

WALTON

V.

BLITZ NEWS NETWORK

A Civil Case By:

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SUMMARY OF THE CASE

On September 24, 2006, Midlands gubernatorial candidate Drew Walton participated in a gun control debate against Professor Lane Hamilton at the Midlands Civic Center. After the debate, the two became embroiled in an argument in the Civic Center parking lot. Shots were fired and Lane Hamilton was found dead in the parking lot, the victim of an apparent gunshot wound to the head. Within an hour, Blitz News Network (“BNN”) reporter Reagan Thomas—present to cover the debate—gave a live broadcast that implicated Walton in Hamilton’s death. Walton maintains that Hamilton committed suicide.

Walton has now brought a claim for defamation, arguing that BNN’s statements during the September 24, 2006 broadcast falsely accused Walton of shooting Hamilton. BNN denies the allegations, asserting that its statements were truthful and its broadcast was proper.

WITNESSES

All witnesses are gender neutral and can be played by a member of either sex.

1. Kit Berkshire, BNN President (may only be called by the Defense)
2. Dr. Chris Caironi, psychiatrist
3. Riley Faith, journalism professor
4. Harley Kim, BNN photojournalist
5. Fran Martin, BNN producer
6. Mickey McQuiggan, Midlands Death Investigator
7. Jan Patel, Civic Center janitor
8. Reagan Thomas, BNN reporter (may only be called by the Defense)
9. Drew Walton, Plaintiff (may only be called by the Plaintiff)

EXHIBITS

1. Transcript of Official Broadcast (Exhibit A to the Complaint)
2. Autopsy Report
3. Psychological Assessment of Lane Hamilton, November 1, 2003
4. Psychological Assessment of Lane Hamilton, January 7, 2006
5. Curriculum Vitae, Dr. Chris Caironi
6. Memorandum from Fran Martin to Kit Berkshire
7. Email from Fran Martin to Reagan Thomas
8. BNN Press Release
9. Journalistic Ethics Report of Riley Faith
10. Memorandum from Kit Berkshire to all BNN employees
11. Gloves worn by Lane Hamilton on September 24, 2006 (*see* Special Instruction 3(b))

SPECIAL INSTRUCTIONS

1. The plaintiff Drew Walton is named in honor and memory of former University of Iowa competitor Brooke Walton, who was tragically killed by a drunk driver in 2006. The dedication is in name only: the attributes and actions of the Drew Walton character are in no way intended to reflect the attributes or actions of Brooke Walton. Other than the Drew Walton character, the witnesses and events in this case are purely fictional and have no connection to real people or events.
2. The witness selection order shall be PDPDPD.
3. There are no restrictions as to how evidence may be used in a trial beyond the requirements that participants acknowledge the legitimacy of the documents provided by AMTA and follow the principles and procedures set forth by the Midlands Rules of Court. Proper foundation still needs to be laid, and to the extent that the authenticity standard promulgated by MRE 901 requires testimony sufficient to show that evidence is what it purports to be, such is still required. However, arguing that AMTA supplied documents are not the real documents mentioned in witnesses' affidavits is a violation of Rule 8.4's prohibition of hyper-technicality. The following list is designed to elucidate the impact of this Instruction:
 - a. Teams are not permitted to bring an actual or look-alike gun into any courtroom. Walton's gun was returned to Walton by the police and is no longer acquirable. Teams are not permitted to proffer any bullets or fingerprints to the court.
 - b. Teams may produce the cloth gloves recovered from Lane Hamilton. The gloves should be of any generic cloth variety, and should not have any visible markings or deformities that could be used to advance case theory. The gloves should be bagged during presentation at trial. Either team may provide the gloves, but should agree at captain's meeting as to which side will provide the pair to be used at trial. In the event that the parties cannot agree on which pair of gloves will be used, the party calling Mickey McQuiggan will choose the gloves to be used; and if neither side calls Mickey McQuiggan, the plaintiff will choose the gloves to be used. No person may try on the gloves during trial.
 - c. The psychological profiles are those prepared by Dr. Caironi and are the final versions. No one may deny this fact, although witnesses other than Dr. Caironi may testify that they do not know.
4. The Case Summary provided on the previous page may not be used as evidence or introduced in any fashion during trial or pre-trial activities.
5. Students are encouraged to review the First Amendment to the US Constitution and the US Supreme Court opinion in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) as background material for the law of defamation and freedom of the press. Of course, only caselaw provided in this case packet may be cited in trial.

DREW WALTON,

Plaintiff,

v.

BLITZ NEWS NETWORK,

Defendants.

Case No. 07-CV-1053

COMPLAINT

JURY TRIAL REQUESTED

Superior Court for the State of Midlands – Southern District

Plaintiff Drew Walton (“Walton” or “Plaintiff”) alleges as follows:

PARTIES

1. Walton is a citizen of the state of Midlands with residence at 238 Chestnut Avenue, Brookridge, Midlands.
2. As of September 24, 2006, Walton was one of two major party candidates for the governorship of Midlands.
3. The Defendant, Blitz News Network (“BNN” or “the Defendant”) is a corporation organized under the laws of Delaware with its principal place of business in the state of New York. BNN is an American television news network available in 93% of United States households in 2006. Before 2004, BNN was Blitz Television Station (“BTS”), a television station that focused on game shows, entertainment, music and fashion. In 2004, BTS changed its name to BNN and increased its emphasis on journalism.

JURISDICTION AND VENUE

4. Plaintiff brings this action for defamation under Chapter 73 of the Midlands Civil Code, therefore giving this Court subject matter jurisdiction.
5. This Court has specific personal jurisdiction over Defendant because Defendant (a) purposefully committed, within the State of Midlands, the acts from which this lawsuit arises; and (b) committed tortious acts outside Midlands, knowing and intending that such acts would cause injury within the state. The Court also has general personal jurisdiction over Defendants as they conduct continuous, systematic, and routine business within the State of Midlands.
6. Venue is proper in the Southern District of the Superior Court of the State of Midlands.

FACTS

7. On September 24, 2006, Walton participated in a debate at the Midlands Civic Center against Midlands University Professor Lane Hamilton. The debate began at 8:00 and concluded at 9:15.

8. BNN employees, including reporter Reagan Thomas and camera crew, were sent to the Civic Center for the express purpose of broadcasting that debate to a national audience via BNN's network television station.
9. At approximately 9:45 pm, Lane Hamilton committed suicide by firearm in the Civic Center parking lot.
10. From 10:17 to 10:19, BNN interrupted its televised broadcast of the Oski Awards, an annual awards show devoted to celebrity gossip and fashion, for a live news broadcast from Reagan Thomas ("the Broadcast"), who was reporting from the Midlands Civic Center parking lot.
11. During the Broadcast, BNN accused Walton, by specific allegation and imputation, of murder. Specifically, BNN accused Walton of shooting Lane Hamilton.
12. The document attached as Exhibit A to this Complaint is a fair, accurate and complete transcript of the Broadcast. It is an authentic copy of the original transcript. The statements made within Exhibit were made by BNN, by and through its authorized employees, representatives and agents, all acting within the scope and in furtherance of their employment, representation and agency for Defendant BNN.
13. According to Nielsen Ratings, the Broadcast was seen by more than 7 million viewers in the United States.
14. On September 25, 2006, the Midlands Coroner's Office and the Midlands Police Department ruled Lane Hamilton's death a suicide.
15. On September 25, 2006, BNN retracted The Broadcast in a press release written by BNN Chief Executive Officer Kit Berkshire.
16. On November 7, 2006, Drew Walton lost the Midlands gubernatorial election.

DEFAMATION

17. The Broadcast included false statements about and concerning Walton. These statements were false because Walton did not shoot or kill Lane Hamilton. The cause of Lane Hamilton's death was suicide.
18. BNN's false statements were defamatory in nature because they stated and implied that Walton had committed a serious crime.
19. By making the Broadcast to more than 7 million viewers, BNN published a false statement to multiple third persons.
20. Defendant BNN acted with actual malice in making and disseminating the statements contained in the Broadcast. Defendant BNN, individually and by and through its employees, agents, and representatives, made the allegations and imputations contained in the Broadcast knowing that such allegations and imputations were false, or made these allegations and imputations in the Broadcast in reckless disregard of their truth or falsity.

21. The Broadcast clearly and repeatedly mentioned Walton's name, such that any viewer would reasonably have recognized that BNN's broadcast was referring to Plaintiff Drew Walton, and could not have reasonably believed that the report was referring to someone other than Plaintiff Drew Walton.
22. Any viewer would reasonably have understood the Broadcast to be defamatory with respect to Walton.
23. The Broadcast was an unprivileged communication.
24. This broadcast caused severe damage to Drew Walton's national reputation, such that:
 - a. Drew Walton's ability to engage in fundraising for nonprofit organizations has been entirely or substantially impaired.
 - b. Drew Walton's ability to obtain public office has been entirely or substantially impaired.
 - c. Drew Walton's ability to speak with credibility on moral matters to a national audience has been entirely or substantially impaired.

WHEREFORE, Drew Walton respectfully requests judgment for:

1. Compensatory damages in the amount of \$25,000,000 for irrevocable damage to reputation;
2. Punitive damages in the total amount of \$25,000,000;
3. Attorney's fees and the costs of this action; and
4. All other appropriate relief.

Respectfully Submitted,

Attorney for Plaintiff

DATED: December 1, 2006

Blitz News Network

BROADCAST TRANSCRIPT
SEPTEMBER 24, 2006

START TIME: 10:17:04 P.M. Midlands Daylight Time

[VIDEO SHOWS: BNN Live Coverage of Oski Awards]

JAY BYMAN: Before we move on to the next award, we're going to send it back to the BNN Tower for a breaking news alert.

[VIDEO SHOWS: BNN Breaking News]

ANNOUNCER: From the BNN Tower, this is a BNN Breaking News Alert.

[VIDEO SHOWS: R.J. Reeves at anchor desk]

[CG LOWER: BNN BREAKING NEWS – LANE HAMILTON SHOT DEAD]

R.J. REEVES: And I'm R.J. Reeves. BNN has learned that professor Lane Hamilton was shot dead just moments after a debate with Midlands gubernatorial candidate Drew Walton.

With the latest we go now live to BNN's Reagan Thomas who's live outside the Midlands Civic Center.

[VIDEO SHOWS: Double Boxes: R.J. Reeves/BNN Tower
Reagan Thomas/Midlands]

Reagan, what can you tell us?

[VIDEO SHOWS: Reagan Thomas in front of loading dock area, yellow police tape, emergency vehicles, onlookers]

[CG LOWER: REAGAN THOMAS – LIVE – MIDLANDS]

REAGAN THOMAS: R.J., I'm behind the Civic Center in downtown Midlands City with a horrifying bulletin. Lane Hamilton, one of the world's leading scholars, was gunned down just half an hour ago. But Blitz News is the first to report the even more shocking news that it appears the person responsible is gubernatorial candidate and First Child of Midlands, Drew Walton.

Walton and Hamilton confronted each other in the Civic Center parking lot after a gun control debate between the two here earlier this evening. BNN has learned that Hamilton made a derogatory comment about Walton's late father, Walton whipped out a gun, the two kept arguing, when shots rang out. I've spoken with several eyewitnesses and the police here at the Civic Center. Ladies and gentlemen, I wouldn't have believed

it if I hadn't seen it with my own eyes, but all evidence points to Drew Walton as the person who shot Professor Hamilton.

[VIDEO SHOWS: Double Boxes: R.J. Reeves/BNN Tower
Reagan Thomas/Midlands]

R.J. REEVES: Reagan, what's the scene like there right now?

[VIDEO SHOWS: Reagan Thomas in front of loading dock area, yellow police tape, emergency vehicles, onlookers]

[CG LOWER: BNN EXCLUSIVE: WALTON MAY BE HAMILTON SHOOTER]

REAGAN THOMAS: This is unbelievable. A massive crowd is forming behind me. Police are working to keep them at a distance so the crime scene investigators can work. You have the tragic irony of a gun-related death after a gun control debate. The possible involvement of one of the most celebrated families in America. The uncertainty that surrounds a crime with so many questions and, currently, so few answers. What we know right now is that Midlands police have taken Drew Walton away from the Civic Center, and all signs indicate homicide charges are forthcoming.

[VIDEO SHOWS: Double Boxes: R.J. Reeves/BNN Tower
Reagan Thomas/Midlands]

R.J. REEVES: Thanks for the update, Reagan.

[VIDEO SHOWS: R.J. Reeves at anchor desk]

[CG LOWER: BNN EXCLUSIVE: WALTON MAY BE HAMILTON SHOOTER]

R.J. REEVES: To recap, BNN's Reagan Thomas is the first to report that Drew Walton, the infamous Midlands gubernatorial candidate, appears to be the shooter responsible for the untimely death of Professor Lane Hamilton earlier this evening in Midlands. Stay with BNN and BNNOnline.com for the latest on this breaking news alert.

Off Time: 10:19:26 Midlands Daylight Time

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I, Sean Shahabi, certify that the foregoing transcript is an accurate word-for-word record of the air check logger tape maintained by Blitz News Network at the above stated date and times. I further certify that the non-verbal items accurately describe the relevant non-verbal portions.

Sean Shahabi, RPR, CBC
Notary Public, State of Midlands

DREW WALTON,

Plaintiff,

v.

BLITZ NEWS NETWORK,

Defendants.

Case No. 07-CV-1053 WQH (RBB)

ANSWER

JURY TRIAL DEMANDED

**Superior Court for the State of Midlands
Southern District**

Blitz News Network ("BNN") answers as follows:

PARTIES

1. The Defendant lacks sufficient knowledge to form an opinion as to the truth of the allegations in paragraph 1, and therefore denies them.
2. Admitted.
3. Admitted.

JURISDICTION AND VENUE

4. Admitted.
5. Admitted as to this Court having personal jurisdiction over the Defendant, but Denied as to the factual allegations otherwise stated.
6. Admitted.

FACTS

7. Admitted.
8. Admitted.
9. Denied.
10. Admitted.
11. Denied.
12. Admitted.
13. Admitted.
14. Admitted.
15. Denied.
16. Admitted.

DEFAMATION

17. Denied.

18. Denied.
19. Denied.
20. Denied.
21. Admitted.
22. Denied.
23. Admitted.
24. The Defendant lacks sufficient knowledge to form an opinion as to the truth of the allegations,
and therefore denies them.

Respectfully Submitted,

Attorney for the Defendant

DATED: December 15, 2006

DREW WALTON,

Plaintiff,

v.

BLITZ NEWS NETWORK,

Defendants.

Case No. 07-CV-1053 WQH (RBB)

STIPULATIONS

**Superior Court for the State of Midlands
Southern District**

The parties to the above entitled action agree to the following stipulations:

1. On the night of September 24, 2006, Reagan Thomas, Fran Martin, Harley Kim and Kit Berkshire were employees of Blitz News Network ("BNN") and were acting in the course of employment. All remain employed by BNN, though BNN only reserves the right to designate Reagan Thomas or Kit Berkshire, but not both, as the BNN representative for the purposes of Midlands Rule of Evidence 615.
2. Both parties waive any and all objections to the admissibility of the Autopsy Report and the Certified Broadcast Transcript from September 24, 2006 (Exhibit A to the Complaint).
3. All witness affidavits and all other documents with places for signatures are to be treated as having been signed. Authenticity of signatures is not at issue, and all witnesses have reviewed and updated their affidavits immediately prior to coming to court.
4. By agreement of both parties, this trial has been bifurcated. This portion of the case deals only with liability.

Attorney for the Plaintiff

Attorney for the Defendant

DREW WALTON,

Plaintiff,

v.

BLITZ NEWS NETWORK,

Defendants.

Case No. 07-CV-1053 WQH (RBB)

FINDINGS OF FACT AND ORDER

**Superior Court for the State of Midlands
Southern District**

Based on the parties' moving papers and oral argument, this Court enters the following findings of fact and order:

MOTION TO EXCLUDE TESTIMONY OF DOCTOR CAIRONI

The motion to exclude or limit the testimony of Doctor Caironi on the grounds of doctor-patient privilege is DENIED. First, neither party represents the deceased Mr. Hamilton, so neither party has standing to object to violations of his doctor-patient privilege. Second, Mr. Hamilton's representatives have filed an amicus brief on his behalf. Mr. Hamilton's will and testament makes clear that Mr. Hamilton waived all doctor-patient privileges. Thus, neither party may object to Doctor Caironi's testimony on the basis of doctor-patient privilege.

**DEFENDANT'S MOTION *IN LIMINE* FOR AN ORDER DECLARING THE PLAINTIFF AN
ALL-PURPOSE PUBLIC FIGURE AS A MATTER OF LAW**

The Defendant's motion for an order declaring the Plaintiff Drew Walton an all-purpose public figure is GRANTED. At the time of the events that give rise to this lawsuit, Walton was a major party candidate for Governor of Midlands, as well as a national celebrity heir to the Walton legacy. Plaintiff's arguments to the contrary are unavailing. Accordingly, Plaintiff must meet the burden of proof required by Midlands Code 73.003.

Judge Scott Joannesburg

July 11, 2008

Midlands Civil Code

Civil Practice and Remedies Code

Title 4. Liability in Tort

Chapter 73. Libel

73.001. Elements of Libel

In an action for defamation or libel, the plaintiff must prove the following elements:

- (a) The defendant published a statement of fact of or concerning the plaintiff.
- (b) The statement is false.
- (c) The statement is defamatory in nature.
- (d) The defendant is at fault for the publication.
- (e) The plaintiff suffered harm or injury as a result of the publication.

73.002. Fault

In adjudging whether a defendant is “at fault” within the meaning of Midlands Civil Code § 73.001(d), the following standards shall apply:

- (a) If a plaintiff is not a public figure, he or she must prove that the defendant negligently published the statement giving rise to the action. Negligence, for the purposes of defamation, is the failure to act as a reasonable person would in assessing whether the statement to be published was indeed truthful.
- (b) If a plaintiff is a public figure, he or she must prove that the defendant acted with actual malice in publishing the statement.

73.003. Burden of proof

In cases brought pursuant to Midlands Civil Code § 73.001, the burden of proof depends on the status of the plaintiff. If the plaintiff is not a public figure, he or she must prove each element under section 73.001 by a preponderance of the evidence. If the plaintiff is a public figure, he or she must prove each element of section 73.001 by clear and convincing evidence.

73.004. Vicarious Liability

A corporation or employer will be held vicariously liable for any act of libel committed by an employee acting in the course of their employment, whether or not the corporation or employer had any knowledge of the statement’s defamatory character at the time of its publication.

Midlands Case Law

Note that, in Midlands, the Superior Courts are the trial courts, the Courts of Appeal hear appeals from the Superior Courts, and the Supreme Court hears appeals from the Courts of Appeal. Thus, the Midlands Supreme Court is the state's highest court.

***Grundy v. Hampton*, 23 Mid. 688 (2004).**

In a defamation suit by a famous stick-figure artist against his ex-wife for statements that Plaintiff had become a “creepy stalker,” the Midlands Supreme Court delineated how a public figure or public official plaintiff can satisfy the element of actual malice. “Actual malice may be demonstrated either by (i) the intentional publication of statements known by the defendant to be false, or (ii) the defendant’s reckless disregard of the statements’ possible falsity.”

***Kramlen v. Michael*, 185 Mid. 341 (2001).**

Plaintiff, a noted scholar and all-purpose public figure, brought a defamation suit against defendant journalist for statements that plaintiff had plagiarized the treatise for which he won the Nobel Prize in Mathematics, Tiebreakers in the New Millennium: Volume Eleven. The Midlands Supreme Court affirmed the summary judgment dismissal, finding that a reporter does not act with reckless disregard of a statement’s falsity merely because she does not corroborate information provided by a source. “A reporter’s newsgathering tools are not limited to archival fact-checking and library research. Accordingly, when defendant has based his report on a source believed to have a history of truthful and honest statements, that defendant has not acted with ‘actual malice.’ Moreover, human sources need not be shining wonders of veracity in order for reporters to rely on them safely. Some of the most revealing journalism is made possible only through testimony by less than savory characters that might not traditionally be sources of first-rate news. However, “actual malice” may yet be found when the third-party source is of such dubious character that the journalist likely could not, in good faith, have actually believed him or her, or where the situation smacks of purposeful avoidance of the truth. Without making an exclusive list, one could readily surmise that this domain might be inhabited by anonymous tipsters, chronically inaccurate gossips, emotionally-charged individuals, nonprofessionals giving complex expert advice, or persons with a known grudge against the plaintiff. We urge that a totality of the circumstances test be used in making the above determination as to whether the journalist’s reliance on the third party was reckless or inherently unreasonable.”

***Sea v. Lao*, 612 Mid. 684 (2003)**

Plaintiff brought suit against defendant television network for reporting that plaintiff had erred in computing results of an intercollegiate scholastic competition. The Midlands State Supreme Court reversed the trial judge’s verdict for the plaintiff, finding that plaintiff had failed to show that the communication was of “defamatory character.” The Court explained that a statement is defamatory when it tends to (1) bring a person into public hatred, contempt or ridicule; (2) cause him to be shunned or avoided; or (3) injure him in his business or occupation.

***Pataswathi v. De Smeth*, 604 Mid. 280 (2008)**

Plaintiff, a well-known television interviewer, brought suit against a defendant blog that criticized plaintiff for “kissing up” to guests. The trial court dismissed, and the Midlands Supreme Court affirmed, because the evidence showed that the statements were, in fact, true. “Truth is always a defense to defamation claims.”

***Raja v. Midlands Gazette*, 564 Mid. 566 (1985)**

Plaintiff, a renowned food critic, brought suit against the defendant newspaper for an article criticizing plaintiff as having “the worst taste in food in all of the United States, possibly even North America.” The jury returned a verdict in favor of the plaintiff, but ultimately the Midlands Supreme Court reversed, holding that the plaintiff had failed to establish that the statement was a statement of fact, rather than an opinion. “Only statements of fact are actionable in a defamation cause of action. Mere opinion does not give rise to liability for defamation.” The Midlands Supreme Court did not state the standard for differentiating fact from opinion.

***Tygers v. Marriott*, 612 Mid. 584 (2005).**

Plaintiff, a lifelong candidate for political office, brought a libel suit against his preacher for allegedly defamatory statements during a Sunday sermon about plaintiff’s supposed promiscuity. Defendant argued the publication element was not met because the congregation that heard the sermon was small in number, but the Court of Appeals rejected this argument. “It is well established that, in order to show publication for the purposes of a defamation claim, a plaintiff must only prove that defendant communicated the statement to someone other than the plaintiff.”

***Sprinkles, Inc., v. Cheesecake Corp.*, 5 Mid. 213 (1996).**

Plaintiff candy company sued defendant dessert manufacturer for allegedly libelous statements about the addictiveness of plaintiff’s products. Plaintiff conceded that the statements were literally true but argued that they were nonetheless misleading. The trial court dismissed the action because plaintiff failed to state a claim on which relief could be granted, but the Midlands Supreme Court reversed: “In some unusual instances, literally true statements may be actionable if they imply false and defamatory statements of fact. For example, if a journalist highlights only certain facts in a news report, perhaps by omitting other relevant facts, or perhaps by juxtaposing their presentation such that an image antagonistic to the actual occurrence is conjured in the recipient’s mind, then that journalist may be liable for libel. Thus, in such a case, plaintiff is absolved of any burden of proof as to the traditional element of falsity related to defendant’s actual utterances; rather, she must prove merely that the defamatory implication itself is false.”

***Sour v. Bacon*, 12 Mid. 668 (1994).**

After the defendant spread rumors that plaintiff was HIV-positive, plaintiff brought suit for defamation. The trial court dismissed the complaint because plaintiff had no proof of special harm. The Court of Appeals affirmed. But the Midlands Supreme Court reversed and remanded. “Generally, a plaintiff in a defamation case must prove harm (synonymous with special damages) by a preponderance of the evidence. But where the statements in question constitute defamation per se, the statements are so obviously harmful that damages are presumed and plaintiff need not introduce evidence demonstrating harm or injury. There are four categories of defamation per se: (1) imputations of serious criminal conduct; (2) allegations injurious to someone in her trade, occupation, profession, or business; (3) imputations of infectious or loathsome disease; and (4) imputations that a woman has been unchaste.”

***Acevedo v. Winnie*, 344 Mid. 345 (2001).**

Plaintiff, a former military general and current eyebrow model, brought suit against a tabloid journalist that described Plaintiff’s driving as “so dangerous as to appear intoxicated.” The

Midlands Supreme Court decided how the element of falsity should be evaluated in a defamation lawsuit. “The law of Midlands, in addressing whether a plaintiff has proven ‘falsity’ for the purposes of a defamation cause of action, overlooks minor inaccuracies and concentrates upon substantial truth. It is sufficient if the substance of the charge be proved true, irrespective of slight inaccuracy in the details.”

***Jaroscak v. Jaroscak*, 318 Mid. 662 (1986).**

The Midlands Supreme Court clarified the definition of “clear and convincing evidence”—the burden required to sustain the elements of falsity, defamatory character and actual malice in a suit for defamation. Plaintiff, a world-famous concert accordionist and all-purpose public figure, brought a defamation claim against her sister, also a concert accordionist, for allegedly libelous statements. The trial judge instructed the jury that “clear and convincing evidence” is evidence that “convinces the trier of fact that it is substantially more likely than not that the element in question is in fact true.” After a jury verdict for plaintiff, defendant appealed on the grounds that the jury instruction was not sufficiently clear—in particular, that no specific percentage of certainty was assigned. The Midlands Court of Appeals and Midlands Supreme Court affirmed. “The trial court’s definition of ‘clear and convincing evidence’ was proper. The quantum of proof necessary to satisfy this standard cannot be reduced to a mathematical figure. The clear and convincing standard is more rigorous than proof by a preponderance of the evidence but less rigorous than proof beyond a reasonable doubt. Other trial courts have described the standards as ‘evidence that establishes a fact by a high probability’ and this formulation is also acceptable.”

***Bookin v. Ollman*, 965 Mid. App. 972 (2004).**

Plaintiff, the nationally celebrated author of the column *Romantic Liaisons in the Metropolis*, filed a suit for defamation against defendant journalist, whose publication stated that the plaintiff’s columns “appeared strikingly (and perhaps problematically) similar” to those featured on a famous premium television program. The trial court granted defendant’s motion for summary judgment and the Court of Appeals affirmed because the statement in question was non-actionable opinion. “In determining whether an allegedly defamatory statement is a fact or an opinion, the question is whether a reasonable factfinder could conclude that the statement implies an assertion of objective fact. We adopt the four-question test employed by the District of Columbia Court of Appeals for distinguishing fact from opinion. First, we ask does ‘the allegedly defamatory statement have a precise meaning likely to give rise to clear factual implications’? Some statements—such as accusations of crime—tend to have well-defined meanings; some statements—such as calling someone a ‘communist’—are more variously interpretable and may not give rise to liability for defamation because they do not convey fact. Second, ‘is the statement objectively capable of proof or disproof?’ If so, the statement is fact, not opinion. Third, does the context of the statement in the overall speech indicate that what would normally be a statement of fact is, in that context, more appropriately viewed as opinion? Fourth, does the broader social context of the speech indicate that the statement is fact or opinion? For example, information conveyed on an op-ed page comes across differently than information printed at the top of the front page.”

***State v. Perry*, 972 Mid. App. 796 (2006).**

At trial, the Prosecution sought to introduce the testimony of a former FBI agent concerning the “criminal profile” of a kidnapper for ransom—that is, the general demographics and

characteristics of those who perpetrate crimes similar to the one that Defendant was accused of committing. The Defendant moved to exclude such testimony on the basis that it was irrelevant and unfairly prejudicial. The trial court admitted the testimony and the jury convicted the Defendant of kidnapping, but the Midlands Court of Appeals reversed the conviction because the expert testimony should not have been admitted. “Every defendant has a right to be tried based on the evidence against him or her, not on the techniques utilized by law enforcement officials in investigating criminal activity. Courts typically condemn the use of profiles as substantive evidence of guilt, while acknowledging that there is a fine line between potentially improper profile evidence and acceptable specialized testimony. Here, the jury should not have been allowed to hear testimony that the typical kidnapper for ransom is a white, middle-aged male with close ties to the family and an urgent financial need. Such testimony is of marginal relevance and is overly prejudicial.”

***Falcon v. Shortens*, 612 Mid. App. 644 (2004).**

Defendant, a college professor, criticized plaintiff, a famous trial attorney, for using tactics and arguments that were no longer in vogue—specifically, defendant described plaintiff’s trial performance as “old hat.” Plaintiff brought suit for libel. The Midlands Court of Appeals affirmed the dismissal of plaintiff’s claim on grounds that the statements were merely opinion. “An opinion is any broad, unfocused and wholly subjective comment. This does not turn on whether the publisher uses the expressions ‘in my opinion,’ ‘as a matter of fact,’ ‘it seems to me,’ etc. Instead, in deciding whether or not a statement is an opinion as a matter of law, the factfinder must place itself in the position of the hearer or reader, and determine the meaning of the statement according to its natural and popular construction. Midlands assesses whether statements are opinions or statements of fact by examining the totality of the circumstances with attention to the context of the statement.”

***Cockatoo v. Grease Magazine*, 564 Mid. App. 514 (2004).**

Plaintiff, a celebrated professional poker player, brought a defamation suit against a periodical that stated that plaintiff “appeared high on some sort of drug or substance” during his appearance at the final table of a national poker tournament. The trial court dismissed the suit but the Midlands Court of Appeals reversed because “actual malice does not require ill will or hatred. Indeed, proof of such animosity could indicate the opposite, that the publisher possessed a genuine belief in the actionable statement. Of course, bias in combination with other factors, such as a departure from standard investigative techniques or an ‘accidental’ misrepresentation of gathered statements might be a strong step toward ‘actual malice.’ The public figure plaintiff, in many instances, will be able to compile compelling evidence that will cumulatively indicate the requisite degree of culpability on the defendant’s part. Indeed, the defendant’s bare assertions of belief in the truth of a publication cannot carry substantial weight unless they rest on similar direct or circumstantial evidence.”

***Rastad v. Mariano*, 318 Mid. App. 319 (1989).**

The Midlands Court of Appeals affirmed a jury’s verdict for plaintiff, a teacher who brought a defamation claim against defendant, a political activist. Defendant had published an article which paraphrased plaintiff’s actual statements but nonetheless used quotation marks. “We conclude that a deliberate alteration of the words uttered by a plaintiff does not automatically equate with knowledge of falsity for purposes of establishing actual malice, unless the alteration

results in a material change in the meaning conveyed by the statement. The use of quotations to attribute words not in fact spoken is certainly relevant to the issues of falsity and actual malice, but is neither necessary nor sufficient for proof of either element.”

***Davis v. Muscle Man Magazine*, 732 Mid. App. 12 (2008).**

Plaintiff bodybuilder brought a defamation claim against a fitness magazine that called Plaintiff’s workout regimen “meek.” Plaintiff hired an accomplished journalism professor to testify at trial that defendant’s allegedly libelous conduct was preceded by violations of standard journalistic ethics and practices. Plaintiff argued that such evidence was probative as to whether defendant had acted with “actual malice” in reporting the crucial statement. The trial court excluded the proffered testimony, characterizing it as unfairly prejudicial. On appeal, the Midlands Court of Appeals reversed, holding that: “The ‘actual malice’ standard is a subjective one, in that the question which must be resolved is whether a particular defendant possessed a particular state of mind. ‘Bad journalism’ cannot be equated with ‘actual malice.’ Yet these standard practices exist for a reason, and that is because they are hallmarks of a thorough and honest news report. Parties are permitted to introduce expert journalistic evidence regarding accepted and preferred standards of journalism because deviation from such standards suggests a degree of carelessness. Extreme departure from general investigative standards can suffice for proof of reckless disregard. Of course, whether such carelessness reaches the level of recklessness is for the trier of fact to determine. In sum, while evidence of deviation or conformity to accepted journalism standards is never dispositive in a defamation lawsuit, it is always relevant.”

***Liesunderoath.com v. Cucumber*, 338 Mid. App. 712 (2007).**

Plaintiff website brought claims against defendant for allegedly libelous statements made in an online forum. Defendant admitted at trial to having thought the statement was false at the time he made it, but introduced overwhelming evidence discovered after publication that the statement was, coincidentally, true. The trial court ruled in favor of defendant, and plaintiff appealed. The Midlands Supreme Court affirmed, stating: “Defendant may have had little or no evidence suggesting that his statement was true at the time of publication, but nonetheless, true it was. As a matter of common sense, there can be no action based on ‘attempted libel.’ The published statement must be false, and not just apparently false at the time of publication. It follows that truth discovered after the fact, even during the litigation itself, is just as valid a defense as truth known at the time of publication.”

***Zakharov v. Siddique*, 12 Mid. App. 565 (2001).**

Plaintiff business owner brought a slander lawsuit against a journalist for accusations that plaintiff was a member of a Russian crime syndicate. The trial judge bifurcated the trial into separate phases for liability and damages. The trial court excluded all evidence related to the plaintiff’s reputation, holding that such evidence was more appropriate for the damages phase of the trial but, on interlocutory appeal, the Midlands Court of Appeals reversed. “Where a trial has been bifurcated, then evidence offered may not be offered in the first phase for the sole purpose of establishing a fact or element at issue in the second phase. However, if evidence probative on an element at issue in the second phase also bears on an element at issue in the first, then such evidence is admissible in the first phase, as well. Here, evidence of the plaintiff’s reputation is admissible in the liability phase to the extent that it can be used to establish the defamatory nature of the communication, actual malice, or that the statement concerned the plaintiff.”

***State v. Beef*, 8 Mid. App. 24 (1978).**

In a prosecution for rape, the Defense cross-examined the alleged victim about her past sexual encounters and her bias towards the Defendant, implying that she may not have been raped at all. The Prosecution attempted to rebut this argument through the testimony of a special victims unit detective who had substantial experience with rape cases. The expert testified as to the typical behavior displayed by rape victims, and concluded that the alleged victim in this case acted consistently with such behavior. The Defense objected and the trial court overruled the objections and permitted the testimony in its entirety. On appeal, the Midlands Court of Appeals affirmed. “Jurors cannot be presumed to have knowledge of the behavior exhibited by rape victims. The expert’s testimony might have shed light on critical issues in the case and helped the jury to determine the credibility of the alleged victim. Were the expert’s testimony excluded, jurors might have assigned undue weight to certain facts, including the fact that the victim did not report her alleged assault for several days. The probative value of the testimony in assisting the jury with the determination of whether a rape actually occurred substantially outweighs the prejudicial effect of such profile evidence.”

***Bryant v. Lion and Eagle Studios*, 564 Mid. App. 567 (1998).**

Plaintiff, an award-winning thespian, filed a libel claim against defendant theater company that, after interviewing several fellow cast members, published statements that plaintiff had forgotten lines in multiple stage performances. The falsity of defendant’s statements was stipulated. At trial, defendant sought to introduce evidence that it believed the statements to be true. Plaintiff objected on grounds of relevance. The trial court sustained the objection and excluded the testimony. On appeal, the Midlands Court of Appeals reversed. “A defendant’s honest belief that her statement is truthful is relevant whenever a public figure brings suit for defamation. It is probative on the issue of actual malice. Defendants in defamation suits should always be permitted to explain why they believed the statement to be true. Such testimony may be objectionable, but not on grounds of relevance.”

***Howard v. Caspar*, 341 Mid. App. 189 (2005).**

Defendant journalist, ghost-writing, reported that a public figure plaintiff fled the country after being charged with serving alcohol to minors. Plaintiff sued for defamation. In assessing whether actual malice had been proved based on a theory of reckless disregard for the truth, the Court of Appeals was guided by three sets of questions: “(1) How urgent was the news story? Was there enough time to check the facts? (2) How reliable was the source of the story? (3) Was the story probable, or so unlikely it demanded further investigation?”

***Nguyen v. Midlands Gazette*, 298 Mid. App. 12 (2001).**

Defendant newspaper published a story that a certain world-famous movie actress was “late.” In the context of the article, the newspaper implied that the actress was pregnant, which was not true. Plaintiff brought suit for libel. The newspaper defended on the ground that the article never explicitly mentioned the plaintiff by name, and that therefore the “of or concerning” requirement of Midlands Code section 73.001 had not been satisfied. The trial court dismissed but the Midlands Court of Appeal reversed. “A statement need not identify a plaintiff by name in order to be ‘of or concerning the plaintiff.’ If the statement identifies the plaintiff with such specificity that a reasonable reader of the statement’s intended or likely audience would recognize the statement to refer to the plaintiff, then the plaintiff has satisfied the ‘of or

concerning' requirement. In this case, the article identified several movies in which plaintiff had appeared and noted the prominent blonde streaks in plaintiff's black hair, which was sufficient."

***Bowden v. Johnson & Erickson LLP*, 18 Mid. App. 45 (2007).**

Plaintiff employee filed suit for defamation after Defendant employer made comments that Plaintiff's incompetence had caused the law firm severe losses. The trial court excluded evidence of the Defendant's past poor job performance as inadmissible character evidence under Rule 404. The Midlands Court of Appeals reserved. "Defendants in defamation cases have a wide right to challenge the elements of falsity and fault (fault either in the form of negligence or actual malice). The general preclusion of character evidence does not trump such a right. When a plaintiff brings a claim for defamation, he or she necessarily places her character at issue within the meaning of Rule 405."

EXHIBITS

MIDLANDS CITY AUTOPSY REPORT

Decedent: Lane Hamilton
Case No.: 1216 TFB 1946
Autopsy Date: 25 September 2006
Autopsy Time: 0745 hours
Performed By: Donna Racheter, M.D., Chief Medical Examiner
Assisted By: Read Langlois, M.D., Assistant Medical Examiner
Present: Mickey McQuiggan, Death Investigator

EXTERNAL EXAMINATION

IDENTIFICATION:

The body is identified by driver's license as "Lane Hamilton." Coworkers confirmed this visually.

CLOTHING AND EFFECTS:

The body is clad in a black calf-length overcoat, gray scarf, black leather gloves, black suit jacket and slacks, black leather belt, white shirt, red tie, white T shirt, gray boxer style under pants, a pair of black socks, and black dress shoes. Personal effects accompanying the body include a brown wallet with one credit card, \$55.00 in paper money, driver's license and various cards and papers.

GENERAL DESCRIPTION:

With the clothing removed and the body cleaned, it is that of a well developed, normally nourished, adult Caucasian male who appears to be compatible with the stated age of 46 years. The length is 5 feet 10 inches and weight as received is 200 pounds. The body is well preserved and has not been embalmed.

The body is cool to touch and has been refrigerated for approximately six hours. Rigor mortis is fully fixed. Fixed purple livor mortis extends on the anterior face and posterior aspect of the body except in areas exposed to pressure.

The scalp is covered by brown hair which measures to approximately 3 inches when straightened. The lower portion of the face, including over the upper lip, is covered by coarse brown hair approximately 1 inch in length. The irises are green and the pupils are bilaterally equal at 0.5 cm. The corneas are translucent. The sclera and conjunctiva are unremarkable. The nose and ears are not unusual. The teeth are natural and in good repair.

The neck is symmetrical. The chest is well developed and symmetrical. The abdomen is flat and soft. The external genitalia are circumcised, adult male. The arms are symmetrical and normally

formed. The back is straight and symmetrical. Identifying marks and scars include a 1 inch diagonal scar piercing the right eyebrow. There is moderate bruising on the lower chest and above the right ribs.

EXTERNAL EVIDENCE OF INJURY

The injuries are numbered for orientation only. The number does not imply temporal sequence.

1. GUNSHOT WOUND

EXTERNAL WOUND: Round entrance wound $\frac{3}{8}$ inch in diameter is visible on the right side of the head, 3 inches below the top of the head and 4 inches right of the posterior midline. Wound consistent with 9mm bullet. Coarse gunpowder stippling is present around parts of the wound, between $\frac{1}{4}$ inch and $\frac{3}{4}$ inches in radius from the entrance defect. Other areas surrounding the wound show no stippling. No soot deposition is visible around the defect.

The hemorrhagic wound track sequentially perforates the scalp, bone, right parietal (through the right thalamus) lobe, left parietal (through the left thalamus) lobe, bone, and scalp. Associated with the entrance wound in the scalp is an inward beveled entrance gunshot bone defect with a linear fracture radiating from the defect through the right calvarium. Associated with the exit wound in left parietal scalp is an outward beveled exit gunshot bone defect in the left parietal bone. Around the cerebrum is diffuse liquid subdural hemorrhage and diffuse subarachnoid hemorrhage.

On the left parietal scalp 2 inches below the top of the head and 3 inches left of posterior midline is an exit gunshot wound consisting of a 2-inch stellate laceration without marginal abrasion.

COURSE OF BULLET: Relative to erect body, the bullet passed from right to left, front to back at an angle of approx. 85 degrees, below to above. This is consistent with victim placing gun against right temple and firing, or with being shot from side.

2. Over the upper abdomen and lower chest, moderate bruising is present. There are no correlating lacerations or cutaneous defects.

INTERNAL EXAMINATION

BODY CAVITIES:

No adhesions or abnormal fluid collections are in any body cavities. All body organs are present in normal anatomic position. The subcutaneous fat layer of the abdominal wall is 3 cm. thick.

HEAD and NECK:

The brain weighs 1520 grams. There is gunshot trauma to the brain with associated subdural and subarachnoid hemorrhages as previously noted. The cerebral hemispheres are symmetrical. The structures at the base of the brain, including cranial nerves and blood vessels are without non-

traumatic abnormalities. The cerebral ventricles are of normal caliber. Sections through the brain stem and cerebellum are unremarkable. Neck, including strap muscles and large vessels, shows no abnormalities. The cartilaginous and bony structures are intact.

ORGAN SYSTEMS:

CARDIOVASCULAR SYSTEM:

The heart weighs 360 grams and has its normal shape. The pericardium is smooth and glistening. The coronary arteries arise and follow the usual distribution of right dominance, showing no atherosclerosis. The chambers and valves bear the usual size/position relationship and are unremarkable. The myocardium is reddish-brown and firm; the atrial septum and ventricular septum are intact. The aorta follows its usual course with no atherosclerosis. The great vessels of venous return are unremarkable.

RESPIRATORY SYSTEM:

The right and left lungs weigh 430 and 380 grams respectively. The larynx, trachea, and bronchi are unremarkable. The lungs are firm, subcrepitant, and the pleura has a diffuse petechial surface. Cut surfaces are moist. The pulmonary parenchyma is dark red and exudes moderate amounts of blood and frothy fluid. The pulmonary arteries are normally developed and patent.

LIVER AND BILIARY SYSTEM:

The liver weighs 1500 grams. The hepatic capsule is smooth, glistening and intact, covering a red-brown parenchyma. The gall bladder contains viscid bile.

GASTRO-INTESTINAL TRACT:

The esophagus is unremarkable. The stomach mucosa is intact and continuous with an unremarkable duodenum. The small and large intestines are unremarkable. The appendix is present. The pancreas has a normal pink to tan lobulated appearance, and the ducts are clear.

URINARY SYSTEM:

The kidneys weigh 120 grams each. They have their normal shape and the capsules strip with ease revealing smooth external surfaces. Cut surfaces show the usual architecture. The pelvis and ureters are unremarkable. The urinary bladder contains 20 ml of urine.

INTERNAL GENITALIA:

The prostate and testes are unremarkable.

RETICULOENDOTHELIAL SYSTEM:

The spleen weighs 120 grams and has a smooth intact dark red-purple capsule covering a red-purple moderately firm parenchyma.

ENDOCRINE SYSTEM:

The pituitary, thyroid, adrenals, and pancreas are unremarkable.

MUSCULOSKELETAL SYSTEM:

The 7th rib on the right side has been fractured. No other fractures have been identified. The bone marrow where visualized is unremarkable. The bony framework, supporting musculature, and soft tissues are not generally unusual.

X-RAY DESCRIPTION:

X-ray film of head reveals no radio-opaque objects consistent with a bullet or bullet fragments.

MICROSCOPIC EXAMINATION:

Nuclear streaming of epidermal nuclei consistent with entrance abrasion. No particles consistent with soot are identified. No pathological diagnosis in heart, lungs or kidney. Acute subarachnoid hemorrhage in brain.

OPINION:

The decedent died of a gunshot wound to the head. The manner of death is consistent with both homicide and suicide. Neither manner can be ruled out or confirmed based on the autopsy alone.

Autopsy revealed a gunshot wound of the head. The entrance was through the right parietal bone, directly above the ear. The bullet passed through the brain and exited through the left parietal bone on a trajectory most consistent with right-handed firearm suicide.

There was also a broken rib and bruising on the right side, possibly indicating improperly performed CPR or other recent indeterminate blunt force trauma.

Toxicology tests revealed the low concentrations of sertraline hydrochloride, a selective serotonin reuptake inhibitor, administered as a prescription anti-depressant under various brands.

Dr. Donna Racheter
Chief Medical Examiner

Psychological Assessment:

Lane Hamilton

Part I

Lane Hamilton 716 Waltham St. Midlands City, Midlands Age: 43 years (born September 24, 1960)	Evaluator: Chris Caironi, MD Date of Filing: 11/1/2003
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Reason for Referral:

Mr. Lane Hamilton ("Hamilton") suggested that he undergo a limited psychological assessment to assuage the concerns of potential employer Midlands University. This report is designed to outline Hamilton's psychological fitness for employment. Hamilton has consented to the disclosure of this report and any of its underlying facts to Midlands University.

Assessment Techniques:

Personal interview
Patient Health Questionnaire
Beck Depression Inventory
EEG
CT Scan

Background Information:

Hamilton currently works as an author and political commentator. Hamilton has completed a Bachelor's Degree in Political Science, summa cum laude, at Midlands University, was awarded a Rhodes scholarship, and soon thereafter received a Ph.D. in Public Policy from Harvard University's Kennedy School. Hamilton's prior physicians have consistently noted symptoms of depression but, before now, no diagnosis of clinical depression was ever made because Hamilton never followed his physicians' advice to seek psychological or psychiatric help. Previous doctors indicated that Hamilton has suffered from extended periods of sadness, lethargy, social isolation, and other typical symptoms of depression. Fortunately, Hamilton has had no record of suicidal ideations (more commonly known as suicide attempts) or any record of otherwise being a danger to himself or others.

Results and Interpretation:

Hamilton is an extremely intelligent and eloquent man. He was very deliberate and introverted but was nonetheless able to talk to me with ease. I cannot say definitively that this will transfer to a larger group setting, as would be common in his professorship, but I have no reason to believe it would not. Hamilton was very willing to answer my questions and had a pleasant affect.

Hamilton is very ambitious and driven towards success. He also has a great deal of pride and has a tendency to take extreme efforts to avoid anything he perceives to be an indication of weakness. One such perception for Hamilton centers on his feelings of sadness. Hamilton is ashamed of his feelings and more specifically, ashamed that he may need professional help (which he calls an “outside influence”) to treat it.

Hamilton expressed sadness about his divorce from wife Ellen and the subsequent estrangement from his two sons, ages eleven and fourteen. The divorce occurred two years ago and the boys moved out of state with their mother just after the divorce. He also reports that he has not spoken with his two sisters, except on those occasions when they contact him.

Hamilton said it has been more than a year since he last went fly-fishing or played chess, two activities he used to perform regularly. He says the most troubling aspect of his life is that he is taking less satisfaction from his work than ever before. He says he has experienced memory problems and often feels fatigued. Hamilton notes that he has gained 40 pounds in the last six months.

Diagnosis:

Hamilton suffers from clinical depression.

Treatment Plan:

I recommend a dual treatment plan. Hamilton should attend regular therapy sessions with a local Midlands psychologist. I have already spoken with Midlands psychologist Ayre Rubenstein, who has agreed to take Hamilton as a patient. Rubenstein is very thorough and effective. I have seen Rubenstein make great progress in just four therapy sessions over a four-day span. Rubenstein will keep me apprised of Hamilton’s progress.

I am also prescribing Zoloft, an antidepressant medication. While this drug will treat Hamilton’s illness, it will not completely eliminate it. Dosage level should match the severity of the depression. The highest dosage level commonly prescribed is 200 mg of Zoloft daily. I prescribe 100 mg of Zoloft daily for Hamilton.

Conclusion:

Mr. Hamilton is fit for the prospective position. Hamilton poses very little risk as a hiring candidate. He has had no major episodes or problems while following his current treatment plan. Additionally, the career of a university professor, though a challenging and important job, does not carry with it any exceptional levels of stress or possess any other qualities which would create a heightened risk of further problems for Mr. Hamilton. Though he does suffer from clinical depression, if Hamilton follows the dual treatment regimen I have prescribed, this condition will not have any significant deleterious effects on his ability to perform within the role of Midlands University Professor.

Addendum to initial Assessment of Lane Hamilton dated 11/1/2003

Psychological Assessment:

Lane Hamilton

Lane Hamilton 411 College Ave. Midlands City, Midlands Age: 45 years (born September 24, 1960)	Evaluator: Chris Caironi, MD Date of Filing: 1/7/2006
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Reason for Referral:

Mr. Lane Hamilton (“Hamilton”) offered to undergo this second psychological assessment to mollify the concerns of current employer Midlands University, which had placed Hamilton in a probationary period following my first assessment of November 1, 2003. As explained to me by Chancellor Currivan of Midlands University, Hamilton would be untenured professor for two years (beginning in late 2003) and the University would revisit the question of his tenure after my second assessment. His two-year probationary period is now complete and I write this second assessment with the conclusion that, from a psychological standpoint, there should be no hesitation in granting Hamilton tenure.

Hamilton has previously consented to the disclosure of this report and any of its underlying facts (medical, biographical, etc.) to Midlands University. By doing so, Hamilton is aware that he is waiving the protection of doctor-patient privilege, or any other legal protections those facts or this report might otherwise be subject to.

Evaluation Techniques:

Personal Interview
Patient Health Questionnaire
Beck Depression Inventory

Background Information:

See previous report filed 11/1/2003.

Hamilton does not report having problems, outbursts or episodes during his two-year probationary period. Neither does Midlands University make any such reports. Hamilton acknowledged that he is aware that my assessment will affect, and possibly determine, whether he is granted a tenured position on the Midlands faculty. I explained to Hamilton that he must nonetheless be truthful in answering my questions; otherwise, my diagnoses will not be accurate.

Doctor Rubenstein reports that Hamilton successfully attended therapy sessions—both group and individual—from late 2003 until August 2005. In February 2005, at Rubenstein’s

suggestion, the weekly therapy sessions were reduced to a frequency of one session every two weeks. This was in an effort to wean Hamilton off of therapy, given his consistent progress. In August 2005, again at Rubenstein's suggestion, Hamilton ceased attending therapy.

Until this January 7, 2006 assessment, Hamilton has consistently taken antidepressant medication, specifically 100mg daily of Zoloft. I have not adjusted the dosage or medication because it appears to be working and because I do not want to risk the side effects associated with other medications.

Results and Interpretation:

Hamilton's improvement from our last meeting is significant. Hamilton reports that he enjoys teaching again. He enjoys working with students. He has resumed fly-fishing and playing chess. When I asked Hamilton about his relationship with his family, he lost concentration momentarily and then explained that he has little to no contact with his ex-wife or children. This fact which caused him to grimace, but Hamilton reports that he has come to terms with this fact and has moved on to make the best of the situation. Hamilton reports that he has not spoken with any family since moving to Midlands, but that is only because work has kept him very busy.

Whereas Hamilton appeared overweight during our first session, he has lost about sixty pounds since. He appears to weigh approximately 200 pounds. This shows excellent progress. Hamilton seems somewhat tired and kept rubbing his temples. I couldn't tell if he was trying to remember something or if he was in pain. Hamilton had a large cut on his left hand, which Hamilton says he received while playing ping pong. Hamilton expressed no symptoms of digestive problems, chronic pains or decreased energy. All in all, these are good signs.

I asked Hamilton to describe his progress in individual therapy sessions and his relationship with others in group therapy sessions. He could not recall the names of others in group therapy—a surprising fact given that he spent more than a year with the same people in group therapy—but, more importantly, reported that he got along well with them.

Diagnosis:

Hamilton's symptoms of depression have resolved.

Treatment Plan:

I am not renewing Hamilton's Zoloft prescription, which will run out in two weeks. I told Hamilton to contact me or Doctor Rubenstein if any feelings of depression return.

Conclusion:

Psychologically, there is no reason that Hamilton cannot work in a University setting.

CURRICULUM VITAE, ABRIDGED

Chris Caironi, M.D.

38F Doctrinal Road
Dallas, Texas
(555) 212-1918

EDUCATION:

1987 B.S. Psychology, Pennsylvania State University
1991 M.D. Rutgers University

CERTIFICATIONS:

1993 Granted: APA board certification, Psychiatry

AFFILIATIONS:

1993-cur. American Psychiatry Association
1995-cur. Texas State Psychiatrists Society (Board Member: 1995-1999)
1995-cur. Illinois Psychiatry Association (Chairperson: 2002-Present,
 Chairperson, Clinical Psychiatry Committee: 1999-2002)
1995-cur. Texas Child Psychiatry Society
1996-cur. American Association of Mental Health Professionals

PROFESSIONAL ACTIVITIES:

1993-cur. Private practice, personal assessment and therapy: Chicago,
 Illinois
1999-cur. University of Chicago: Full professor of psychiatry

PUBLICATIONS: Over 50 articles in psychiatry, including:

1994 Multi-targeted assessment techniques
1996 Full circle therapy: Advantages and disadvantages of the
 classical patient role
1999 Personal and personnel: Translating assessment procedures from
 private practice to public consulting
2004 Jeopardy: Should successful therapists be looking for answers or
 for questions

RILEY FAITH

2637 Regent St # 102 • Berkeley, CA 94704 • (555) 344 – 3185 • rileyfaith@berkeley.edu

Abbreviated Curriculum Vitae

EDUCATION:

Northwestern University

Bachelor of Arts, Journalism, 1973

University of Missouri-Columbia

Master of Arts, Journalism, 1976

FACULTY POSITIONS (recent):

University of California, Berkeley—Y. Shirinian Professor of Journalism	2000—present
University of Tokyo—visiting professor	1998
McGill University—M. Smith Professor of Journalism	1996—2000
Emory University—visiting professor	1994
Oxford University—E. Christensen Professor of Journalism	1991—1996
New York University—visiting professor	1990

AFFILIATIONS:

- Radio-Television News Directors Association
- British Broadcasting Corporation
- Society of Professional Journalists

AWARDS:

- Francis Leo Award for Excellence in Journalism, 2003
- Maureen Kingsley Award for Promoting Ethical Journalism, 2001

PUBLICATIONS (representative):

- “Thorny Issues: How the Media Mishandled the Ashley Thornhill Trial,” *New Republic*, 2002.
- “No Harmony: An Examination of the Journalism Surrounding the Vicki and Michael Harmon Divorce,” *AMTA Survey*, 2004.
- “Without Merritt: How a University Professor Wrongly Used Her Position to Vilify a Company That May Have Killed Her Husband,” *Sherpa Publications*, 2001.

SUBJECTS TAUGHT (representative):

- Journalistic Ethics
- Media Coverage of Crimes and Investigations
- Sources: Anonymity, Attribution, and Assistance

Blitz News Network

MEMORANDUM

TO: Kit Berkshire
FROM: Fran Martin
DATE: September 25, 2006
SUBJECT: September 24, 2006 BNN Coverage of Lane Hamilton Death

Last evening, at approximately 10:05 pm, I had a telephone conversation with BNN reporter Reagan Thomas ("Thomas"). I took careful notes during my telephone conversation with Thomas. Those notes were helpful in preparing this memorandum.

Thomas wanted to interrupt our broadcast of the Oski Awards with a live broadcast from the Midlands Civic Center. Lane Hamilton ("Hamilton") had been found dead, the apparent victim of a gunshot wound. Thomas wanted to deliver a news report that Drew Walton ("Walton") was the likely shooter. I refused Thomas's request and told Thomas not to run that story. Our telephone conversation lasted approximately five minutes.

1. UNDERLYING EVIDENCE

I was not present at the Midlands Civic Center on Sunday, September 24, 2006. All of the information on which I based my decision came from Reagan Thomas. Thomas briefly described the people with whom Thomas spoke, as well as Thomas's own firsthand observations:

A. Personal Observations

Thomas heard two gunshots and after which saw Hamilton lying motionless in the Civic Center parking lot. Thomas saw Walton kneeling beside and touching Hamilton's body. Thomas approached Walton and Walton's hands went up "as if guilty."

B. Interviews

Thomas spoke with a police captain and some sort of detective. I do not know whether this person was a homicide detective or a forensic investigator. The police captain said that the gun used to kill Hamilton belonged to Walton and that Walton had volunteered to go to the police precinct to answer more questions. The detective indicated only that the situation "does not look good for Drew Walton."

Thomas reported speaking with exactly two eyewitnesses. Harley Kim, a BNN photojournalist, saw Walton draw a gun on Hamilton after Hamilton made a derogatory statement about Walton's father. Kim then went to the BNN truck to get camera equipment and, at that point, heard two gunshots fired.

Thomas also spoke with Walton's personal assistant, who told Thomas that the shooting appeared to be a suicide. The personal assistant indicated that he could not see very well because it was poorly lighted and he was only looking through a car's rearview mirror.

Thomas did not indicate speaking with Jan Patel, a Civic Center janitor quoted heavily (since the shooting) on several reputable websites and in national newspapers. Patel claims to have seen the shooting in its entirety. Patel claims that Hamilton committed suicide with a gun.

2. ANALYSIS

Thomas's personal observations are not persuasive of Walton's guilt or involvement in Hamilton's death. Thomas did not witness the shooting. Thomas's description is consistent with a scenario in which Walton was trying to help Hamilton or check for a pulse.

The information from police sources is inconclusive. The fact that Walton's gun was used to kill Hamilton definitely suggests that Walton was not just a bystander, but it does not mean that Walton was responsible. The comment about the situation not looking good for Walton could just as easily mean that this undermines Walton's political position on gun control. Both facts—the gun ownership and the detective's quote—are appropriate for broadcast. But neither fact substantiates that Walton shot Hamilton.

The eyewitness evidence is likewise inconclusive. Thomas spoke with two eyewitnesses, one of which indicates a murder and the other of which indicates a suicide. Thomas also appears not to have interviewed eyewitness Jan Patel, although I did not know this at the time I made the decision not to allow Thomas to run the story that Walton was responsible for Hamilton's death.

In retrospect, I failed to adequately consider Walton's history. I was aware of Walton's repeated assault convictions and famous temper. I was also aware how close Walton was with Walton's deceased father. I probably underestimated the likelihood of Walton reacting angrily in the face of a negative remark about Walton's father.

3. CONCLUSION

All told, I believe that I made the correct decision to kill Thomas's story. Perhaps I should have taken a more middle-of-the-road approach by permitting Thomas to state the facts supporting the notion that Walton had shot Hamilton, but not permitting Thomas to state the conclusion that Walton had shot Hamilton. Ultimately, however, I was convinced by the other media reports. No other network was reporting that Walton was involved and I was worried about being the first, or only, media outlet to make such an accusation.

Martin, Fran

To: Fran Martin
From: Reagan Thomas
Date: Sunday, September 24, 2008 8:45 PM Midlands Standard Time
Re: Re: Walton Interview Questions

R, your questions will go over the heads of our audience. Stick to the Blitz Basics: who are you dating, how did you lose all the weight, tell us what it was like spending the night in prison after being arrested for ____, etc.

F

-----Original Message-----

To: Reagan Thomas
From: Fran Martin
Sent: Sunday, September 24, 2006, 8:22 PM Midlands Standard Time
Re: Walton Interview Questions

Fran, these are the questions I plan to ask Walton after the debate. Just double-checking for your Okay.

How are you going to improve the Midlands economy? (follow-up question on minimum wage legislation)

How would you have responded differently to the recent teachers' strike?

Why are you running for governor? Why not mayor or city council, etc. where you can get some experience?

What is your opinion on gay marriage?

How is your position on gun control affected by the fact that you've received more contributions from pro-firearm lobbyists than any others?

Blitz News Network

Official Press Release

September 25, 2006, 10:24 PM Midlands Standard Time

On September 24, 2006, during a live broadcast, BNN journalist Reagan Thomas made statements about the tragic death of Lane Hamilton. Some of those statements concerned gubernatorial candidate Drew Walton's possible involvement in Mr. Hamilton's death.

In light of new evidence issued recently by the Midlands Police, BNN wishes to retract the statement that "all evidence" points to the conclusion that Drew Walton fatally shot Mr. Hamilton. BNN stands by its other statements, as all were founded on credible sources and reliable information.

BNN remains committed to providing accurate and timely news on all issues of interest to its audience, including the untimely death of Lane Hamilton.

—Kit Berkshire, President of Blitz News Network

Analysis of Adherence to Ethical Standards of Journalism

Expert: Riley Faith
Case: Drew Walton v. Blitz News Network (“BNN”), Midlands State Court
Subject: BNN September 24, 2006 live broadcast concerning Lane Hamilton death
Hire Date: February 23, 2007
Report Date: July 1, 2007

I have assessed the extent to which BNN adhered to ethical standards of journalism during its September 24, 2006 live broadcast from the Midlands Civic Center. The parties in this lawsuit have supplied me with exactly eight documents: the affidavits of Reagan Thomas, Fran Martin, Kit Berkshire, Harley Kim and Jan Patel; a DVD copy and paper transcript of the broadcast made by BNN on September 24, 2006 from the Midlands Civic Center; the September 25, 2006 memorandum by Fran Martin; and the Kit Berkshire press release of September 25, 2006. I am also aware of the news coverage provided by other media networks on the subject of Lane Hamilton’s death; I became aware of such coverage prior to my being hired in this matter. For reasons outlined in my accompanying affidavit, I did not conduct any interviews in this case.

A. Conflict of Interest

In this case, I saw nothing to indicate a bias or conflict of interest on the part of Reagan Thomas, the BNN correspondent who reported live from the scene of the death. Although Thomas did appear irritated with Drew Walton when Walton refused to answer Thomas’s questions after the debate, this was a minor irritation, and did not appear to influence Thomas’s journalism in any way. Reporters are used to sources who refuse to speak with the media. I do, however, have significant concerns with Thomas’s motivations for the timing of the broadcast; Thomas appears to have been overly focused on breaking a big story to improve Thomas’s career and less on reporting the truth. But it is unclear whether this actually affected the broadcast’s content of the live report.

Kit Berkshire does appear to have a conflict of interest in this case. Berkshire contributed to the political campaign of Walton’s opponent. Berkshire has a long adversarial history with the Walton family, although Berkshire’s relationship with Drew Walton, the subject of BNN’s broadcast, is less clear. It is definitely possible that Berkshire’s actions on September 24, 2006 were motivated in part by a grudge against the Walton family. However, this possibility is diminished by Berkshire’s reminder that Thomas not overstate the facts.

B. Investigation

In this case, Reagan Thomas’s investigation, however brief, certainly had its strengths. Thomas spoke with three available eyewitnesses and, after reading much about this incident, I am unaware of any other eyewitnesses to the shooting. Thomas also interviewed two police officials—the Midlands police captain and a crime scene investigator. These were probably the best two police sources to interview: one was the spokesman for the police squad and the ranking officer on scene, and the other was the lead forensic investigator. The thoroughness of Thomas’s questioning of the photojournalist, the personal assistant, and the police captain appears to have been sufficient, at least when considering that these interviews were likely preliminary.

Yet Thomas's investigation was far from perfect. Thomas too quickly dismissed the janitor, Jan Patel, as a source. Patel was claiming firsthand knowledge that contradicted another eyewitness's observations. Yet Thomas's own affidavit indicates that Thomas asked no questions of Patel. Thomas defends this failure to question Patel by the fact that Patel seemed to want attention. Thomas is correct that a journalist should always question a source's motivation, and the desire to achieve fame is an acceptable basis to discount a source's observations. Reporters, especially TV reporters, are frequently approached by "less than competent" sources who have little or no information but a great desire to simply be on TV. But Thomas's other two reasons for ignoring Patel are questionable at best. I also think that Thomas should have asked more questions of the police detective.

The biggest shortcoming of Thomas's investigation was the failure to attend Drew Walton's press conference after the shooting. There is no excuse for the deliberate failure to listen to the subject's version of events. However, just because Reagan Thomas ignored the Drew Walton press conference does not mean that BNN ignored the press conference. Kit Berkshire watched the press conference via a separate feed before giving permission for Thomas to run the story. Because the affidavits and other documents discuss little about the phone conversation between Berkshire and Thomas, I don't know the extent to which Berkshire incorporated information from that press conference into Thomas's live report.

C. Publication

There are two reasons why it is difficult to evaluate the appropriateness of BNN's September 24, 2006 broadcast concerning the death of Lane Hamilton. First, so much of what makes a story well-founded or ill-founded cannot be understood without firsthand experience. I was not there at the Civic Center when Reagan Thomas spoke to the eyewitnesses and police officials. I cannot say whether they seemed believable. I cannot say whether their tone was serious or sarcastic, certain or doubtful. Much is lost in translation and, as I have relied on written documents, translation is all I have.

Second, the documents upon which I relied are not entirely consistent. Martin, Berkshire, Kim, Thomas, and Patel give different accounts of their communications among one another. For example, Harley Kim's description of the events surrounding the shooting differs from what Reagan Thomas said that Kim told Thomas; Fran Martin received a recount of Kim's observations that differs further; likewise, Berkshire appears to have received a slightly different account of what Kim saw. Given the information at my disposal, it is impossible to determine, precisely who said what to whom, and yet such a determination is necessary to fully assess the validity and appropriateness of the BNN broadcast at issue in this lawsuit.

Those difficulties aside, I have several misgivings about the BNN statement concerning Lane Hamilton's death. The report contains inflammatory language, such as "gunned down," "whipped out" and "crime." While this is language that is increasingly favored nowadays by news directors and news marketing consultants to give broadcasts more "punch," it is also language that lacks optimal objectivity. The broadcast also fails to identify the names of Reagan Thomas's sources. It fails to identify that Thomas's eyewitness sources provided somewhat contradictory observations. In fact, the only eyewitness that Thomas specifically identifies is Thomas. This, and the fact that Thomas makes such a point of mentioning that "BNN is the first

to report the even more shocking news,” makes me seriously question Thomas’s judgment and motivation in running the story.

Ultimately, though, the key question in this matter is whether it was ethical and/or appropriate to make the statements against Walton. In my opinion, the statement that “all evidence points to Drew Walton as having shot Professor Hamilton” is stated too strongly. Given the varying eyewitness accounts, the quickness of the investigation, and Walton’s explanation of suicide, I do not think that “all evidence” actually pointed to Walton guilt. Even accounting for Walton’s status as a public figure, this was a very aggressive statement to make in the absence of criminal charges.

However, several factors reduce the obvious shortcomings in BNN’s statement. Thomas’s broadcast blurs the line between fact and opinion. While generally it is preferable to have a clearer line between fact and opinion, in this case that blur lessens the impact of any misstatement by BNN. It is unclear the extent to which the conclusion of Walton’s involvement is based primarily on Thomas’s personal observations or on the eyewitness accounts or on information supplied by the police. Thus, it is unclear whether the conclusion regarding Walton’s involvement is offered as fact or as Thomas’s opinion. Certainly, Thomas and BNN should have been clearer; but lack of clarity reduces the likelihood that the statement is patently false. Thomas also reduces any overstatement with phrases like “it appears,” “possible involvement,” and “uncertainty.”

D. Correction

I applaud BNN for retracting the statement based on new evidence—in this case, the police announcement that the cause of death was suicide. A retraction does not necessarily imply that the original news report was not fully investigated or that the journalist has done something wrong. Often a retraction means that a source proved unreliable information, or that someone other than the journalist erred. Especially in breaking news situations, even “official” sources frequently disseminate incorrect information to reporters. In this case, though, I must wonder whether the announcement provided a convenient excuse for retracting a statement of questionable origin.

E. Conclusion

The motivation of two BNN principals—Reagan Thomas and Kit Berkshire—is not altogether clear. Thomas appears overly motivated by career advancement, Berkshire appears overly motivated by settling a score, and both appear too focused on being first with the story—but it is impossible to know if any of those motivations actually affected the substance of the broadcast that night. Thus, I must focus instead on whether the statement was justified.

The broadcast was not a model of journalistic excellence with respect to evidence, clarity or attribution. In my view, it was quite typical of modern TV journalism in its departure from traditional standards for content and form. Whether it was legally problematic—that is, whether BNN personnel acted with reckless disregard of the truth or falsity of their subject matter—is a question beyond my capability to answer. I was not there that night and the documents that I was given have too many contradictions for me to fully evaluate BNN’s conduct.

Blitz News Network

MEMORANDUM

TO: All Blitz News Network Employees
FROM: Kit Berkshire
DATE: January 1, 2004
SUBJECT: BNN Standards for Responsible Journalism

I could not be more excited to join you in this incredible challenge: reshaping an entertainment television station into a premier international news organization.

As we cover the world's news—everything from those events that affect people only in their cities and townships, to those events that transform nations and generations—the highest standards of our profession shall serve as our guiding light:

Thoroughness

It is more important to be thorough than it is to be memorable.

We will seek all sources. We will seek sources from every side of a story. We will interview and investigate every source as thoroughly as we can.

Accuracy

It is more important to be right than it is to be first.

We will distinguish reliable sources from unreliable sources, and reliable information from unreliable information. We will verify the information our sources provide. We will report only what we have reason to believe is true.

Fairness

It is more important to be fair than it is to be remarkable.

We will report objectively. We will publish balanced stories that capture the complexity of an event. We will place facts in context.

As journalists, we hold enormous power to shape public opinion and discourse. Such power requires that we follow the ideals described above. Together, we have the opportunity to report the news of our time. Let us do so with curiosity and candor.

K.B.

AFFIDAVITS

AFFIDAVIT OF KIT BERKSHIRE

After being duly sworn upon oath, Kit Berkshire hereby deposes and states as follows:

My name is Kit Berkshire. I was born in 1952. I live at 218 East 96th St. in New York, New York. I graduated with a degree in broadcast journalism from Swarthmore College, and thereafter completed a joint degree program with Harvard's Law School and Business School. I've since held a variety of journalistic positions, including field reporter, news anchor, and network legal analyst. I chose to switch over to the business side of broadcasting about twenty years ago. In 1995, I was named News Director for United Broadcasting Company ("UBC"). At the time, UBC had the tenth most profitable news programming on American television. By the time I left UBC, our news department had moved up to second place.

In late 2003, I became President of Blitz News Network ("BNN"). BNN used to be Blitz Television Station ("Blitz TV"), a mid-major channel known for game shows, reality TV, syndicated shows, and talk shows. Blitz TV had virtually no news department other than a single show that recapped the week's biggest stories from Hollywood. Blitz TV's ownership group had decided to change direction in anticipation of the profits associated with covering the 2004 election season, and changed its name to Blitz News Network. But transforming an entertainment television channel into a respected news source requires more than a name change.

That's why BNN hired me. BNN offered me an annual salary of \$10 million, plus considerable stock options, and I decided to accept the challenge of bringing credibility to BNN without sacrificing its entertainment value. Since my arrival, BNN has increased its ratings by fifty percent while simultaneously improving its journalistic reputation. I think my January 1, 2004 memorandum set the tone for our excellence. In that memo, I laid out the journalistic standards to which Blitz would always adhere—standards on par with the most respected news

outfits in the world. The standards described in my January 1, 2004 memo remain BNN's standards for all reports, publications, and broadcasts.

Of course, not everyone has agreed with my methods. In 1989, when I was a field reporter for UBC, the company was sued for libel based on my story about cheating in collegiate athletics. The case settled out of court. In 1993, as a UBC producer, I produced a story accusing certain tobacco companies of marketing their products specifically to minors. One company sued for libel and the jury found UBC liable, but awarded minimal damages. From 1995 to 2004, when I served as News Director for UBC, the network was sued for defamation more times than any other American television network. Most of those lawsuits were dropped or dismissed; some settled out of court; six went to trial; and of those six, only two included libel verdicts against UBC. During my time as UBC news director, Gerald Walton brought three libel lawsuits against UBC and won one.

This Drew Walton defamation lawsuit is absurd. First, the evidence regarding what happened on September 24, 2006 is not at all certain. I understand that the police ruled it a suicide, but I still think Walton had something to do with Lane Hamilton's death. Regardless, BNN didn't do anything wrong. Reagan Thomas's live broadcast was perfectly responsible given what Reagan knew at the time. Now Walton's lawsuit has already cost BNN millions of dollars in legal fees and it's hurt our stock value. I know if we somehow lose this lawsuit, it will cost every shareholder dearly. I also hear rumors that if BNN is found liable in this Walton defamation lawsuit, the company may look to replace me as President. I don't worry about these things, though, since they're just rumors and, besides, I know BNN did nothing wrong.

I was very much looking forward to the September 24, 2006 debate between Drew Walton and Midlands University Professor Lane Hamilton. I was confident that an esteemed

47 academic and experienced debater would crush Walton in a gun control debate and destroy
48 Walton's gubernatorial run on national television. Some have wondered why I poured such
49 heavy resources into our debate coverage. I had several reasons. BNN covers celebrities and
50 Drew Walton is a major celebrity. Our audience can't get enough of Walton. We weren't going
51 to air the debate, just the post-debate press conference. I also expected Walton to lose the debate
52 and the governor's race. At that point, Walton would return to being the sort of vapid,
53 superficial celebrity that represents what BNN is all about. Besides, it wasn't like we really
54 invested that much in the debate coverage. I had Fran Martin producing, and Fran is hardly one
55 of our better producers; I had Harley Kim on camera, and I've heard Kim has a drinking
56 problem. Reagan Thomas was the only star member on the team covering the debate.

57 On September 24, 2006, BNN was televising its biggest event of the year, the Oski
58 Awards. I was watching the Hamilton-Walton debate. I had donated significant money to the
59 gubernatorial campaign of Walton's opponent, Neal McGivern. My spouse and I had each
60 maxed out our allowable contribution. I had the popcorn out and was ready for Hamilton to
61 crush Walton. But instead it was Walton who dominated the debate by citing statistics and
62 providing relevant examples. Hamilton just became more and more frustrated. By the end, it
63 was clear to me that Walton's charisma was going to win the Governorship

64 I acknowledge that I've never been especially fond of the Walton family's politics or
65 tactics. I knew the late Gerald Walton, former Midlands governor and longtime chairman of the
66 House Committee on Energy and Commerce. Back in 1999, Gerald Walton led a Committee
67 investigation into increased violence and sensationalism in television news. Walton decided to
68 make UBC the poster child. He hauled me before Congress with a subpoena in 1999 and grilled
69 me for several hours. He ambushed me with several statements from UBC employees who had

70 testified privately that I had ordered that certain news reports be exaggerated to increase ratings.
71 It was the low point of my career.

72 As UBC News Director, some accused me of carrying an anti-Walton bias. It's true that
73 UBC was the network that exposed Gerald Walton's affair with a staff member, and it was UBC
74 that broke the story about Gerald Walton's kickbacks from Midlands businessmen. And in 2002,
75 we were also the first major network to report that Drew Walton had checked into the Borello
76 Anger Management Clinic in Greenwich Village, New York—apparently, Drew Walton had
77 thrown some heavy household objects at the some family servants. But these news reports don't
78 indicate a bias on my part; they indicate vigilance for truth. I knew that Gerald Walton had no
79 scruples, and I knew that the apple didn't fall far from the tree. As a journalist, it is my job to
80 make sure the public knows the true character of its leaders and role models. I don't apologize
81 for tarnishing the Walton legacy—I was only reporting the truth.

82 That's the same standard that guided me on September 24, 2006. After the debate ended
83 at about 9:30, I poured myself a stiff drink and watched as pundits fawned over Drew Walton.
84 One of the more respected UBC commentators said, "Drew Walton just silenced every concern
85 about inexperience and knowledge of the issues. Walton is going to win the governor's race
86 without breaking a sweat. I expect that by 2012 Drew Walton will be a presidential contender."
87 The thought of Walton reaching the White House made me contemplate a second scotch.

88 All of a sudden, the UBC anchor interrupted her guest commentator and announced a
89 late-breaking story from the Midlands Civic Center—Professor Lane Hamilton had just been
90 found shot in the head, almost certainly dead. I flipped to BNN, where we were still showing the
91 silly Oski Awards. I called Fran Martin and said, "We have a reporter at the Civic Center. We
92 should be running this story. Let's see if Drew Walton is involved." I kept flipping channels.

93 Every network was saying the same thing: Hamilton had been shot, Walton claims it was a
94 suicide, and it's too early to draw any sort of conclusion. At about 10:10, I got a call from
95 Reagan Thomas. Most field reporters don't have my personal number, but when I had assigned
96 Reagan to cover the Walton debate, I gave Reagan my number. I wanted to make sure Reagan
97 had every resource necessary to expose Walton. As usual, my instincts proved right.

98 Reagan told me that Reagan wanted to run a story indicating that there was evidence that
99 Drew Walton shot Lane Hamilton, but said that Fran Martin killed the story. I asked Reagan the
100 basis for Reagan's story. I wanted BNN to break the story about Walton's involvement—our
101 ratings and rankings would go through the roof, which was good for BNN and good for me.
102 Still, I wasn't going to have BNN accuse a gubernatorial candidate of murder without sufficient
103 proof. I'm an attorney, so I know libel law cold. With struggling financial numbers in
104 September 2006, the last thing we needed was a major lawsuit.

105 During our September 24 phone conversation, Reagan told me every detail Reagan had
106 learned at the Civic Center, and I have included every such detail here. Reagan personally
107 observed Walton right beside the body moments after two shots were fired. Reagan said that no
108 one else was nearby the body—just Walton. Reagan reported three eyewitnesses who saw at
109 least part of the events. They all confirmed that Walton had pulled a gun on Hamilton after
110 Hamilton made a derogatory reference about Gerald Walton. Reagan said that while the
111 eyewitness accounts differed, the most reliable source—Harley Kim, our photojournalist—told a
112 story that strongly suggested it was a Walton murder, not a Hamilton suicide. Reagan
113 acknowledged that Walton's personal assistant saw parts of the event from a poor vantage point
114 and thought Walton was innocent. And Reagan mentioned that some star-crazed janitor said it
115 was a suicide. Reagan also said that one police officer indicated that the circumstances of the

116 shooting made it look bad for Walton, and another officer indicated that the gun that inflicted the
117 fatal wound was Drew Walton's gun.

118 I put all of this together and told Reagan to run the story but not to overstate the facts. I
119 called the BNN station and gave the green light to interrupt the broadcast with Reagan Thomas's
120 live report. I listened with delight as Reagan broke the major news story of 2006. I re-watched
121 the two-minute broadcast about ten times, both because I loved the accusation against Drew
122 Walton and because I wanted to make sure that Reagan Thomas never crossed the line.

123 Why did I give Reagan Thomas the green light to run a story implying that Drew Walton
124 might be responsible for Hamilton's death? I didn't do it because of a grudge against the Walton
125 family. I did it because that was the conclusion justified by the facts that Reagan presented
126 during our September 24, 2006 phone conversation. Drew Walton was the only person near the
127 body immediately after the shooting. It was Walton's gun. Walton is known for having a
128 temper and known for being set off by comments about Walton's father, Gerald. Harley Kim's
129 account places the gun in Walton's hands moments before the shooting. I watched Drew
130 Walton's impromptu parking lot press conference, so I knew Walton was claiming that Hamilton
131 committed suicide. But if it was really suicide, there wouldn't have been two shots.

132 I know Reagan has been criticized for several things related to the September 24, 2006
133 broadcast. Reagan probably should have questioned the janitor and Reagan probably should
134 have listened to Drew Walton's parking lot press conference. But each of these decisions is
135 defensible. As a reporter, you have to make judgment calls about which sources to believe, and
136 Reagan found the janitor unreliable. You also have to allocate your time properly—that's why
137 Reagan's decision to skip the Walton question-and-answer session was reasonable. Reagan
138 chose to interview eyewitnesses in an effort to get the real story. In assessing Reagan's actions, I

ask myself what I would have done were I in Reagan Thomas's or Fran Martin's shoes that night. I've spent more than fifteen years reporting and producing. I would have done exactly what Reagan did (though I obviously would not have done what Fran Martin did).

Of course, when the police ruled the shooting a suicide on September 25, 2006, I issued a limited retraction on BNN's website. Some might call this an admission that we were wrong to air Reagan Thomas's September 24, 2006 broadcast. But our retraction is another example of BNN acting responsibly under my leadership. The facts we knew on September 24 indicated that Drew Walton had killed Lane Hamilton, so we reported just that. When the facts we knew changed the next day, we did not hesitate to update our report and retract our earlier statements.

BNN has also been criticized for airing the supposedly accusatory broadcast too soon; some say we should have waited until we had more information. Yes, it's possible that the story might have been more accurate if Reagan had waited longer and interviewed more eyewitnesses and police authorities. But as a journalist, you have to balance thoroughness against speediness. The public has a right to know important news immediately. Reagan's disclaimer about still waiting for many answers sufficiently disclosed that the investigation was ongoing.

The person who did not act appropriately during this entire episode was producer Fran Martin, who wrote a memo detailing Martin's justification for refusing to allow Reagan Thomas to run the broadcast. When I read that memorandum, I was furious. First, how could Martin be so stupid as to put those thoughts in print and expose BNN to liability? Second, Martin admits to overlooking Walton's history of violence and that a more "middle-of-the-road approach" would have been better than killing the story. But my biggest frustration comes from the end of the memo, where Martin says, "No other network was reporting that Walton was involved and I was worried about being the first, or only, media outlet to make such an accusation." When you run

a news network, you want to be the first to break a story, both for reasons of journalism and profitability. The fact that Martin was reluctant to be the first to air a report shows Martin is not cut out for national news. So I transferred Martin to our Alaska division permanently. The attorneys said it would be easier than firing Martin.

As for Drew Walton, well, Walton got what was coming. The huge lead in the gubernatorial polls evaporated overnight and Walton lost the election. I suppose the suspicion of murder will do that. Now Walton is back to being famous for being famous, and the country can rely on leaders offering more than mere glib answers and made-for-TV smiles.

I hereby attest to having read the above statement and swear or affirm it to be my own. By signing this document I swear to or affirm the truthfulness of its content. I understand that I have an opportunity to update this affidavit and that unless such is done prior to such a time whereas I may be called upon to testify in court, and that in such an event a copy of my updated statement is given to all parties involved in this case, I am bound by the content herein.

Kit Berkshire

Subscribed and sworn before me this day April 1, 2007

Carol Spencer

Notary Public

AFFIDAVIT OF DR. CHRIS CAIRONI

After being duly sworn upon oath, Chris Caironi hereby deposes and states as follows:

My name is Doctor Chris Caironi. I was born in 1965. The address of my practice is 38F Doctrinal Road, Dallas, Texas. I am a certified and licensed psychiatrist. I received my BS in Psychology from the Pennsylvania State University in 1987 and my MD with a residency in clinical psychiatry at Rutgers, where I did research in child and adult therapy. In 1993, I became board certified in Clinical Psychiatry.

After graduating from Rutgers, I moved to Chicago and began working in a private practice. For the first seven or eight years of that practice I focused almost exclusively on personal assessment and therapy. I met with clients and made initial determinations of a particular patient's various tendencies, pathologies, and any areas where the patient was of particular danger to him or herself or others. This is the assessment phase. After that, the patient would come in for sessions where I tried to treat those pathologies, as well as develop a more emotionally accessible and stable person. This is the therapy phase.

Eventually I became well-known for my specialized work and the publications that followed. This led to a professorship at the University of Chicago in 1999. Also around that time I started doing a lot of outside consulting work for businesses and other large organizations. Usually, some big corporation was about to make a high profile hire and wanted me to come in and do an assessment. Sometimes, though, I would be called in response to complaints about a particular employee's behavior. I have done these assessments countless times over the past ten years and this is the way I came to meet Mr. Lane Hamilton.

In 2003, Midlands University was considering Lane Hamilton as a tenured professor of Political Science. This was a big event because Hamilton was known for being two things: one

of the most brilliant policy thinkers of our time and one of the most eccentric public figures of recent memory. All of Hamilton's books had won critical acclaim and awards for their content, while at the same time topping best seller lists due to Hamilton's unique and engaging voice. Despite all this, Hamilton had a reputation for being somewhat reclusive and acting strangely during interviews. The most famous instance of this was when Hamilton went on a national interview program in 1996 and refused to answer any questions about his latest book. Instead, Hamilton insisted on sharing cookie recipes with the host. Half of America saw Hamilton eventually leave the set of the show in the middle of a question. There were other similar, if less extreme, instances, and eventually Hamilton stopped giving live interviews. While this may have helped him save a little face, the questions about his mental fitness remained. There was concern from Midlands University that he might not be able to handle the duties of a full professorship; if a psychological impairment was causing his bizarre behavior, it might limit his abilities to communicate with and handle his students.

Hamilton told Midlands University that he would demonstrate his mental fitness by getting the approval of a licensed mental health professional. Midlands University agreed to make Hamilton's employment contingent on my approval. I first met with Hamilton in October 2003. Hamilton answered my initial questions openly and willingly. He seemed like a completely different person from the public persona of an eccentric recluse that he had developed. From that first meeting with Hamilton, I diagnosed Hamilton with clinical depression based on his answers and my observations. There is no chemical test for clinical depression but there are a few tests that can rule out other explanations for the same symptoms. However, I never tested Hamilton's serotonin level, nor referred Hamilton for such testing. I did

order an EEG and CT scan, the results of which allowed me to rule out epilepsy and brain lesions, respectively. Hamilton also signed a release so I could see his complete medical history.

Clinical depression—also known as major depressive disorder, great depression or unipolar depression—is a mental disorder characterized by a pervasive low mood and reduced ability to experience pleasure. This is a serious condition that can affect one’s work, family relationships, sex life, health and general happiness. Clinical depression is a major risk factor for suicide; in fact the number one cause of suicide is untreated depression.

Clinical depression carries a variety of symptoms. Almost all people suffering from clinical depression display substantial feelings of sadness, poor mood and loss of interest in things that they used to find enjoyable. Physical symptoms include (among others) insomnia or oversleeping; fatigue; and large weight swings (either gains or losses) as a result of changed eating habits. The “poor mood” symptoms include irritability, pessimism, concentration problems, memory difficulties, guilt, hopelessness, suicidal thoughts and feelings of worthlessness. Social symptoms include suicide attempts, withdrawal from social situations and a loss of interest in tasks or activities that the person used to find pleasurable. There may also be chemical symptoms. Reliable studies have shown a link between depression and reduced levels of serotonin; other reliable studies have shown a correlation between an increase in levels of serotonin and dosages of monoamine oxidase inhibitors.

The variety of symptoms, and the fact that many symptoms of clinical depression are also symptoms of other mental disorders, makes clinical depression very difficult to diagnose. Also, a convincing 2004 study indicated that the standard criteria for diagnosing clinical depression may be overbroad, which leads to many “false positives” in the diagnosis of clinical depression.

The standard treatment for clinical depression includes medication, therapy or both. Often, it is necessary to change a patient's medication from one drug to another, and also to adjust the dosage. This is the only way to maximize the efficiency of the medication. Nowadays, drugs used to treat depression fall into four categories: selective serotonin reuptake inhibitors (SSRIs); tricyclic antidepressants (TCAs), monoamine oxidase inhibitors (MAOIs), and other antidepressants. SSRIs such as sertraline (Zoloft), escitalopram (Lexapro), fluoxetine (Prozac), paroxetine (Paxil) and citalopram (Celexa) are most common. Electroshock therapy is also an option for treating depression, but should only be used as a last resort.

After assessing Hamilton, I spoke with M. Alyssa Currivan, Chancellor of Midlands University. Based on my November 1, 2003 report, Midlands University offered Hamilton a professorship. However, given the diagnosis of clinical depression, Currivan was concerned. Midlands University put Hamilton on a two-year probationary period, after which Hamilton would come to me for a second assessment and, based on my findings, Midlands University would decide whether to offer Hamilton a tenured professorship. While I did not see or speak with Hamilton in 2004 or 2005, I followed his progress during regular correspondence with Doctor Rubenstein, a psychologist, who reported that Hamilton was making good progress in weekly therapy sessions and continuing to take his medication. I kept renewing Hamilton's prescription for 100mg daily of Zoloft, based on Dr. Rubenstein's recommendations, until my second assessment meeting with Hamilton on January 7, 2006.

I met with Hamilton for the second and final time on January 7, 2006. Based on Hamilton's answers and my own observations, I determined that Hamilton no longer suffered from clinical depression. On January 7, 2006, I took him off of medication.

I have become aware of the events surrounding Hamilton's death on September 24, 2006. I reviewed the affidavits of Reagan Thomas, Harley Kim, Jan Patel and Drew Walton, all of which were central to my conclusion that Hamilton did not commit suicide. My January 7, 2006 meeting with Hamilton confirmed that he was not suicidal—he no longer suffered from clinical depression. Nonetheless, when Hamilton's death was first reported as a suicide after the autopsy results on September 25, 2006, I was very upset. I was the doctor who took Hamilton out of therapy and off antidepressant medication. It occurred to me that those without all the facts might jump to the wrong conclusions about my decision to take Hamilton off medication. I worried about civil liability from Hamilton's family and possible damage to my reputation. Still, I did not let these concerns affect my conclusions regarding September 24.

The circumstances of Hamilton's death make suicide unlikely. Lane Hamilton did not like guns; he would not have committed suicide by firearm. Most people who commit suicide do so privately, not in front of an audience. It is possible that a sudden traumatic event, such as a huge professional disappointment, could trigger a suicide—but only if the person were already suicidal, or severely depressed. As I've said, Lane Hamilton was no longer clinically depressed.

I should emphasize that I am quite familiar with the subject of suicide, including its causes, preventive measures, and critical statistics. I am proud to say that none of my patients has ever committed suicide. Most psychologists and psychiatrists view suicide as a mental health concern associated with depression, suffering, fear, grief, discontinuation of psychoactive substances, or other mental disorders. This does not include suicide motivated by politics, military efforts or avoidance of punishment.

The circumstances of a death affect the likelihood of suicide. Between 50% and 60% of all suicides occur by firearm. Another factor that makes suicide less likely is that Lane Hamilton

113 left no suicide note. One American study estimates that between 12% and 37% of suicides
114 include a note; one recent Japanese study puts the figure at 40%. Literate, educated suicide
115 victims—such as Professor Hamilton—leave notes at greater frequencies.

116 Demographics inform suicide rate. Women are twice as likely to attempt suicide, but
117 men are four times more likely to die from their attempt. Thus, two-thirds of all suicide victims
118 are men. More than 85% of those who commit suicide by firearm are men. Many western and
119 some Asian religions consider suicide a dishonorable act, but some other cultures view suicide as
120 honorable when atoning for failure. Cultural and religious issues do not come into play in this
121 case, however, as the Professor was an atheist. Hamilton was 46 years old, which is not the
122 highest risk age for suicide (teenagers and the elderly commit suicide most frequently).

123 Hamilton was Caucasian, which, among Americans, is the ethnicity with the second highest
124 suicide rate (behind only Asian-Americans). Single people and widows are more likely to
125 commit suicide than those married or in long-term relationships. Hamilton was a divorcee.

126 Approximately half of all suicides follow nonfatal attempts. Someone who has attempted
127 suicide is more than 20 times more likely to successfully commit suicide (obviously, I use the
128 term “successfully” in a purely clinical sense). Often, those who eventually commit suicide
129 make incomplete suicide attempts—such as an infliction of self-harm that leaves signs of the
130 attempt, or a full attempt in circumstances that make it likely that another person will prevent
131 completion. Neither Hamilton nor his medical records mentioned any suicide attempts, suicide
132 gestures, or actions of self-harm. Alcoholism and substance abuse are often directly correlated
133 with suicide, but Hamilton did not drink alcohol or use any addictive substances.

134 Those with a family history of suicide are at particular risk of suicide. It appears to be
135 somewhat genetic. Hamilton’s grandfather attempted suicide and his father committed suicide. I

136 did not learn about this family history until after Hamilton's death. I asked if Hamilton's family
137 had any history of depression, drug use, alcoholism or suicide, but Hamilton said no.

138 I was hired by the party who is calling me at trial. My expert witness fee is \$550 per
139 hour. In this case, my total fees—including preparation time and time spent in deposition or
140 preparing for deposition—were \$11,400. This does not include any time I will spend at trial
141 (whether testifying or not), plus any travel time to or from the trial. My total fees from Midlands
142 University as a result of the Hamilton interviews came to \$7,300.

143 I hereby attest to having read the above statement and swear or affirm it to be my own.
144 By signing this document I swear to or affirm the truthfulness of its content. I understand that I
145 have an opportunity to update this affidavit and that unless such is done prior to such a time
146 whereas I may be called upon to testify in court, and that in such an event a copy of my updated
147 statement is given to all parties involved in this case, I am bound by the content herein.

148 _____
149 Chris Caironi

150 Subscribed and sworn before me this day April 1, 2007

151 _____
152 Carol Spencer

153 Notary Public

AFFIDAVIT OF RILEY FAITH

After being duly sworn upon oath, Riley Faith hereby deposes and states as follows:

My name is Riley Faith. I was born in 1952. I earned my bachelors degree in journalism from Northwestern University and attended the University of Missouri-Columbia for my Master of Arts in journalism. I'm now a tenured professor at the University of California, Berkeley's Graduate School of Journalism. I've taught at Berkeley since 2000. Before that, I taught all over the world, including at Oxford, University of Tokyo, and McGill. I've taught courses in almost every subject related to journalism and news media, but my emphasis is journalistic ethics. I've never actually worked as a journalist in either print or broadcast form. My experience is more academic. I've published more than 100 articles on journalism and the media. I am a frequent television commentator when the media itself becomes the story. I write a weekly newspaper column. In 2003, I won the prestigious Francis Leo Award for excellence in promoting the highest standards of journalism.

On April 10, 2007, I was hired by the party who is calling me at trial. My hourly rate is \$650 per hour, which includes the time necessary to review documents, interview necessary sources, prepare for and attend trial. Prior to coming to court, I spent 26 hours on this case. I reviewed the affidavits of Reagan Thomas, Fran Martin, Kit Berkshire, Harley Kim and Jan Patel and Mickey McQuiggan. I also reviewed a DVD copy and associated paper transcript of the broadcast made by BNN on September 24, 2006 from the Midlands Civic Center; the September 25, 2006 memorandum by Fran Martin; and the Kit Berkshire press release of September 25, 2006. Because the parties were represented by counsel, I could not interview all of the participants, so in the interests of fairness, I declined to interview any of the participants. Thus, I drew my conclusions solely from the aforementioned six affidavits and three documents (with

the one attached video of the broadcast itself). These items were sufficient.

My goal was to determine whether BNN complied with generally recognized ethical standards of journalism. These standards are based on a compilation of international journalistic standards, including (among others) the British Broadcasting Corporation's Ethical Guidelines and the Radio-Television News Directors Association Code of Ethics and Professional Conduct, and Guidelines for Breaking News Events. I have been hired in more than 60 defamation lawsuits and I have testified in court on such issues more than 20 times. I want to clarify that I am not an attorney, nor have I ever attended law school. I made no conclusions as to the legality of BNN's actions with respect to the Hamilton shooting. I am certainly familiar with libel law—I co-taught a first amendment law class at Emory University—but I drew no conclusions as to whether in this instance BNN acted with "actual malice" or reckless disregard for the truth or falsity of its statements.

At the outset, I note my general contempt for BNN. I have devoted my life to ensuring that journalists adhere to the highest of ethical standards. Historically, BNN has trampled on such standards. BNN's nightly programs often head to commercial with teasers such as, "Why did Vickie Harmon visit her ex-husband in prison? Find out after the break." When the show returns from commercial, we learn that the celebrity revealed during an interview that she will not be having children for several years. There is a huge disconnection between the teaser and the report. Sometimes BNN is much worse than that. BNN relies on lone anonymous sources when reporting absolute smears. Its reporters invade celebrities' privacy and intrude on their lives to the point that celebrities sometimes respond aggressively to the BNN paparazzi. I certainly do not excuse assaulting a reporter who is disrespectful, but it is worth observing that BNN's "reporters" are more criticized and attacked than any others.

In general—and this is not a conclusion regarding BNN’s specific coverage of the Lane Hamilton shooting—I find BNN to represent the worst in journalism. The reason that BNN is generally so lacking in journalistic ethics is that, as a tabloid television network, BNN is more focused on entertainment than news. And, like every other cable “news” network, BNN has 24 hours of airtime to fill, which results in an endless thirst for any nugget of information, no matter how trivial. Plus, like their competition, there is always a quest to be “first” with any breaking developments. Most BNN employees with whom I’ve spoken (after their employment with BNN has ceased) acknowledge that the company is not concerned with following common journalistic standards. (Of course, my opinion of BNN’s historically shoddy coverage largely predates Berkshire’s arrival at BNN. I’ve noticed at least an effort at an improvement since Berkshire took over, although the network’s adherence to standards is still far from ideal.) Nonetheless, I evaluated BNN’s coverage of the Lane Hamilton shooting in a vacuum—that is, I looked only at BNN’s actions in this case, and not the company’s historical record of ethics. This is why my accompanying report only references BNN’s conduct in this matter.

My accompanying report contains my conclusions in this case. This affidavit outlines some of the prevailing canons of journalism.

Thoroughness is vital to ethical journalism. A journalist must be as accurate as possible and seek the most reliable sources, given the time allotted to preparation and investigation. Before broadcasting a story, a journalist should interview as many reliable sources as possible . If possible, a journalist should verify each source with another source. While a reporter may ultimately reject information from some sources, he should almost never ignore a source or fail to question a source. A journalist should always seek out the subject of his report and give that subject an opportunity to respond to any allegations of misconduct. Anonymity should be

70 avoided except where necessary to obtain information. A journalist should keep his promises of
71 anonymity, even when inconvenient or difficult.

72 It is important to avoid any real or perceived bias. A journalist should remain objective
73 and free from any conflict of interests. A journalist should not accept bribes or report on stories
74 that affect his personal interests. The perception of favoritism or a conflict of interest can be just
75 as debilitating as actual favoritism or conflict of interest. For this reason, a journalist should seek
76 to retain independence and should avoid associations that may lessen his credibility.

77 Published reports must be accurate, balanced and contextualized. A journalist should not
78 misrepresent or take information out of context. He should balance competing viewpoints. A
79 news report should clearly distinguish which portions are news and which portions are opinion.
80 A journalist should describe charged crimes as “alleged” and identify exactly which sources are
81 making the allegations. But a journalist may report such crimes as fact once a defendant is
82 convicted, unless substantial controversy remains about the rightfulness of the conviction. A
83 journalist should show serious discretion when reporting on children, victims and other
84 involuntary public figures, but may report more freely with respect to public figures. A
85 journalist should be judicious about naming someone as a criminal suspect before any criminal
86 charges have been filed, and especially before police have even made an arrest.

87 Attribution is an important component of ethical journalism. Attribution means giving
88 credit to a particular source of information and identifying that source as part of the publication
89 or broadcast. A journalist should attribute information to sources when possible because the
90 audience cannot determine the reliability of various facts without knowing the reliability of the
91 source. A journalist should identify his source for conclusions based on a single eyewitness, but

may report as fact those conclusions based on multiple eyewitnesses. When eyewitnesses disagree, a journalist should present all viewpoints and identify all sources, where possible.

No matter how responsible the journalist, his reports will sometimes turn out to contain errors and inaccuracies. That is the natural consequence of relying on information from other people and from the need to get information to the public as quickly as possible. For these reasons, a retraction does not necessarily mean that a journalist has acted carelessly or unethically. When a journalist discovers that his publication or broadcast contained inaccuracies, he should correct those mistakes promptly and prominently. The prominence of a retraction depends on the extent of the inaccuracy, the certainty with which the inaccuracy was first reported, and the prominence of the original broadcast or publication.

I hereby attest to having read the above statement and swear or affirm it to be my own. By signing this document I swear to or affirm the truthfulness of its content. I understand that I have an opportunity to update this affidavit and that unless such is done prior to such a time whereas I may be called upon to testify in court, and that in such an event a copy of my updated statement is given to all parties involved in this case, I am bound by the content herein.

Riley Faith

Subscribed and sworn before me this day July 1, 2007

Carol Spencer

Notary Public

1 **AFFIDAVIT OF HARLEY KIM**

2 After being duly sworn upon oath, Harley Kim hereby deposes and states as follows:

3 My name is Harley Kim, and I'm twenty-six years of age. I live in Los Angeles,
4 California. Just like everyone else in LA, I'm involved in the entertainment industry. I do
5 camera and set work for BNN. I joined BNN back in 2003 when it was called Blitz Television
6 Station. I worked as a cameraperson for one of the game shows. When the company announced
7 in late 2003 that it would become a news organization, I applied for one of the "photojournalist"
8 positions—it's the same work as being a cameraperson, but it pays a lot better. I didn't know
9 anything about journalism since I never went to college, BNN made me read the January 1, 2004
10 memo from CEO Kit Berkshire, which explained the company rules and standards for running a
11 story. I read the memo and I would recognize it if I saw it, but I wouldn't say I read it closely.

12 As a photojournalist, I do all the camera work for all of the stories we're working on.
13 That includes shooting the reporters' interviews and stand-ups, but also shooting the subjects and
14 scenery of our piece. The job has me traveling a lot to exotic places like St. Petersburg,
15 Minneapolis, Des Moines, and Waukegan. Sometimes I get to meet celebrities, fashion models,
16 musicians, actors and actresses—it's a blast.

17 I was put on an unusual job for September 24, 2006. The gig took place at the Midlands
18 Civic Center in Polk County, Midlands. The station paired me with Reagan Thomas, a pretty
19 new but enthusiastic reporter who was coming into town to cover the Walton-Hamilton debate. I
20 was really surprised that BNN was covering the debate. We usually stick to things like awards
21 shows, murder investigations, public scandals, stuff like that. I get that we're trying to be more
22 serious, but since when did we become a snooze-fest like C-SPAN? This was the first time I've
23 been sent to cover anything political, let alone a boring debate on gun control. For them to fly

me and Thomas all the way out to Midlands made even less sense. I know Drew Walton is a celebrity—we’ve covered Walton dozens of times. But that was always about trying to figure out which Hollywood star Walton was dating, or how much money Walton spent on this year’s birthday party or last minute trip to a Vegas night club.

All my buddies at BNN say that the reason the network sent us to cover the debate is that our new President Kit Berkshire hates Drew Walton and the Walton family. It makes sense. Ever since Walton announced in early 2006 that Walton was running for Midlands governor, it seems like BNN has been trying to destroy Walton’s campaign. We interviewed Walton’s angry exes. We interviewed the sleazy reporters that Walton punched a couple of years ago. We linked Walton to the Midlands night clubs notorious for drug use. Every story we run on Walton is negative, which is strange since our viewers really like Walton. It doesn’t bother me, though. I just aim the camera where I’m told and make sure we get good footage.

On September 24, 2006, we got to the Civic Center early, around 7 pm for a debate set to start at 8. But unlike the other network crews there, BNN wasn’t covering the debate itself. We just wanted to interview Walton after the debate. I was on camera, Reagan Thomas was reporting, and Fran Martin was producing (though not present at the Civic Center).

Since we weren’t covering the debate itself, I decided to head across the street to a bar called Chuggy’s. I was there for two hours and had about three drinks. I was back a few minutes after 9 pm, ready to shoot some footage. I went up to Reagan Thomas, who said, “Look at your eyes! Have you been drinking?” Thomas was just being a stick in the mud. I felt totally sober—certainly sober enough to work a camera. At 9:20, after the debate ended, both participants exited behind the stage and took separate podiums for a press conference. All the questions were directed towards Walton and most reporters were openly commenting on how

47 Walton had dominated the debate. Hamilton just stood there, looking angrier and angrier.

48 Hamilton crossed his arms and got red in the face.

49 Reagan Thomas was another person who got annoyed during the press conference.

50 While all of the reporters were asking serious questions about gun control, polling results, and
51 the gubernatorial election, Thomas was asking the usual BNN questions: “Has running for office
52 affected your dating life?” “Who’s the best looking person in politics?” “Where did you get that
53 suit?” Stuff like that. Eventually, Drew Walton just gave Thomas a condescending smile and
54 said, “I’m here to answer questions of substance. I’m here to answer questions from *real* news
55 reporters.” Thomas just grabbed my arm and we left. “Walton’s not going to answer any of our
56 questions. I’m going to take a quick peek in Walton’s dressing room, maybe get a quote from
57 Walton’s personal assistant, then we’ll split. I’ll meet you in the parking lot out back.”

58 At 9:40, I went out behind the Civic Center, loaded my camera equipment into the truck,
59 and waited outside the truck for Thomas to come back. It was dark out, but I was standing under
60 a light, so I could see pretty well. At about 9:45, I saw Drew Walton and Walton’s personal
61 assistant come out the rear door of the Center. The assistant opened the rear door of a limo for
62 Walton, who removed a jacket and tossed it into the car. The assistant got into the driver’s seat
63 and I heard the engine start. All of a sudden, I heard screaming. Lane Hamilton had exited the
64 Center and was yelling at Drew Walton. I could see Walton’s back and Hamilton’s face.
65 Hamilton said, “You’re wrong on gun control and you’re wrong for this country. You might be
66 able to fool voters with that propaganda, but your father would see right through it. If he saw
67 you tonight, he would be ashamed.” As soon as Hamilton mentioned Walton’s father, Walton’s
68 demeanor changed from irritation to anger. Walton said something like, “Don’t you dare talk
69 about my father.” That’s when Walton reached into the car and pulled out a gun.

70 I immediately started dialing Reagan Thomas's cell phone number and I went to grab my
71 camera from the back of the truck. I had to take my eyes off of Hamilton and Walton, but my
72 job isn't to see events—it's to capture them on tape. I was still getting my camera ready, when I
73 heard a gunshot go off. I ducked my head inside the back of the truck. I heard a second shot. I
74 peeked out from behind the truck and saw Hamilton on the ground. He wasn't moving, though it
75 looked like he was bleeding. Drew Walton was touching Hamilton's body but I couldn't tell
76 what Walton was doing. The last thing I saw before the shots was Walton holding a gun, and the
77 first thing I saw after the shots was Walton crouching by the body. I only looked away for about
78 thirty seconds. I didn't see Walton shoot Hamilton, but I assume that's what happened.

79 A few seconds after the second shot was fired, Reagan came running out of the Civic
80 Center. Reagan asked me what I saw and I gave Reagan the whole story, detail by detail. Pretty
81 soon, a crowd had gathered, including lots of other reporters, and by 9:50 the cops arrived. The
82 cops wanted my story so I couldn't get much action on camera—I caught flack for that later.
83 Drew Walton started doing a press conference at 9:55. I asked Reagan Thomas if I film the
84 Walton press conference. Reagan said, "No, every other channel is listening to Walton's self-
85 serving story. I don't care what Walton has to say. If I want to break this story, I've got to
86 interview the eyewitnesses." So that's what Reagan did. Instead of listening to Walton, Reagan
87 talked to everyone else. Reagan asked me about what I saw. Reagan spoke to the police chief,
88 Captain Vanunu. Reagan talked to one of the crime scene investigators. Reagan interviewed
89 Walton's assistant, who said it was a suicide. Reagan was also approached by a janitor, but that
90 conversation lasted about 15 seconds because Reagan didn't ask the janitor any questions.

91 By 10:05, I heard Reagan on the phone with our producer, Fran Martin. I only heard one
92 side of the conversation. Reagan went through all of the interviews and what each person had

said. Reagan wanted to get on the air and say that Walton had shot Hamilton. I could tell from Reagan's reaction that Martin had refused to let Reagan run the story. I've worked with Fran Martin before. Martin is reasonable and professional and I figured Martin's decision was the end of it—we'd just get on air and make the same report that every other station was running, that Hamilton was dead. But as soon as Reagan got off the phone with Martin, Reagan called Kit Berkshire. I couldn't believe it! Reagan gave the same recap to Berkshire that Reagan had given Martin. Reagan smiled and hung up the phone. "We're running the story," Reagan said.

The next thing I know we're live on BNN, interrupting the network's coverage of the Oski Awards. Reagan basically accused Walton of murder. I'm proud to be part of the biggest news story in Midlands history and the biggest story that BNN has ever run. The company gave me an immediate raise and now I get the best gigs in the sweetest locales. I hope to have a long future with BNN.

I hereby attest to having read the above statement and swear or affirm it to be my own. By signing this document I swear to or affirm the truthfulness of its content. I understand that I have an opportunity to update this affidavit and that unless such is done prior to such a time whereas I may be called upon to testify in court, and that in such an event a copy of my updated statement is given to all parties involved in this case, I am bound by the content herein.

Harley Kim

Subscribed and sworn before me this day April 1, 2007

Carol Spencer

Notary Public

1 **AFFIDAVIT OF FRAN MARTIN**

2 After being duly sworn upon oath, Fran Martin hereby deposes and states as follows:

3 My name is Fran Martin. I live in Anchorage, Alaska, but I used to live in Manhattan,
4 New York. I was born in 1969. Dad was never around and my mother was a hairstylist. Since
5 our family couldn't afford babysitting, I spent a lot of time at the salon with my mother. That's
6 where I started reading the gossip magazines and tabloids. I knew who each celebrity was
7 dating, which ones had gotten plastic surgery and which ones had checked into rehab. I grew to
8 love the stuff. My dream was to cover celebrities for a living.

9 After high school, I turned down a few college opportunities and instead got an entry-
10 level position at Blitz Magazine, a periodical devoted to entertainment and celebrity gossip. I
11 opened mail, brought coffee to the editors, and basically served as office gopher. I worked hard
12 and moved my way up, so when Blitz Enterprises founded Blitz TV in 1988, I became a low-
13 level editing assistant. Over the years, I worked my way up the ladder and, in 2002, I was
14 promoted to Producer. I've never actually worked as a reporter or anchor. For my entire career,
15 I've focused on the work going on behind the camera, including general production issues,
16 technical management, and programming coordination. I've never worked in front of the
17 camera, but I've never been very comfortable with an audience.

18 In 2004, Blitz renamed itself Blitz News Network ("BNN") in an effort to become more
19 serious. We still featured a lot of the same content as before, such as talk shows, game shows,
20 and reality TV, but we added a ton of news content, including a 24-hour news desk that could cut
21 into a broadcast at any time a story broke. The transition was difficult for me since my interests
22 lie with celebrity gossip and the entertainment industry, not politics, business or human interest
23 stories. But fortunately, BNN still retained its sensational feel as it covered current events.

24 In early September 2006, I heard BNN would be covering the September 24, 2006
25 Hamilton-Walton gun control debate and that I would be the producer in charge of the coverage.
26 Before I got the assignment, I didn't know there was a debate. In fact, I hadn't even heard of
27 Lane Hamilton. The closest I come to politics is trying to predict which politician will be the
28 next subject of scandal. I know Drew Walton is a major celebrity but I was nonetheless shocked
29 that BNN wanted to cover a political debate. I called BNN President Kit Berkshire.

30 Berkshire became BNN President back in 2004 when we transitioned ourselves to a news
31 organization. Berkshire had headed the news department for the United Broadcasting Company,
32 one of the largest, most respected and most profitable television networks in the world. Ever
33 since I was a teenager, I had always admired Berkshire's work for UBC as professional, reliable
34 and well-researched. But after Berkshire arrived at BNN, when I personally worked with
35 Berkshire on more than five occasions, I was especially impressed. Prior to the events
36 surrounding the Walton-Hamilton debate, I found Berkshire to be smart, wise, and cautious.

37 In 2005, I was covering a story about the famous Bailey Reynolds kidnapping. I wanted
38 to run this story about how the babysitter was a suspect that the police had overlooked, because
39 she had a troubled past, needed money, and had access to the drug used to sedate the kidnapped
40 child. But Berkshire wouldn't let me run the story until I had more evidence. Berkshire
41 reminded me that while sensationalism sells, it also risks destroying real lives. The babysitter
42 turned out to be innocent and, thanks to Berkshire's conservatism, we spared a young girl an
43 accusation that might have been difficult to overcome.

44 Anyway, I called Berkshire in September 2006 to ask why BNN was covering the
45 political debate. Berkshire told me that Walton was a celebrity. I reminded Berkshire that BNN
46 had never covered Jesse Ventura's or Arnold Schwarzenegger's political campaigns even though

47 they were celebrities. Berkshire said, “This is an important election. Voters need to know what
48 kind of person Walton is.” Berkshire sounded hostile towards Walton, so I dropped the topic.

49 On September 24, 2006, I coordinated with our engineering staff, photojournalist Harley
50 Kim, and reporter Reagan Thomas, who we sent to report on site at the Midlands Civic Center.
51 We were under orders from Berkshire not to cover the debate but only to ask Walton some
52 questions after the debate. That made sense—our viewers would have no interest in a gun
53 control debate, but they might enjoy hearing a few lines from Walton, always one of our best-
54 selling subjects. Still, we were sending one of our best photojournalists, one of our top reporters,
55 and booking a satellite truck all the way out to Midlands...just to ask two or three questions. It
56 seemed like a very costly, inefficient use of resources, but I could tell this was a big deal to
57 Berkshire, so I didn’t protest. I’ve learned that, to get ahead, sometimes you need to say what
58 people want to hear—and sometimes, you just have to keep your mouth shut.

59 During the debate, I got an email from Reagan Thomas with some proposed interview
60 questions for Drew Walton. Thomas wanted to ask about Walton’s political stances. They were
61 good questions for other networks, but the BNN audience wants insight into fashion and
62 romance, not gun control and economic measures. Thomas is an excellent reporter—a great
63 rapport with interviewees, a good nose for a story, and an unmatched work ethic—but sometimes
64 it’s obvious that Thomas doesn’t consider BNN to be “real journalism.” It always seems that
65 Thomas would rather be working at CNN than BNN and it leads Thomas to push stories that
66 don’t always get the best ratings. In this case, I rejected Thomas’s questions for Walton and sent
67 back a more appropriate set of interview questions.

68 After the debate, at 9:40, I got a call from Thomas that Walton hadn’t been receptive to
69 the questions I drafted. Thomas didn’t sound happy with me. Thomas said, “I’m going to do a

70 little more digging. I'll let you know if I find anything." At 9:50, I got a call from one of my
71 friends, telling me to put on the news. "Which station?" I asked. "Anyone but BNN," she said.
72 That night, we were showing the Oski Awards, BNN's biggest televised event of the year. I
73 grabbed the remote and flipped through the major networks.

74 Every major network had cut into their regular broadcasts and was reporting either from
75 the Midlands Civic Center or from their studios. One network's reporter said, "Professor Lane
76 Hamilton is dead, found here in the Civic Center parking lot just moments ago, an apparent
77 victim of a gunshot wound to the head. Gubernatorial candidate Drew Walton may have been
78 here at the scene. It's too early to determine the nature of Hamilton's death, but we will bring
79 you new developments as they happen." Another network said, "After a debate between
80 gubernatorial candidate Drew Walton and Midlands University Professor Lane Hamilton, police
81 on the scene say Professor Hamilton was found dead in the parking lot behind the Midlands
82 Civic Center. It's too early to say why or how Hamilton died, but early reports, apparently based
83 on statements from Drew Walton, suggest that this may be a suicide."

84 I immediately dialed Thomas's cell phone. I wanted to know why we were the only
85 network with reporters at the Civic Center that wasn't covering the Hamilton death. Thomas's
86 cell phone went to voicemail. Then I saw another network was showing a live press conference
87 with Drew Walton, who said, "I was there when it happened. I was there when Hamilton shot
88 himself. It was horrible." I redialed Thomas's phone, but again got no answer. I kept dialing
89 Thomas and Harley Kim, but I kept getting their voicemail. I even didn't get a response when I
90 tried to talk to our truck, or Reagan and Harley, directly through the satellite connection. I could
91 tell something strange was going on.

92 At 10:05, I finally got a call from Reagan Thomas. I started chastising Reagan for the
93 fact that we were the only network covering the debate that hadn't reported on Hamilton's death.
94 Reagan interrupted me by saying, "Fran, I've got the biggest story you've ever heard. I think
95 Drew Walton murdered Hamilton." I asked Reagan for the evidence supporting that conclusion.
96 When I heard the basis for Reagan's conclusion, I knew that they didn't meet our network's
97 journalistic standards, described in Berkshire's January 1, 2004 memo. I told Reagan that we
98 weren't going to run the story but, as I was explaining why, Reagan hung up the phone.

99 You can imagine my surprise when about five minutes after I got off the phone, our
100 control booth came over the intercom to tell me BNN was interrupting the Oski Awards
101 broadcast with a live report from the Midlands Civic Center. My jaw dropped when I heard
102 Reagan accuse Drew Walton of shooting Lane Hamilton. I was more furious than I've ever
103 been. I dialed Reagan's cell phone, but of course Reagan didn't answer. I called Berkshire, who
104 picked up immediately. Before I could complain, Berkshire cut me off. "I can't believe you told
105 Reagan not to run that story. This is the biggest story of the year. This is going to completely
106 change the governor's election." I told Berkshire that Reagan didn't have sufficient evidence to
107 accuse Walton of murder. Berkshire responded, "First of all, Reagan didn't accuse Walton of
108 murder. Second of all, Reagan stated the news report as an opinion. And as to the issue of
109 sufficient evidence, well, we'll discuss that tomorrow—that is, if you still have a job tomorrow."

110 After Berkshire threatened my job, I decided to put my side of the story in writing before
111 Berkshire or Thomas could undercut me. I wrote a memo to Kit Berkshire on the morning of
112 Monday, September 25, 2006. The memo includes everything I learned from Reagan Thomas
113 during our conversation of approximately 10:05 pm on September 24, 2006 and my reasons for
114 not allowing Reagan Thomas to broadcast the accusation against Walton.

115 I learned from coworkers that Berkshire had overridden my decision and allowed Reagan
116 Thomas to make the accusation against Walton. Many decisions of whether to run a story are
117 close calls that come down to judgment. Sometimes one journalist will think she has enough
118 evidence to make a broadcast, where another doesn't think so. This doesn't necessarily mean
119 that one is right and the other is wrong. I can think of several instances where Berkshire and I
120 disagreed about a judgment call—and almost every time, Berkshire ended up being right.

121 Still, I couldn't understand why Berkshire would do that with the lack of evidence against
122 Walton. It wasn't the sort of responsible journalism that had been the hallmark of Berkshire's
123 reputation. I decided to investigate. I watched all of the recent Drew Walton segments that
124 BNN had aired since Berkshire took over as President. Almost every segment was negative,
125 depicting Drew Walton as shallow and privileged—a huge change from the fairly positive
126 treatment that Walton was given by BNN prior to 2004.

127 I watched the first BNN broadcast after Walton announced that Walton was running for
128 governor. BNN cut away from the press conference and immediately started showing photos of
129 Drew Walton looking drunk after a party in 1995 and video clips of Walton screaming at
130 paparazzi. Katie Lynn, the BNN anchor, questioned whether Walton's temper and inexperience
131 made Walton a weak candidate for public office, but offered nothing positive about Walton's
132 candidacy or announcement. On another network, this sort of journalism would be considered
133 biased. But for BNN, a network that had never before taken an interest in politics, it seemed
134 especially nasty and vindictive. It was clear to me that someone at BNN—I suspected
135 Berkshire—was going out of his or her way to attack Drew Walton. I did a little more digging—
136 apparently, Berkshire had personally contributed money to the campaign of Neal McGivern, the
137 man running against Drew Walton in the Midlands gubernatorial race.

I was going to bring these concerns to the attention of BNN's management but I never got the chance. On Tuesday, September 26, 2006, Kit Berkshire walked into my office with BNN's general counsel, Bonnie Sood. Berkshire didn't say a word, but just smiled as Sood said I was being reassigned to our local affiliate all the way down in market number 154—Anchorage, Alaska. She explained to me that the reassignment was effective immediately. I'm been working in Anchorage ever since, covering stories about how to get a fishing license, and about kids who make really large snowmen. I make 25% of what I used to make but, worst of all, there's no celebrity gossip to cover in Alaska. When I tried to interview at other news stations and tabloid magazines, no one would return my calls. I blame Berkshire for my terrible reassignment, and I suspect Berkshire made calls to other executives and told them not to hire me. Berkshire ruined my dream job.

I hereby attest to having read the above statement and swear or affirm it to be my own. By signing this document I swear to or affirm the truthfulness of its content. I understand that I have an opportunity to update this affidavit and that unless such is done prior to such a time whereas I may be called upon to testify in court, and that in such an event a copy of my updated statement is given to all parties involved in this case, I am bound by the content herein.

Fran Martin

Subscribed and sworn before me this day April 1, 2007

Carol Spencer

Notary Public

AFFIDAVIT OF MICKEY MCQUIGGAN

After being duly sworn upon oath, Mickey McQuiggan hereby deposes and states as follows:

My name is Mickey McQuiggan. I was born in 1978. I live at 4120 Larchwood Street in Midlands City, Midlands. I got a four-year degree from the University of Minnesota at Morris, graduating with honors in biochemistry and a minor in physics. After a year of unsatisfying work in a lab, I decided on a career change. While watching *CSI: Midlands* on TV one night, I realized microscopes can help with more than just curing diseases—they can solve crimes. I received a two-year graduate degree in forensic science from Midlands University and accepted a job with the Midlands City coroner's office. My official title is "death investigator"—but, thankfully, people often use other titles.

As a DI, I conduct the initial investigative phase surrounding any "reportable" death—any death that is sudden, unexplained, traumatic, or medically unattended. I've been trained in evaluation of postmortem physiological changes, including establishing time of death, and evidence collection procedure. I have training and experience in specializations like ballistics analysis and crime scene reconstruction. I guess you could say that I do a little bit of everything and perpetrators find that out the hard way. I've been lead DI for more than 200 cases.

I was on duty the night of Sunday, September 24, 2006. The weather was unusually cold, about 40 degrees with strong winds. It's hard enough to collect good evidence without having to worry about the elements, not to mention shivering. At exactly 9:47 that night, the station got a call about a high-profile shooting at the Midlands Civic Center potentially involving Drew Walton. Typically, DIs work in pairs so we don't miss anything but, because my partner had the flu, they had staffed me alone that night. I grabbed my kit and hopped in the unit with the Police Captain Vanunu, who drove.

24 We got there at 9:50 and found the craziest death scene of my career. There was a
25 camera crew there already, with lots of people milling around, and to boot, there was no
26 authority figure. We were actually the first response team. Civic Center security personnel had
27 created a twenty-five foot perimeter around the body. There is a difference between security
28 guards and forensic investigators, so I worried about whether the crime scene had been
29 compromised before our arrival. There is no way to tell for sure, but everything looked in order.

30 The body was Lane Hamilton, as identified by driver's license and several who knew the
31 man. Hamilton was on his back. There was a bullet hole in his head; he was dead. His body
32 was still warm. I would later conduct more extensive analysis of time of death, but Hamilton
33 had clearly died within the last few minutes. Both of his arms were to the side, almost in the
34 position of a snow angel. He had gloves on both hands. A Beretta 92 was 18 inches from
35 Hamilton's right hand. I found no evidence that the gun had been moved or contaminated.

36 Vanunu confronted and frisked Drew Walton, who was standing nearby, looking dazed.
37 Walton insisted that Hamilton had shot himself with the pistol on the ground. Walton
38 acknowledged that the Beretta pistol was owned by and registered to Walton. Our interaction
39 with Walton was cordial and professional because Walton was so cooperative. We never
40 handcuffed Walton, placed Walton under arrest, or read Walton Miranda rights. Walton
41 voluntarily got into a squad car with a police officer and went to the police precinct for
42 questioning. After that, I had four officers quickly secure the scene with the standard double
43 perimeter of police tape.

44 The first thing I did was bag and tag the Beretta pistol lying on the ground not too far
45 from Hamilton. The Beretta 92 is a 9mm semiautomatic, single-action handgun. Semiautomatic

46 weapons can be fired without chambering another round; single-action weapons don't need to be
47 cocked. Hamilton's head wound was consistent with the Beretta I found next to Hamilton.

48 At first, I suspected that we had a homicide on our hands, simply because people usually
49 don't shoot themselves in front of an audience, especially when the audience owns the gun. Just
50 as I was thinking that, someone on the other side of the tape said to me, "Looks like Walton's
51 halo just got a little rust on it, huh?" I gave an offhand response like "When two people are
52 present at a shooting, I wouldn't want to be the one standing when the police arrive." When the
53 person started asking more questions, I realized the person was a reporter, so I explained that the
54 investigation was ongoing and we had not yet determined whether it was suicide or homicide. I
55 found out later that the person I had responded to was national news reporter Reagan Thomas.

56 I also saw Captain Vanunu make a brief announcement to all of the reporters at 10:05,
57 including Thomas. All he said was that Drew Walton owned the gun recovered by Hamilton's
58 body, but that Walton was claiming that Hamilton committed suicide right in front of Walton.

59 Getting back to my investigation, I found a bullet deeply embedded in the pavement
60 about twenty feet from the body, and was immediately able to confirm it as consistent with the
61 Beretta's slug. The location of that bullet seemed inconsistent with it having been the bullet that
62 caused the head wound. I found a second a bullet in the wall of the Civic Center, consistent with
63 it having been the bullet that killed Hamilton. This, and the lack of a bullet in the ground by
64 Hamilton, tells us that Hamilton must have been shot standing up. Strangely, I only found one
65 shell casing near Hamilton's body. I never found the second shell casing.

66 I later prepped the body itself for delivery to the morgue, and made sure to specially bag
67 Hamilton's gloves to preserve them for gunshot residue ("GSR") analysis. GSR testing is used
68 to determine whether someone fired a gun. If someone fires a gun, tiny particles of gunshot

69 primer residue—simply “gunshot residue” for short—are expelled from the barrel of a firearm.
70 Gunshot residue contains heavy metals barium, lead and antimony.

71 I find GSR testing to be reliable, though its use is controversial. Several well-regarded
72 experts state that GSR testing can never determine whether someone has fired a gun. It is
73 indisputable that someone can acquire gunshot residue without actually firing a gun. You can
74 get gunshot residue on your own hands if you come into contact with someone or something
75 already covered in gunshot residue. Numerous studies have found high GSR concentrations in
76 police cars, in police stations and on police officers themselves. It’s important to perform GSR
77 testing as soon as possible, or at least immediately isolate the specimen from contamination. In
78 order to be more certain that GSR actually indicates that a person has fired a gun, some experts
79 only look for a specific type of particle—one that contains lead, barium *and* antimony, as
80 opposed to particles that contain any of the three metals. I used that strict standard in this case.

81 Specifically, I performed GSR testing on four surfaces: Hamilton’s gloves and Walton’s
82 hands. Walton and Hamilton are both right-handed. Hamilton’s left glove had no GSR particles.
83 Hamilton’s right glove tested positive for gunshot residue; his right glove contained more than
84 200 GSR particles, 73 of which contained all three of lead, barium and antimony. This is very
85 strong evidence that Hamilton fired a gun. Working alone, I didn’t have time or equipment to do
86 a GSR test on Walton’s gloves or clothing at the scene. I performed GSR tests on Walton just
87 before midnight on September 24, 2006, right after Walton was questioned at the police station.
88 Both of Walton’s hands tested positive for gunshot residue. Walton’s right hand contained about
89 75 GSR particles, but only three that contained barium, lead and antimony. Walton’s left hand
90 contained 25 GSR particles but none that contained all three metals (lead, barium, antimony).
91 These results are inconclusive, only indicating that Walton may have fired a gun.

I tested the Beretta found by Hamilton's right hand. The Beretta 92 holds 15 bullets (14 in the magazine and 1 more in the chamber) but I found only 13 cartridges of standard 9mm parabellum ammunition in the pistol (12 in the cylinder and 1 in the chamber). The bullet recovered at the Civic Center was of the same type as those found in the pistol. Minimal residue build-up indicated the firearm had recently been cleaned but fired afterward. I concluded that the Beretta recovered near Hamilton was the weapon that killed him.

I performed ballistics tests to determine the distance from which Hamilton was shot. Using the Beretta and the ammunition found in it, I established a muzzle to target ratio. With a contact shot, the produced stippling pattern caused by release of powder and gas particles varied between no stippling at all and stippling with a $\frac{1}{4}$ radius surrounding the point of contact. At three inches, the stippling pattern varied between $\frac{1}{4}$ inch and $\frac{1}{2}$ inch in radius surrounding the point of contact. At six inches, the stippling varied between $\frac{1}{2}$ inch to 1 inch in radius. Based on these tests and the autopsy report, I am 99.5% certain that the Beretta's muzzle was between zero and 4 inches from the decedent's head at the time of discharge. The most likely scenario is a contact shot—that is, the muzzle was touching Hamilton's head at the time of discharge.

I also lifted seven fingerprints from the Beretta. Three of those prints were unidentifiable but, with 95% certainty, I matched three of the prints to Walton's right hand and one to Walton's left hand. I cannot determine when Walton handled the pistol. The presence of Walton's fingerprints on the pistol is unremarkable since registration records and Walton's own admission confirm that Walton owned the pistol.

I was present during the autopsy. As is typical for every DI, I relied on the entirety of the autopsy report in forming my conclusions. I was trained in analyzing autopsy results. If Hamilton was killed in a manner other than suicide, I wanted to determine the height of the

shooter, but the angle of the entrance wound combined with Hamilton's height means that the shooter could have been any height (assuming, of course, that this was not a suicide).

I considered all of the evidence—the autopsy report, the gunshot residue testing, the ballistics exams, and the fingerprints—in determining whether Hamilton's death was homicide or suicide. I acknowledge that it is possible that Hamilton's death was a homicide. Most suicides involve only one gunshot, rather than the two fired here. About a third of all suicide victims leave a suicide note, but none was found here. And some of the forensic evidence is consistent with homicide. Ultimately, however, the totality of forensic evidence caused me to conclude that suicide was the more likely manner of death. Namely, the GSR testing, the autopsy results, the fact this was probably a contact wound, and the location of the gun all indicate a death scenario of suicide. Based on my conclusion, the Midlands Coroner's Office announced Hamilton's death as a suicide on the evening of September 25, 2006.

I hereby attest to having read the above statement and swear or affirm it to be my own. By signing this document I swear to or affirm the truthfulness of its content. I understand that I have an opportunity to update this affidavit and that unless such is done prior to such a time whereas I may be called upon to testify in court, and that in such an event a copy of my updated statement is given to all parties involved in this case, I am bound by the content herein.

Mickey McQuiggan

Subscribed and sworn before me this day April 1, 2007

Carol Spencer

Notary Public

AFFIDAVIT OF JAN PATEL

After being duly sworn upon oath, Jan Patel hereby deposes and states as follows:

My name is Jan Patel. I'm thirty-two years of age, and live at 18 Eighth Street, in Midlands City, Midlands. I never finished high school but I did get my G.E.D. I moved to Midlands a few years ago, looking for a fresh start. I've held a variety of odd jobs over the years, but when I moved to Midlands, I got a job as a janitor at the Midlands Civic Center, basically just cleaning up after other peoples' parties, banquets, speeches, and weddings. My job isn't the most glorious position in the world, I know, but it's not too bad. I have lots of friends on the cleaning staff, and plenty of us have side jobs or take classes.

The most exciting day of my life was September 24, 2006 because it was the day I finally met my hero, Drew Walton. I've always enjoyed reading the tabloids magazines and watching gossip shows on BNN, and Drew Walton was my favorite celebrity. I was so proud of Drew for completing anger management. I remember watching the interview where Drew said, "I've always had a problem with anger. Sometimes I've reacted violently to minor frustrations and disagreements. But it's a problem I acknowledge and a problem I've overcome."

I used to pretend that I was the heir to the Walton kingdom. Drew was so cool and hip and good-looking, and was always dating the newest and hottest celebrity. When I saw photos of Drew Walton and Drew's latest celebrity date, I would cut them out and put them on my refrigerator—all 8 photos on my fridge include Drew! I thought about pasting my photo into their photos, but decided not to because that would be creepy and, besides, it would be too much work. Anyway, when I heard that Drew was running for governor, I was so inspired! That's when I started studying for the GED. I don't know what I'm going to do after I stop being a janitor. Maybe I'll run for office like Drew did.

24 Anyway, I finally got to meet my hero on September 24, 2006 because Walton was in
25 some kind of debate at the Civic Center—I saw the ads with pictures of Drew Walton and Lane
26 Hamilton. When I say we “met,” it’s not like I was on stage or anything. I was working that
27 night, and just as I was taking out the garbage around 9:45 pm, I heard voices yelling in the back
28 parking lot. I looked over in the direction of the yelling. It was hard to see. They don’t have a
29 lot of lights behind the Civic Center and it was pretty cloudy out so the moon wasn’t providing
30 much light. I saw two people standing by a huge limousine. I was about fifty feet away from the
31 limo but I have excellent eyesight. One person was standing next to the rear passenger side door,
32 which was open. Right away I recognized that person as Drew Walton. The other person was
33 standing about three feet away from Drew and was facing Drew. I recognized him as Lane
34 Hamilton. He was the one yelling. I heard Lane Hamilton scream, “I knew your father, Gerald
35 Walton, and you, Drew, are no Gerald Walton!” Drew and Lane Hamilton were standing still,
36 like mannequins at those nice department stores I walk by sometimes. I could see that
37 Hamilton’s lips were moving, but he wasn’t speaking loudly enough for me to hear.

38 I saw that Hamilton was holding a gun in his right hand. He was holding the gun in front
39 of him, about waist high, and was looking down at the gun. He wasn’t pointing the gun at
40 anyone but since I wasn’t sure what was going on, I decided to go get help. I turned away from
41 Drew and Lane Hamilton and began jogging back toward the Civic Center, where I thought I
42 could get a security guard. About five seconds after I turned away from the confrontation
43 between Drew and Hamilton, I heard what sounded like a gunshot, so I ducked down and
44 covered my ears. Then I heard another shot. I didn’t see who fired the shots because I was
45 facing the Civic Center, not the limo. But I assume it was Hamilton who fired the gun—not
46 Drew—because Hamilton was the one who had the gun. Besides, Drew wouldn’t hurt anyone.

47 Eventually, after about thirty seconds after the gunshots, I got the courage to look behind
48 me. Hamilton was on the ground and he wasn't moving. The gun was lying on the ground about
49 a foot-and-a-half away from his right hand. I saw Drew Walton hunched over Hamilton's
50 body, which was sprawled out on the ground. I'm pretty sure I saw Walton performing CPR, but
51 I was too far away to know for sure. I turned back toward the Civic Center and called for help.
52 Then I turned back toward Drew and Hamilton, and I started walking toward them. The gun
53 now seemed a lot closer to Hamilton's right hand—maybe about six inches away.

54 A few seconds later, more people came running out of the back door, one even carrying a
55 huge TV camera. Police came pretty fast, too, and the whole area was taped off within about
56 five minutes. Naturally, the place was an absolute zoo. There were a lot of reporters—probably
57 because of the whole debate thing from earlier that night—but the only one I recognized was
58 Reagan Thomas from BNN. Thomas is always doing great celebrity interviews. I learned from
59 Thomas's interviews which tattoo is Angelina's favorite and why Gwyneth likes strange baby
60 names. All the reporters were asking questions but the only one I felt comfortable talking to was
61 Thomas. So at about 9:55 pm, I went up to Thomas and said, "I saw the whole thing. I saw the
62 shooting. I can tell you it was a suicide. I can tell you that Drew Walton had nothing to do with
63 it. Do you want to interview me on camera? I'm ready to tell America what I saw." I really
64 wanted to make sure that Drew didn't get in trouble and I thought it would be exciting to be on
65 camera. Maybe I could become famous! And maybe Drew would want to thank me!

66 But Reagan Thomas totally blew me off. Thomas gave me this look like I was a crazy
67 person and walked away without saying anything or asking a single question. I must have
68 seemed a little bit nuts since I was talking so fast and excitedly to Thomas. But why wouldn't
69 Thomas at least find out what I saw before just walking away?

I hereby attest to having read the above statement and swear or affirm it to be my own.

By signing this document I swear to or affirm the truthfulness of its content. I understand that I have an opportunity to update this affidavit and that unless such is done prior to such a time whereas I may be called upon to testify in court, and that in such an event a copy of my updated statement is given to all parties involved in this case, I am bound by the content herein.

89 Subscribed and sworn before me this day April 1, 2007

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AFFIDAVIT OF REAGAN THOMAS

After being duly sworn upon oath, Reagan Thomas hereby deposes and states as follows:

My name is Reagan Thomas. I was born in 1977. I live primarily at 4120 Madison Avenue, New York, New York, but don't expect to find me there, because on any given night, I could be anywhere in the world.

I majored in journalism at Columbia University. After school, I worked for some small time papers and local television stations before I got a job at BNN in 2004. It wasn't exactly my dream job. I didn't work hard in school so I could report on celebrity gossip. But BNN is a national name and I figured that once I made my mark with BNN, I could get a job with one of the more serious networks. I want to be the Tom Brokaw or Katie Couric of my generation. Since working for BNN, I've worked as a reporter, investigative journalist and news anchor. Occasionally I do special interviews and field reports but until I became famous as a result of Lane Hamilton's death, I never got to report on anything major.

On the night of September 24, 2006, I had an odd assignment: BNN wanted me to go to Midlands City and cover a gun control debate between gubernatorial candidate Drew Walton and Professor Lane Hamilton. This was strange for a few reasons. First, BNN doesn't cover debates—certainly not political debates. We do political scandals, murder investigations and celebrity gossip. True, we've covered Drew Walton a lot in the past, but Walton is a major celebrity. I can't count the number of times I've seen Walton's face on magazine covers at the supermarket checkout. But even if our BNN viewers were interested in Walton, there was no way they'd be interested in a gun control debate.

Second, and even stranger, was the fact that BNN was sending such top-level personnel. The network flew me and Harley Kim, an experienced photojournalist, out to Midlands City

when they could have just used some less experienced local people. They also booked a local satellite truck for us to have live capabilities and the ability to feed back footage. The network assigned producer Fran Martin to the story. Martin is one of our most experienced and respected producers. BNN usually saves its top producers like Martin for big events. And to top it off, BNN President Kit Berkshire called me a week before the debate. I'd never before spoken to Berkshire, let alone met Berkshire. "I will make sure I'm available on the night of the debate. If you have any questions—any—you call me." I asked Berkshire why BNN was investing so many resources into this debate. "Let's just say I have an interest in Midlands's favorite child and a history with the Walton family. I want you to get some dirt no matter what it takes." I promised to do my best. I was flattered that Berkshire chose me for this when it clearly meant so much to Berkshire, and I was excited that I was going to get to do some real journalism.

I arrived at the Midlands Civic Center at 6:45 with photojournalist Harley Kim. I'd never worked with Kim before but had heard good things. The debate was supposed to start a little after 8:00 and end at around 9:15. All of the other studios were setting up to cover the debate, but Harley and I just relaxed and got a lay of the land. Producer Fran Martin had told us that BNN wouldn't be airing or reporting on the debate itself. We were there to ask some tough questions afterwards. Harley and I agreed to be ready at 9. I watched the debate and prepared my list of hard-hitting questions for Walton. I wanted to ask about Walton's political inexperience, about the vagueness of Walton's economic plan, and Walton's stance on gay marriage. I jotted down my prepared questions and emailed them to Martin. A few minutes later, I got an email back from Martin. Martin had nixed all of my political questions and replaced them with silly, superficial questions. I was furious. How was I supposed to get my big break if all I could ask were these puff questions?

47 Harley Kim returned around 9:10. Kim's eyes were bloodshot, Kim wore a goofy smile,
48 and I smelled beer on Kim's breath. I asked, "Are you drunk?" but Kim said, "I'm fine. Let's
49 go get a great soundbite from Dale Walton." As soon as the debate ended at 9:15 or so, we went
50 backstage to a press conference. Both Walton and Hamilton were there, but all of the questions
51 were directed towards Walton. I raised my hand and got called on quickly. I asked one of the
52 fluff questions Martin had sent me. "Next question," Walton responded. I waited a few
53 questions and jumped in again, asking "Drew, who are you dating now? Are you still seeing that
54 French model?" Walton paused and said, "I'm running for governor of the great state of
55 Midlands. It's a serious job that requires real ideas. That's why I'm only going to answer
56 questions from real reporters." I felt humiliated. At that moment, I felt like I was going to spend
57 the rest of my life interviewing reality television contestants using the last sixty seconds of their
58 fifteen minutes of fame.

59 Realizing that Walton wasn't going to answer any of my questions, I told Harley Kim to
60 wait out by the truck while I took a peek in Walton's dressing room. I figured that if I found
61 something interesting, I could make that the basis of my story. I glanced inside Walton's
62 dressing room, but I didn't find much—just a few toiletries and a small picture of Walton's
63 father, the late Governor Gerald Walton. It was 9:45. I was starting to brainstorm what kind of
64 story I was going to put together—I had no answers from Walton and nothing juicy from the
65 debate—when I heard a gun shot. I started walking toward the back of the building, where it
66 sounded like the shot came from, and then I heard another gunshot.

67 I ran into the parking lot behind the Civic Center. The first thing I saw was Drew Walton
68 down on one knee about fifty feet away. Walton was leaning over a body on the ground.
69 Walton's hands were on the body. I couldn't tell what Walton was doing—it looked like Walton

70 was going through the person's pockets or something. When I started running towards Walton,
71 Walton immediately stood and put hands up. Walton's facial expression and body language
72 indicated guilt. Walton's hands were covered with blood. That's when I saw that the body on
73 the ground was Professor Hamilton, with blood everywhere. I saw a gun on the pavement a few
74 feet away. No one else was in the vicinity. I didn't see what happened, but it was pretty obvious
75 that either Walton had shot Hamilton or Hamilton had shot himself. Within seconds, there were
76 people milling all over the place, but luckily, the building's security team cleared out the scene
77 with surprising speed and efficiency.

78 This was a reporter's dream. Hamilton was one of the leading American scholars.
79 Walton was one of the country's most popular and famous celebrities, and a strong favorite to be
80 Midlands' next governor. And here I was, the first reporter on scene. I knew right away that this
81 was going to be my big break—this was going to catapult me from BNN to real national news. I
82 turned to Harley Kim, who had come over to the edge of the taped-off area, and started shooting
83 video. Harley said, "I saw it, dude. I can't believe it." I hadn't seen Harley when I came outside
84 but, to be fair, I was focused on Walton more than anyone else (a good journalist never takes his
85 or her eyes off the subject). From what Harley told me, Harley was standing outside by our
86 satellite truck when Hamilton and Walton got into an argument. Harley said, "Hamilton made a
87 mean comment about Walton's dad, Walton got real angry and pulled out a gun, and the next
88 thing I know, I hear two shots and Hamilton is on the ground and there's blood everywhere."

89 At this point, I had visions of an Emmy Award running through my head. It sounded like
90 Walton shot Hamilton because Hamilton insulted Walton's father. This made total sense. I've
91 been covering Walton for years as a BNN reporter. I knew all about Walton's famous temper—
92 three assault charges, two convictions, and an uncountable number of screaming matches and

93 physical threats to reporters. I know that one of those assault charges involved a gun and another
94 came after a reporter insulted Walton's father.

95 Harley Kim's story and Walton's history convinced me that Walton had shot Hamilton.

96 Now I just needed to prove it. I looked down at my watch. It was 9:50. I knew that if I wanted

97 to be the one who broke the story, I would need to act quickly. Other reporters were standing

98 around Drew Walton, who was answering questions. I couldn't hear what was being said and,

99 frankly, I didn't much care. I knew Walton would just proclaim innocence. While other

100 reporters were being fed what Walton wanted them to hear, I would be getting the real story.

101 When I found out late that night that Walton did, in fact, proclaim innocence, just as I expected, I

102 felt justified in skipping Walton's self-serving post-shooting question and answer session.

103 I grabbed Harley, who was with me the rest of the night, and started interviewing

104 everyone I could. It didn't take long because there were so few eyewitnesses. I talked to the

105 Midlands crime scene investigator, Mickey McQuiggan, who was standing inside the taped-off

106 area that surrounded the body. I asked McQuiggan what happened. McQuiggan said, "Well,

107 when there's two people and one of them is dead, it sure doesn't look good for the other one." I

108 started jotting that down on my pad and I think that's when McQuiggan realized I was a reporter.

109 McQuiggan immediately started backpedaling, saying, "I need to emphasize that our

110 investigation is only preliminary and we haven't reached any firm conclusions regarding the

111 events that transpired." As a reporter, I've learned to ignore the political double-speak and focus

112 on what the subject says when his or her guard is down. In this case, I read between the lines

113 and concluded that the CSI thought Walton shot Hamilton.

114 I also listened to Midlands Police Captain Vanunu, who was surrounded by other

115 reporters. Captain Vanunu said that the police had already briefly questioned Walton and would

116 soon be taking Walton down to the police precinct for further questioning. Captain Vanunu said
117 Walton acknowledged that the gun found on the ground by Hamilton's body was, in fact,
118 Walton's gun. Vanunu ended by saying that the investigation was in its earliest stages and that
119 the only thing that could be reported with certainty was that Professor Lane Hamilton had died as
120 a result of a gunshot wound to the head.

121 Other than Harley Kim, I only spoke to two other "eyewitnesses" before calling my
122 producer but I ultimately discounted both of their stories. The first was a person wearing a
123 janitor's uniform—the shirt read "Civic Center Maintenance." I could tell the person was a
124 janitor by the clothing. I saw the janitor's photograph in the newspaper the next day and learned
125 that the janitor's name is Jan Patel. The janitor came up to me, ranting and raving, clearly eager
126 to get my attention. All the janitor said was, "Hey, Reagan! I saw everything! Hamilton
127 committed suicide. Drew Walton is totally innocent. If you want to interview me, I will tell
128 America what I saw. I will tell America that Walton is innocent."

129 I didn't ask Patel any questions or follow-up on Patel's story because I didn't trust Patel.
130 As a reporter, you have to decide which sources you trust and which ones you don't. I've been
131 doing this a long time I've developed a pretty good sense of who's telling the truth. Besides, I
132 didn't have a lot of time to break this story, so I had to be selective about whom I spent time
133 interviewing. I had three good reasons for not trusting what Patel said about it being a suicide.
134 First, no offense, but Patel was just a janitor. Second, Patel clearly wanted to be on television
135 and I've learned not to trust sources who want the spotlight so badly. They'll say anything to get
136 on television. Third, when I came outside, I didn't see Patel or anyone else in a janitor's
137 uniform. If Patel had actually been there when the shooting happened, I would have seen Patel.

138 The other eyewitness I spoke to was Walton's personal assistant, Casey French, who told
139 me, "I didn't see much because after that gun came out, I stayed in the limo. But I saw what
140 happened from the rearview mirror. Everything went down real fast, but I don't think Walton
141 had anything to do with it." I had trouble believing that French was able to see much through a
142 rearview mirror in a poorly-lighted parking lot on a dark night. When you toss in the gunshot
143 and the fact French was Walton's personal assistant, I figured French was too scared and too
144 biased to be a trustworthy source.

145 I put all of my credible information together and concluded that Walton shot Hamilton.
146 That's what it looked like when I came out of the building, that's what Harley Kim saw, and
147 that's what the police captain and the CSI seemed to be saying. At 10:05, I called Fran Martin to
148 get the green light to break in to normal programming and go live with the story. I told Martin
149 about everyone I'd interviewed, including Harley Kim, Mickey McQuiggan, Captain Vanunu,
150 the janitor and Casey French. I told Martin that I had wisely skipped the Walton parking lot
151 "press conference" since I knew the other networks' reporters would be listening to Walton's
152 self-serving drivel while I got the real scoop. Martin, however, failed to see the wisdom of my
153 decision to skip the Walton question-and-answer, and told me I should have listened to what
154 Walton had to say.

155 After I gave Martin the information I had gathered, I told Martin that I wanted to get on
156 air and break the story that Lane Hamilton was dead and it appeared Drew Walton was
157 responsible. Martin said no. "We don't have enough evidence to make that accusation. You
158 have conflicting eyewitness accounts and inconclusive statements from the police. We're not
159 running that story until you have a lot more solid information," Martin said.

I hung up the phone stunned. As a journalist, I know that I need to be cautious, but this was a huge story and there's no use being the second network to deliver it. Everyone remembers that Lindbergh was the first to cross the Atlantic, but does anyone remember who was second? Martin's timidity was going to cost the network ratings and it was going to cost me the kind of job that my journalism skills deserved. So I called Kit Berkshire, who picked up immediately. I told Berkshire exactly what I told Martin. But instead of criticizing my decision to skip the Walton question and answer session, Berkshire complimented me. "Good thinking," Berkshire said. "You got the real story while everyone else was taken in by Walton's spin machine." Berkshire said promised to call master control and authorize a breaking news cut-in report. Berkshire said, "Make sure you don't overstate things. Just stick to what you know and offer anything else in terms of your opinion." Within a few moments, we had a satellite window booked, and I was reporting live from the Civic Center.

I made an honest, detailed presentation based on the facts available at the time. I composed myself as much as possible under the circumstances, and told America about what had just happened. I was careful not to sound too certain about what had happened, because this was by no means an open-and-shut case. I reported what I saw, what others had confirmed, and what the evidence indicated. Besides, I never outright said that it was murder, I just indicated that it looked like Walton was somehow partly responsible for the death. I was only reporting my opinion of the facts.

The next day, the police ruled Hamilton's death a suicide. I have strong doubts about that. I stand by my report as being a well-founded piece of investigative journalism and live reporting, particularly in light of the fact that this was a hot news story. My investigation and broadcast report both complied with BNN's standards for investigative journalism, as described

in Kit Berkshire's January 1, 2004 memo. That memo still serves as a summary of the principles to which we at BNN always strive to adhere.

I assumed that this story would catapult me into the big time, but I didn't find it as easy as I expected to get a gig with the serious networks. One network executive told me that my Walton news report was "sloppy journalism" and another told me that her network "couldn't afford the liability insurance it would take" to hire me. BNN, however, was very pleased with my performance. Berkshire authorized a big raise. Now I'm one of BNN's biggest star anchors. I may not be covering the serious news I'd always dreamed about, but I'm on national television all the time and paid handsomely for my efforts. I owe BNN and Berkshire a lot.

I hereby attest to having read the above statement and swear or affirm it to be my own. By signing this document I swear to or affirm the truthfulness of its content. I understand that I have an opportunity to update this affidavit and that unless such is done prior to such a time whereas I may be called upon to testify in court, and that in such an event a copy of my updated statement is given to all parties involved in this case, I am bound by the content herein.

Reagan Thomas

Subscribed and sworn before me this day April 1, 2007

Carol Spencer

Notary Public

AFFIDAVIT OF DREW WALTON

After being duly sworn upon oath, Drew Walton hereby deposes and states as follows:

My name is Drew Walton. I was born in 1975 and I live at 238 Chestnut Avenue in Brookridge, Midlands, a suburb of Midlands City. My father was Midlands Governor Gerald Walton and my grandfather was Midlands Governor David Walton. As my parents' only child, it was always assumed that I would follow the family legacy of public service. But for a long time I had no interest in politics. Maybe it was rebellion. Maybe it was a desire to find my own way. Maybe it was something else. Regardless of the reason, I was the first Walton to turn down Harvard and instead attend Midlands State University, where my official major was political science but the more accurate label would have been "partying."

For the ten years after I finished high school, I was a paparazzi favorite, dating various celebrities and filling the covers of every tabloid and gossip magazine to find a newsstand. Sometimes the paparazzi became too pushy. When that happened, I pushed back. That led to three assault charges. The first assault charge came in 2000 when I pushed a reporter off his motorcycle. I pled guilty and paid a fine. The second assault charge came in 2002 when I pulled out my handgun after a reporter snuck into our backyard and started taking photos. My family got that charge dismissed. And the third assault charge came in 2004 when a reporter made a nasty comment about my father and I threw a brick at his car. I pled guilty that time, too. I've always had a temper, I suppose. I'm not proud of it but, when people push my buttons, I react.

I stopped the partying and superficial lifestyle in 2005 when my father became sick. He told me that life was measured by giving back and he made me promise that I would follow the family legacy of community work. I would do anything to make my father proud—the thought of letting him down is unacceptable.

24 The day after he passed away I began to honor that promise by announcing my candidacy
25 for the Midlands governorship. In February 2006, I easily won the nomination of Midlands's
26 more conservative party and by autumn 2006, I held a 12-point lead over my liberal opponent,
27 incumbent Governor Neal McGivern. I decided to make crime prevention the central issue of
28 my campaign. McGivern's administration had seen the crime rate rise by 20% and the murder
29 rate by 15%. My family had always been tough on crime and, just like my father and
30 grandfather, I believe that the best way to protect the public from criminals is to allow them to
31 defend themselves. That's why I support a citizen's right to bear arms, and why I have a
32 conceal-and-carry permit and carry a gun myself.

33 Originally I planned to debate McGivern on the gun control issue, but with me up 12
34 points and McGivern struggling to raise funds, why give him free airtime? My campaign
35 advisors had a better idea, one that would help me not only in the governor's race, but would
36 raise my national profile, possibly toward a presidential run down the road. They scheduled me
37 to debate noted gun control proponent Midlands University Professor Lane Hamilton. That way
38 I got the media attention that comes with a debate but avoided giving my gubernatorial opponent
39 the same airtime. We scheduled the debate for Sunday, September 24, 2006 at the Midlands
40 Civic Center in Polk County. All the media networks were covering the debate—I guess the
41 Walton name still means something.

42 We took the stage at 8 and the debate was one-sided from the start. Hamilton's style may
43 work in the classroom but in the political arena, that university professor nuanced-argument
44 routine wasn't going to cut it. Five minutes into our segment, it was obvious that Hamilton
45 knew he was completely out of his league. He became agitated. He started stuttering and
46 sweating, and his performance just spiraled downwards. I almost felt bad for the guy, but I

47 couldn't pull any punches because this was a chance to launch my career definitively into the
48 national limelight.

49 The knockout blow came in the last ten minutes. Hamilton tried to gather some
50 momentum by talking passionately about the fact that people who purchase guns are far more
51 likely to commit suicide. I responded, "Professor, you know as well as anyone that if a person is
52 unhappy enough, they don't need a gun to end their life. Think about all of the people who
53 commit suicide through other means...like pills." I paused right before I said "like pills" and
54 looked squarely at Hamilton. You see, my research team had learned that Hamilton's father had
55 committed suicide by overdosing on sleeping pills. I knew my subtle rebuttal—one that only
56 Hamilton would understand the personal reference to him—would throw off my opponent
57 without alerting the audience. It worked. When I mentioned the pills, Hamilton got red-faced
58 and angry, and huffed off stage as soon as the debate ended at 9:15,

59 I stuck around to do a quick interview—all of the networks wanted to discuss my victory
60 (except BNN, who asked their typically superficial questions). After answering a few questions,
61 at about 9:40 I went out the back to my waiting car, where my personal assistant Casey French
62 had the engine going. When you're running for governor, you don't have a minute to waste.

63 To this day, I can scarcely believe what happened next. I opened the rear passenger side
64 door of my car, began to duck inside the car, and that's when I heard Hamilton screaming. I
65 turned and saw Hamilton running out of the building after me. He was yelling, as if possessed,
66 "You took a cheap shot in there, Walton. You had no right dredging up my past. I knew your
67 father and if he heard your lies tonight, he would roll over in his grave." I hesitated. On the one
68 hand, I didn't have time to get into an argument. On the other, I felt bad for the man,
69 embarrassed in front of so many cameras. I decided to speak with him briefly—but cautiously.

70 So before I emerged from the car, I grabbed the loaded Beretta 92 semiautomatic, single-action
71 pistol I keep in the back console for protection. I certainly didn't think anything would happen,
72 but Hamilton was angry, and I didn't want to take any chances. I moved the safety to the off
73 position and told Casey to stay in the car.

74 Upon seeing the pistol in my hand, Hamilton's demeanor changed completely. A look
75 came across his face. It was the look of sadness and acceptance. I set down the pistol on the
76 back end of the car, put my arm on Hamilton's shoulder, and told him everything would be okay.
77 He paused a moment and appeared to be thinking. Then he said quietly, almost whispering,
78 "You're so young, you have your whole life, you don't understand. I've lost my wife. I've lost
79 my children. All I had was my reputation and tonight I lost that." He began to nod and smile
80 sadly, as if he had just reached a decision. Suddenly, Hamilton picked up the pistol, holding it
81 awkwardly, and fired a shot, almost as if by accident, like he didn't know how much pressure
82 you had to put on the trigger. I took a confused step back. That's when, without warning,
83 Hamilton lifted the gun, touched it to his temple, and shot himself in the head. I bent down to
84 check his pulse. Hamilton was dead. I'd never seen anyone commit suicide before. It was the
85 worst moment of my life.

86 The local media had been there for the post-show press conference, of course, and they
87 started coming out of the building and crowding around. I answered every one of their
88 questions, patiently and calmly – wanting to make sure everyone knew I had nothing to do with
89 Hamilton's death – until the police arrived a few minutes later. I accompanied the police to the
90 stationhouse so I could speak with them privately. I told the police everything that happened in
91 the studio parking lot. I told them that the gun that Hamilton used to commit suicide was my
92 gun, registered in my name. I told them I had fired the gun many times before, always in a firing

93 range. I told them that I didn't especially like Hamilton, but I never wished anything like this on
94 him or anybody. They asked me the same questions over and over, but of course my answer
95 remained the same every time. Eventually the police seemed convinced that the death was a
96 suicide and they drove me home.

97 But when I arrived home that night, I learned that during a live broadcast—made just
98 minutes after the suicide—reporter Reagan Thomas had accused me of murdering Hamilton. I
99 couldn't believe it. Not only had Thomas failed to ask me a single question when I spoke with
100 reporters immediately after the incident, Thomas wasn't even among the reporters present!
101 Every other station simply reported Professor Hamilton was dead as a result of a gunshot wound
102 to the head. BNN was the only network saying I was responsible—an accusation even BNN
103 retracted via press release the very next day!

104 I shouldn't be surprised that BNN would come after me. Its President is Kit Berkshire,
105 an executive in the media business for the last 25 years. Berkshire was an ardent liberal and so
106 never got along with my father—not when Dad was doing local politics and Berkshire was doing
107 local news, not when Dad was a party leader and Berkshire was a major media player. Berkshire
108 used to run one of the biggest news stations in the country before BNN hired Berkshire to boost
109 their ratings. As soon as I announced my candidacy for governor, BNN was a constant thorn in
110 my side. They would spin every one of my successes as failures. And when the network
111 couldn't find a way to spin the stories, they just didn't run them.

112 In March 2006, when I won my party's nomination, it was with no thanks to BNN. The
113 company sent a mob of reporters to our primary debates. Since when does a TV station that
114 normally reports on movies and fashion have multiple senior correspondents cover a relatively
115 uncompetitive gubernatorial primary? In January 2006, BNN was the first outlet to report some

of my closest advisers had wrongly used government money for personal purposes. In February 2006, BNN was the media network to “break the story” that I had cheated on my spouse with a campaign staffer. Both of these BNN reports were true, but it was the special vigor and nastiness with which the network reported them that clarified that BNN had it out for me.

The shooting was ultimately ruled a suicide but by then the Thomas accusation had done its damage. I was down in the polls and the official ruling of suicide wasn’t enough to overcome all of the negative press I’d gotten. My position on gun control no longer looked so wise. My donors dried up, the party heads stopped showing up at my rallies, and I lost the gubernatorial election on November 7. Now I’m running a non-profit and my political career appears over. A vicious lie on live TV undermined a budding career in public service. It’s still hard to accept.

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Drew Walton

Subscribed and sworn before me this day April 1, 2007

Carol Spencer

Notary Public