

Glutco Dealership Site Plan
1948 First Street

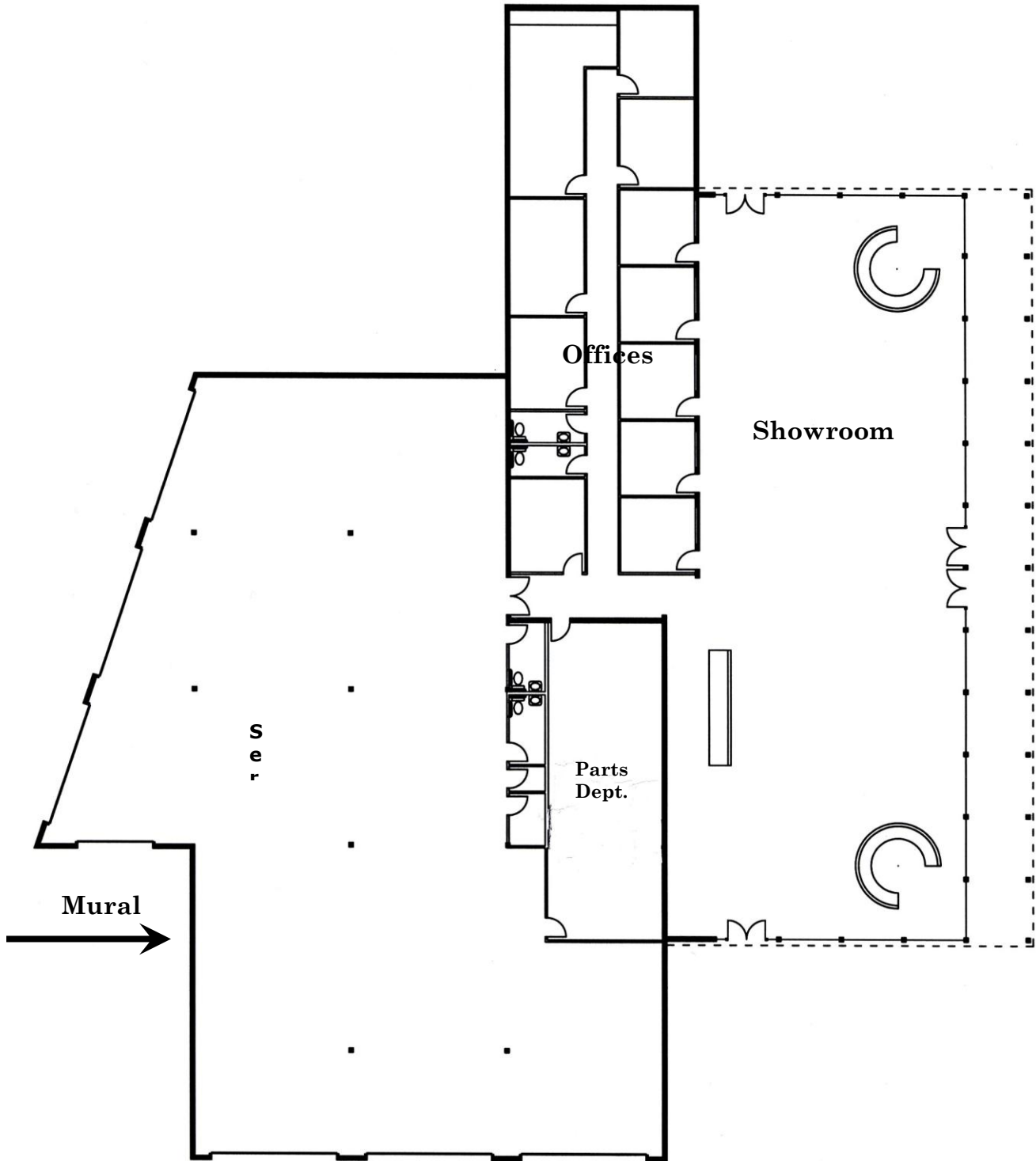
Auraria Springs, New Hampshire



Glutco Dealership Floor Plan

1948 First Street

Auraria Springs, NH



NEW HAMPSHIRE BUREAU OF INVESTIGATION
CRIME LAB

Forensic Report

Items Received: Four independently collected and bagged samples of apparently burned material.

Date Received: 14 January 2005

Received From: Officer R. S. Mann, *Auraria Springs Police Department*

Requested Analysis:

1. Test for presence or absence of accelerant
2. If accelerant is found, identify type

Tests Performed:

1. Gas chromatography with flame ionization detection (GC/FID) and headspace sampling of volatile flammable materials.
2. Gas chromatography with mass spectrometric (GC/MS) detection of the same volatile flammable materials after concentration of the vapors with solid adsorbent
3. Hydrocarbon analysis

Results: All four samples tested positive for the presence of accelerant. Analysis of the chemical properties establishes type of accelerant as commercially available paint thinner. Since no independent sample of paint thinner was provided and many paint thinners vary in their precise chemical composition, the source cannot be conclusively determined.

/s/
Joe Jackson
Lab Specialist III

STATEMENT OF CHIEF BRAD/BARBARA GRAY

1. My name is Brad/Barbara Gray and I am an arson investigator for the Auraria Springs Fire Services Department. I have been with the Fire Services since 1981. I started my career with Fire Services as a firefighter; I rose through the ranks and entered the Arson Unit in 1995. I have been Chief of this Unit since 2000. I have been a certified firefighter since 1981; I received my certification from the New Hampshire Firefighter Standards and Training Council. I have been a certified Emergency Medical Technician through the New Hampshire Department of Human Resources since 1988. I was certified as a Law Enforcement Officer through the New Hampshire Peace Officer Standards and Training Council [P.O.S.T.] since 1995. I have been a certified Arson Investigator through the New Hampshire Peace Officer Standards and Training Council [P.O.S.T.] since 1995. I am also a certified Fire Officer through the National Professional Qualifications System since 1993.

2. I have attended many courses at the New Hampshire Fire Academy. Some of the courses include the following: Building Construction; Basic Arson Investigation; and Advanced Arson Investigation. At the New Hampshire Public Safety Training Center, I completed courses on Interviews and Interrogations and Death Investigations. I have also been to several courses sponsored by Alcohol, Tobacco and Firearms [ATF] relating to Cause and Origin Investigation. I have attended and taught courses on fire Investigative Approaches as well.

3. Currently, I am a member of the International Association of Arson Investigators, the International Association of Firefighters, the New Hampshire Fire Investigators Association, and the North New Hampshire Arson Task Force.

4. While I was a firefighter, I became more and more interested in the arson cases. As such, I asked for and received permission to enter the Arson Unit. In order to do this, however, Auraria Springs sent me to mandate school so that I could become a certified law enforcement officer. After I received my P.O.S.T. certification in 1995, I entered the arson unit. As an arson investigator, I am responsible for investigating the cause and origin of fires. Of course, not all fires are considered "arson." I have investigated fires in which the cause was accidental. In those cases where the cause is not accidental, our Unit will try to identify and arrest the suspect. During my tenure as an arson investigator, I have investigated more than 150 structure fires and more than 50 vehicle fires. I have testified in court, for both the prosecution and the defense, over 73 times. I have been qualified as an expert in the field of arson and arson investigation over 73 times in the Superior Courts of New Hampshire.

5. As an arson investigator, I refer to many publications. Some of these include Kirk's Fire Investigations, NFPA 921 Guide for Fire and Explosion Investigations, New Hampshire Law Enforcement Handbook, and Methods and Techniques of Interviews & Interrogations by Donald Sparry. While these publications are authoritative texts in the field, they supplement my personal experience and classroom training.

6. My investigation into the origin and cause of the fire that occurred on January 10, 2005 at the Glutco dealership at 1948 First Street revealed the following. At 0330 hours, a concerned citizen contacted the Auraria Springs Fire Services in regards to a structure fire at 1948 First Street. As is customary on fire calls, the Auraria Springs Police Department also responded to the scene. Police Officer R.S. Mann was the first to arrive at the scene. He discovered a well-involved structure fire. There were several citizen on-lookers upon Officer Mann's arrival. These citizens were later identified as local homeless people who oftentimes seek shelter in the empty dealership. One of these on-lookers, Lauren/Laurens "Larry" Newton, informed Officer Mann that he/she and his/her sister, Philipa Newton, were inside the structure when two people in a car came and started a fire. He/she dragged his/her sister out of the building and flagged down a passing motorist. Officer Mann radioed for an ambulance and

assisted EMS personnel in placing Ms. Newton into the ambulance. After the firefighters had extinguished the blaze in the office area of the structure, Officer Mann approached the structure and located the charred remains of what appeared to be a Sterno can and a can of paint thinner. At that time, Officer Mann notified the Arson Unit.

7. I responded to the scene and took over the investigation at that time. I used my county issued cellular phone to check on the status of Ms. Newton. The hospital notified me that Dr. Carley had pronounced Ms. Newton dead upon her arrival to the emergency room. The doctor was to perform the autopsy later that afternoon. Next, I contacted the Auraria Springs Homicide Unit to assist in the investigation, and the Auraria Springs Crime Scene Unit to assist in processing the scene. Now, just because a person dies in a fire I am not going to start "rounding up the usual suspects." A person can die of smoke inhalation and nobody could be "at fault." I must admit, however, that I was suspicious in this instance for two reasons. I know from past experience that homeless people have used the old dealership to seek refuge from the weather and that they would start fires to cook and keep warm. I thought that perhaps the fire may have started accidentally and that Mr./Ms. Newton was afraid and made up the story of the two strangers in a car to steer the focus away from him/her. Once I saw one charred paint thinner can and the remains of a second one, however, I thought that there might be more to this.

8. I began my investigation by interviewing Officer Mann and witnesses, then having the Crime Scene Unit photograph the exterior of the building, then moving to the interior from the least burned area to the most burned area. Crime Scene Unit Investigator Joyce Vortice photographed the area and drew a sketch of the scene. The bay/garage area was the least burned. I determined that this was not the room of origin since it had the least fire damage and ordinary combustibles [paper, wood, et cetera] were still present. I later examined the office area; this area had the most extensive burn. I found low burn patterns in the office area, patterns that were not present in the bay/garage area. I located a burned area on the concrete floor approximately 10 inches long by 10 inches wide; this was in the middle of the floor. Located near the burned area was a can, which appeared to be Sterno. Four chemical samples were collected from the office area and later submitted to the New Hampshire Bureau of Investigation's State Crime Lab for analysis. I determined that the office area was the room of origin as it had the most damage. Radiant heat and convection currents caused fire spread to the bay/garage area.

9. Sterno cans are very small. If a person just spilled the Sterno, then it is highly unlikely that the spill alone would create a fire as large as the one at Glutco. The Glutco dealership went up in flames quickly. Clearly there was a large amount of accelerant used to make the fire spread that quickly. Based upon the location of the fire, the point of origin, and the presence of an accelerant, I determined that this fire was intentionally set.

10. I discussed the situation with W. E. Buy, who arrived at the scene some time earlier. Also, Homicide Detective Davis notified me that he and Detective Sissel had potential witnesses at the hospital. I drove towards the hospital so the witnesses could be interviewed. While on the way, I noticed Robin Banks, and Michael/Michelle Collins walking along the road. Given the information provided by Buy, I stopped and asked Banks and Collins if they would voluntarily accompany me to the hospital. They consented, and I transported them to the hospital with Banks in the passenger seat and Collins in the back seat (due to space constraints).

11. When we arrived, I observed someone later identified as a Mr./Ms. Newton. Immediately upon our arrival, Mr./Ms. Newton became visibly shaken and agitated, yelling at Banks and Collins. Newton was yelling "murderer, murderer" and pointing at Banks. This surprised me, as I really liked Collins for this fire, so I pointed at Banks and asked, "Is this him?" Newton nodded. I smelled what seemed to be an odor of accelerant. The cold must have prevented me from smelling it on Banks and Collins before, but the odor was present at the hospital. I then began to interview each of the individuals present. After

calming down Newton and taking his/her statement, I spoke to Banks and Collins. I began to question them as to their whereabouts that night. The Collins subject indicated that he/she and Banks were together at a restaurant and then took a walk for a couple of hours. I was immediately suspicious because it was very cold outside and Collins did not appear to be dressed for the weather. When I pressed Collins on this issue, he/she maintained that he/she and Banks were together the whole time.

12. When I spoke with Banks, he/she did not mention being with Collins that evening. In fact, he/she did not even acknowledge knowing Collins. When I asked him/her where he/she had been that evening, he/she requested a lawyer. Even though he/she was not under arrest, I ceased questioning him/her at that moment. I did observe what appeared to be red marks on Banks' hands. I thought that perhaps these were mild burn marks created as a result of ignition from the use of some type of an accelerant. I requested the hospital to look into this injury, but Banks refused treatment. I asked Detectives Davis and Sissel to review the statements with each of the witnesses and then call me on my cell phone.

13. I left the hospital and I met Dr. Carley at the Medical Examiner's Office. I was present during the autopsy and can testify as to the accuracy of Dr. Carley's report. The report indicates that Ms. Newton had a blood alcohol level of .23. In the end, Dr. Carley determined that the cause of death was smoke inhalation and that the manner of death was homicide.

14. I have known Robin Banks ever since his/her family moved to Auraria Springs. He/she is a very talented artist and has drawn murals all over town. He/she has told me in the past that he/she is most proud of the mural he/she painted at the old alternative fuel car dealership. He/she was upset that Glutco purchased the site and would not allow him/her to remove the mural. The mural was fixed to the wall and therefore belonged to Glutco – at least that is what he/she told me that the Glutco lawyer told him/her. I never thought that he/she would go to this extreme, however. I am aware that artists use paint thinner in their work. I am also aware that mechanics use paint thinner to clean car parts; the can of paint thinner we found was located in the office area and not the bay/garage area where car parts would be located.

15. I am familiar with Michael/Michelle Collins and the GNAT organization. During a training session to prepare for the Gang of Four summit, I had the opportunity to study a fire at a ski resort in Vail, Colorado started by these "tree huggers", I mean environmentalists, years ago. They are professionals; they know what they are doing; they research things. If they are going to set a fire, then they are not going to use a lot of accelerant. These people know that accelerant leaves a trail. They would use some sort of a timing device. For instance, they would set a candle in the middle of the floor and then make a trail using ordinary combustibles [like paper or wood]. Then they light the candle, set a trail of combustibles and leave!

16. I was not surprised when these "tree huggers" descended upon Auraria Springs for the Gang of Four summit. We were prepared for demonstrations and not all peaceful. I am surprised that the Glutco dealership was the target since everyone knew that the homeless frequent this area. In fact, Amalia Akshaya just wrote a great article on that very issue for the local paper. Ironically, a few copies of Ms. Akshaya's article were found in the office area of the Glutco dealership.

17. After reviewing all of the evidence in the case, I went before Magistrate Judge Ellie Wainwright and swore out arrest warrants for Robin Banks on the charges of felony murder and arson.

STATEMENT OF LAUREN/LAURENS “LARRY” NEWTON

1. My name is Lauren/Laurens “Larry” Newton, and Philipa Newton is—was—my sister. Her death, burned up in that fire at the new Guzzler site, is just the last in a series of hard knocks, which have come down on both of us. Again, we’re the victims of larger agendas, castaways on the sea of life, buffeted by its tide. But, as Robert Burns put it well:

*“...What tho’ on hamely fare we dine,
Wear hodden grey, an’ all that?
Gie fools their silks, and knaves their wine –
A man’s a man fo a’ that!
For a’ that, an’ a’ that,
Their tinsel show an’ a’ that,
The honest man tho’e’er sae poor,
Is king o’ men for a’ that...”¹*

2. Or that’s what poor Philipa would’ve said. We kept our noses clean (if only in a figurative sense), so our brushes with the police were always of the “move along, and don’t come back” kind; the last thing they wanted to do was arrest us and feed us overnight those times we were rousted from places we’d tried to use as shelter from the cold. I did a little time for petty theft, but those days are behind me. Philipa and I figured out better ways to survive.

3. I wasn’t always homeless, nor was my sister. There were times, as I’ve said, that we had ambitions. Philipa’s time ended, I guess, when they began letting people go from the Army: that “peace dividend,” a few years back. The military was gonna be her “useful” skill, and in the service they took care of her but she didn’t do too well out on her own. What kept her together was taking care of me—I’d begun to have my own problems, about then—but that only lasted so long. Then, after that logging truck hit her dog Rags... Well, Philipa never got over that dog’s death. She got more and more morose, more depressed, till... Well, even though Philipa qualified for some VA benefits she wasn’t comfortable going back around regular people so much anymore. The doctors gave her some pills to help with the blues—and they told her not to give in to all the beers she liked when she used to sit and compose monodies to Rags—but she thought her medications made her “squirrely”, so she wouldn’t take ‘em.

4. Philipa always said I was good with remembering what I hear, but not so good with my letters, so the military wouldn’t take me without a diploma. Civilian employers weren’t too keen, either, but I managed to get jobs where I didn’t have to do so much with paperwork, just my hands. Problem was, as jobs got more automated—as the neighborhood around here got more developed—those jobs got harder and harder to find. Like my sister, I’ve had a touch of the wanderlust—I don’t like “setting” in one place too long—but I didn’t have a single career like hers that fit that urge. And, too, none of the pick-up jobs I had came with health insurance. Once I got sick, what little savings I had were gone.

5. The same economic development that was making menial jobs harder to get—at least ones that covered my expenses, not just pocket money—was making it hard to find affordable places to live. And that left Philipa and me—by this time she’d come to stay so we could share expenses—out on our own. Together, I’d drink with her when she was down—it took away the feeling sorry for myself for awhile; took away the sense of being so “different”—but it wasn’t like either of us had a “problem;” even combining our pocket change, we could never buy enough alcohol at one time to become “problem drinkers.” We wandered about a bit more, and then gravitated back to Auraria Springs, where we were

¹ “Is There for Honest Poverty” (lines 9-16); Robert Burns: Selected Poems; Penguin Classics, London, 1993; p.181

from, originally. I guess, even if there's really no one and nothing for you there, you still want the feel of home.

6. It's strange that Philipa's death has brought me a better "new start" than we were ever able to manage while we were together. The company got me new clothes—I'm planning to wear them for the trial so I don't look like some sort of bum, 'y'know—and had my teeth looked at and helped me to get credit for a couple of months rent of a place so I'll have a base from which to look for a job or some training program or something. Their lawyer has told me there might be some public training programs around, he's said there might be some money due me on account of Philipa getting killed in a deliberately-set fire... but, all in all, I'd rather have my sister back!

7. Philipa and I have had our run-ins with the Guzzler people. They'd run us off their lot at night, but we knew the watchman was spread too thin to keep on top of us, so we'd come back, as often as not, when it got to be the wee hours. Especially if it was cold, that watchman didn't want to be walking about in the New Hampshire mountains any more than Philipa and I did! Although the Guzzler folks were happy to rebuild the old dealership so they could sell tricked-out sports utilities to the city slickers who are coming up here to build or renovate vacation homes, apparently they pinched pennies pretty tightly when it came to paying menial employees like their night watchmen.

8. It was dirty in the old store rooms, since Guzzler hadn't gotten to the point of cleaning up completely, and the service bays were still greasy—with trash and debris from the parts of the previous dealership that they'd begun to rip out—but the place was warm shelter, and the discarded furniture they hadn't carted away yet was softer than the ground. There was plenty of greasy trash and tracks in just about every section of the building. After the first dozen times or so, Guzzler had somebody disable the appliances in the old employee break room so we "visitors" couldn't use them, and we wouldn't be encouraged to come back to the site—that made us popular with the night watchman (who was using the stove and the refrigerator too, I think, and had to go back just to his Thermos)—but Philipa's Army training stood her in good stead. She found ways of cooking some hot grub out on the work floor, usually with Sterno. Philipa was always so careful with her cookware and fuel, probably the only "useful skill" that translated from her days in the Army. There is absolutely no way our little can of Sterno could have caused that fire, because I saw her put the lid on it once she was done cooking.

9. It was late on the night of January 9th or early morning of the 10th, 2005, and we'd slipped through a spot where erosion had washed the dirt from beneath the fence (and nobody had filled in), creating a gully just deep enough for Philipa and me. At about 1:30 or 2 o'clock in the morning, we'd settled down around the Parts Department, hiding below the counter, which opened into the service bays. My stomach was as full as a day's scrounging and Philipa's culinary skills could make it. Philipa had ducked out to powder her nose, and I was feeling drowsy.

10. Somewhere across the dealership, I heard a noise. Ordinarily, I would've let it pass—it was too far away, I thought, to be my sister falling in the restroom or anything, but it was in that direction — because we're not greedy about the Guzzler place being only our homestead. But this was different: the sound was too "ambitious" to be simply some other homeless folks taking cover. I called for my sister in a harsh whisper, but I guess she didn't hear me. Or else, she was "indisposed." Getting into a crouch, below the counter, I crawled to the doorway and slowly twisted the knob. Opening the door carefully, so as not to be seen, I crawled into the service bay and hugged the wall, so I'd be hidden in the shadows, somewhat. Through the plate glass, smeared with grime, but translucent, I saw headlights, or heavy flashlights, or something like that moving in an arc.

11. Homeless people don't drive cars, generally, and they don't usually spend the money to carry heavy-duty flashlights. I thought the security guard had finally read his job description and began to provide security for the old building. I skulked in the shadows, keeping an eye out for my sister so I

could warn her of trouble. I didn't see Philipa, but I did see Robin Banks, the defendant. I didn't know Banks at the time—maybe I'd seen him/her around town a time or two—but I got a good look, as two (that I could see) figures slipped into the dealership. They were carrying something; I couldn't see what it was, but their silhouettes—or, at least Banks'—showed up clearly against the lights beyond the plate glass. Later, his/her face showed up as a yellow-reddish glow grew below it, vibrating: flickering, I'd say, in hindsight. Intruders!

12. They crossed the service bay and headed into the back, towards the offices, where we'd left after dinner. They were whispering between themselves animatedly, but I couldn't make out what they were saying. Keeping my distance, I followed along the wall. By the time I got to the doorway looking into the back, the second figure had disappeared. That kept me from following any closer; I didn't want to run into him/her. So I watched.

13. There was, as I've said, a ripple or a flash of warm-colored light, and I saw the defendant's face clearly. Banks' expression was both malevolent and satisfied: a demon gazing down on its handiwork. But abruptly, after only that moment's pause, Banks moved deliberately towards the doorway behind which I hid, watching mesmerized. Taken by surprise, I threw myself behind a stack of tall wastebaskets gathered from the previous places at each service manger's workstation and other discarded supplies. I bit into my forearm, muffling my rapid breathing with my coat sleeve to keep from being heard. Banks and his/her accomplice then stopped and looked around. I heard Banks mutter "Bums" to the other person, and then they left. That was my third, but somewhat shadowed, look at the defendant.

14. Again, as I regained my composure, I looked around for Philipa. I had to crab-crawl to avoid being discovered—although the lights outside were moving again, I couldn't be certain everyone had departed—so it took some time. My search was interrupted when I smelled smoke and heard the unmistakable cracking of a fire from inside the back area where Banks and his/her companion had been. Only as the danger drew me back—curiosity killing the cat—did I see a prone figure illuminated by the growing conflagration.

15. With desperation, I dragged my sister towards the relative safety of the service bay. The fire was already severe—I don't know how long it had grown while I'd been searching—and Philipa wasn't sounding too well. Not just smoke inhalation, but the fumes of whatever was in the smoke. As we nearly reached the doorway, the flames released overhead detritus; they'd already charred through some structural supports. Part of the falling material hit Philipa, only nearly missing me.

16. I wanted to call for help, but the phone lines were cut off—to discourage trespassers, again. As I regained my composure, I did my best to render emergency aid to my sister, but she looked in very bad shape. Where, otherwise, I would've been reluctant to draw attention to our (illegal) presence in the Guzzler dealership, the injury to my sister changes the rules. Unable to telephone, and unsure where—or if—there was a fire alarm, I ran through the dealership. The front doors were chained, of course; I had to retreat to a side entrance, and then try to climb the fence surrounding the parking lot where inventory would've been kept. By the time I'd made it, my hands were bloody from the effort and smoke curled from the building behind me. I ran into the street, waving my hands above my head.

17. That the security guard did not immediately see me is testimony to his level of vigilance. Instead, a passing motorist got to me first. Telling the driver—I do not know his name—to summon help, I turned back to the dealership to begin my climb again. I had to get my sister out of the building; the flames were spreading rapidly—far, far more quickly than I'd imagined they could. Over the dealership, the mural was lit up (for the brief period before it vanished behind a layer of soot, then collapsed into ashes along with the rest of the wall) like the stage set/backdrop scrim of some Wagnerian "ring" opera in Bayreuth. It's strange what imagery goes through your mind at stressed moments like that.

18. As I was dragging Philipa's limp form out into the clear night air, away from the now-collapsing dealership, an officer arrived and cut through the security fence with shears. S/he helped me load my sister into the ambulance which quickly followed—s/he must've been alerted to call for one on the way by that anonymous motorist – and I rode to the hospital with my silent, still sister. Philipa was pronounced DOA at the Emergency Room; I was still answering the EMS's questions when the Chief Gray got there to take my statement—this statement—for the official record. Chief Gray also had two individuals with him/her, and I again gazed into the face of Robin Banks. Before being asked, I shouted, "That's him/her, Chief! Make your arrest!"

19. I hope Banks gets what's coming to him/her for having started that fire. S/he may not have seen Philipa—or s/he may, I don't know—but s/he's responsible for killing my sister and my only companion, either way. Banks set that fire at the Guzzler dealership, deliberately, although I don't know why—or didn't, until I heard the gossip while I was waiting at the hospital (since I had nowhere to go even if I hadn't been too distraught, then depressed, to think about going anywhere)—and I'm happy to help the fine people with Auraria Springs and the Guzzler people bring Banks to justice for it!

WITNESS ADDENDUM

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

Signed,

/s/

LAUREN/LAURENS "LARRY" NEWTON

SIGNED AND SWORN to me before 8:00 a.m.

On the day of this round of the 2006 New Hampshire Mock Trial Competition.

/s/

Claudia Merson, Notary Public

State of New Hampshire

My Commission Expires: 05/01/2006

STATEMENT OF WILLIAM/WILMA E. BUY

1. My name is William/Wilma Buy. I was born in Detroit, Michigan. I suppose you could say that cars are in my blood. I've worked for all three of the major United States manufacturers over the course of my career. I retired about four years ago and was bored! After six months of the retired life, I had seen most of the major sites in the United States and was driving my spouse crazy! An old friend of mine from the old Detroit days, Maximus Glut, had the idea for me to come and work for him. It's funny how someone that you know in your childhood can be so very different from how you remember him or her!

2. Max was an independently wealthy man who decided about ten years ago that the cars on the road were just not big enough for him. Max insists that he is big boned, but I think that he really should start taking it easy on his heart!

3. Max formed a new company – called it Glutco – to make his new larger than life sport utility vehicle. He called it the Guzzler – cause it guzzles soooo much gas. He started out making a few of them for his other rich friends. These cars are built like tanks. In the first year of manufacturing, one of the Guzzler's withstood a tornado in Omaha. It made the national news. The rest was, as they say, history.

4. Max has been buying land and building dealerships in all of the major cities in the United States. He hired me to help target the next tier of cities, or places that are near several metropolitan areas. Once he gets his heart set on something, that's it! He doesn't always care if the demographics of an area are right for Guzzler sales, so I have to check out all of that "due diligence" stuff real thoroughly. Otherwise, we might throw good money after bad on a location that just doesn't work.

5. I went out to Amarto County a bunch of times to get reports on traffic counts, average household income, neighboring businesses, and the like. I try to review anything and everything I can before I present a possible site to Max. Because, like I said, once he gets his heart set on something you cannot change his mind about it.

6. I was very encouraged by the growth and development of Auraria Springs. It looks like the yuppies have been buying up the old dilapidated warehouses and turning them into loft apartments and condominiums. I checked out all of the demographics for the area and Auraria Springs looks like a perfect fit for a new Guzzler car dealership! Glutco was lucky to get this site for its new showroom. I don't know why we were able to get it – but I think it is great! It's right next to the railroad tracks. I think that we can use that to bring in the Guzzlers – they are too wide for transportation on standard-sized tractor-trailers. We have to use two lanes of a major highway to transport them to the dealership. This makes moving a Guzzler very expensive and cumbersome. The cost and difficulty of moving the Guzzler means that there is no trading of vehicles from one dealer to another. Everyone has the same thing at the same time. We have only 1 model of Guzzler for sale at any time. We also transport them in only one color. We custom paint each Guzzler to any of our 256 colors at the dealership's custom paint shop.

7. I drove by the site maybe six or seven times during my visits to Auraria Springs in the summer and fall of 2004, before we purchased the Property. Yeah, I heard that there might be homeless people at the site, but I never saw one homeless person when I drove by there. That environmental report by SPEWI said that there was evidence of homeless people. When I saw that I called Sid and asked if he ever actually *saw* a homeless person there, he said no. But, I put it in my report anyway, because, like I said, I like to be thorough.

8. Glutco hired a man who had been discharged from the police force to periodically conduct surveillance of the site. He has a wife and six kids under the age of ten, so he was happy to take a part-time job for some extra money and fresh air! Because the building was so dilapidated, there was no heat or air conditioning, etc.; he agreed to take the job if he could check on the site four times per day. He went out to the site at 8:00 a.m., on his way to his regular job fixing cars at the only car repair shop located in town. He went back at 5:00, 8:00 and 11:00 at night. We didn't have to pay him as much as you would a regular caretaker; it's always good to save the company's money. We eventually turned off the electricity and gas to the site to help shave off a few dollars of our monthly expenses. Most of the lights were burned out anyway, so what if he'd have to carry a flashlight – it got the job done, didn't it? Our security must be doing a good job, because I get verbal reports of vagrants and trespassers that have been run off from the premises.

9. Glutco's plan was to demolish the building and construct a brand new, spacious, modern-design car dealership. Our plans have been substantially delayed every step of the way. We can't even get a permit to remove the old furniture and fixtures from those folks at city hall and we were starting to wonder what we could do to get the ball rolling over there. I understand that the general contractor has had trouble with the officials over the type of car that Glutco will be selling on the Property. I can't see why that's any of their business. Take for example the town council meeting that turned into the big fight. We were trying to secure a few minor (but necessary) permits and some nut case stands up to speak out against the development in general. S/he said his/her name was Robin Banks, and from the moment s/he opened his/her mouth, you could tell s/he was a few cards short of a full deck. It was a constantly rambling, vicious attack that was mostly incoherent. It got so bad that Banks was removed from the meeting, kicking and screaming! As they dragged Banks from the room, s/he kept screaming "Keep it like it was!" It's almost as if Auraria Springs doesn't want Glutco! I can't imagine why. Sure, we've had some trouble from other cities when they find out that we're coming to town. The people want us, just look at our sales records!

10. During the meeting, I kept thinking that Banks looked familiar, but I couldn't place him/her. It then dawned on me that I had met Banks about a week earlier. I was actually on the Property when Banks appeared out of nowhere. I have no idea how s/he got in, because I distinctly remember locking the gate behind me when I arrived. S/he started rambling about trying to save that mural on the property. I told Banks that we had been given permission to raze the entire structure and there was nothing there worth saving. What I meant was that the historical review board had reviewed the application and found nothing of historical significance to save. I may have mentioned that s/he was trespassing and threatened to call the police. Banks must have taken my statement the wrong way, because s/he flew off the handle again just like at the town council meeting. Banks then stormed out and said over his/her shoulder as s/he was running away, "Mark my words, that mural will become your pyre! I'll see to that personally. I have friends..." I had to look up what s/he meant. I think s/he kept yelling at me, but the echo from the empty building and the fact that s/he was running away made it difficult to understand.

11. Considering the threats and irrational behavior, I did a little research on Robin Banks. I discovered that s/he is a member of GNAT. We have had run-ins with members of that organization before, and I've been briefed on the general activities of Michael/Michelle Collins, their leader. They love to target companies such as ours for their twisted agenda. How does setting fire to a car dealership help the environment? Think about the global warming concerns (if you are into that sort of propaganda) when more ash, soot and burned petroleum products are let loose?

12. It was right around the time that Auraria Springs hosted The Gang of Four conference that this whole mess arose. I was in Auraria Springs for the summit, staying at a new hotel downtown. Our security guard called and said that the building was all clear at the time of his last inspection, around 11:30 p.m. on the 9th, the night of the accident. I went to bed and the next thing I know, I get a call from

an Officer Mann about a fire on the Property (my name and number are listed on signs as an emergency contact). I arrived as quickly as I could, but there wasn't anything I could do in the first place. The entire structure was ruined.

13. I then spoke to a fire investigator at the scene named Gray. S/he was giving me a really rough guess as to the cause of the fire, and that s/he believed it was intentionally set. Then I put two and two together and came up with Banks. I informed Gray about all the previous problems we had with Banks and the threat. Gray nodded in an understanding manner and promised to investigate.

14. This whole fiasco has really set us back – with the environmental issues associated with cleanup, I don't know if we are ever going to get this dealership built. I speak for the entire company when I state unequivocally that this fire was not set with any permission, express or implied. All Glutco wants is to be treated like any other citizen of Auraria Springs. That's why we want to be treated fairly, and that's why we are cooperating with this investigation. The idea that we are doing this only to collect on our insurance is preposterous. We, like any citizen, want to see justice done.

WITNESS ADDENDUM

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

Signed,

/s/
WILLIAM/WILMA E. BUY

SIGNED AND SWORN to me before 8:00 a.m.
On the day of this round of the 2006 New Hampshire Mock Trial Competition.

/s/
T. Reginald Solomon, Notary Public
State of New Hampshire
My Commission Expires: 05/01/2006

STATEMENT OF ROBIN BANKS

1. My name is Robin Banks. I was born on February 9, 1968, in San Francisco, California, so I guess, in some respects, you could say I am a product of my hippie parents' participation in the "Summer of Love." But a more cynical observer might say my origins stem from my dad's fear of losing his student draft deferment. Here's the way my parents, whom I was raised to call Ernie and Kathy, tell their part of the story:

2. In the spring of 1967, my dad, Ernest "Ernie" Banks, was a student at the University of Virginia. Having spent more nights exploring the steam tunnels that crisscross the bowels of the campus than he did studying, Ernie finished up his freshman year at UVa. without an invitation to return for a sophomore year. Although underground exploration became Ernie's passion, at that time he was more interested in charting a surreptitious route to the nursing school, where my mom Katherine Barclay Banks, was a student.

3. When classes ended in May, Ernie proposed to Kathy that they drive to San Francisco in the used mail truck he had bought at a postal service auction. Though her views later changed when she became a feminist, in 1967 she was like many women at that time—looking for a Mrs. Degree, if not a diploma. So Kathy agreed to go, provided that Ernie marry her first. They tied the knot in an impromptu ceremony, which coupled with my subsequent birth nine months and three days later, provided Ernie with a paternity deferment from the draft to replace the student deferment he lost by flunking out.

4. Their summer-long, cross-country honeymoon was spent camping in the mail truck. During each stop on their way west, Ernie worked on decorating the truck's exterior. By the time they reached California, the mail-truck residence resembled a mini-version of Ken Kesey's famous psychedelic bus. The only difference, other than size, was that Ernie painted the word "Father" (where the Merry Pranksters' bus said "Further") above the windshield because he was ecstatic that Kathy was already expecting by the time they reached San Francisco.

5. In the Bay Area, Ernie and Kathy found the hippie underground and psychedelic counterculture that they expected, but they were most excited to be there as the seeds of the nascent ecology movement grew into Earth Day. My parents say the benign environmental teach-ins that they took me to when I was a baby were a far cry from the ecotage tactics later employed by some of the fringe elements that spun out of my generation's more radical environmental groups, such as the Global Nature Activist Troop (GNAT...they love to remind everybody that the G is silent).

6. Unfortunately, our little family was not able to settle permanently in San Francisco. Ernie's dream of finding steady work turning vehicles into psychedelic magic buses went up in smoke and he was reduced to painting anything anyone would pay him to paint, whether it was an artistic endeavor or not, while we made our nomadic journey back east.

7. Eventually, we settled in Auraria Springs in north New Hampshire. When Ernie found stable work painting "See Rock City" on barns after a freak lightning strike laid up the guy who had the regular gig, Kathy got a part-time job at the health-food co-op. Auraria Springs also suited Ernie because its famous network of subterranean caverns provides plenty of spelunking opportunities and as I got older he started taking me along. Because I was home-schooled, it wasn't until I started college that I found out some folks thought my family was a little batty for spending so much time in the darkness underground.

8. As a teenager, I dreamed of going away to college at UVa. to explore the steam tunnels like Ernie did. But, when the time came, it just made more sense to stay at home to attend classes part-time

at Auraria Springs College and not incur a ton of student debt. I worked in Ernie's painting business when I wasn't attending classes. The only down side was that it took seven years to earn my art degree. During this time, Ernie taught me that the secret to success as a painter requires some exceptions to our healthy and environmentally correct lifestyle. Chemical strippers and paint thinners are necessities, but must be used carefully because they can burn your hands if you don't wear gloves.

9. In 1992, toward the end of my student career, I founded a chapter of the newly created Global Nature Activist Troop (GNAT). By this time, the environmental movement had come a long way from my parents' early efforts to establish a global holiday for the whole planet. Our chapter's motto: "Resist much, obey little."² In my mind, that means peaceful civil disobedience, which I had to make clear whenever one of our hothead members suggested we would get more impact from ecotage.

10. By the time I graduated in 1993, the painting business was growing by leaps and bounds as retirees and young professionals started buying mountain property and building homes that needed painting inside and out. Ernie even put his artistic skills to work doing trompe l'oeil murals and faux finishes for rich folks really into decorative arts. He and I were in big demand over the next decade or so as developers completely transformed Auraria Springs with new shopping centers catering to the newcomers and restored commercial buildings downtown housing gift shops and gourmet restaurants.

11. Although this growth allowed me to develop a prosperous niche painting murals, I was determined to stay true to GNAT and my environmentalist roots by speaking out at City Council meetings when they were considering zoning changes to permit new development. I became a regular gadfly, telling the City Council over and over again, "Keep it like it was."³ Sadly, the City Council never seemed to listen.

12. In frustration, I decided to paint a nostalgic rendering of Auraria Springs, the way it looked when I was growing up, before the City Council let the developers create all the horrible traffic and pollution problems. Entitled "Keep It Like It Was," this was my favorite mural. Unfortunately, I painted it inside the only business to fail miserably in Auraria Springs—a dealership for alternative fuel vehicles that had been built out by the railroad tracks in the area under which the best spelunking cave was located. In fact, the dealership building was constructed right over one of the many entrances to the cavern, which a number of homeless people began utilizing after the building was vacated to enter it for shelter from the cold mountain air.

13. I was horrified when I found out that Glutco was acquiring the building for a Guzzler dealership. The idea of those ecological monstrosities being showcased against my "Keep It Like It Was" mural really made my blood boil. I tried contacting Glutco's president, Maximus Glut, to arrange for removal, but he just had a secretary call to tell me that they weren't going to use the mural.

14. Then one day while I was painting a mural of frolicking canines at Dave's Doggy Day Care, the pet spa out by the railroad tracks, I saw one of Glutco's fat cats pull up to the dealership building. I decided to go over there and talk to him/her about getting the mural back. I had called Glutco and spoke with a very nice PR person who said they'd look into the issue. The Glutco guy/gal had locked himself/herself inside by the time I got there and wouldn't answer my knocks at the door. So, I found my way into the building through the subterranean passages I knew so well.

² This quote from Walt Whitman was the motto of Edward Abbey, the author of *The Monkey Wrench Gang*, a novel about radical environmental activism, and he included it between two other quotes at the beginning of the book. *The Monkey Wrench Gang*, Copyright 1975, Perennial Classics, New York, Introduction by Douglas Brinkley, Copyright 2000, p. xv.

³ This was the battle cry of the fictional Monkey Wrench Gang in Edward Abbey's book. *The Monkey Wrench Gang*, Copyright 1975, Perennial Classics, New York, Introduction by Douglas Brinkley, Copyright 2000, p. xx.

15. I realize now that I probably startled the Glutco guy/gal when I encountered him/her inside the dealership. I tried to explain that I was the artist who had painted the mural and started to give my reasons for wanting to get it back, but the Glutco guy/gal apparently thought I was one of the homeless people who sometimes use the same underground entrance to seek shelter in the building. S/he punched 911 on his/her cell phone and told me he/she would push send if I didn't leave immediately. "If you remove that mural, you'll be a liar! Resist much, obey little!" I roared as I escaped into the underground tunnel.

16. The next week, I saw the Glutco guy/gal at the City Council meeting and found out his/her name is W.E. Buy. There were two items of interest to me on the council's agenda. One was approval of security plans to limit demonstrations during the four-day global economic summit referred to as the "Gang of Four." The other was approval of a demolition permit to allow Glutco to level the old dealership building to construct a new facility. I signed up on the list to make public comment, as I always do.

17. When the council was considering the "Gang of Four" issue, I expressed concern that the plan to confine demonstrators to a park far from the meeting site was a violation of the First Amendment rights of GNAT and other organizations who were planning to protest during the summit. I rose to speak again when the council was considering the Glutco demolition permit, but the council president said, "You can't speak twice." When I responded that in all the council meetings I have attended over the years I had never heard of such a rule, the council president ordered police to remove me. The officer took me by the arm and twisted it behind my back. I collapsed to the ground and cried, "Resist much, obey little," and let my body go limp. As they carried my dead weight past W.E. Buy I told him/her, "You better not destroy my mural, 'Keep It Like It Was.'" I was referring to the name of the mural, not the GNAT battle cry, so I don't know why the media reported that I threatened Glutco.

18. About three weeks before the "Gang of Four" summit, I met the famous GNAT activist Michael/Michelle Collins, who had come to town to help organize the protests. After an organizational rally, we went to the Red Bird Café to grab a bite to eat and to discuss how to get around the City Council's newly enacted limitations. I started telling him/her about the meeting in which they were adopted and how I wasn't allowed to make a plea to save my mural at the old dealership building. I think Michael/Michelle really understood how attached I am to that mural. S/he picked up the check, saying it was his/her treat to cheer me up, and suggested that we take a walk through town so that S/he could become more familiar with some of the staging areas for the protests.

19. We were just about to call it a night after surveying several potential rally sites when Chief Brad/Barbara Gray pulled up in a squad car. I've known Chief Gray for years because s/he is always at the City Council meetings so I was shocked that s/he suddenly popped out of his/her squad car and very curtly told us to get in. I'm all for protesting, but when an authority figure I know personally makes a request, I plan on complying even though Michael/Michelle demanded to know what was going on.

20. I was completely stunned when Chief Gray took us to the hospital and marched us into the emergency room and stood us in front of one of the homeless people that I had seen hanging around down by the railroad tracks when I was painting at the pet spa. The bum pointed at me when the chief asked, "Is this them?" And the next thing I knew, I was carted off to jail.

21. That is all I am prepared to state at this time. I didn't do it.

STATEMENT OF MICHAEL/MICHELLE COLLINS

1. My name is Michael/Michelle Collins. I was born on June 10, 1974 in Cambridge, Massachusetts, but not to any blue blood, Harvard-types. My Mom and Pop were working class folks who immigrated to this country before I was born. When I was just a baby, we moved to Boston's south side and my playground was the hardscrabble streets south of the Charles River. Boston has always been famous for its revolutionaries and you grow up angry when you grow up on the mean streets. For me, I directed that anger at the corporations who polluted the air and fouled the water of the Charles River so near my home.

2. While my anger could have turned to violence, I've dedicated my life to non-violent activism and social justice. Since I was a teenager, I've been involved with various issues ranging from the environment to non-humyn animal welfare to humyn rights. I think, feel and care about the well being of everyone and everything. The desecration of our only Earth Mother, the abuse and slaughtering of our co-inhabitants and the rampant violation to civil and humyn rights has motivated me to non-violent action and to oppose and expose what I see as heinous crimes in our culture. I admit I am a follower of the principles of the Global Nature Activist Troop ("GNAT", the "g" is silent), but the government alleges that I'm the national leader of GNAT. However, the government is just trying to pin that label on me and make me a target for persecution because I chose to challenge the status quo.

3. In fact, to say that anyone is the leader of GNAT in itself demonstrates a complete lack of understanding of GNAT, its goals or principles. GNAT was formed in 1992 as a splinter group from the Earth First! Movement during an international conference held in England. GNAT is an underground movement with no leadership, membership or official spokesperson. Because GNAT is non-hierarchical, there is no centralized organization or leadership. There is also no "membership" in GNAT. While some individuals commit arson and other illegal acts under the GNAT name, individuals who choose to do so under the banner of GNAT do so only driven solely by their personal conscience. GNAT is not organized like a service club where you pay \$20.00 and get a handbook or membership card. You anoint yourself in GNAT by following its principles and by acting out, to the extent your personal conscience allows, against those who pollute the environment and are cruel to animals.

4. I am also aware that Ecotage, shorthand for Ecologically Motivated Sabotage, has been associated with GNAT by the FBI, but as GNAT's website states, "no citizen or animal has ever been hurt by GNAT's actions." While GNAT opposes all those who profit from the desecration of the Earth Mother, some of the most egregious violators include logging companies, ski resorts, whaling vessels, anything sold by Big Box or made of plastic. However, without question, the main symbolic offense against our only Earth Mother is the Guzzler automobile. Under the GNAT banner, there have been numerous attacks on Guzzler dealerships across the country. In San Diego, a fire gutted a Guzzler parts warehouse and destroyed 20 Guzzlers on the lot. At a Guzzler dealership in Los Angeles, slogans such as "Fat Lazy Americans" and "I ♥ Pollution" were spray painted on vehicles. Besides, the Guzzler is no automobile. It's an urban tank. Gas-guzzler is too polite a term for this behemoth on the freeways. It's a reverse oil well sucking in fuel at three miles to the gallon to feed its insatiable 613-horse power engine. It's the vehicular equivalent of buffed biceps and hypertrophied abs. The Guzzler should run on steroids, not petroleum.

5. However, unlike some followers of GNAT's principles, I reject violence and I have dedicated my life to non-violent activism and social justice. While the people who set fires under the banner of GNAT may make a big splash with their fires and break-ins, I feel their actions are obscuring the true message of GNAT. Their actions are causing people to liken GNAT to groups like Al Qaeda, not to more mainstream organizations like the Sierra Club or the American Society for the Prevention of

Cruelty to Animals. To paraphrase Barry Goldwater, extremism in the defense of the environment or animals is no virtue; moderation in the pursuit of environmental change or animal rights is no vice.

6. Participating in peace marches, protests and speaking at various humyn rights festivals keeps me traveling around the country all the time. Naturally, when I heard that Auraria Springs had been selected to host the four day "Gang of Four" Summit, which consists of the four main violators of our only Earth Mother, I knew I had to come to the North New Hampshire Mountains to help organize and participate in peaceful, non-violent protests. I arrived in Auraria Springs on Monday, December 20, 2004, about three weeks before the beginning of the summit. A friend had arranged for me to stay with some art students from Auraria Springs College. The art students also took me to campus where, from the free speech platform in front of the Student Center, I gave speeches on the desecration of the environment, humyn and non-humyn rights and how the government sold the country to the corporations. I also posted flyers around campus scheduling a series of meetings to organize protests at the upcoming Gang of Four Summit. The organizational meetings were held at a small bar called "The World" which was near campus and frequented by an artsy student crowd and other eclectic types. It was at one of these early organizational meetings that I first met Robin Banks.

7. Robin was either from Auraria Springs or grew up there and told me that s/he had attended Auraria Springs College. Robin became essential to organizing the protests for the Gang of Four Summit. Since s/he was local, Robin knew everyone in the area who shared our sentiments on the environment, humyn and non-humyn rights and anyone with an ultra-progressive political agenda. Robin even knew that the best place to get a tofu burger was at the Red Bird Café.

8. In fact, it's because of the Red Bird Café that I'm certain that Robin Banks is innocent of these charges. You see, the night of the fire at the would-be Guzzler dealership, Robin and I were having a bowl of tofu and bean sprouts at the Red Bird. We'd gone there about 11:00 p.m. to get something to eat after one of our organizational rallies. The place was not crowded, and I doubt anyone else could vouch that we were there. We were sitting there eating when the music in the restaurant started playing Lil' Nemeses T's "School's for Suckas." Now while I've never been a big fan of hip-hop banjo, upon hearing that song, tears welled up in Robin's eyes. Robin told me how this was one of his/her favorite songs and that s/he had listened to it over and over again while painting this mural of the way Auraria Springs looked before the developers and urban sprawl. Robin also said the mural would be destroyed when the new Guzzler dealership went in to what had been an alternative fuel vehicle dealership located on the edge of town.

9. To help lighten up Robins' spirits, I paid the check at the Red Bird and suggested that we go out and get some fresh air. We walked around the downtown area of Auraria Springs and around campus for maybe an hour or two. We discussed the great response we were having to our calls to protest the Gang of Four Summit and how the protests would attract a lot of media attention to our cause. This seemed to take Robin's mind off the mural and put him/her in a better mood. I was just about to tell Robin that I needed to call it a night when blue lights started flashing and Chief Brad/Barbara Gray got out of a squad car, gun already drawn and pointing at us.

10. Chief Gray shouted, "don't move" and then, "put your hands on your heads." Robin and I both complied, but I demanded to know what was Gray's basis for detaining us. In typical fascist manner, Gray gruffly responded by telling us to "shut up" and s/he handcuffed us and roughed us into the back of the squad car. As Chief Gray sped us away in the patrol car, I again demanded to know why we were being detained and I demanded to see a lawyer. After all, as a political activist, I've been arrested dozens of times for my peaceful, non-violent protests, so I know my rights. However, this jack-booted thug tersely told us that "the only rights we had was the one's s/he wanted to give us." To my surprise, instead of jail, Chief Gray took us to the hospital. S/he made us get out of the squad car and force-marched us into the Emergency Room. Once inside, Gray asked some disheveled-looking bum sitting

on a bench "Is this them?" The bum pointed a hand, shaky with DT's, at Robin and just nodded affirmatively. Begrudgingly, s/he took the cuffs off me and told me I was "free to go," but said menacingly "I'll be keeping an eye on a troublemaker like you Collins." Chief Gray then grabbed Robin, who was still handcuffed, by the arm, and led him/her out the doors of the Emergency Room to the Auraria Springs jail.

11. I was with Robin when that fire was set at the Guzzler dealership, so I know that he/she had nothing to do with it. Just as many other activists have experienced, Gray targeted Robin, not because s/he is guilty of anything, but because Robin had become a threat to the powers that be. Robin is a threat because s/he stands in the way of corporate and government agendas. Robin is a threat because the protests s/he was helping me organize would attract worldwide media attention to our cause at the Gang of Four Summit. This would embarrass the Auraria Springs government and cause corporations to lose some of their precious profit from the pillaging of our Earth Mother. Robin is a threat because s/he wants to speak out about the lies, cover-ups and atrocities committed by the hands of government and corporate figures. Robin speaks the truth, and the powers that be don't want us to know the truth!

12. This is why Robin is being targeted. This is why Robin is facing imprisonment and the possibility of the rest of his/her life behind bars, walls and fences. They think they can take away Robin's freedom? Well, freedom is just another word for nothing left to lose. As long as these injustices continue towards Robin, the planet, our non-humyn animal friends and my brothers and sisters here and abroad who join hands with me in protest, then there is still work to do. May we all strive to create a world filled with love, justice and respect for everyone and everything.

WITNESS ADDENDUM

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

Signed,

/s/

MICHAEL/MICHELLE COLLINS

SIGNED AND SWORN to me before 8:00 a.m.

On the day of this round of the 2006 New Hampshire Mock Trial Competition.

/s/

Anna Henke, Notary Public

State of New Hampshire

My Commission Expires: 05/01/2006

STATEMENT OF I. C. DAHDPEPAL

1. My name is I. C. Dahdpepal and I am smarter than you are. It sounds conceited, but it is a simple fact – otherwise, you wouldn't be asking my expert opinion about the origin of this fire.

2. After being home schooled in Tennessee, I attended Clemson University for three years where I had a double major in French and political science. Alas, the traditional university held no charm for me, and I moved to North Dakota where I joined the local fire department in Nanook. Two years ago, I decided to end one career of public service and start another, and offer my professional services to those who required a competent expert to assist in their investigations. By the way, I am currently enrolled in an online university, and I hope to get my bachelor's degree in chemistry. I am on track to be in the cyber-class of 2012.

3. While with the Nanook Fire Department, I was tapped to take courses in fire investigation. Over the ten years I worked for NNDFD, I completed several fire investigator courses offered by the Bureau of Alcohol, Tobacco and Firearms, as well as state agencies. I also investigated scores of fires in Nanook, and occasionally testified in court about my findings. This is the first time I've testified about a case I investigated since opening my professional services company two years ago in Campbellton. Don't get me wrong – I've worked several files, but this is the first one that wound up in court.

4. I was first contacted about this file approximately two weeks after the fire. I was hesitant to take the case because the passage of two weeks can jeopardize a quality investigation. After all, you never know what is left standing after the local investigation is completed and the elements have deteriorated the scene. However, I was convinced to take the case, and I arrived in Auraria Springs the next day.

5. When I investigate a fire, the NFPA 921 is my bible. It is a publication from the National Fire Protection Association, a private association. The official name of NFPA 921 is "Guide for Fire and Explosion Investigations." A committee of the finest minds associated with arson and fire investigation created it. I know it isn't "official" or "binding" on investigators, but it is a wealth of information. Personally, I wouldn't even listen to anyone who wasn't intimately familiar with NFPA 921.

6. In order to understand my investigation, I need to explain a few things. First, let's talk about fire itself. Fire is commonly defined as the rapid oxidation of a combustible substance based on an uninhibited chemical chain reaction, which is usually associated with the production of heat, light, smoke and exhaust gasses. So, the four elements of fire are heat, fuel, oxygen and the chain reaction. Take one away, and the fire goes out. This is the logic used by firefighters in combating a fire.

7. There are several stages of fire development. During the Incipient Stage, the fire is just beginning, slowly producing more smoke, gasses and heat. This is the stage where a smoke detector is designed to sound an alarm. During the Free-Burning Phase, the fire and temperatures grow exponentially. Temperatures in a room can exceed 1900 degrees Fahrenheit at this point. During the Flashover Phase, the temperature at the floor will equal, and then rise above the temperature at the ceiling. This is the most dangerous condition for firefighters because all the contents of the room will reach ignition temperature. Finally comes the Decay Phase, where the fuel in the room has been consumed and the fire dies down. This entire process can happen so fast that all these phases can be compressed into a matter of minutes.

8. A fire will usually burn up and out from the place it starts. This burning usually occurs in three dimensions, like a cone, unless there is something that will cause a fire to behave differently. This could be an obstruction, odd ventilation or airflow, highly combustible building materials in the vicinity or chemicals.

9. NFPA 921 outlines that an investigator will generally try to work backwards – from the area of least damage to the area of the greatest damage. Then the investigator must determine the point of origin of the fire. A point of origin is where the very first heat source and the very first fuel source came into contact with each other. Finally, the investigator must determine the cause of the fire, taking care to eliminate all reasonable accidental and natural causes are eliminated before attributing a fire to foul play.

10. This is exactly what I did, or at least what I tried to do. However, the previous investigation and firefighting effort had destroyed much of the remaining structure. Coupled with the fact that it had snowed between the time of the fire and the time of my investigation, the scene was significantly compromised.

11. I was able to locate the area of origin (more general than the point of origin), which was an area was later described to me as a suite of offices. I also determined the point of origin, which was an area on the concrete floor near the center of the office suite. I noticed the odd shape of what appeared to be a spill burned in the middle of the floor, roughly 6 inches long and 8 inches wide at the widest point. The burn patterns radiated out from this shape in the floor, and it was obvious that this small area was the point of origin. I took samples in the immediate area and processed it the next day, but from the shape of the burned area, I already knew what it was. It turned out to be a mixture of ethanol, methanol and petroleum jelly. This confirmed my suspicions. I returned to the scene and looked through the debris. Although the area was in a pretty sorry state, there it was – a can of Sterno. It is liquid fuel, after all. I don't see how the original investigator missed it as the primary cause of the fire.

12. I had seen this repeatedly in Nanook. The winters are so bitter up there; many homeless seek any available shelter from the elements. Some get their hands on Sterno and use it to cook or just for heat. I can't count the number of times someone spilled the Sterno and started a fire. I can't believe that the original investigator missed it, but I do think I understand. Many investigators who initially respond to the scene of a fire already believe that there is some suspicious origin. In short, they expect it to be a criminal matter, and immediately begin to look for signs of foul play. As NFPA 921 suggests, the best practice is to eliminate any reasonable accidental or natural cause before looking for evidence of an intentional act. In fact, NFPA 921 specifically cautions against using the term "suspicious" during the investigation, as it is not an accurate description of the cause of a fire.

13. To me, it is simple. Homeless people were using the building for shelter. Someone is using Sterno, either cooking or just trying to keep warm. They accidentally tip the can over. The flammable gel spreads and quickly ignites surrounding items. Judging from the report and the remaining debris, the room was full of trash like paper, broken pieces of wood, and all manner of potential fuel. In short, the place was a tinderbox waiting to go up, and all it needed was a spark and this huge fire started from a small, innocuous area in the middle of the floor. It is certainly unfortunate, but hardly the eco-terrorism that the prosecution alleges. Judging from that report, the amount of accelerant used was significant, and I found absolutely no evidence that a significant amount was present at the scene, much less placed in strategic areas in the room. Any other accelerant found by Investigator Gray is probably due to cross-contamination. You see, trespassers who walk throughout the building probably spent some time in the service bay area. It is very easy to pick up oil, sludge and other flammable substances on the bottoms of shoes, on clothes and on hands. Walk though the office area, hang out for a while and viola! Flammable substances are spread everywhere. I have no doubt that those substances contributed to the acceleration of the fire once they were ignited, but the point of origin is still the area where the Sterno was spilled. This also explains the paint thinner found in the debris. Once the fire was really going, the paint thinner in those cans ignited and caused an explosion, which naturally spread the substance in the general area.

14. My investigation revealed much more. I found that Glutco had not only insured the property prior to rebuilding, but had also recently purchased a Terrorism Rider. This additional coverage has

