

## **2002 MOCK TRIAL CASE**

### ***SMID VS. LAWTON***

#### **NOTE TO COACHES:**

This year's mock trial case involves substantial issues and is meant to elicit serious discussion while providing a worthy educational experience for your students. The casewriters have attempted to portray these issues in a way that will neither trivialize this material nor traumatize your students.

The 2002 mock trial case is a hypothetical case. All names used in the mock trial case are fictitious and were created to be gender-neutral. Any similarity to an actual event or to the name of an actual person is strictly coincidental.

As in previous years, all admissible exhibits and information relating to the case is contained in these case materials. Students and coaches are particularly **discouraged** from using handguns and ammunition to research the issues presented.

#### **STATEMENT OF FACTS**

On April 28, 2001 Sean Lawton, Lee Smid and Riff Randall were hanging out in the basement of Sean's house instead of attending the Clearwater High School Senior Prom. Sean's parent was not home and the young people were listening to CD's, drinking some malt liquor, watching movies, and goofing around.

At some point in the evening, Sean went upstairs and returned with his/her parent's .357 magnum to show his/her friends. The three friends decided to play Russian roulette. There are conflicting stories as to exactly what happened, however one fact is clear – one young man, Lee Smid, ended up dead with a gunshot wound to his head.

#### **Plaintiff Witnesses**

Pat Smid  
Riff Randall  
Officer Ronnie Kopp  
Sergeant Billie McCoy

#### **Defense Witnesses**

Sean Lawton  
Andie Lawton  
Wesson Smith  
Dr. Avery Slezak

#### **Stipulations for Trial**

1. The parties have stipulated that Lee Smid died as a result of a gunshot wound to the head.
2. The amount of damages is not an issue in this case.
3. Lee's BAC at time of death was .02.
4. All affidavits are considered part of the case materials and may be used during trial.
5. Jury instructions are the law of the case even though you have not been supplied with a jury verdict form.

6. The claim for pain and suffering was previously settled.

Your assignment in the 2002 Mock Trial Case is to present the case of the plaintiff or the defendant. Questions about the negligence of the parents or the child are relevant and may be pursued at trial.

**FOR THIS YEAR'S CASE:**

**At the regional tournament only:** The following witnesses will be called:

Plaintiff Witnesses

Pat Smid  
Officer Ronnie Kopp  
Sergeant Billie McCoy

Defense Witnesses

Sean Lawton  
Andie Lawton  
Dr. Avery Slezak

**At the state tournament only:** The following witnesses will be called:

Plaintiff Witnesses

Pat Smid  
Riff Randle  
Sergeant Billie McCoy

Defense Witnesses

Sean Lawton  
Wesson Smith  
Dr. Avery Slezak

## **NOTE ON NEGLIGENCE AND WRONGFUL DEATH**

When an individual's death may have been caused by the negligent actions of another, the decedent's survivors or estate may seek compensation in a wrongful death action. As in most civil lawsuits, the burden is on the plaintiff to show by a preponderance of the evidence that he or she should prevail.

The defense of contributory negligence is the argument that the decedent or the plaintiffs bear some or all of the responsibility for the death. In Clearwater, in wrongful death actions, the negligence, if any, of a decedent in a wrongful death action is imputed to the plaintiff seeking to recover in such an action.

In practice, the fact finder (judge or jury) will weigh the causal negligence and assign, on a percentage basis, some or all of the responsibility to the various parties in the lawsuit. If the defendant satisfies the finder of the fact that the plaintiff was more than 50% negligent, then the plaintiff is barred from any recovery.

### **200 BURDEN OF PROOF: ORDINARY**

The burden of proof rests upon the party contending that the answer to a question should be "yes." This burden is to satisfy you to a reasonable certainty by the greater weight of the credible evidence that "yes" should be the answer.

By the greater weight of the evidence means evidence which when weighed against evidence opposed to it has more convincing power. Credible evidence is evidence that in the light of reason and common sense is worthy of your belief.

If you have to guess what the answer should be after discussing all evidence which relates to a particular question, then the party having the burden of proof as to that question has not met the required burden.

### **215 CREDIBILITY OF WITNESSES; WEIGHT OF EVIDENCE**

You are the sole judges of the credibility of the witnesses and the weight to be given to their testimony. In determining the credibility of witnesses and the weight you give to the testimony of each witness, including expert witnesses, you should consider their interest or lack of interest in the result of this trial, their conduct and demeanor on the witness stand, their bias or prejudice if any has been shown, the clearness of, or lack of clearness of, their recollection, their opportunity for observing and knowing the matters and things given in evidence by them.

The weight you give to the evidence is not to be decided merely according to the number of witnesses on each side. You may find that the testimony of one witness is entitled to greater weight than that of another witness, or even of several other witnesses. In weighing the evidence, you may take into account matters of your common knowledge and your observations and experiences in the affairs of life.

You should also consider all facts and circumstances appearing in the trial which tend either to support or discredit the testimony of a witness, and then give to the testimony of each witness such weight as you believe it is fairly entitled to receive.

## **260 EXPERT TESTIMONY**

Usually witnesses can testify only to facts they know.

But, a witness with expertise in a calling (specialty) may give an opinion in that calling (specialty). In determining the weight to be given an opinion, you should consider the qualifications and credibility of the expert and whether reasons for the opinion are based on facts in the case. Opinion evidence may be admitted in this case to help you reach a conclusion. You are not bound by any expert's opinion.

(In resolving conflicts in expert testimony, weigh the different expert opinions against each other and consider the relative qualifications and credibility of the experts and the reasons and facts supporting their opinions.)

## **410 WITNESS: ABSENCE**

If a party fails to call a material witness within its control, or whom it would be more natural for that party to call than the opposing party, and the party fails to give a satisfactory explanation for not calling the witness, you may infer that the evidence which the witness would give would be unfavorable to the party who failed to call the witness.

## **1005 NEGLIGENCE: DEFINED**

A person is negligent when (he) (she) fails to exercise ordinary care. Ordinary care is the care which a reasonable person would use in similar circumstances. A person is not using ordinary care and is negligent, if the person, without intending to do harm, does something (or fails to do something) that a reasonable person would recognize as creating an unreasonable risk of injury or damage to a person or property.

## **1007 CONTRIBUTORY NEGLIGENCE: DEFINED**

Every person in all situations has a duty to exercise ordinary care for his or her own safety. This does not mean that a person is required at all hazards to avoid injury; a person must, however, exercise ordinary care to take precautions to avoid injury to himself or herself.

## **ADDITIONAL OR OPTIONAL PARAGRAPHS**

(A person must exercise ordinary care to employ (his) (her) senses of sight and hearing so as to become aware of the existence of danger to (him) (her). A failure to do so is negligence.)

(It is the duty of every person to exercise ordinary care to recognize and appreciate all dangers that are open and obvious to (him) (her) or which should have been recognized and appreciated by a reasonably prudent person under the same or similar circumstances. That the warning of the existence of danger was not seen or was not heard does not free one from negligence. In addition, one who looks and fails to see, or listens and fails to hear, a warning of danger which under like or similar circumstances would have been seen or heard by a reasonably prudent person is as guilty of negligence as one who did not look or listen at all.)

(However, a person is not bound to see every hazard or danger in his or her pathway even though they should be plainly observable nor to remember the existence of every condition of which the

person has had knowledge. A person is only required to act as a reasonably prudent person would act under the same or similar circumstances.)

(To be free of negligence, a person must exercise ordinary care in choosing his or her course of conduct and in the pursuit of that choice. A person is not guilty of negligence in making a choice of conduct if the person has no knowledge that one course of conduct carries a greater hazard than another, provided that such lack of knowledge is not the result of the person's failure to exercise ordinary care.)

### **1500 CAUSE**

(A) Question(s) in the special verdict ask(s) about the cause of the death. (This) (These) question(s) (do) (does) not ask about "*the* cause" but rather "*a* cause" because a death may have more than one cause. A death may be caused by one person's negligence or by the combined negligence of two or more people.

You must decide whether someone's negligence caused the death. Someone's negligence caused the death if it was a substantial factor in producing the death of Lee Smid.

### **1010 NEGLIGENCE OF CHILDREN**

A child is required to use the degree of care which is ordinarily exercised by a child of the same age, intelligence, discretion, knowledge, and experience under the same or similar circumstances.

In determining whether a child exercised this degree of care, you should consider the child's instincts and impulses with respect to dangerous acts, since a child may not have the prudence, discretion, or thoughtfulness of an adult.

### **1013 PARENT'S DUTY TO CONTROL MINOR CHILD**

A parent must use ordinary care to control his or her minor child so as to prevent the child from intentionally harming others or from conducting himself or herself so as to create an unreasonable risk or bodily harm to others, if the parent knows or should know:

- (1) that (he) (she) has the ability to control the child;
- (2) that there is a necessity for exercising such control; and
- (3) that there is an opportunity to do it.

**904.03 Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.**

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

**904.04 Character evidence not admissible to prove conduct; exceptions; other crimes.**

904.04(1) **Character evidence generally.** Evidence of a person's character or a trait of the person's character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:

904.04(2) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

**904.06 Habit; routine practice.**

904.06(1) **Admissibility.** Except as provided in s. 972.11 (2), evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

904.06(2) **Method of proof.** Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

PAT SMID,  
Personally and as Personal Representative  
of the ESTATE OF LEE SMID,  
811 Pine Street  
Clearwater, WI

Plaintiffs,

**COMPLAINT**

vs.

Case No. 435 CV 2001

SEAN LAWTON;  
ANDIE LAWTON,  
4 First Street  
Clearwater, WI

Defendants.

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As and for their Complaint against the above-named Defendants, the Plaintiff, Pat Smid, personally and as Personal Representative of the Estate of Lee Smid, by (his/her) attorneys, Clark & Ryan, S.C., allege and show to the Court as follows:

1. Plaintiff is an adult resident of the State of Wisconsin who resides at 811 Pine Street, Clearwater, WI. (S/He) is the natural parent of Lee Smid, Deceased.
2. Plaintiff was appointed as Personal Representative of the Estate of Lee Smid on May 25, 2001, and letters of administration were issued to (him/her) by the Circuit Court of Clearwater County. The Plaintiff is qualified to commence this lawsuit as Personal Representative of the Estate of Lee Smid. Plaintiff also brings this action personally in (his/her) own name and legal right.
3. Defendant, Sean Lawton, is an adult resident of the State of Wisconsin who resides at 4 First Street, Clearwater, WI.

4. Defendant, Andie Lawton, is an adult resident of the State of Wisconsin who also resides at 4 First Street, Clearwater, WI. At all times material hereto, Andie Lawton was the natural parent of defendant, Sean Lawton, and was the owner of the home, handgun and ammunition involved in the death of Lee Smid, Deceased.

5. On or about April 28, 2001, the Plaintiff's son, Lee Smid, now Deceased, visited the home owned by the Defendant, Andie Lawton, located at 4 First Street, Clearwater, WI in the company of, and with the permission of, the Defendant, Sean Lawton. At this time and place, the Plaintiff's son was accidentally shot, fatally injured and died.

6. At and prior to the aforementioned accident, fatal injury and death of Lee Smid, the Defendant, Sean Lawton, negligently, carelessly and recklessly suggested and encouraged certain dangerous, inherently hazardous conduct by the Plaintiff's son, Lee Smid, involving a .357 magnum handgun and live ammunition belonging to Defendants. Specifically, Defendant Sean Lawton enticed Lee Smid to participate in and play a deadly game of so-called "Russian Roulette" under circumstances that Sean Lawton knew, or should have known, that due to his/her older age and personal influence over Lee Smid, this Defendant would succeed in persuading Lee Smid to participate in the dangerous, unsafe activity that was initiated by Defendant, Sean Lawton.

7. At and prior to the aforesaid accident, fatal injury and death of Lee Smid, the Defendant, Andie Lawton, was negligent and careless in the manner that s/he owned and stored his/her .357 magnum handgun and ammunition because s/he left these inherently dangerous instrumentalities accessible to his/her child and to the minors who frequented Defendant's home. Additionally, Andie Lawton was negligent in his/her adult supervision and control over his/her child, Sean Lawton. Defendant, Andie Lawton, knew or should have known that Defendant's



child, Sean Lawton, handled firearms dangerously and recklessly and that his/her child could endanger minor children who visited Defendants' home and would thereby have access to the dangerous handgun and ammunition left available and unsupervised by Defendant, Andie Lawton.

8. The aforementioned April 28, 2001 accident, fatal injury and death of the Plaintiff's son, Lee Smid, was proximately caused by the negligence and recklessness of both Defendants, individually and collectively.

9. As a result of Defendants' negligence and reckless conduct, the Plaintiff suffered severe mental anguish, emotional distress and the loss of the companionship and support of (his/her) son. The Plaintiff also incurred and paid medical bills and funeral expenses for (his/her) son.

WHEREFORE, the Plaintiff personally, and as Personal Representative of the Estate of Lee Smid, demands judgment as follows:

- A. Recovery by the Estate of Lee Smid for anguish, pain and suffering of the Decedent;
- B. Awarding wrongful death damages to the Plaintiff for mental anguish and loss of companionship and support, plus medical costs and funeral expenses due to the death of (his/her) son;
- C. Costs and disbursements in this action as allowed by law.

Dated this 28th day of June, 2001.

CLARK & RYAN, S.C.

By: \_\_\_\_\_  
M. Clark  
Bar Member No: 643555

100 W. Main Street  
Clearwater, WI  
(715) 555-8810

PAT SMID,  
Personally and as Personal Representative  
of the ESTATE OF LEE SMID,  
811 Pine Street  
Clearwater, WI

Plaintiff,

**ANSWER AND AFFIRMATIVE  
DEFENSES**

vs.

Case No. 435 CV 2001

SEAN LAWTON;  
ANDIE LAWTON,  
4 First Street  
Clearwater, WI

Defendants.

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As and for their Answer and Affirmative Defenses to the Plaintiff's Complaint, the Defendants, Sean Lawton and Andie Lawton, by their attorney, L. Wilbanks, admit, deny and show to the Court as follows:

1. Answering paragraphs 1-4 of the Complaint, admit same.
2. Answering paragraph 5 of the Complaint, the Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of paragraph 5 and, therefore, deny same.
3. Answering paragraphs 6-9 of the Complaint, Defendants deny same. Defendants deny that the Plaintiff is entitled to judgment against the Defendants jointly, or against either of them individually.

**AFFIRMATIVE DEFENSES**

4. Affirmatively allege that the Plaintiff's claimed injuries and damages and Lee Smid's death were caused by and due to Lee Smid's own contributory negligence and/or his own intentional conduct.
5. Affirmatively allege that the Plaintiff's claimed injuries and damages and Lee Smid's death were caused by and due to the negligence of Pat Smid in failing to properly supervise (his/her) son.
6. Affirmatively allege that the Plaintiff's injuries and damages and the death of Lee Smid may have been caused by or are due to negligence of other third persons not joined to this lawsuit.

WHEREFORE, the Defendants demand judgment as follows:

- A. Dismissing the Plaintiff's Complaint, with prejudice and on the merits;
- B. Awarding Defendants their fees and costs as allowed by law.

Dated this 30th day of July, 2001.

By: \_\_\_\_\_  
L. Wilbanks  
Bar Member No: 111231

71 Bass Lake Road  
Clearwater, WI  
(715) 555-5295

## **Affidavit of Pat Smid**

1. My name is Pat Smid. I live at 811 Pine Street in Clearwater with my four children and my spouse. Lee was the oldest child. I was probably harder on him because he was the oldest. He resented helping with the younger children. He didn't think it was cool to babysit. My spouse is in sales so is gone most of the time making sales calls. Therefore, I usually work overtime a great deal to compensate for inconsistent sales commissions in order to provide for our family. I didn't have the education I wanted for my children, and so I didn't mind working hard. I expected Lee to help out when we weren't around but sometimes Lee would just take off without letting us know where he was. When that deadbeat Varner Williams killed our dog, Spook, running it over last year, Lee was pretty devastated and his behavior seemed markedly changed afterwards. He seemed to not respect us or obey us as much as he used to. He also started hanging around that Sean Lawton and was always saying things to us like, "Sean says this and Sean says that...that's not the way Sean does it." We would give anything to hear him say that now. He was a very important member of our family and we grieve over him so.
2. They say a parent should never have to bury a child. I don't know who "they" are, but they sure are right! I also don't know what is worse, the loss of Lee or the guilt I feel. Somehow I think I taught him better than that. Everyday I wonder what I could have/should have done differently. It has been five months and still I can't answer that question.
3. We NEVER pretended with guns in our house! We never kept toy guns around. Lee took a gun safety course; in fact we took it together.
4. We used guns together as well at the shooting range. Lee was good! He knew how to shoot long guns. In fact he was asked several times to join junior leagues, amateur leagues and to compete in tournaments. Many colleges have shooting teams, and I was hoping if Lee was good enough, that would help pay for his college. Often those scholarships have been going unfilled. Lee seemed to enjoy the time we spent at the shooting range, maybe we should have spent more time there. Hell, we should have spent more time anywhere!
5. The cops say Lee used booze the night he died. They said there were rumors that Lee used lots of drugs and booze. If only I had known. That is why I feel so guilty. I should have known, should have figured it out, seen it somehow.
6. Another thing, I am not so sure about those "friends" at Clearwater High School. They led him into a lot of trouble! There was that swim party at Brandeis Creek last year for example.
7. This year Lee and Sean spent a lot of time together. Sean was definitely the leader but it didn't seem so bad at the time. I thought it would help Lee grow up, even if there was that difference in their ages. Even when they did get into scrapes, they were mostly dumb/silly ones. They put School Board President Chuttie's fishing boat in the Clearwater Sewerage Treatment ponds. They had a dummy all dressed like Principal Runaas in it.

8. More often than not, if he weren't following Sean around, he would hole up in his room. It was all we could do to get him to come down for meals. School ---room---meal---room---school---room---meal---room---enough to make anyone sick.
9. Prom night we thought we were lucky! He would not be out partying and driving. We thought he would be safe. Then that awful call came; and the praying and waiting and bargaining with God. None of it made any difference - our child was dead. I feel like on April 28, 2001; part of me died as well. I can never make amends, or correct whatever mistakes I might have made. He is just lost.....and I feel like I am too.
10. After that the confusion started. First it was a suicide, then it was murder, then it was an accident, that is why we are here! No one can give us a straight answer.
11. Sean told me Lee took the gun and while they weren't looking, shot himself....but they were sitting right there!
12. Riff hinted there was this gunplay game, or s/he didn't see anything, or s/he was in the bathroom, or who knows what else! I just want to scream! Don't I have a right to know how my child died? Evidently neither the kids nor the cops think so.
13. Some of Lee's classmates told me at the funeral that he wasn't drinking and that Sean tricked him into playing Russian roulette.
14. The cops gave me just a big a run around too. They couldn't find their shoes in a closet! I think they were just being bureaucrats. If it was an accident, then they didn't have to do any more work, case closed and they could go back to Dunkin Dinky Donuts. I don't think they even talked to me a week after Lee died. They wouldn't even hand deliver the coroner's report. They just called and tossed it in the mail.
15. I just want to know...could I have done something different and what. Other parents should know too. This isn't any way to treat our children. Let them shoot themselves...Who cares....just so much trash? People ought to know the truth.
16. That's why I brought this lawsuit, I want those young people and parents, and even the cops to swear to tell the truth; sit up on the witness stand, face their other friends and the community and fess up! If the truth comes out, I will be satisfied. I know Lee will never come back to us, but at least his death will have some purpose.
17. Some people have said that I am just suing for the money.....they could not be farther from the truth! My lawyer has been very kind. Whatever money I get will be used for the community. I want to start a gun buy-back program. I would like to find someone to melt those things down and create a sculpture in Hamilton Park depicting how tragic the loss of our young people is. My brother is an Art Professor at the University of New Mexico in Portales who has experience with outdoor metal sculptures in several states. He has

volunteered to design and build the sculpture. Or maybe I'll establish a scholarship in Lee's name and that of his Uncle Jason who was also a victim of violence.

Dated this 5th day of October, 2001.

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Pat Smid

Sworn to this \_\_\_\_\_ day of October 2001.

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Notary Public

My commission expires: January 27, 2004

## **Affidavit of Riff Randall**

1. My name is Riff Randall. I'm 17 years old, but everyone thinks I'm really 18. I'm a senior this year at Clearwater High School, but I was a junior last year when everything happened.
2. Last year on Prom night, Saturday, April 28, 2001, Sean Lawton, Lee Smid a/k/a Dead Boy (that's what we always called him—he was such a goth—really looked dead), or “the kid” and me were hanging out drinking Mitch's Big Cow Malt Liquor. Most of the rest of the kids were at Prom, but we didn't want to go—they cracked down on drinking at the Prom this year. What's the fun of going to Prom if you can't get blitzed.
3. So instead of going to Prom, Sean, Lee and I thought we'd listen to some tunes and down a few beers in Sean's mom's/dad's basement. Sean's mom/dad had also just gotten a new DVD player and a little later we were going to watch “Rock and Roll High School.” You know—school's out forever! We would never actually take over the school, destroy the files, and blow the school up, but it sure is fun to think about it. Our new principal Ms. Togar was such a witch this year. She even made us make up days missed for bomb scares early in the year even though we didn't use any snow days.
4. Anyway, back to the night at issue. Sean and I were cruising around town when we ran into Lee. Lee said he was looking for us and wanted to hang out with us. I said I didn't mind if Sean didn't. Lee got in the car and we decided to head to the Lawton's house. Lee was always tagging along, but then again lots of younger kids tried to tag along with Sean—s/he's so cool. I remember one time last year when 14 year old Joey O'Hara was always tagging along. Sean suggested that they play Russian roulette—in part to see if Joey would do it, and in part, I think to impress me. Sean was always trying to impress me by showing off—especially showing how s/he could control younger kids. S/he knew it turned me on like s/he had mind control over them. Joey chickened out after Sean put the gun to his/her own head and pulled the trigger. That's the last we saw of Joey.
5. Anyway, back to Dead Boy. Lee had been hanging around Sean most of the school year. I remember one time them shooting at cans on a rock and then later at rats in the alley by old man Johnson's house. Sean even got the kid to fire a rifle on the 4<sup>th</sup> of July after the fireworks. Sean got in trouble when they both got caught. Because of his/her age, s/he got probation or something, but couldn't have anything to do with guns anymore. Lee would do anything Sean said. At first, Lee didn't really know much about guns, but he learned quick and I know he was even reading up on the subject through NRA publications and on the web.
6. There was another time early in the year when we were sitting around bored and Sean suggested that we huff some Lysol. Lee didn't want to at first. Beer was one thing, liquor even, maybe some pot now and then, but he really didn't want to huff. Sean, however, egged him on. Called him a chicken. Said Riff likes it, which turned the trick. See, Lee was also always trying to impress me, even though he was two years younger and really not my type—

just too creepy. I mean, black is nice (and I liked the stud in his tongue), but sometimes you've got to wear something with a little color.

7. Anyway, back to the night in question as they might say. We let the kid come with us to Sean's house. We went into the basement, broke out the Mitch's Big Cow, and put on "Rock and Roll High School." Several beers later, and right about the time that the mouse explodes, Sean gets this strange look in his/her eye—like s/he had just thought of something really cool, but dangerous to do. I'd seen that look before and knew something was up. The kid had no clue.
8. Anyway, Sean gets up and goes up stairs. S/He must have been gone about five minutes as Lee tried to impress me by chugging two more beers. When Sean came back, s/he was carrying his/her mom's/dad's .357 magnum—the same gun that s/he used last year trying to play Russian roulette. I knew there must be some trick, but didn't know what it was. Sean may be daring and a show off, but s/he wasn't stupid. I figured if there was a trick, that Lee must know it too from reading all that NRA stuff.
9. Well, Dead Boy took one look at the gun and said "what are you going to do?" Sean said: "Let's have some real fun and play Russian roulette. Game, kid?" (Sean call him "the kid," which always riled Lee.) The kid said that he didn't want to, but Sean said: "Oh, come on kid, you don't want Riff to think that you're a wuss. Do you?" That did it—as I'm sure Sean knew it would. Lee said okay, but sort of reluctantly. For good measure, they both chugged another beer apiece.
10. Sean went first. S/he spun the cylinder, took a look at the gun and put it to his/her head. S/he then slowly pulled the hammer back, then pulled the trigger, click, nothing. I let out a sigh of relief. Even though I knew there must be something to it, I wasn't sure. I was getting excited, however, from the suspense. Sean then gave the gun to Lee, who slowly took it, spun the cylinder like Sean, looked at the gun and then put it to his head. Sean was looking a little worried until the kid looked at the gun, then s/he relaxed. Dead Boy then put the gun to his head and pulled the hammer back and then slowly and shakily pulled the trigger. Click, nothing. I could hear the air escape from his lungs.
11. They both then had another beer and then Sean went again. Same as before, except this time s/he pulled the trigger quickly. Dead Boy then went again. Spin. Pull the hammer back. Pull the trigger. Only this time instead of a click, there was a loud explosion. Sean's face went white. S/he started yelling "what the hell did the kid do—didn't he know?" Me, I started screaming. I might have even passed out. Sean was shaking me and said, "We can't let the police know what really happened" or "I'm in big trouble."
12. The story we came up with was that Lee went upstairs to the bathroom and came down with the gun. He'd been in the house before and knew where the gun was kept—after all they'd used it before. Sean's parent always kept the gun in the bedroom cabinet and loaded. The cabinet was locked, but we've all known for years that the key was right on top of the cabinet. It was no secret. So the story went that the next thing we knew he was back



downstairs with the gun. Before either of us could say or do anything, Dead Boy cried “death is my only friend,” put the gun to his head and pulled the trigger. At that time, I didn’t see any harm in making up that story. It was an accident after all. Nothing was going to bring Lee back. Why should Sean or I get in trouble—Sean said something about that I could also get charged as a party to the crime?

13. Anyway, once we got our story straight, we called the police. Then Sean tried to call his/her parent on the cell phone, but s/he was out of town at some gun trade show where Pat Buchanan was a keynote speaker. Anyway, the police came, roped off the area and then took our statements. We thought everything was fine, although Officer Kopp didn’t look like s/he believed us—s/he never has liked Sean (nor has his/her goody good daughter). Even Sean’s parent backed up the story of Lee knowing where the gun was kept. Sean’s parent admitted that maybe s/he shouldn’t have kept a loaded gun around the house, but after all Sean was almost 18 and knew how to handle a gun. What was the harm. S/He wanted to protect himself/herself from intruders. S/He said that s/he never expected some “weirdo” to take the gun and kill himself.
14. Everything seemed fine—I mean except for the fact that we felt a little guilty, but hey he was dead, we had to get over it. Everything was fine that is until little Joey O’Hara said something to her parents about Sean trying to play Russian roulette with her last year and how this seemed too strange. Her parents then called the police who got to thinking. Officer Kopp dragged both of us back into the station house. I wasn’t going to give Sean up, but s/he must have been worried, but then I heard that s/he was going to blame me, which was so lame. Therefore, I figured it was time to be honest and tell the truth about what really happened.
15. Apparently the police thought of charging him/her with something, especially Officer Kopp—I don’t really know or understand what, but the DA decided there wasn’t much of anything criminal and wrote it off as a stupid stunt by drunk kids.
16. Dead Boy’s parents were a different matter. They talked to me and I tried to tell them the same thing that we told the police, but I guess they were too frantic to believe or understand anything. Just kept muttering “Why?” or “We should have known.” Anyway, pretty soon they hired a topnotch law firm to file this lawsuit. They may say they only want truth and justice (how about apple pie, too), and will donate the money to charity, but I don’t buy it. Besides even if they donate the money to charity, their lawyers still keep their cut. I’d like to see them donate all of the fees to charity—like that’ll happen!
17. At the time, this seemed like this was just an accident. Lee didn’t have to play along. He could have said no. After all Joey did last year and nothing happened to her. I thought Sean thought that Dead Boy knew the trick—something about seeing the bullet. Maybe the kid just drank too much and didn’t know what he was doing. Now, I don’t know. Sean doesn’t seem very sorry and s/he had that strange look in his/her eye like s/he thought s/he’d get Lee or something. Plus, everyone in town says Sean is evil and wanted Lee dead. I don’t know what to think now.

Dated this 9th day of October, 2001.

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Riff Randall

Sworn to this 9th day of October 2001.

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Notary Public

My commission expires: January 10, 2005

## **Affidavit of Officer Ronnie Kopp**

1. My name is Officer Kopp. I am employed by the City of Clearwater as a law enforcement officer duly sworn to uphold and enforce the laws of the State of Wisconsin and the County and City of Clearwater.
2. I graduated from Clearwater High School in 1975 and attended Clearwater Technical College for two years in its police science program. I then transferred to the University of Wisconsin-Superior where I completed my college work and earned a Bachelor's degree in Criminal Justice. I wanted to be a police officer in Clearwater ever since I was a kid.
3. After college, I was hired by the Clearwater Police Department. I attended the police academy for three months upon being hired. During this training we are required to undergo at least 80 hours of firearm training - which consists of shooting, learning about different types of weapons, how to identify the type of gun used in a crime and gun safety. Since attending the academy I have attended 20 hours of required training on a yearly basis to update my knowledge of firearms and other legal information.
4. Gun violence has escalated dramatically since I became an officer. Children seem to be able to obtain guns without any problem and seem to be a lot less responsible than when I was a kid. In Clearwater, kids grow up around guns and hunting but we always respected guns and would never think of playing with them or goofing around. Especially nothing as crazy as Russian roulette. I also do not think parents are very responsible these days either. They should not allow such easy access to their guns, especially handguns. I do not believe people should own handguns. Shotguns and rifles for hunting - no problem, but handguns should be for law enforcement persons that are trained like me. Handguns seem to only cause accidents and deaths and fall into the hands of irresponsible adults and their children.
5. On April 28, 2001 I was working a double shift because Officer McFadden called in sick. Therefore, I started my regular shift at 8:00 a.m. and was scheduled to leave at 4:00 p.m., but because Officer McFadden called in, I worked until 12:00 a.m. that night. That evening, I was called to a shooting at 4 First Street, just at the edge of town. We were already busy because it was prom night and there was a lot of drinking and disruptive behavior going on by those Seniors at Clearwater High School. When I arrived, I found Lee Smid lying on the ground with a bullet to his head, DOA. It wasn't readily apparent by looking at him to determine whether the gunshot wound was self-inflicted, an accident or even murder. There were two kids at the house when I first arrived - Sean Lawton and Riff Randall. I talked to both of them.
6. Sean told me s/he took the gun, a .357 Magnum, from his/her parent's gun cabinet. The cabinet was locked but the keys were on top of the cabinet. How ridiculous. If you want to keep guns safe from kids, you don't leave the keys on top of the gun cabinet. Sean Lawton, age 17, said that all the kids looked at the gun and then Lee Smid inexplicably

shot himself. Riff Randall, age 16, gave the same story. I knew something wasn't right. It made no sense. My daughter attended Clearwater with these kids, she was a senior and at the prom that night. She said she knew of Lee Smid and never heard of any reason he would just shoot himself. He seemed like a good kid - but not part of the popular crowd like her. She said that Sean Lawton was a different story – s/he was kind of a loser and hung around a lot of younger kids, freshman. Sean seemed to like to boss them around and they looked up to him/her. She also said Sean is known as a dare-devil. Sean's parent should have known better than to allow him/her to be near, let alone own, any guns at all. This kid is out of control.

7. So I knew something was fishy but I didn't get my big break until we received an anonymous phone call after Smid's death saying that Sean Lawton played Russian roulette before. So I called him/her in for another interview. Sean finally admitted that s/he had played Russian roulette with Lee and his/her intent was to impress Riff Randall. Sean admitted s/he started the game by spinning the cylinder, placed the barrel to his/her head and pulled the trigger. Sean stated s/he watched where the round was placed before pulling the trigger and stated "I assumed Lee would catch onto what I was doing, it didn't cross my mind that he was going to do that." S/He then spun the cylinder again and handed the gun to Lee. Lee put the gun to his head and pulled the trigger and ended up dead.
8. Sean also admitted that s/he had referred to Lee Smid as "the kid" and that Lee would follow him around like a dog. I could not believe how calm Sean was. Sean never said s/he was sorry and seemed like I was wasting his/her time. Sean is clearly an irresponsible kid who knew exactly what s/he was doing and didn't care if his/her friend ended up dead. Sean even admitted that s/he had lied to me the first time and had asked Riff Randall to lie too. What nerve this kid had! Sean admitted that s/he owns guns and a hunting rifle and a bow and arrow and a collection of knives. If s/he has all this, Sean should know better than to play with a gun or let anyone else play with a gun. Sean knows guns kill - that is what they are designed to do.
9. I recommended charges be issued for reckless homicide, but the wimpy Assistant District Attorney didn't feel there was enough to prove the case beyond a reasonable doubt. This kid is getting off scot free - even when Lee's family wins the civil suit, this kid doesn't end up paying anything, the insurance company does. Sean can just walk away. S/He needs to be punished somehow. But I am sure this won't be the last time I have contact with him/her. We police officers know the bad apples in town, and this kid is one of them.

Dated this 12<sup>th</sup> day of October, 2001.

Sworn to this 12th day of October 2001.

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Officer R. Kopp

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Notary Public  
My commission expires: January 27, 2004

## **AFFIDAVIT OF SERGEANT BILLIE McCOY (Ret.)**

1. My name is Billie McCoy and my services have been retained by the plaintiffs in this case. I am a firearms expert. I am originally from the State of Tennessee. Growing up in the '50's, I was greatly influenced by the book, Where the Red Fern Grows, by Wilson Rawls. As a young boy, I loved to coon hunt. I was 16 years old in 1967 when the Viet Nam war was heating up. I lied about my age in order to enter the U.S. Army and serve my country. Within a few weeks of entering boot camp I surprised my supervisors by setting two records: I assembled an M-16 rifle faster than any of the other trainees, and I hit at least 97 bull's-eyes out of 100 five times in a row. Because of my marksmanship, I was transferred, after boot camp, from Fort Leonard Wood, Missouri to Fort Campbell, Kentucky. Within six months I became a small weapons instructor. Four years later I became the lead small arms instructor for the 86th Infantry Battalion.
2. During my 20 years with the U.S. Army I learned just about all there is to learn about all conceivable small arms. By "small arms" I mean any firearm capable of being carried by one person and being fired without additional mechanical support.
3. After my Honorable Discharge from the U.S. Army I began working for the Sporting Arms & Ammunition Manufacturers Institute, Inc. (S.A.A.M.I.) While we are a firearms industry group, and, to that extent, we are certainly "pro-gun," we do not lobby against reasonable gun safety legislation. In fact, with 34,000 people being killed each year by firearms, we see a need for more safety measures and, certainly, more education. So many of these deaths, especially of children, are entirely preventable.
4. The decision to keep a firearm in the home is very serious, and one that must not be made lightly. Any person who would choose to keep a firearm must become fully informed about the risks that firearms pose, especially to children. National research shows that 40 percent of households with children have at least one firearm in the house, and one in four of these guns are kept loaded!
5. In this particular case, it is my opinion that both Sean's parent, Andie Lawton, and Sean Lawton were negligent in a variety of ways. A basic tenet of firearm safety concerns storage. Firearms and ammunition must be stored separately, and both under lock and key in a gun cabinet or safe. In this case, Mr./Ms. Lawton not only did not secure the revolver and its ammunition, but s/he violated the most fundamental rule of gun ownership: s/he stored the revolver loaded, and while s/he locked it in a gun cabinet, s/he left the key to the gun cabinet conveniently on top of it, where any occupant or visitor to the home could easily find it. Of course, under these circumstances, it was almost inevitable that the firearm would be discovered by curious juveniles. Furthermore, it was virtually guaranteed that any juvenile discovering the firearm would handle it without being supervised.
6. Another fundamental tenet of gun ownership is that the owner knows his or her weapon. I inspected and tested the weapon in question, and I readily discovered a characteristic

about it that made it especially hazardous, and, therefore, heightened the need for taking all the usual precautions: very low trigger pull. "Trigger pull" is the average force which must be applied to the trigger to cause the firearm to fire. Typically, non-target mode firearms have a minimum trigger pull of three pounds. Double-action revolvers often have a long, heavy trigger pull of around 10 pounds. I will talk about the significance, in this case, of the difference between single action and double action in a few minutes, but my testing revealed that the pull necessary to cause this particular firearm to discharge was less than one-half pound. In other words, to use the vernacular, this firearm had a "hair trigger."

7. The conduct of Sean Lawton was, of course, beyond merely negligent and can best be described as nothing short of reckless. First, we never ever intentionally point a firearm at ourselves or anyone else. The reason we don't is because we assume that the firearm is loaded, even if we have been careful to assure ourselves that it is not. In this case, Sean did not have to assume the firearm was loaded, s/he knew it was loaded, that there was one bullet in one of the six chambers of the revolver. This was an additional reason not to point the firearm at any person.
8. Sean's explanation was that the Russian roulette game was not all that hazardous because s/he could see whether a cartridge was in the next chamber, and he would only squeeze the trigger if he knew there was none about to be discharged. My inspection revealed that to be true, but I believe it would have been far from obvious to anyone who was just handed the firearm.
9. What is particularly disturbing in this case is that Sean had at least two chances to warn Lee: first, as s/he himself/herself admits, by looking at the revolver before handing it off s/he could see the position of the single cartridge. As with all revolvers, the cylinder rotated clockwise, so a cartridge visible to the left and below the hammer was a sure sign that the next pull of the trigger would result in discharge.
10. Second, if the exchange of the firearm had taken place quickly, the position of the cartridge in the cylinder could have been missed, but this was a single-action firearm. With a double-action firearm a single pull of the trigger cocks and releases the hammer. With a single-action firearm, however, the mechanism requires the manual cocking of the hammer before the trigger releases the firing mechanism. This means that it should have been no surprise that Lee was about to discharge the firearm. This is because he had taken the first step in preparation for firing the gun by manually cocking the hammer back. This means that Sean had ample time to warn Sean by shouting "no" or "stop" when s/he heard the hammer being manually cocked.

Dated this 19<sup>th</sup> day of October, 2001.

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Billie McCoy

Sworn to this 19th day of October, 2001.

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Notary Public  
My commission expires July 30, 2004.



## **Billie McCoy Curriculum Vitae**

Name: Billie McCoy  
Address: 424 Gore Drive  
Memphis, TN 55555

Born: March 15, 1951

Enlisted: U.S. Army, May 11, 1967

Basic Training: Fort Leonard Wood, Missouri  
Awards: Marksmanship Rifleman Assembly

Promotions: Transferred to Fort Campbell, KY, December, 1967. Promoted to small weapons instructor.  
  
July, 1971 - Promoted to lead small arms instructor for the 86th Infantry Battalion.

1972-1982: In charge of small arms training for U.S. Special Forces (Green Berets)

1982-1987: Chief Small Arms Instructor at West Point and the National War College.

1987-Present: Executive Vice President of Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI)

Primary Responsibilities: Inspect and test all handguns manufactured or sold in this country for safety; provide a written critique of all handguns manufactured or sold in this country; testify at State legislative hearings and Congressional Committee hearings on the impact and efficacy of various gun control proposals. Available to testify in court hearings or trials as an expert on handguns and handgun safety.

Books/Articles: 1975 U.S. Army Manual: Weapons and Marksmanship  
  
1984 Combat Revolvers - (co-authored with Duncan Short) - a review of the best and worst revolvers available in the U.S. A sample of the companies whose guns are reviewed: Smith and Wesson, Colt, Ruger, Charter Arms and Taurus.

## **AFFIDAVIT OF SEAN LAWTON**

1. My name is Sean Lawton. I am 18 years old. I have lived in Clearwater all my life. I am a senior at Clearwater High School, expecting to graduate in 2002. I am an okay student, I guess. I get mostly Bs and Cs. I might go to college or tech school if I can afford it. My mom/dad has some money set aside for my education. I have saved some money for school from my job at the Tastee-Queen. I guess the outcome of this lawsuit will have a lot to say about whether I go to school. If we lose and have to pay the ungodly amount of money the plaintiffs are demanding, all our savings will be gone, not to mention the house, car and snowmobiles.
2. I have known Lee since we were young. We were never really good friends, we just hung out together sometimes. Sometimes he seemed to follow me around. At times he was kind of a pest. I know Lee knew something about guns because he used to hang around my parent's shop and he was always reading NRA publications. I know Lee hunted deer and birds, so he should have known how to handle guns. He was two years behind me in school.
3. Its kind of hard to explain what happened that night. Riff and I had been hanging out downtown for awhile when we ran into Lee. He asked if he could join us so I said it was okay. There was nothing much going on and the cops don't like teenagers just hanging out downtown---gives the town a bad image or something, so we left before we got hassled. We drove around for a while. Eventually we ended up at my house. I think it was about 6:30 or 7:00 in the evening on Saturday, April 28, 2001.
4. My mom/dad wasn't home when we got there. My bedroom is in the basement and we went down there to hang. We put on some music for a while. I called my friend Wesson to see if s/he wanted to come over but as soon as I said the kid was here – Wesson said s/he wasn't interested. For some reason, the kid makes Wesson nervous.
5. I grabbed some cans of Mitch's Big Cow Malt Liquor out of the fridge and we drank it in my room. I don't think we drank more than two cans apiece. We listened to some tunes and watched some movies—parts of movies mostly.
6. I took hunter's safety when I was 12. I have hunted deer, birds and rabbits. My mom/dad taught me to shoot rifles, shotguns and pistols. My mom/dad owns both semi-automatic pistols and revolvers. I know how to load and use both kinds of pistols. My favorite pistol is a .357 magnum. It is so cool. It is stainless steel, with an eight inch barrel. I can hit a tin can at fifty yards with that pistol.
7. Hunter's safety taught me that you should never point a gun at anything you do not intend to shoot, and never to point a loaded gun at a person under any circumstances. I think those are pretty good rules, but I have a lot of experience with guns. I thought Lee had a lot of experience with guns too.

8. My mom/dad is usually very safety conscious when it comes to guns. S/He keeps the guns locked up in a cabinet, with the ammunition locked in a separate compartment, just like they teach in hunter's safety. My parent had been out to the shooting range a few days before the incident. I guess he/she got interrupted when putting his/her gun away because after he/she locked the gun cabinet, he/she left the keys to the cabinet sitting up on top of the cabinet.
9. What I don't understand is this: with the .357 magnum revolver we used that night, you can look into the cylinders when the barrel is pointed in your direction and you can easily see where the bullet is. I mean, if the bullet is in the chamber which is right next to the barrel, you would have to be nuts to pull the trigger because you know the gun is going to shoot. I cannot imagine that Lee did not know how a revolver worked, or that he did not look into the cylinder before he pulled the trigger.
10. Anyway, after we had been in my room for a while, I went upstairs. I knew my mom/dad wasn't home. For some reason, the keys to the gun cabinet were right on top. I took the keys and unlocked the gun cabinet. I got out the .357 magnum and I emptied it except for one bullet. I took the gun and bullet down in the basement to my room. I made a big show of bringing the gun and bullet into my bedroom and loading the gun in front of Lee and Riff. I suggested that we play a game of Russian roulette. I guess I was trying to impress Riff.
11. After I put the bullet in the cylinder I spun it around. I could see the bullet about three spaces away from the barrel, so I knew it would not fire, since all the other chambers were empty. I put the barrel up to the side of my head. I pulled the trigger real slowly. I made a big production out of it. Riff's eyes sort of bugged out when the hammer snapped down on the firing pin. Lee's eyes got kind of wide too.
12. After a minute or two I spun the cylinder again. Again I could see the bullet several spaces away from the barrel. This time I pulled the trigger real fast. Riff must have been expecting me to pull the trigger slowly, like I did it the first time, because s/he let out a sort of squeal when the hammer snapped down.
13. After the second time I held the gun out to Lee. I didn't throw it to him or drop it in his lap as some of the rumors around town suggested: I held it out and he took it. I didn't say anything to him either.
14. Lee took the gun while he was sitting on my couch. He stood up and looked at the pistol for a moment. Then he spun the cylinder. He slowly brought the gun up to his head. I was standing about four feet away. From where I stood it looked to me as though he should have been able to see into the chambers to see where the bullet was located. He put the barrel to his head and pulled the trigger.
15. I was completely surprised and shocked when the gun went off. I couldn't believe that Lee would put a revolver to his head without checking the location of the bullet. Riff screamed when the gun went off and then he/she passed out. I pulled him/her out of the bedroom.

Obviously the room was a mess. The impact was devastating. I felt sick to my stomach myself.

16. I knew Lee was dead, so I didn't bother with CPR. I threw a blanket over the body and closed the door to the bedroom. I woke Riff and got him/her upstairs.
17. I was in a state of shock and confusion. I thought I might get charged with a crime or something, even though I didn't do anything wrong. I now know it was wrong to lie, but I was really upset and confused that night. I told Riff that he/she and I were in this together and that we had better get our story straight or we would both be in trouble. I knew that it was unlikely anyone heard the shot since we live quite a ways from our nearest neighbor, so we had some time to calm down and talk. We decided to tell the police that Lee had asked to see the gun and bullet and that I had reluctantly taken them out of their cabinets. We would then say that Lee loaded the gun and was 'playing' with it when it went off. Riff and I agreed not to say anything about the Russian roulette.
18. After we had calmed down and got our story straight, I called 911. The police came and both Riff and I gave the story we came up with.
19. Looking back, I still cannot believe that Lee did not look into the cylinder to see where the bullet was located before he pulled the trigger. That was the cause of this accident. Anyone who has even a little knowledge of guns should know enough to look at the bullet in the cylinder---it is so easy to see. I don't know, maybe Lee was on drugs or something, or maybe he thought he was immortal like Dr.Slezak says. Two cans of malt liquor should not have been enough to get him drunk, in my opinion.
20. I know the gun-control liberals will see this case as another reason to take away our right to bear arms, especially handguns. That's so stupid. In our American Society class last semester we looked at John Lott's book More Guns, Less Crime. We learned how Professor Lott found that people are actually much safer with handguns around, even when accidental deaths are taken into account. He even points out that a lot of big anti-gun liberals have permits to carry concealed handguns, even though they want to take guns away from the rest of us. I wonder if that plaintiff expert, McCoy, has any handguns? This case resulted from a stupid accident by Lee. He should have known better. The rest of us should not have to suffer for his mistake.
21. That prior incident on the Fourth of July with old man Johnson got blown way out of proportion. What really happened was, I was trying to hit this crow with my rifle. I sneezed just as I pulled the trigger so my aim was off and the bullet went through Johnson's window a half mile away. I guess the label on the box is right, a .22 long rifle bullet really will travel a mile. Anyway, we reluctantly worked out a deferred prosecution agreement. We worked out a deal back in October, 2000. As part of the deal I had to pay for old man Johnson's window, which I agree was only fair. On top of that I had to pay another \$200 to the Clearwater Rod and Gun Club to help fund their hunter's safety course. But the bogus part was the judge ordered me not to have any contact with guns for twelve months. My parent was really mad

at the judge's order too, because it meant I couldn't hunt deer last fall and we like to eat a lot of venison. That meant that I couldn't even work in our store! Our lawyer had to hustle me and my parent out of the courtroom to keep my parent from giving the judge a piece of his/her mind. Imagine that: the judge ordered my parent not to let me have access to any guns for a year, including the deer rifle that I bought with my own money! I guess it will be worth it when the charge gets dismissed: I won't have a criminal record.

Dated this 10th day of October, 2001.

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Sean Lawton

Sworn to this 10th day of October 2001.

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Notary Public

My commission expires: January 10, 2005

CLEARWATER COUNTY SHERIFF'S DEPARTMENT

**YOUR RIGHTS**

Date: \_\_\_\_\_ Time Started: \_\_\_\_\_ Completed: \_\_\_\_\_

Place: \_\_\_\_\_

Name: \_\_\_\_\_ D.O.B. \_\_\_\_\_

Address: \_\_\_\_\_

I am \_\_\_\_\_ years old and have completed the \_\_\_\_\_ Grade in school. I have been advised that I have the following rights under the Constitution of the United States:

1. I have been informed of my right to remain silent. \_\_\_\_\_
2. I have been informed that anything I say can and will be used against me in a court of law. \_\_\_\_\_
3. I have been informed of my right to have an attorney present before and during questioning. \_\_\_\_\_
4. If I cannot afford to hire an attorney, one will be appointed to represent me at public expense before or during any questioning, if I so wish; \_\_\_\_\_
5. I have been informed that if I decide to answer questions now without a lawyer present, I have the right to stop the questioning and remain silent at any time I wish, and the right to ask for and have a lawyer any time I wish, including during the questioning. \_\_\_\_\_

**WAIVER OF RIGHTS**

I have read this statement of rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed: \_\_\_\_\_

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

## STATEMENT

My name is Sean Lawton. On April 28, 2001, I, along with Riff Randle and Lee Smid went to my home. We went into the basement, where my bedroom is located, listened to some music and watched some videos. We drank some Mitch's Big Cow Malt Liquor. I believe Lee Smid drank at least a couple cans, but I wasn't keeping track. Lee Smid knew my parent runs a gun shop and asked if we had any magnum pistols in the house. At first I didn't answer him. After awhile he asked about the pistol again, so I said "yeah." He asked if he could see one. I went upstairs and got a .357 magnum pistol and one bullet and brought them down to the basement. I didn't really want to do this, but I did anyway, I don't know why. I gave the gun and bullet to Lee Smid. Lee was sort of playing with the gun, moving it from one hand to the other and pointing it around the room. At some point I guess he loaded it. All of a sudden the gun went off and I saw Lee Smid had shot himself in the head, by accident. I didn't mean for him to shoot himself. I saw he was dead so I covered the body and called 911. Riff Randle saw the whole thing, too. I have read this statement and it is the truth.

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Sean Lawton

## **Affidavit of Andie Lawton**

1. My name is Andie Lawton. I am the parent of the defendant Sean Lawton and the co-defendant in this suit. I reside at 4 First Street in Clearwater. Our house is just inside the city limits and across from us is county forest and farm land. I am 45 years old and I own the Clearwater Sportsman's Oasis sporting gear store. My spouse died of a heart attack two years ago at a handgun meet at the Clearwater Gun Club.
2. Guns have always been important in our lives, as they are in the lives of most people in Clearwater County. At each major highway entrance to Clearwater County, the county visitors bureau has posted a sign, "Clearwater County Welcomes Marksmen". This isn't one of those places like Washington D.C. where the road signs tell you that your gun license from another state does you no good. We have always welcomed marksmen who come to the many competitions and advanced skills classes run at the Clearwater Gun Club. Those marksmen are an important boost to the Clearwater economy and to our business.
3. I learned about guns from my parents at our family business. I met my spouse, who was from North Carolina, at the National Rifle Association's national handgun championships at Camp Perry, Ohio, on the shores of Lake Erie. We never won the major awards, but we were good enough to compete there for several years. But marksmanship, like other strenuous athletic skills, requires physical skills that decay with time. Strong eyesight and steady hands are as important as steady nerves. Eventually, it's time to move over and let the next generation take its turn at those high level contests.
4. The Clearwater Gun Club has been an important part of our family life. My spouse and I were active club officers and supported the gun club's strong educational programs. We were particularly proud of the Club's Advanced Handgun Skills Course, which produced so many of Wisconsin's champion marksmen. Our store always ran ammunition specials for the participants in the Gun Club's programs – you need at least 1000 rounds of ammunition for some of those advanced programs.
5. We brought our children up to cherish the beauty and power of handguns and rifles. Our children were taken to hunter safety courses as soon as they were old enough to properly take responsibility for a rifle. It's amazing what city people don't know about what it takes to keep a gun clean and firing properly. But of course basic hunter safety class makes you about as much of a good marksman as drivers ed class makes you a good driver. We'd take our children out to the club to practice regularly. We'd take them to the local competitions and to the state competition when it was held at Clearwater. If we were going to keep our family business going, proper knowledge and respect for guns was part of our children's business training. We even took a trip out to Fairfax, Virginia to see the National Rifle Association's National Firearms Museum so the kids could understand the role of firearms in our history and why it's so important to preserve our constitutional right to bear arms. Why there's even a gun on display there that came over on the Mayflower. And you should see Teddy Roosevelt's library and gun room. Who wouldn't like a bookcase that opens to reveal incredibly beautiful sporting guns?



6. Sean went through all the basic and intermediate skills programs in firearms offered at the Gun Club. We impressed upon Sean the importance of keeping ammunition separate from guns and keeping guns locked up. We emphasized how people without proper training shouldn't be allowed near guns. We've had customers who didn't follow basic rules of gun safety and had accidents occur, and we had table discussion at dinner after those accidents about how now the gun control nuts would start dumping on gun enthusiasts again. But no rules or government regulations or waiting periods mean a thing if a person is determined to die. Just like the safest car in the world won't save a person who decides to drive off a cliff.
7. Sean did fire a rifle on the Fourth of July in 2000 while we were lighting sparklers after the town fireworks were over. Sean was extremely contrite about the criminal charge when our neighbors' window was hit. I don't think our neighbors would have called the police on it, but they had a cousin watching the house while they were at Camp Perry and the cousin called the police. Sean admitted right away what had happened and took the punishment meted out. I thought it was a bit much for the prosecutor and the judge not to drop the charge right away, but to deny Sean access to firearms for a year in return for dropping the charge later. But I was still in shock after my spouse's death and I just wanted to get the thing behind us and keep Sean's record clean. We're law-abiding people even when we're ordered to do something we disagree with. I put all our guns at home under lock and key and hid the key. Sean had to go work at the drive-in making malts instead of learning our family business. We tried to tell the judge what a hardship that was, but she wouldn't listen.
8. Lee Smid hung around our store when Sean worked there. Lee seemed mesmerized by rifles – or maybe Lee just wanted to hang around Sean. We'd humor Lee if we weren't too busy in the store and let him look at some rifles. But we knew Lee would never buy one. But Lee so wanted to be a normal Clearwater kid. No wonder Lee always seemed so sad and depressed. Lee's parents never thought about their kid or anyone else except in terms of what they could get for themselves. If they couldn't run an organization or cause in this town, they wouldn't help it at all. No grunt work for them.
9. Lee started hanging around Sean a few years ago – I don't really remember how long it's been. Sean really didn't like Lee hanging around, but Lee wouldn't let go. It's hogwash that Sean led Lee on. Sean didn't want to hang out with such a marked kid, especially a kid three years younger. Lee had been at our house several times and certainly must have known we had guns at home. It was no big secret.
10. I was out of town running a gun show booth the weekend Lee died. I trusted the kids to stay alone, and had done it a number of times. Our older child is 21 but was out at the bar that night. They hardly need babysitters at that age. I had no reason to doubt that the kids would do fine.
11. The .357 magnum that was used that night was in a locked cabinet in my bedroom as it was supposed to be, but I have no idea how they found the key. My regular practice is to keep the ammunition separate from my guns and store my guns unloaded. I don't know why it was

loaded that night. There are other grown people in that house – I don't know everything that goes on.

12. I think people who don't teach their children how to use a handgun properly are only encouraging them to use it foolishly. Guns are a historical part of American culture. If you don't teach a kid how to use a gun wisely, or how to drink sensibly, you're just asking for trouble. If there's any negligence here, it's Lee's family who was negligent in not bringing their kid up in the real world of Clearwater.
13. Everybody feels so sorry for Lee's family. Well what about us? There are all sorts of stories running around town about Sean causing Lee's death, when anybody in town could tell you how Lee had been moping around and was probably targeting our house as a place where he could get hold of a gun somehow and end the misery of life. Such a dramatic kid. Not a Clearwater type at all. You've got to put one foot in front of the other and keep moving in this life. That's what we're trying to do. The whole town's talking about it. Sean will have this hanging around for life, we'll never get a decent price when we sell our house after what's happened here, and Clearwater County will probably pass some stupid gun ordinance that will irritate the marksmen who are the lifeblood of our business. Lee Smid took away our lives too with that selfish shot.

Dated this 10th day of October, 2001.

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Andie Lawton

Sworn to this 10<sup>th</sup> day of October 2001.

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Notary Public

My commission expires: January 27, 2003

## **Affidavit of Wesson N. Smith**

1. My name is Wesson and I am Sean's best friend. I live at 8 Pine Street not far from Sean's place. Sean and I have been friends since kindergarten---we have hung out forever. Sean's parent and mine are even on the same bowling league.
2. I am in the ROTC and plan on enlisting in the Navy shortly after graduation. Sean talked about going on to Tech school but we figured that s/he'd probably end up working in the gun shop--taking over the family business. I'm not sure that Lee gave much thought to what s/he'd do but a lot of people around here end up at the factory.
3. Sean, Lee, and I all lived within blocks of each other growing up. Lee was like our little shadow. Lee was a few years younger and so Sean always good-naturedly called Lee "the kid". Lee could be somewhat annoying, always wanting to follow us around and do what we did. We were nice about letting Lee tag-along though. When Sean and I started high school, Lee couldn't wait to go there too. Lee loved the status of hanging around with our senior friends.
4. Sean and I were a couple of grades ahead of Lee in school, but you would not have guessed that from the way Lee acted. Lee was a quick learner and definitely knew how to hold his own. As far as talking crap and getting into trouble, Lee could do it with the best of them.
5. Lee definitely did not seem to be afraid of anything. I once saw Lee lay on the railroad tracks right before the trains came. I also saw Lee and friends play chicken on their ATVs on several occasions by Clearwater Creek. These incidents were usually preceded by a good deal of partying and consumption of Mitch's Big Cow Malt Liquor. Lee held the slamming record of our group; it blew my mind how fast Lee could knock them back. Sean was kind of a lightweight and couldn't drink very much without getting sick. I was worried when there were times we almost got caught but belonging to a group requires you to do what the group does, allegiance is important. We knew who our friends were and we would try to protect each other. Loyalty is a quality that is admired. No one ever ratted anyone out.
6. I turned 18 in January of my senior year at Clearwater, and I took Sean and Lee with me to Clearwater's Muddy Parlor to get my first tattoo. When we were there, Lee thought that Sean and him should get something pierced because neither of them was old enough for a tattoo. Sean didn't want to and said so. Lee said Sean was just a coward and afraid of the pain. Lee, showing that he could one up Sean, decided to go ahead and get his tongue pierced. Lee was just plain obnoxious the whole time we were there. Later on, we heard how furious Lee's parents were when they found out about the piercing but they never made Lee take it out.

7. Sean did not have a date for Senior Prom and Lee and Riff were too young to go. I didn't feel like going to the Prom but I didn't want to hang out with Lee either. I was still kind of upset with him for the way he acted on my birthday and I thought he was becoming a bad influence on Sean. Sometimes Lee would do stupid stuff just on a dare – like the time he laid down on the railroad tracks right before a train came just because Sean dared him too. I don't think Sean really thought he would do it though. Another time, Sean and I were duck hunting (Lee tagged along) and Lee asked to see my shotgun – I gave it to him and he started waving it around pretending he was holding us up – he started making me very nervous.
8. After the accident, Sean told me how that night they all were listening to music in Sean's basement, we used to do it a lot on the weekends when there was nothing else better to do. We had a few favorite CDs that we'd play all the time; it was much better than listening to the crap edited versions they played on the radio.
9. Sean admitted to concocting the foolish Russian roulette challenge in an attempt to impress Riff. Sean and Lee considered Riff almost like a rivalry. Sean told me that it was a dumb idea but that it was just an empty dare. Sean figured being older and acting cool would win over Riff. I talked to Riff at Lee's funeral. Riff said that Sean was bossy to Lee and tried to control him. I disagreed with her/him. I explained that Sean really was not; sometimes Sean just got a little annoyed by Lee. Sean talked a lot but never pushed anyone into anything. Lee gave Sean just as much lip but just not around Riff. To an outsider, it looks so much different than what it really was.
10. In retrospect, suggesting the round of Russian roulette was foolish, but going first did not make Sean responsible for Lee's death. None of us was any stranger to guns, but that should come as no surprise. Yes, Sean probably had more experience with guns than the rest of us, since Sean's mom/dad owned the local gun shop. However, when you look around to most families in the area, you see that many have enough guns to start a militia. It's just a way of life around here. Everyone in my family hunts, and most, practice shoot too.
11. I know that Sean took no chances with that little game of Russian roulette. Anyone familiar with a .357 Magnum revolver knows that you can see the bullet when you look in the cylinder. When Sean spun it and looked, Sean knew exactly what would happen after pulling the trigger--nothing. After the click and carefully watching the look on Riff's face, Sean handed the gun to Lee and gestured for him to do the same. Sean didn't egg Lee on, and Lee didn't have to do it. Sean just took for granted that Lee would do just as Sean had done—check the cylinder first. Most people would have made the same fateful assumption. Sean was not careless in thinking that Lee would know exactly what to do. Lee was not a dumb kid; I and everyone else who knew him would have said the same.
12. I still can't believe that Lee would even agree to play Russian roulette. I've been with Lee and Sean before when the suggestion has come up to play the game and Lee had always said no. Sean had always laughed it off like s/he was just kidding.

13. The whole thing is so unfortunate. Everything just went wrong. Sean never meant for all this to happen and Sean is not responsible for it. As for Riff not coming forward with the truth right away, I wouldn't blame that on Sean. Yes, Sean asked Riff not to mention the Russian roulette game, but can you even imagine the shock of seeing someone kill himself? That's hard on anyone much less a kid who is the kid's friend. Can you really blame Sean for being scared? The whole thing just got way out of hand. There's just no way Sean ever could have known, or even thought, Lee was going to do that. It's just all crazy and sad.
14. I feel bad for Lee's family. I miss Lee too. I also feel just as bad for Sean. Sean talks a lot about what it would be like if it were possible to go back and change that night. Some people think Sean is arrogant and nonchalant, but really Sean is just shy. It's such a terrible thing but it wasn't Sean's fault. Sean has an enormous amount of guilt, just like I'm sure Lee's parents do, but that can't be fixed now, and blaming someone else like Sean, is not going to make it any different. While no one forced Lee to make the bad choice that he did, it's one we all regret.
15. Maybe if I had gone over to Sean's that night; Lee might still be alive.

Dated this 17th day of October, 2001.

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Wesson N. Smith

Sworn to this 17th day of October 2001.

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Notary Public

My commission expires: January 27, 2005

## **Affidavit of Dr. Avery Slezak**

1. I am a full Professor of Developmental Psychology at the University of Texas at San Antonio. I have been a professor with the University since 1984.
2. I am appearing in this case at the request of Andie Lawton and I am being paid \$150 per hour plus any travel expenses for the time I am spending on this case. I met with Sean Lawton on October 30 and 31, 2001. I also reviewed all of the information in the affidavits of witnesses in this case. Obviously, I could not meet with Lee Smid. This affidavit is based upon my research, my experience, review of the information, and my meeting with Sean.
3. I first became interested in studying psychology as a teenager after walking in as my older brother committed suicide. I graduated from the Franklin and Marshall College in 1976 with a Bachelor of Arts Degree. My major was psychology. I obtained my Masters of Science Degree in psychology from Michigan State University in 1978. I earned my doctorate from the University of Wisconsin in developmental psychology in 1983. My doctoral dissertation was entitled "The Development of Attitudes Towards Guns Among Junior High Boys."
4. Developmental psychologists are dedicated to the discovery and application of scientific knowledge to education, child care, policy and related settings. We study the development of morals, language, emotion, social skills, and cognitive skills from birth to death. We use quantitative and qualitative research to try to develop systemic models of bio-behavioral organization.
5. Adolescents strive to loosen their ties to their parents and move toward freedom and responsibility. They also face finding new places to belong and new social affiliation. Abraham Maslow, a developmental psychologist, believed that there are five different levels of basic needs we must meet. We must meet the needs of one level before moving on to the next. The first level includes our physiological needs. The second level includes our needs for safety and security. The third level is our need for belonging and for social affiliation. The fourth level is the need for self-esteem and the final level is the need for self-actualization, the setting and achieving of goals larger than just ourselves.
6. Many adolescents spend a large amount of time trying to satisfy this third level of need. As a result, peer friendships increase in their importance. Adolescents generally seek out friends with similar needs and who have similar attitudes about life. During junior and senior high, clear adolescent status hierarchies emerge. Adolescents often engage in "showing off" behavior to try to insure respect and to attempt to move up in this hierarchy.
7. For boys as well as for girls, this showing off behavior sometimes can consist of very risky behavior. The role of adulthood that we promote in our society encourages seeking control, success, and power. Use of guns can appear a short-cut to these goals, particularly in areas where hunting is popular and guns therefore can be a means to developing bonds between friends.

8. Both Lee Smid and Sean Lawton exhibited risky showing off behavior here. Their ready use of a gun as part of this behavior is a demonstration of some of their similar attitudes and of the attempt to use guns to cement ties. Although Sean was slightly older, his/her willingness to hang around with Lee regularly suggests that they also were at similar developmental levels. It also indicates that both of them were very anxious to insure respect and felt a need to attempt to move up in the adolescent hierarchy.
9. Adolescents also struggle to develop their values. Although they are growing morally, they continue to be egocentric. Lawrence Kohlberg, a developmental psychologist who developed a theory of moral development, noted that typical adolescents begin to move from a moral system that equates “good” with “nice” to one in which morals are less dependent upon what pleases and is approved of by others. This newfound appreciation of the relativity of right and wrong, combined with the adolescent need to challenge authority makes them the only age group that has a significant tendency to admire the wrongdoer. This admiration extends to guns and those who use guns. This admiration for guns and those who use them existed for Lee as much as for Sean.
10. Adolescent thinking also is developing. Although it begins to approach adult thinking, it is not yet adult thinking. Adolescents can do more and more what-if, abstract thinking than they could before but they tend to overlook long-term consequences and to have a distorted perception of possible outcomes. They tend to quick and impulsive decisions reached without considering all of the options. Their sense of invulnerability and only partially developed ability to think about the future contributes to the poor nature of many of their decisions. Here, for example, a knowledge that guns can kill would not necessarily have translated into the knowledge that guns could kill either Lee or Sean. Both of them would have been wrapped in that adolescent sense of immortality that distorts adolescent thinking about possible outcomes.
11. In the situation in this case, none of the adolescents involved appears to have been able to consider long-term consequences or to perceive the likely outcomes. For both Lee and Sean, their sense of invulnerability and immortality distorted their ability to perceive that death was a realistic possible outcome. While Sean’s checking where the cartridge with the bullet landed suggests that he had some sense of possible outcomes, the egocentrism that is part of adolescent thinking prevented him from appreciating that Lee might not do the same. Adults often believe that as adolescents grow, they think more altruistically. Longitudinal studies suggest that this belief is a myth. Although selfish thinking steadily decreases in children approaching early adolescence, many in mid- and late adolescence regress. Hedonistic reasoning increases in these years. Thus, many adolescents retain vestiges of childhood thinking and assume others magically share their thoughts. They are unable to consider seriously the feelings or thought processes of others.
12. The National Longitudinal Study of Adolescent Health recently released by the National Institute of Child Health and Human Development found that, contrary to what was previously believed, family structure and income level are not the best predictors of risky behavior. That study found that the greatest predictors of risky behavior were whether

teenagers had friends who drink, problems with schoolwork, and frequently hang out with friends. Both of these teens apparently enjoyed drinking and I know that both were having difficulties with their schoolwork and that they were teenagers who were not involved with very many organized activities. Thus, both teens were equally likely to engage in risky behavior.

13. In my opinion, therefore, a teenager of Sean's age, intelligence, background and experience typically might not have thought to warn Lee about either the dangers of Russian roulette or how to tell whether the gun was about to go off just as a teenager of Lee's age, intelligence, background, and experience typically might not have admitted any ignorance of the workings of guns and might not have thought to apply whatever knowledge he had of guns to the ongoing events of that night. They were teenagers, not adults. Teenagers simply do not think as carefully or consider danger as thoughtfully as most adults do. The events of that night were tragic and stupid but, unfortunately, they were not beyond the ordinary for teenagers such as these. In my opinion, there was no negligence.

Dated this 2nd day of November, 2001.

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Dr. Avery Slezak

Sworn to this 2nd day of November, 2001.

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Notary Public

My commission expires: January 27, 2004



# CURRICULUM VITAE

## AVERY SLEZAK

### EXPERIENCE

#### **University of Texas at San Antonio**

Full Professor of Developmental Psychology, 1996-present

Associate Professor of Developmental Psychology, 1990-1995

Assistant Professor of Developmental Psychology, 1984-1989

### EDUCATION

#### **University of Wisconsin**

Ph. D in Developmental Psychology, 1983

#### **Michigan State University**

M.S. in Psychology, 1978

Teaching fellow in developmental psychology

#### **Franklin and Marshall College**

B.A. magna cum laude in Psychology, 1976

Research assistant to Professor Arnold Slacker investigating language development in toddlers

### WRITINGS AND PUBLICATIONS

Nice as Good: Moral Thinking Among High School Students, *Developmental Psychology* (August 2001)

*Chapter Ten: Adolescent Psychology*, Readings in Psychology, D.C. Heath and Company (2000)

Cloudy Crystal Balls: Teenage Thinking About Consequences, *Review of General Psychology* (November 1998) (with D. Kohler & R.E. Wenzle)

What Studies Say About Risky Behavior Among Our Youth, *International Journal of Psychology* (February 1995)

*Chapter Five: Looking at Lawrence Kohlberg's Theories*, Adolescent Psychology for Educators, University of Michigan Press (1993)

*Chapter Eight: Maslow's Hierarchy*, Adolescent Psychology for Educators, University of Michigan Press (1993)

Using Language as a Reflector of Peer Influences in Teenage Girls, Journal of Applied Development Psychology (March 1991)

Use of Lying to Gain Prestige in Middle School Boys, Journal of Experimental Child Psychology (April 1990)(with A.R. Eisen)

Moral Thinking in Pre-Teens, Developmental Psychology (January 1988)

What We Know About Helping Children Develop Morals, Educator Magazine (September 1986)

How Teenagers Learn to Think About Guns, Journal of Experimental Child Psychology (fall 1985)

The Development of Attitudes Towards Guns Among Junior High Boys, Doctoral Dissertation (1983)



**.357 Magnum**



The pen is indicating a bullet in the chamber.

This is a frontal view of the gun with an empty chamber.

