

NO. 14-033971-CV

**VICTORIA DENNING, individually  
and in her capacity as Administrator  
of the Estate of KAY DENNING,**

*Plaintiff,*

v.

**ZETA LAMBDA NU FRATERNITY**

*Defendant.*

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**IN THE 479<sup>th</sup> DISTRICT COURT**

**IN AND FOR**

**DALLAS COUNTY**

**STATE OF LONE STAR**

**Prepared by:**

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**NATIONAL TRIAL COMPETITION**  
**KAY DENNING v. ZETA LAMBDA NU FRATERNITY**  
**SUMMARY OF FACTS**

Kay Denning's estate brings this wrongful death action against the Zeta Lambda Nu fraternity ("ZetaNu") after she died of massive brain damage incurred at a fraternity event on its premises on May 24, 2014. Defendant asserts Denning's death was the result of her own negligence.

## **WITNESS AND EXHIBIT LIST**

### **WITNESSES:**

#### **PLAINTIFF:**

1. Alex Bell (may be male or female)
2. Chris Bloom (may be male or female)

#### **DEFENDANT:**

1. Andrew Dornburg (must be male)
  2. Courtney Perez (may be male or female)
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### **EXHIBITS:**

1. Invitation to the May 24, 2014 party at Zeta Lambda Nu
2. Diagram of fraternity house and yard
3. Photograph of the sign over Zeta Lambda Nu's door
4. Photograph of the tiki bar at Zeta Lambda Nu
5. Photograph of the lifeguard chair at Zeta Lambda Nu
6. Photograph of the megaphone used by Andrew Dornburg
7. Text messages on Andrew Dornburg's phone with Kay Denning
8. Text messages on Andrew Dornburg's phone with Chris Bloom
9. Police report dated May 25, 2014
10. Police report dated May 28, 1988
11. Kay Denning's autopsy report
12. Alcohol Content Laboratory Report
13. Photograph of Kay Denning
14. Photograph of Kay Denning

## STIPULATIONS

### Procedural Matters

1. Federal Rules of Civil Procedure and Federal Rules of Evidence apply.
2. All witnesses called to testify who have identified the parties, other individuals, or tangible evidence in depositions or prior testimony can and will, if asked, identify the same at trial.
3. Each witness who gave a deposition agreed under oath at the outset of his or her deposition to give a full and complete description of all material events that occurred and to correct the deposition for inaccuracies and completeness before signing the deposition.
4. All depositions were signed under oath.
5. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on a deposition does not comport with signatures or initials located on an exhibit.
6. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.
7. This competition does not permit a listed witness, while testifying, to “invent” an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that “invented” individual.
8. “Beyond the record” shall not be entertained as an objection. Rather, teams shall use cross-examination as to inferences from material facts pursuant to National Rules VII(4) NTC National 2016 Revised - Page 12 VIII(5). Any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in Rule VIII(4).

9. The Plaintiff and the Defendant must call the two witnesses listed as that party's witnesses on the witness list. The parties may call their respective witnesses in any order.
10. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence. The parties have waived all objections to Exhibit 11 (Kay Denning's autopsy report) save for those arising under Federal Rules of Evidence 401-404. Subject any such objection, Exhibit 11 may be offered by either party at any time during trial.
11. It is stipulated that no one shall attempt to contact the problem drafter about this problem before the conclusion of the 2016 National Trial Competition Final Round. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.
12. 2016 is the year in which this case comes to trial.
13. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the Plaintiff shall have four minutes to present any pretrial motions; (2) the Defendant shall have four minutes to respond to the Plaintiff's motion(s); (3) the Defendant shall have four minutes to present any pretrial motions; and (4) the Plaintiff shall have four minutes to respond to the Defendant's motion(s).
14. This competition permits teams to argue additional case law and other relevant authority to support their arguments on motions and evidentiary issues. However, no additions or deletions are permitted to the jury instructions or to the jury verdict form.
15. Motions to dismiss and for summary judgment have been filed and denied; no further motions to dismiss or for summary judgment will be entertained.

### Substantive Matters

16. The legal drinking age in the State of Lone Star is 21. The Court previously has rejected the Defendant's argument that Kay Denning's consumption of alcohol while under Lone Star's legal drinking age constitutes negligence *per se*. It also has rejected the Plaintiff's argument that the Defendant's admission of Ms. Denning to the party on May 24, 2014 while she was underage constitutes negligence *per se*. No further motions in either respect will be entertained. However, if properly presented at trial, the jury may consider such evidence in determining the parties' respective degrees of fault, if any.

17. The Court previously has ruled that Exhibit 12 is admissible. No further motion regarding the admissibility of Exhibit 12 will be entertained.

18. Lone Star Civil Practice & Remedies Code § 33.001 provides:

In a tort action, a claimant may not recover damages if his percentage of responsibility is greater than 50 percent.

19. Lone Star Penal Code § 49.01 provides:

“Intoxicated” means having an alcohol concentration of 0.08.

“Alcohol concentration” means the number of grams of alcohol per 100 milliliters of blood.

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<b>and in her capacity as Administrator</b>	§	<b>IN THE 479<sup>th</sup> DISTRICT COURT</b>
<b>of the Estate of KAY DENNING,</b>	§	
	§	
<i>Plaintiff,</i>	§	<b>IN AND FOR</b>
	§	
	§	
<b>v.</b>	§	<b>DALLAS COUNTY</b>
	§	
<b>ZETA LAMBDA NU FRATERNITY</b>	§	
	§	<b>STATE OF LONE STAR</b>
<i>Defendant.</i>	§	

**PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE COURT:

COMES NOW Plaintiff Victoria Denning, individually and in her capacity as Administrator of the Estate of Kay Denning, deceased, and files this Original Complaint against Zeta Lambda Nu Fraternity:

**GENERAL ALLEGATIONS**

1. This is an action for damages within the jurisdictional limits of this Court.
2. Victoria Denning (“Plaintiff”) is an individual who has been a resident of Dallas County since 1992. Kay Denning (“Kay”) was an individual who was a resident of Dallas County from 1994 until her death on May 30, 2014.
3. Zeta Lambda Nu Fraternity (“Defendant”) is a non-profit corporation organized under the laws of the State of Lone Star. Its headquarters is located at the University of Lone Star in Armadillo, Lone Star.

4. The accident that is the subject of this Original Complaint occurred in Dallas County, State of Lone Star.

5. On May 24, 2014, Defendant held a party at its fraternity house on the University of Lone Star campus. It served alcohol at the party. Defendant's treasurer, Andrew Dornburg ("Dornburg"), organized the party. On May 24, Dornburg repeatedly invited Kay to the party.

6. Kay attended the party at Dornburg's urging. She was 20 years old at the time. Defendant knew or should have known that Kay was not of legal drinking age, but it let her into the party anyway and served her alcohol.

7. At the party, Dornburg suggested that Kay climb to the top of a lifeguard chair and dive into a shallow pool that Defendant had built for the party. Kay complied, dove into the pool, and landed on her head and neck.

8. Kay died as a result of the injuries she sustained following the dive.

9. At all relevant times, Dornburg was acting within the course and scope of his duties as Defendant's treasurer.

10. Plaintiff is the natural parent of Kay.

11. Plaintiff has been duly appointed as the administrator of Kay Denning's estate.

### **NEGLIGENCE**

12. Plaintiff incorporates by reference the allegations in paragraphs 1 through 11 as if fully restated herein.

13. Defendant had a duty of care toward Kay while she was a guest and



invitee at its party on May 24-25, 2014.

14. Defendant breached its duty of care to Kay and was negligent in one or more of the following ways:

- a. Admitting Kay to the party at its fraternity house when it knew or should have known that she was not of legal drinking age;
- b. Admitting Kay to the party at its fraternity house when it knew or should have known that she was intoxicated; and
- c. Through Dornburg, directing Kay to dive off of the lifeguard chair and into the pool when it knew or should have known that she was intoxicated.

15. Defendant's negligence was the actual and proximate cause of the accident and of Kay's death.

16. Plaintiff is a person entitled under the statutes of Lone Star to assert a wrongful death cause of action for the death of Kay Denning, being a parent of Kay.

17. Kay, had she survived the accident, would have had a cause of action for her pain, suffering, and mental anguish suffered as a result of the accident. Plaintiff is a person entitled to assert such causes of action on Kay's behalf and on behalf of her estate.

**JURY DEMAND**

18. Plaintiff demands trial by jury.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and as Administrator of the Estate of Kay Denning, requests that the Defendant be cited to answer and appear, and that upon final hearing the Plaintiff have judgment for damages, pre-judgment and postjudgment interest as allowed by law, costs of suit, and such other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully Submitted,

Law Offices of Madelyn Light & Associates  
2204 Goskomizdat Way  
P.O. Box 2001  
Armadillo, Lone Star 72115-2001  
(512) WILL SUE (Telephone)  
(512) 945-5788 (Facsimile)

By: /s/Madelyn Light  
Madelyn Light, State Bar No. 00045896

<b>VICTORIA DENNING, individually</b>	§	
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<b>of the Estate of KAY DENNING,</b>	§	
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<i>Plaintiff,</i>	§	<b>IN AND FOR</b>
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<b>v.</b>	§	<b>DALLAS COUNTY</b>
	§	
<b>ZETA LAMBDA NU FRATERNITY</b>	§	
	§	<b>STATE OF LONE STAR</b>
<i>Defendant.</i>	§	

**DEFENDANT’S ORIGINAL ANSWER**

TO THE HONORABLE COURT:

COMES NOW Defendant Zeta Lambda Nu Fraternity (“Defendant”), and files this answer to Plaintiff Victoria Denning’s Original Complaint:

**ANSWER**

1. Defendant admits the allegations in paragraph 1 for jurisdictional purposes only.
2. Defendant admits the allegations in paragraph 2.
3. Defendant admits the allegations in paragraph 3.
4. Defendant admits the allegations in paragraph 4.
5. Defendant admits the allegations in paragraph 5.
6. Defendant admits that Kay Denning attended the party on May 24-25, 2014 and that she was 20 years old at the time. Defendant denies the remaining allegations in paragraph 6.
7. Defendant admits that Kay Denning dove into a pool at Defendant’s fraternity house and landed on her head and neck. Defendant denies the remaining allegations in paragraph 7.

8. Defendant admits the allegations in paragraph 8.

9. Defendant denies the allegations in paragraph 9.

10. Defendant admits the allegations in paragraph 10.

11. Defendant admits the allegations in paragraph 11.

12. Defendant realleges its answers to paragraphs 1 through 11 as if fully set forth herein.

13. Defendant admits the allegations in paragraph 13.

14. Defendant denies the allegations in paragraph 14.

15. Defendant denies the allegations in paragraph 15.

16. Without admitting liability, Defendant admits the allegations in paragraph 16.

17. Without admitting liability, Defendant admits the allegations in paragraph 17.

18. To the extent necessary, Defendant denies all the remaining allegations in Plaintiff's Original Complaint.

#### **AFFIRMATIVE DEFENSES**

19. Without waiver of the foregoing, but in addition thereto, Defendant affirmatively pleads that the accident identified in Plaintiff's Original Complaint was proximately caused, in whole or in part, by Kay Denning's own negligence, including, without limitation:

- a. Consuming an excessive amount of alcohol at a separate party before arriving at Defendant's fraternity house on the night of May 24, 2014;
- b. Entering Defendant's fraternity house for the purpose of consuming alcohol when she knew she was barred because of her age;
- c. Refusing to leave the party at Defendant's fraternity house after being told by Defendant that the party was over; and

- d. Deciding, while under the influence of alcohol, to dive from the lifeguard chair and into the pool identified in Plaintiff's Original Complaint.

**PRAYER**

WHEREFORE, Defendant requests that upon final trial that Defendant have judgment that Plaintiff take nothing by her suit, that Defendant be discharged from any and all liability, that Defendant recover court costs, and for such other and further relief, at law or in equity, general or special, to which Defendant may show itself to be justly entitled.

Respectfully Submitted,

Jones & Bloom, LLC  
711 West Insurance Way, Suite 6700  
Armadillo Petroleum Building  
PO Box 1411  
Armadillo, Lone Star 72105-1411  
(512) 424-4411  
(512) 424-4422 (fax)

By: /s/Brantley Jones  
Brantley Jones, State Bar No. 15848726

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Deposition of Alex Bell

Q. Please state your name for the record.

A. My name is Alexander Bell. People call me Alex, though.

Q. How old are you?

A. I'm 52.

Q. What do you do for a living?

A. I'm a sergeant with the University of Lone Star Police Department.

Q. How long have you been a police officer?

A. Since college. I went to the University of Lone Star, and when I graduated, I decided I didn't want to leave. Go Armadillos! Sorry, I still have a lot of school pride. Anyway, I was a criminal justice major, so I joined the ULSPD right after graduation and I've been here ever since.

Q. What training do you have as a police officer?

A. Well, apart from my degree in criminal justice, I also attended and got a certificate from the Lone Star Ranger school, where I learned a great deal about criminal law, accident investigation, forensics, interrogation techniques, that sort of thing. When I started, I was working under Tim Helfrich, who was a legend in our department. After two years of that, I got my own patrol and have been doing that ever since.

Q. What sort of experience do you have investigating accidents or other types of incidents on the ULS campus?

A. Oh, we get all sorts of things. Most of it is alcohol-related. I usually give out a few DUIs a month, almost all of which are in or near frat row. We also have our fair share of fender benders, shoplifters, and other sorts of petty crime. There's the occasional booze-fueled

1 fight, which, again, usually happens on frat row. Things can really get pretty crazy over there,  
2 particularly when there's a big party going on.

3 Q. Before Kay Denning, had you ever investigated an accidental death?

4 A. Only once before, about 25 years ago, at the same fraternity. All of the  
5 techniques I learned in college and in Ranger School are applicable to that sort of investigation.

6 Q. What happened 25 years ago?

7 A. A kid drowned in that artificial lake they make in their yard. Again, too much  
8 alcohol. I was pretty new at being a cop, then. But I remember it like it was yesterday. A real  
9 tragedy. Stupid frat boy incident.

10 Q. Did you investigate Kay Denning's accident on the night of Saturday, May 24,  
11 2014?

12 A. Yes. Well, actually, it was early in the morning on May 25, 2014, but yes, I did.

13 Q. How did you learn about the incident?

14 A. At approximately 1:55 a.m. on the morning of the 25th, our 911 dispatcher  
15 radioed me and told me that there had been an accident at the Zeta Lambda Nu fraternity and that  
16 an officer was needed on-scene immediately. So I turned on my siren and headed over there.  
17 The whole thing really took me back to 25 years ago. Right off the bat I knew the Zetas had  
18 done something really stupid.

19 Q. When you got there, what did you see?

20 A. Well, when I pulled up, I saw a sort of "beach scene" set up in the front. There  
21 was that damn shallow pool or pond, a sandy beach, a small tiki bar, and a lifeguard chair set up  
22 in the sand. It was déjà vu all over again. The same basic set up from 25 years ago. I gathered a  
23 party had taken place there that night. There were red and blue cups strewn around all over the

1 front yard, and I also saw a few empty rum and vodka bottles. There also was a small group of  
2 what looked like Zeta fraternity brothers huddled around something on the sand.

3 Q. I'm showing you Exhibits 4 and 5. Are these pictures of the tiki bar and lifeguard  
4 chair you saw?

5 Marty Jones: OBJECTION. Leading, assumes facts not in evidence, lack of foundation,  
6 calls for speculation.

7 Tim Williams: Really, counsel?

8 [Colloquy off the record.]

9 Q. OK. Alex Bell, you have exhibits 4 and 5 in front of you. Do you know what  
10 those are?

11 A. Yes, I do.

12 Q. What are they?

13 A. They are pictures of the tiki bar and lifeguard chair I saw.

14 Q. What were the fraternity brothers huddled around?

15 A. As I approached, I could see it was a young woman's body. She was unconscious  
16 and was soaking wet. She was breathing, but only just. I later learned that this was Kay  
17 Denning.

18 Q. How did you respond?

19 A. My 911 dispatcher had informed me that an ambulance already was on the way,  
20 so I secured the area and moved the crowd back until the paramedics got there. I assisted the  
21 paramedics in loading Ms. Denning into the ambulance, and when it left, I began investigating  
22 what happened.

23 Q. How did you do that?



1 A. I interviewed several people at the scene.

2 Q. Who did you interview?

3 A. Andrew Dornburg, who, I was told, was the fraternity's treasurer, Courtney Perez,  
4 who apparently was the party organizer, and Chris Bloom, who, I learned, was a friend of Ms.  
5 Denning's from out of town.

6 Q. Okay. Let's start with Andrew Dornburg. When you spoke with him, what was  
7 his demeanor like?

8 A. He was obviously drunk. His eyes were glazed over, he was slurring his words,  
9 he had trouble balancing, that sort of thing. Believe me, I've had to respond to enough frat  
10 parties that I've seen this sort of thing before. I've been to that particular house multiple times.

11 Q. What did you ask him?

12 A. I asked him what happened.

13 Q. And what did he say?

14 A. Well, he said Ms. Denning had met him toward the end of the party, that they had  
15 been drinking, and that somehow they decided that Ms. Denning would try to do a cannonball off  
16 of the top of the lifeguard chair and into the pool. I asked him whose idea that was, but he said  
17 he didn't remember.

18 Q. What did he say happened next?

19 A. He seemed a little confused, and at that point, I started having trouble getting a  
20 straight answer out of him. I think it was the alcohol. From what I could gather from him, Ms.  
21 Denning refilled her drink, climbed up on the lifeguard chair and ended up headfirst in the pool.  
22 That's what he seemed to be saying, at least. He was drunk and a little hysterical, though, and it  
23 looked like he also was in a state of shock.

1 Q. Did you ever try contacting him again to get clarification?

2 A. Yes, the next afternoon, I dropped by the fraternity and asked to speak with him  
3 again. Mr. Dornburg's dad was there and said his son would not talk with me again without a  
4 lawyer. He looked a lot older than the last time I saw him.

5 Q. You just made a face when you made that comment, and you had a fair amount of  
6 scorn in your voice.

7 Marty Jones: OBJECTION. Counsel is testifying. Don't answer, there's no question  
8 pending.

9 Q. Do you have negative feelings toward Mr. Dornburg's father?

10 A. Well, let's just say he was a jerk 25 years ago, he's a jerk now and his son is  
11 worse.

12 Q. What about Perez, what did Perez say?

13 A. Perez was at the door most of the night. Ms. Denning and Bloom had attempted  
14 to enter the party, but when they refused to present ID, Perez declined to let them in. Perez also  
15 said that, later that night, when taking down some of the party decorations, Perez saw Ms.  
16 Denning wading through the pool and toward the lifeguard chair and told her to leave because  
17 the party was over. Perez said Ms. Denning then climbed up on the lifeguard chair and fell into  
18 the water.

19 Q. Did Perez say whether Mr. Dornburg was there?

20 A. Perez didn't see Mr. Dornburg at that time.

21 Q. Okay, let's go to Chris Bloom. What did Chris Bloom say?

22 A. Bloom was hysterical, but just said Ms. Denning had climbed up and fell off of  
23 the lifeguard chair and that it was all Andrew's fault and Bloom should never have let Denning

1 out of Bloom's sight when Bloom knew she was so drunk. That was about all I could get out of  
2 Bloom.

3 Q. Did you speak with anyone else?

4 A. No. I canvassed the bystanders thoroughly, but nobody else had any information  
5 about what had happened.

6 Q. Was that the end of your investigation?

7 A. Yes.

8 Q: Can you identify Exhibits 11 and 12?

9 A: Exhibit 11 is the Autopsy Report. It's a tragedy what the Zetas did to that girl.  
10 Brain dead on admission to the hospital. Exhibit 12 is a lab report for Ms. Denning.

11 Q. What did you do when you finished your investigation?

12 A. I put my findings in a report.

13 Q. Here is Exhibit 9. Can you identify this document?

14 A. Yes, it's the police report I prepared on May 25, 2014 about the incident.

15 Q. I'm showing you Exhibit 10. Is this a report you prepared in 1988? Withdrawn.  
16 Can you tell me what this document is?

17 A. Yes. It's a report I prepared from 1988. It details a very similar incident, the  
18 drowning I spoke of.

19 Q. When we first got this, Exhibit 10 was attached to the back of Exhibit 9. Did you  
20 do that?

21 A. I most certainly did.

22 Q. Why?

23 A. Because I think the Zetas need to be held accountable for their irresponsible

1 actions over the years.

2 Q. In your expert opinion, do you think the Zetas were negligent in allowing Ms.  
3 Denning to come to the party, climb up on the lifeguard chair, and dive off?

4 Marty Jones: Objection, lack of competence, lack of foundation, assumes facts in  
5 evidence, misstates prior testimony. This witness cannot opine on negligence.

6 Tim Williams: You may answer.

7 A. Yes, absolutely. She was 20 years old, so she shouldn't have even been there.  
8 Without a doubt, they're responsible for her death.

9 Q. Officer Bell, when you were in college at ULS, you thought about joining the  
10 Zeta fraternity didn't you?

11 A. Yeah, I mean, I visited a few frats.

12 Q. But the Zetas didn't let you in, did they?

13 A. No.

14 Q. In fact, they humiliated you?

15 A. Don't know what you're talking about.

16 Q. During the rush process, they made you strip down to your underwear and rush  
17 the field during a ULS football game, right?

18 A. Yeah, I mean, I'll never forget that.

19 Q. And then, the very next day, they told you that you didn't make the cut.

20 A. Yeah, but hey, it was college. Things like that happen. I ended up in another  
21 house and had a great time. We held joint parties with the Zetas, so there were no hard feelings.

22 Q. Dornburg's father was the person who communicated that decision to you, wasn't  
23 he. And he did so in front of a group of your friends.

1           A.     Yeah. Like I said, the guy's a jerk.

2

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1 Deposition of Chris Bloom

2 Q. Please state your name for the record.

3 A. I'm Chris Bloom.

4 Q. How old are you?

5 A. I'm 21.

6 Q. Where do you live?

7 A. I'm at 41 Ramona Street out in Tall Tree.

8 Q. You're a student, right?

9 A. Yeah, I'm a junior at Tall Tree College.

10 Q. Did you know Kay Denning?

11 A. I did. She was my best friend. We grew up together. I'll never forgive Andrew  
12 Dornburg for what he did to her.

13 Q. Just out of curiosity, why didn't you end up going to the University of Lone Star  
14 with her?

15 A. I applied but I didn't get in. I thought I got shafted, because my application was  
16 really good, but I think the shoplifting conviction kept me out. But, anyway, Kay and I still tried  
17 to visit each other as often as we could. Tall Tree and Armadillo are only a few hours apart by  
18 car.

19 Q. When were you convicted of shoplifting?

20 A. It happened right after I turned 18, right before I applied to ULS. I got probation.

21 Q. What did you shoplift?

22 A. I didn't take anything. Nothing.

23 Q. What were you convicted of stealing?

DEPOSITION OF CHRIS BLOOM

Page 1 of 9

1 A. Jewelry.

2 Q. Were you in Armadillo on May 24, 2014?

3 A. Yeah, I went to visit Kay at ULS. Sorry, that's the University of Lone Star.

4 Q. What did you and Kay do that night?

5 A. Well, I got into town around 4:00 p.m. We had dinner at this great little Mexican  
6 place on campus, and then we headed out to try to find someplace to hang out.

7 Q. Did you go to Zeta Lambda Nu?

8 A. Yeah, we walked by around 6:30, I think.

9 Q. What did you see?

10 A. So, there was some sort of beach setup in the front yard. There was a pool made  
11 out of sandbags, a sandy beach, a little tiki bar, and a lifeguard chair in the water. There were a  
12 few guys floating on rafts. And there was some guy, who I now know was Andrew Dornburg,  
13 sitting on top of the lifeguard chair with a megaphone and a beer. He had his shirt off and was  
14 yelling at everyone with the megaphone.

15 Q. I'm showing you Exhibit 4. Can you identify that?

16 A. Yes, that is a picture of the tiki bar.

17 Q. Now I'm showing you Exhibit 6. How about this one?

18 A. Yup. That looks like the megaphone Andrew was using.

19 Q. And now here's Exhibit 5. What is this?

20 Marty Jones: Counsel, can you tell me why these exhibits are not in order?

21 Tim Williams: No. Please answer the question.

22 A. That's the lifeguard chair Kay fell off of. It was in the water, though, so you  
23 couldn't see the bottom part.

1 Q. How much of it was in the water?

2 A. Um. Let me try to think. I'm pretty sure you couldn't see the bottom rung or  
3 two.

4 Q. What did Andrew say to you and Kay?

5 A. He used his megaphone and said, [witness pretends to hold microphone in left  
6 hand and raises voice] "Hey you, in the pink shirt." That was Kay. He said, "You want to come  
7 to my party tonight?"

8 Q. What happened then?

9 A. Well, I was a little grossed out by him, but Kay wanted to talk. We walked over  
10 to the side of the pool and Andrew walked across to talk to us.

11 Q. You said he walked across to you? Wasn't he on the lifeguard chair?

12 A. Obviously he had to climb down for the chair. He slipped on the way down and  
13 spilled his beer. Then he walked through the water over to us. He stood in the water and we  
14 were on the other side of the sand bags.

15 Q. How deep was the water?

16 A. I don't know. Maybe 2 feet.

17 Q. Describe any communications once Andrew got over to you and Kay.

18 A. Just chit chat stuff. Andrew was hitting on Kay. It was like I wasn't there. He  
19 talked right over me. He really ticked me off. A jerky man. After a few minutes Andrew asked  
20 for Kay's number. She asked for his phone and put her number on it. Then she handed the  
21 phone to me, so I did the same and gave it back to Andrew. Andrew told Kay to make sure she  
22 came to the party and we left.

23 Q. What did you and Kay do after that?



1           A.     Well, Kay's in the Xi Pi sorority. She was getting ready to move out, but all her  
2 stuff was still there. There was a group going to the party at Zeta Lambda Nu, so we hooked up  
3 with them.

4           Q.     Do you know how they heard about the party?

5           A.     I know they got an invitation.

6           Q.     How do you know that?

7           A.     Kay had one. She said everyone in the house was invited.

8           Q.     Can you identify Exhibit 1?

9           A.     That's the invitation that Kay had in her room. But she was worried . . .

10          Q.     You stopped your answer, what was she worried about?

11          Marty Jones: Just answer the question. Don't volunteer.

12          Tim Williams: Please don't instruct the witness. Is there an objection?

13          Marty Jones: No. Go ahead and answer. But just the question he asks you.

14          A.     It's not important.

15          Q.     Please finish your thought. What was Kay worried about?

16          A.     Well, she told me she had dropped out of all her classes but hadn't told her mom.  
17 She got a notice that she was suspended from the sorority and had to move out of the house by  
18 the end of the term. They let her stay because she was all paid up until then. She said she would  
19 have to apply for reinstatement if she ever came back. She told me she didn't really care,  
20 though, and she was going to get in as much fun time as possible before her mom found out.

21          Q.     What was your response?

22          A.     I didn't say anything much. I was pretty much shocked and knew her mom was  
23 really going to freak out. Plus Kay got really weird and worked up so I just let it drop.

1 Q. When did this conversation take place?

2 A. While we were getting ready to go to the party.

3 Q. Did you go to the party?

4 A. We tried. Kay and I were each 20 at the time, and when we got to the door, there  
5 was a handwritten poster that said "Must be 21 to enter." So we couldn't get in.

6 Q. Was there anyone checking to see if people were 21?

7 A. Yeah, it was someone Kay knew -- Courtney.

8 Q. Courtney Perez?

9 A. Yeah. I didn't know Courtney's last name then, though.

10 Q. What happened when you tried to go into the party.

11 A. There were around 6-7 of us. We hung around the back of the group, but  
12 Courtney checked everyone one by one. When it was our turn, Kay told Courtney that she had  
13 left her ID back in her room, but she'd been specifically invited by Andrew. Kay tried to talk  
14 Courtney into letting us in. She said she just wanted to see Andrew and wouldn't drink, if that  
15 was the problem. Courtney became more and more of a jerk and Kay got pretty mad and riled up  
16 and argued a lot. We finally left. I saw some other people who didn't look like they were 21  
17 going in the door, though.

18 Q. Just to be clear, though, you don't know if anyone under 21 was actually let into  
19 the party?

20 A. I never saw their ID's, if that's what you mean.

21 Q. What time was it when you talked with Courtney Perez?

22 A. Around 9:30.

23 Q. What did you and Kay do after it was clear Courtney was not going to let you in?

1           A.     Kay said it was stupid that they wouldn't let her in when Andrew wanted her to  
2 come. She said there were parties all over campus and we could go find another one. So that's  
3 what we did.

4           Q.     Where did you go?

5           A.     I'm not sure. We went to a few different places, but ended up staying most of the  
6 time at an apartment house few blocks away.

7           Q.     What time did you get there?

8           A.     Probably 10:00 p.m.

9           Q.     How long did you stay?

10          A.     Until a little after 1:00 a.m.

11          Q.     Was Kay drinking?

12          A.     I mean, yeah, it was a party.

13          Q.     She was drinking kind of a lot, wasn't she?

14          A.     Sure, I guess.

15          Q.     You had been drinking, too, that night, hadn't you?

16          A.     Sure, I had a couple of drinks. I'm not a big drinker, though.

17          Q.     How many drinks did Kay have?

18          A.     Over those three hours? I wasn't with her the entire time, but I'd say probably  
19 three or four vodka-cranberries, maybe more. She might have done some shots. Maybe a hit or  
20 two, maybe a brownie. She was pretty wasted. She kept texting someone. I assume it was  
21 Andrew.

22          Q.     Did you say anything to her?

23          A.     I told her we had to go home. She said she wanted to go see Andrew. She could

1 hardly even talk. I told her absolutely not. She said she was going to the bathroom and then I  
2 couldn't find her.

3 Q. What happened then?

4 A. When Kay first went to the bathroom I texted Andrew to let him know I was  
5 worried she'd try to go over there. When I couldn't find her, I texted him again and told him that  
6 she was in really bad shape.

7 Q. Let me show you Exhibit 8. Are these your texts to Andrew?

8 A. Yes.

9 Q. Why does it say "the friend"?

10 A. Well, that's how I put my info into his phone.

11 Q. Did he respond?

12 A. No, but I started over there right away. I was a little turned around and it took me  
13 a while to find it.

14 A. What time did you get there?

15 Q. I'm not sure. I know it was before 2.

16 Q. What happened then?

17 A. I saw Kay climbing the lifeguard chair. I started running when I saw her, but  
18 everything seemed kind of like slow motion. She was slipping a lot. When she got to the top,  
19 she stood up and wobbled around and then fell headfirst into the water. By the time I got to the  
20 pool, Courtney was already in the water with her and Andrew was going out to help. I just stood  
21 there, I couldn't even move. Andrew yelled out something like "she's ok, she's ok." And the  
22 next thing I remember are the sirens.

23 Q. Where was Andrew when you first got there?

1 A. He was kind of running out of the house with a pitcher in his hand and yelling.

2 Q. What was he saying?

3 A. I remember him saying, "Hey baby, I'm here to top you off. Don't you go diving  
4 without me." I'm pretty sure I remember him saying that. Or something like that. I remember  
5 him saying "baby" because I really hate that name. I mean, her name was Kay and she was a  
6 grown woman.

7 Q. Have you ever seen Exhibits 13 or 14?

8 A. Those are pictures of Kay. I think that I was in the first picture, but it looks like I  
9 was cropped out. The other picture is from a party a few weeks ago.

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1 Q. I'm the one asking questions, not you.

2 A. I'm guessing you weren't in the Greek system when you were in college. I mean,  
3 we wanted a fun party. Pretty simple. So, first, we were going to have plenty of booze. We sort  
4 of got the idea from a few beach parties my dad put on in the mid-80s, when he was president of  
5 the Zetas. Those parties are pretty legendary at Zeta, and we wanted people to feel like they  
6 were back in the 80s, too, you know, like it was the olden days. So, beach party, time travel,  
7 "Teen Beach Movie."

8 Q. Did your dad ever describe any of those parties to you?

9 A. Yeah, he told me they were amazing, but they only had three or four of them. He  
10 told me how we should build the pool.

11 Q. Do you know why the parties stopped?

12 A. Yeah, I heard something happened when someone did something stupid and got  
13 hurt bad.

14 Q. Who told you that?

15 A. My dad, I think.

16 Q. Did he say what that "something stupid" was?

17 A. No, he never did. I never pushed him on it.

18 Q. Did he tell you that someone had actually drowned in the pool?

19 A. I don't think he ever told me that. I did hear it, though, from that cop who came  
20 to the accident. Really seemed to have it in for us.

21 Q. When was that?

22 A. The cop -- Boyle or something like that -- came to talk to me the next day and my  
23 dad was already there to help us, you know, kind of cope with stuff.



1 Q. Do you mean Alex Bell?

2 A. Yeah. That's the one. My dad said it was the same cop who came to the accident  
3 when my dad was at ZetaNu. Alex, is that the name? Anyway, Alex was pretty rude and just,  
4 like I said, seemed to have it in for us. My dad said enough was enough and that I was not to  
5 talk to him without a lawyer. So I didn't.

6 Q. Do you always do what your dad tells you to do?

7 Tim Williams: OBJECTION. Relevance. You may answer.

8 A. When he's around I sure do. You don't want to mess with him.

9 Q. I'm showing you Exhibit 2. This is a bird's-eye view of the setup for the party on  
10 May 24, isn't it?

11 A. Yes.

12 Q. Can you describe the setup for me?

13 A. Well, we used plastic tarps and sandbags and made the whole front section on the  
14 west side of the front yard a pool. We also hauled in a couple loads of sand and made a little  
15 beach in front of the pool. That's where the bar was, too. It was a tiki bar where people could  
16 get rum drinks. It looked so great.

17 Q. Let's try to stay focused, Mr. Dornburg. Was there anything else?

18 A. Sorry, yeah. Um, there was a little plastic island floating in the pool. Oh, and I  
19 went to the athletic center and grabbed an old lifeguard chair from out back to set up by the  
20 beach, right in the pool. It was a little rickety, but it was fine. We tied sandbags to its legs and  
21 put it next to the water, just in case anyone fell off. Just to make sure it was okay, I climbed up  
22 on top of it a few hours before the party. I guess we also had a few kegs of beer in the backyard,  
23 and we set up a big screen to show old beach movies during the party.

1 Q. Do you remember meeting Kay Denning?

2 A. Yeah, she and her friend came by right after we got the tiki bar up and ready. I  
3 was up on the life guard seat testing it out. Some of the other guys were floating around on  
4 plastic rafts.

5 Q. What time was that?

6 A. Geez. Maybe 6 or so. The party was officially starting at 8.

7 Q. Were you drinking at that point?

8 A. We had just started. People were just starting to get ready.

9 Q. What do you mean, "get ready?"

10 A. Well, listening to beach party music, watching the old movies, that kind of stuff.  
11 Trying out the rum drinks. People were looking for beach stuff to wear.

12 Q. How many drinks had you had?

13 A. I don't remember. Wasn't counting. Not a lot. Just kind of testing out the rum  
14 drinks, like I said.

15 Q. So you said you were on the lifeguard chair. Did you have a drink with you?

16 A. Well, yeah. And a megaphone I found in the house.

17 Q. Why did you have a megaphone?

18 A. I was telling the guys on the rafts what to do.

19 Q. Describe how you met Kay Denning.

20 A. She was walking by the front of the house with another person.

21 Q. Who was that?

22 A. I didn't know either of them. I found out later their names were Kay and Chris.

23 Q. So what happened?

1           A.     I don't remember exactly. I asked if they were coming to the party. I used the  
2 megaphone at first. Then they came around to the side and we talked for a little while. Just  
3 general stuff about the party. Then they put their numbers on my phone and left.

4           Q.     How did you do that, if you were up on the lifeguard chair?

5           A.     Well, I climbed down, obviously. I'm pretty sure I remember doing that because  
6 I almost slipped when I was coming down the ladder. I asked Kay to give me her number. She  
7 put it on my phone and then gave it to Chris, who also put a number in.

8           Q.     What happened after that?

9           A.     She left. I think I told her to come to the party on the megaphone.

10          Q.     I'm showing you Exhibit 7, which are copies of texts on your cell phone. Are  
11 these text messages that you and Kay exchanged later that evening?

12          A.     Um, yeah.

13          Q.     What did you mean when you said you thought Kay was an "excellent swimmer"  
14 and that she "could dive in my pool anytime."

15          A.     I didn't mean anything. Just joking around.

16          Q.     Did she come to the party?

17          A.     Yeah. It was pretty late, after everything was pretty much over. She texted me a  
18 little after 1:30 to say she was by the pool. I was in my room, so I came down and we went into  
19 the backyard. The movies were still showing. She had her own glass with her, which was kind  
20 of weird. It said "Top Me Off." It was about half full. Something red.

21          Q.     Did she appear intoxicated or impaired?

22          A.     I don't know what you mean by impaired. She seemed fine to me, kind of party  
23 happy. I'd been drinking, too, so I wasn't in any shape to be judging.

1 Q. Did you give her anything to drink?

2 A. Absolutely not. She may have filled her cup with beer from one of the kegs.

3 Don't know for sure. But I most absolutely did not give her anything more to drink.

4 Q. I'm showing you Exhibit 8, which are copies of texts from your phone. These are  
5 text messages from Chris, Kay's friend, that you received that night as well, right?

6 A. I guess so. I don't remember seeing these.

7 Q. What happened then?

8 A. Courtney Perez came by and told us we had to get out of there because the party  
9 was over. As soon as I turned around, I saw her chugging whatever left in her glass. Then she  
10 said, "I am ready to swim in your pool."

11 Q: Did she say anything about diving?

12 A: Not that I remember. All I remember is that she said she wanted to take a swim.

13 Q. Did you respond?

14 A. You bet I did. I told her that was stupid and that we needed to go. I said we  
15 could go find another party. I knew some of the older guys in an annex apartment who were  
16 having an after party.

17 Q. What happened then?

18 A. I told her to meet me out in front. I went upstairs to change my shirt. The next  
19 thing I remember is Courtney screaming for help. I ran downstairs, and Courtney was in the  
20 water and Kay was just kind of floating there.

21 Q. What did you do then?

22 A. I got out there as fast as I could and helped Courtney get her over to the sand.  
23 Then I called 911. They got there real fast. Kay was knocked out, but she was breathing fine. It

1 didn't look that bad.

2 Q. Did you or Courtney say anything between the time you got into the water and the  
3 time you got Kay to the sand?

4 A. Man, I don't remember anything we said. We were just trying to get her out of  
5 the water. Everything between the time I saw her in the water and the ambulance left with her is  
6 just a big blur.

7 Q. Mr. Dornburg, were you aware at any time prior to Ms. Denning's death that she  
8 was only 20 years old?

9 A. No. She sure looked older. She acted like she knew what she was doing.

10 Q. What do you mean by that?

11 A. Like she'd been around, you know.

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1 Deposition of Courtney Perez

2 Q. Please state your name for the record.

3 A. I'm Courtney Perez.

4 Q. How old are you?

5 A. I'm 21. Will be 22 next week.

6 Q. Where do you live?

7 A. I live on 2600 SW 5th Ave.

8 A. Yeah.

9 Q. Ah. Okay. Are you a student?

10 A. Yeah, I'm a junior at the University of Lone Star here in Armadillo. I'm studying  
11 pre-law. I also have my own little business handling parties around the campus.

12 Q. Do you provide those services for Zeta Lambda Nu fraternity?

13 A. Absolutely. It's one of my best customers. I just did another one for them last  
14 weekend. Animal House theme. Awesome party.

15 Q. Were you present at the Zeta house on the night of May 24, 2014?

16 A. Yes I was. I was in charge of the time travel beach party scheduled for that night.

17 Q. Do you know where the idea for the party came from?

18 A. I don't know exactly. I attended a meeting of Zeta's party committee early on. I  
19 think Andrew thought it up. Some of the others thought it was stupid, but Andrew was pretty  
20 adamant that's what it should be. He's known around campus for having an abundance of wild  
21 and crazy ideas, and this party was no exception. He told me he wanted the party to be the best  
22 one of the year.

23 Q. Did you help plan the party?

1           A.     Yeah, that's part of my job. The party committee came up with most of the ideas  
2 and my job was to help organize things to actually throw the party. I had to do most of the leg  
3 work to get ready, but all of the physical stuff was done by the guys in the house. I kind of  
4 supervised the set up for the food and drinks and was responsible for the door and for organizing  
5 clean up.

6           Q.     Were you aware that the Zetas had a few similar beach-themed parties in the  
7 1980s?

8           A.     Well, after the accident, Andrew told me about some stories he heard from his  
9 dad. But beforehand, no, I didn't realize that.

10          Q.     What stories did Andrew tell you?

11          A.     He was pretty vague. I told him I'd never heard about anything bad. Andrew said  
12 that a lot of money was paid out to keep it all pretty quiet and he couldn't talk about it.

13          Q.     So, what did you do to get the house ready for the party?

14          A.     Andrew basically said he wanted to create a beach bar on our front lawn,  
15 complete with sand, a lifeguard chair, a tiki bar, and a pool. I had no idea how we were going to  
16 do the pool, but Andrew suggested we use sandbags, a tarp, and water from the garden hose. I  
17 helped with finding vendors to buy the stuff and get it delivered. The sand was a bit of a  
18 challenge. Turns out it worked pretty well, though. A bunch of the guys were out there during  
19 the day on blow up rafts.

20          A.     Was there any discussion about potential problems or dangers?

21          Q.     A big discussion. I was pretty worried about liability for the house if something  
22 went wrong. Like I said, I do this a lot and, to be honest, it just sounded like a bad idea to me.

23          Q.     Did Andrew have any input into that discussion?

1           A.     Yeah, he did. He said, “What could go wrong?” It wasn’t going to be very deep  
2 and we were all grown-ups. He told me anyone who came had to be 21, so they were adults by  
3 legal definition.

4           Q.     How deep was the pool?

5           A.     About to here. (The witness stood up and pointed to an area between his knee and  
6 hip.)

7           Q.     So, what is that? About 3 feet?

8           A.     More or less, I’d say.

9           Q.     Did you know if there were any problems with the setup?

10          A.     The only problem was with the lifeguard chair that Andrew brought over from the  
11 athletic center. It looked old and a little rickety, but Andrew said he just wanted to use it as a  
12 prop. I wasn’t sure it was going to stay put in the sand, particularly because I figured people  
13 would be climbing on it. Not my problem, though.

14          Q:     Was Andrew worried?

15          A:     He told me he wasn’t worried. It said it would be fine. He suggested that they tie  
16 some sandbags to its legs and put it in the water. That way, if someone accidentally fell off,  
17 they’d fall into the water, which would break their fall. That seemed logical. Plus, like Andrew  
18 said, college students are adults, and we thought people would be able to handle themselves. He  
19 said if we had to worry about every little danger in our setup, we could never have a party.

20          Q:     Okay. Let’s go to the night of the party. What were you doing as the party got  
21 underway?

22          A:     I was covering the door. Andrew was sort of the “head” organizer, and I was  
23 under strict instructions from him not to let anyone in who didn’t have a valid ID showing that



1 they were at least 21 years old. He told me to put a sign over the door that said "Must be 21 to  
2 enter."

3 Q: Andrew gave you those instructions?

4 A: Yeah. Andrew cares a lot about the fraternity, and particularly about people's  
5 safety. In fact, one time, I remember I was with Andrew and a couple of the other house  
6 members just hanging out after class on a Friday. One of them had a little too much to drink. He  
7 left and came back with a stolen shopping cart and talked some of the others into riding it down  
8 the big hill at the north end of campus. As they were heading out, Andrew stopped us and asked  
9 what they thought they were doing. He was pretty mad and said, "This isn't what Zetas do, guys.  
10 You're going to hurt yourselves or, worse, somebody else." He wouldn't let them go. Probably  
11 a good thing he did. That hill is really steep.

12 Q: Why do you bring that up?

13 A: Oh, sorry. I mention that because Andrew brought it up when he was telling me  
14 that I had to make sure the door was covered at all times. He said, "Remember, Courtney, we  
15 have two goals tonight: have fun and be safe. We don't want our guys to do a repeat of the  
16 shopping cart incident."

17 Q. Did you make the sign?

18 A. Yeah. Andrew helped me make it. We hung it right over the door.

19 Q. Is Exhibit 3 a picture of the sign you and Andrew made?

20 A That's it. Kinda crude, I know. We just did it free hand, but it served the  
21 purpose.

22 Q. How big was it?

23 A. It was on butcher paper, maybe 5-6 feet long.

1 Q: While you were covering the door that night, did you see Kay Denning?

2 A: I did. I had seen her around at several of the parties I handled on campus. That  
3 night, though, she was with someone else I didn't know.

4 Q: What happened?

5 A: They wanted to come into the party, so I asked for ID.

6 Q: How did they respond?

7 A: Well, the other person, who I now know was Chris Bloom, just said, "Come on,  
8 Kay, they're not going to let us in. Plus, we probably shouldn't be drinking like this anyway."  
9 But Kay got really mad. She said, "Chris, shut up, I'm just trying to have a little fun!" Then she  
10 turned to me and said, "Listen, Andrew invited us."

11 Q: How did you respond?

12 A: I told her she couldn't get in without ID. She told me she left it back at her house,  
13 so I told her, "No ticket, no show." She seemed a little wild. I don't know, I just got a bad  
14 feeling about her. I do this a lot, you know, and sometimes you can just tell when someone's a  
15 potential problem.

16 Q: How did she react?

17 A: She said she'd get into the party one way or another, and then stormed off.

18 Q: Did you tell Andrew about your encounter with Ms. Denning?

19 A: No, I didn't have time. I was at the door most of the night, and then, when the  
20 party ended, I immediately had to start cleaning up.

21 Q: Did you see Ms. Denning again that night?

22 A: I saw her with Andrew out in back. I told Andrew he had to get her out of there  
23 because it was already way past one and we had to close it down or they could get in big trouble

1 with the school, which requires any campus party to be dead over at 1. Then I went back into the  
2 house.

3 Q: Did you see Ms. Denning at any time after that?

4 A: Yeah, as I was cleaning up. I was on my way outside to take down the sign over  
5 the door and I saw Kay over by the pool.

6 Q: Was she with anyone?

7 A: No, she was by herself.

8 Q: What was she doing?

9 A: She was in the water wading over to the lifeguard chair by the beach. She was  
10 stumbling around and laughing. She also was drinking out of a big glass in her hand.

11 Q: Why did you notice the glass?

12 A: Because it was real big, like Big Gulp size. Nothing like the ones we were using.

13 Q: Did you say anything?

14 A: Well, I was inside when I first saw her. I went over to the door and she was  
15 started to climb up the chair. I yelled at her and asked what the heck she thought she was doing?

16 Q: You said, "What the heck?"

17 A: Not actually the word I used, but the same idea. I yelled at her to get out of here  
18 because the party was over.

19 Q: Did she?

20 A: No. She didn't respond to me at all. She was climbing up the chair and kind of  
21 slipping all over it.

22 Q: Then what happened?

23 A: It went real fast. She got to the top of the chair and kind of wobbled around. I

1 was yelling at her to get down.

2 Q. What did you say?

3 A. I said, "You are going to fall, you stupid idiot!" She took a drink and then it  
4 looked like she dived into the pool.

5 Q. What do you mean, she dived into the pool.

6 A. That's what it looked like -- head first into the pool. Like she was diving off a  
7 diving board. (Witness raises hands up above head.) Hands up, a little hop, and down she went.

8 Q. What did you do then?

9 A. I got out to her as fast as I could and started to drag her to the sand. Andrew was  
10 helping me at some point. I don't know how he got there. He kept saying, "I didn't think she  
11 would really do it," and "Not again, not again." He was so freaked out. Someone called 911.  
12 Andrew, I think. They were there in just a few minutes.

13 Q. Did you or Andrew say anything else between the time Andrew called 911 and  
14 the ambulance arrived?

15 A. No, Andrew just kind of sat there moaning. It was awful. I knew it was bad.

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## Exhibit 1

# You Are Invited

**To:** All sisters in good standing old enough to drink.

**What:** 80's Beach Party. There will be music, movies, tiki bar and a beach. Dress appropriately.

**Where:** Zeta Lambda Nu

**When:** Saturday, May 24, 9-1

# Exhibit 2

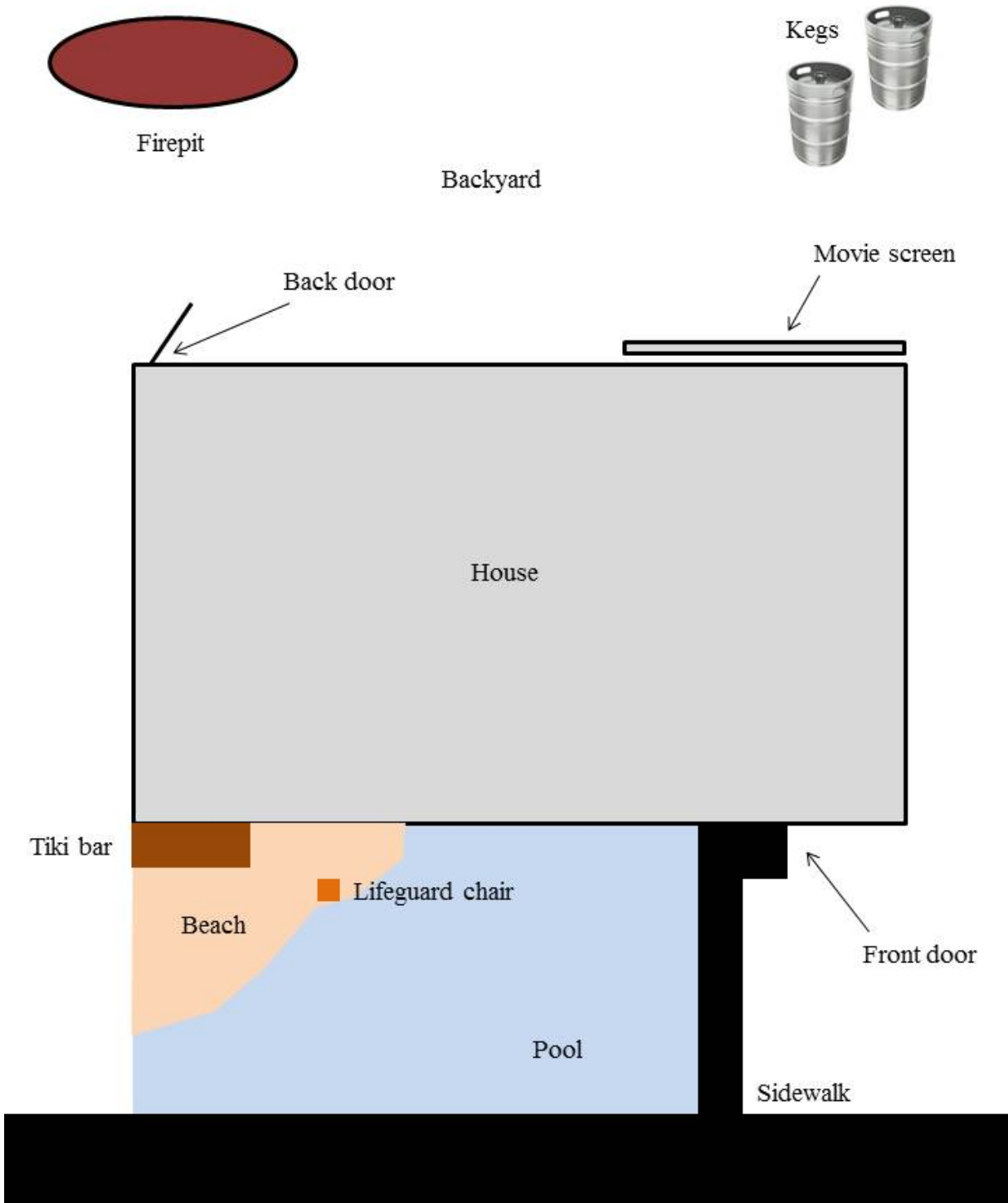


Exhibit 3

**MUST** **BE** **21** **+** **ENTER**

## Exhibit 4





**Exhibit 5**



**Exhibit 6**



## Exhibit 7

### Text Messages Between Kay Denning and Andrew Dornburg

To	From	Time	Content
Kay	Andrew Dornburg	6:37 p, May 24, 2014	Hey its Andrew. Can't wait to see you at the party tonight
Andrew Dornburg	Kay	6:41 p, May 24, 2014	It sounds so fun! I think I might have to go for a swim ☺
Kay	Andrew Dornburg	6:44 p, May 24, 2014	haha you seem like an excellent swimmer... You can dive in my pool anytime ;)
Kay	Andrew Dornburg	11:36 p, May 24, 2014	Are you coming to my party? Waiting . . .
Andrew Dornburg	Kay	11:42 p, May 24, 2014	Courtney woodn't let me in. Left my ID at home. Don't go swimming without me
Kay	Andrew Dornburg	12:11 a, May 25, 2014	where are you
Kay	Andrew Dornburg	12:29 a, May 24, 2015	where are you? come to my party
Kay	Andrew Dornburg	12:31 a, May 25, 2014	wood luv to come to ur party. Come to my party.
Kay	Andrew Dornburg	12:33 a, May 25, 2014	Can't leave. Let's go swimming
Kay	Andrew Dornburg	12:45 a, May 25, 2014	I'm waiting . . . .
Andrew Dornburg	Kay	12:58 a, May 25, 2014	got to ditch chris very unhappy with me
Kay	Andrew Dornburg	1:18 a, May 25, 2014	Screw chris. Sounds like a nag. Are you coming?
Andrew Dornburg	Kay	1:22 a, May 25, 2014	yes
Andrew Dornburg	Kay	1:32 a, May 25, 2014	Hey! I'm here, by the pool! Where are you??
Kay	Andrew Dornburg	1:37 a, May 25, 2014	Sounds like you're ready for a swim! Be right down

## Exhibit 8

### Text Messages Between Chris Bloom and Andrew Dornburg

To	From	Time	Content
Andrew Dornburg	the friend	6:39 p, May 24, 2014	Hey this is chris
Andrew Dornburg	the friend	1:12 a, May 25, 2014	Hey this is chris again. I'm really worried about Kay. Is she meeting you?
Andrew Dornburg	the friend	1:34 a, May 25, 2014	Seriously, I think she's way too drunk to be out right now. Let me know if she is there
the friend	Andrew Dornburg	3:30 a, May 31, 2014	I'm so so so sorry. All my fault.

## Exhibit 9

<b>Case No.:</b> 2014-135	<b>Date:</b> 5/25/2014	<b>Type:</b> Fatal Accident
<b>Officer:</b> Bell	<b>Time:</b> 01:52	<b>Location:</b> campus
<b>Further Reports:</b> 3	<b>Disp.:</b> closed, no charge	<b>Warrants:</b> none
<b>Person:</b> Kay nmi Denning		
<b>Address:</b> 1420 Clearview Dr., Armadillo, TX 75161		
<b>Phone:</b> 661-234-XXXX	<b>Sex:</b> F	<b>Race:</b> W <b>DOB:</b> 4/1/94
<b>Narrative:</b>		
<p>Summary:</p> <p>ULS Campus Police were called out via 911 to respond to an injury accident at the Zeta Lambda Nu Fraternity, address above. Upon arriving at the scene, I observed the after effects of a party. The Fraternity had constructed some sort of a lake or pond in their front yard with visqueen. There was a lifeguard chair and a tiki bar near the water. The tiki bar had beer cans and bottles on it. The scene was littered with empty liquor bottles and red cups. There was a small group of people standing around what appeared to be a person laying supine on a sandy area near the water. She was later identified as Kay Denning.</p> <p>Emergency medical technicians had been dispatched to the scene, and they arrived only seconds after I did, so I did not attempt to render aid or assistance to the injured woman. I secured the scene with crime scene tape, separated the witnesses, had each stand apart from the others with additional officers, and proceeded to interview witnesses separately by placing witnesses one by one in the front seat of my patrol vehicle.</p> <p>Witness interview summaries are in attached supplemental reports. The reports were prepared on the afternoon of May 25, 2014.</p> <p>Persons Interviewed:          Andrew Dornburg          Courtney Perez          Chris Bloom</p> <p>Evidence Secured:          Liquor Bottles          Blood and Urine at Lone Star County Hospital          Clothing of Victim (Shorts, sleeveless t-shirt, leather sandals, undergarments), marijuana pipe with residue from victim</p> <p>Weather: clear          Temperature: 75 degrees</p> <p>Addendum: Hospital records show alcohol at .19 mg/dL, and THC at 37 ng/mL at time of Denning's admission.</p>		
<b>Reporting Officer:</b> Bell	<b>Badge:</b> 1499	<b>Supervisor:</b> Lt. Davis

<b>Case No.:</b> 2014-135	<b>Date:</b> 5/25/2014	<b>Type:</b> Fatal Accident
<b>Officer:</b> Bell	<b>Time:</b> 01:52	<b>Location:</b> campus
<b>Further Reports:</b> 3	<b>Disp.:</b> closed, no charge	<b>Warrants:</b> none
<b>Person:</b> Kay nmi Denning		

## Exhibit 9

<b>Address:</b> 1420 Clearview Dr., Armadillo, TX 75161		
<b>Phone:</b> 661-234-XXXX	<b>Sex:</b> F	<b>Race:</b> W <b>DOB:</b> 4/1/94
<b>Narrative:</b>		
<u>Witness Interview: Andrew Dornburg</u>		
<p>I interviewed witness Andrew Dornburg in the front seat of my patrol vehicle.</p> <p>Mr. Dornburg appeared to be under the influence of intoxicants. His speech was slurred, his eyes were red, and there was a strong odor of alcohol about his person. He seemed very upset, and sometimes his speech was rambling. I attempted to interview Mr. Dornburg again the next day, but his father was with him, and would not allow me to speak with Mr. Dornburg.</p> <p>Mr. Dornburg is a junior at the University, and he lives at the Zeta Nu fraternity house. He said he's the treasurer of the house, and he was in charge of a party that began in the early evening of May 24, 2014. Mr. Dornburg told me that they take great pains to serve alcohol only to those over 21. The party started at 8:00 p.m., but many people were drinking before that time. The party was by invitation only. No people under 21 are invited, although underage fraternity members and pledges are entitled to attend.</p> <p>He remembers speaking to Kay Denning earlier in the evening, but he cannot remember what was said. He does not remember whether or not she was 21. He remembers her showing up later in the evening, after midnight, and she had a friend who showed up later on. He said the party was over and he tried to get them to go to an after party across the street.</p> <p>He had to go to the bathroom. And he left her company. When he came back out Ms. Denning was in the water. He helped drag her out and lay her on the sand. At that point he started crying and asked how she was. I told him she had been transported to the hospital.</p> <p>I asked him if he knew how Ms. Denning got into the water, and he said, "I don't know – maybe she fell in or jumped in." I asked him if he had served Ms. Denning any alcohol. He said, "no, but she had something in a cup when she came."</p>		
<b>Reporting Officer:</b> Bell	<b>Badge:</b> 1499	<b>Supervisor:</b> Lt. Davis
University of Lone Star – Campus Police Report		Page 3/5
<b>Case No.:</b> 2014-135	<b>Date:</b> 5/25/2014	<b>Type:</b> Fatal Accident
<b>Officer:</b> Bell	<b>Time:</b> 01:52	<b>Location:</b> campus
<b>Further Reports:</b> 3	<b>Disp.:</b> closed, no charge	<b>Warrants:</b> none
<b>Person:</b> Kay nmi Denning		
<b>Address:</b> 1420 Clearview Dr., Armadillo, TX 75161		
<b>Phone:</b> 661-234-XXXX	<b>Sex:</b> F	<b>Race:</b> W <b>DOB:</b> 4/1/94
<b>Narrative:</b>		
<u>Witness Interview: Courtney Perez</u>		
<p>I interviewed witness Courtney Perez in the front seat of my patrol vehicle.</p>		

## Exhibit 9

Perez admitted having several drinks earlier in the evening, but did not appear to be impaired.

Perez is a senior at the University, but entered school after two years in the service. Perez runs a party organizing service and was at the party in that capacity. The party officially started at 8:00 p.m., but several house members were drinking a bit prior to that time. Perez was in charge of guarding the door, and "took pains" not to let any underage guests in the door. Perez said that underage members and pledges were not allowed to drink, but they may well have had alcohol in their rooms that Perez didn't know about.

Kay Denning and her friend Chris came to the fraternity earlier in the evening, but Perez would not let them into the party without ID that showed them to be 21.

Perez said Ms. Denning came back, initially by herself, around 1:00, after the party had shut down. Perez was cleaning up. At one point Perez saw Ms. Denning in the back yard of the fraternity with Andrew Dornburg. Perez told them they should leave because the party was over. Later, Perez saw Ms. Denning in the water in front of the house, wading around with a drink in her hand. Perez told her she needed to leave, but she didn't pay much attention the warning. She then started to climb up the lifeguard chair, and Perez told her to get down. When she got to the top, she stood up and wobbled around and fell head first into the water.

Perez and Dornburg, then helped drag her out of the water and layed her on the sand. Someone called 911, and the police and ambulance arrived shortly.

**Reporting Officer:** Bell      **Badge:** 1499      **Supervisor:** Lt. Davis

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<b>Case No.:</b> 2014-135	<b>Date:</b> 5/25/2014	<b>Type:</b> Fatal Accident
<b>Officer:</b> Bell	<b>Time:</b> 01:52	<b>Location:</b> campus
<b>Further Reports:</b> 3	<b>Disp.:</b> closed, no charge	<b>Warrants:</b> none
<b>Person:</b> Kay nmi Denning		
<b>Address:</b> 1420 Clearview Dr., Armadillo, TX 75161		
<b>Phone:</b> 661-234-XXXX	<b>Sex:</b> F	<b>Race:</b> W <b>DOB:</b> 4/1/94
<b>Narrative:</b>		
<u>Witness Interview: Chris Bloom</u>		
Chris Bloom, 41 Ramona St., Tall Tree, Lonestar. Phone [REDACTED]		
I interviewed witness Chris Bloom in the front seat of my patrol vehicle.		
Bloom is a friend of the victim, Kay Denning, and she accompanied Ms. Denning to a party before Ms. Denning arrived at the fraternity. Bloom goes to Tall Tree College in Tall Tree. Bloom said that Bloom and Ms. Denning came to the campus area around 9:00. They tried to go to the party at Zeta Nu, but they were stopped at the door because they were under 21. Bloom said Ms. Denning already had a few drinks, and tried to get into the party, but they		

## Exhibit 9

were denied entry repeatedly. They went to the party because the president of the fraternity, Andrew Dornburg, was insistent that Ms. Denning attend.

Ms. Denning then took her to a party at an apartment house nearby. Bloom had a few drinks there, but didn't like the group, so Bloom stopped drinking early and wanted to leave. Ms. Denning wanted to stay, and so Ms. Denning had several more drinks and maybe some marijuana. Ms. Denning was texting continuously with Dornburg. At some point, after midnight, Bloom lost track of Ms. Denning, and Bloom suspected that Ms. Denning had gone back to the fraternity to find Andrew, who she apparently had a crush on. Bloom sent Dornburg several texts to let him know that Ms. Denning was very drunk and planned to come see him.

Bloom then went back to the Zeta Nu fraternity, and as Bloom approached Bloom saw Ms. Denning climbing the lifeguard chair. Bloom shouted for her to get down, but Ms. Denning apparently didn't hear Bloom. She was wobbling and slipping, and when she got to the top she tried stand up, and sort of did stand up, but fell face first from the chair, or dove, into the water. She immediately went motionless and was face down in the water. Two people then dragged her out of the water and laid her face up on the sand. She was breathing but in a ragged manner. Her face looked sort of lopsided.

I got Bloom's phone and address and told Bloom I would be in touch.

**Reporting Officer:** Bell      **Badge:** 1499      **Supervisor:** Lt. Davis

University of Lone Star – Campus Police Report

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<b>Case No.:</b> 2014-135	<b>Date:</b> 5/25/2014	<b>Type:</b> Fatal Accident
<b>Officer:</b> Helfrich	<b>Time:</b> 01:52	<b>Location:</b> campus
<b>Further Reports:</b> 3	<b>Disp.:</b> closed, no charge	<b>Warrants:</b> none
<b>Person:</b> Kay nmi Denning		
<b>Address:</b> 1420 Clearview Dr., Armadillo, TX 75161		
<b>Phone:</b> 661-234-XXXX	<b>Sex:</b> F	<b>Race:</b> W <b>DOB:</b> 4/1/94
<b>Narrative:</b>		
Supplemental Report:		
In the early morning hours of May 25, 2014, I was dispatched to the Zeta Nu fraternity house to assist Sergeant Bell with crime scene security and witness interviews. I arrived on scene at 02:02, and was directed by Sergeant Bell to help separate witnesses and to secure Courtney Perez, a witness, until Sergeant Bell could conduct an interview. After Sergeant Bell interviewed Andrew Dornburg, another witness, I remained with Mr. Dornburg, who seemed very upset, and in a high degree of excitement.		
I stood by Mr. Dornburg, and attempted to give him some comfort. He was sitting on the sand, with his head in his hands, moaning off and on. I heard him say, "we never should have built the lake or the beach. My dad warned me. I should have listened to him." I asked Mr. Dornburg to repeat what he said, but he just continued to moan. Mr. Dornburg's eyes were very red and watery, and he had the strong odor of alcohol about his person.		
I asked Sergeant Bell if I should make a special report of what Mr. Dornburg said, and the		



## Exhibit 9

sergeant encouraged me to do so.

**Reporting Officer:** Helfrich

**Badge:** 1701

**Supervisor:** Sgt. Bell

## Exhibit 10

# University of Lone Star – Campus Police Report

<b>Case No.:</b> 1988-92	<b>Date:</b> May 28, 1988	<b>Type:</b> Drowning
<b>Officer:</b> Bell	<b>Time:</b> 09:30	<b>Location:</b> campus
<b>Further Reports:</b> 4	<b>Disp.:</b> closed	<b>Warrants:</b> none
<b>Person:</b> Carlos Rosales		
<b>Address:</b> No known address		
<b>Phone:</b> No known phone	<b>Sex:</b> M	<b>Race:</b> W <b>DOB:</b> 5/6/70
<b>Narrative:</b>		
<p>I was called to the Zeta Nu fraternity house with a report of a drowned man. I arrived to find several fraternity members standing around the body of a young Latino who was lying motionless on the ground next to a temporary pond or pool of some sort that had been built in the front yard of the fraternity with plywood, large stones, and plastic sheeting. I was told that a party had occurred the night before.</p> <p>I ascertained that the man was not breathing, he had no pulse, and his skin was quite cold. He had visible trauma to the front and top of his head. Emergency medics had been called already, and were arriving. I checked the pockets for ID, and found a wallet with various cards inside, including a Lone Star driver's license in the name of Carlos Rosales. The fraternity members said they saw the man in the water when they woke up, but they did not know who he was. They denied they had ever seen him before.</p> <p>Sergeant Smith arrived and took control of the scene. He asked me to secure the perimeter. I did.</p>		
<b>Reporting Officer:</b> Bell	<b>Badge:</b> 1499	<b>Supervisor:</b> Smith

# Exhibit 11

## Summary Autopsy Report Office of Dallas County Coroner

<b>DATE and HOUR AUTOPSY PERFORMED:</b> 6/2/2014; 8:30 A.M. by  Rusty O’Kane, M.D. 555 Jackson Avenue Armadillo, TX 75161 662-234-XXXX (FAX 662-234-XXXX)	<b>Assistant:</b> Victoria Austin, M.D.  <b>Full Autopsy Performed</b>
Name: Kay Denning	Coroner’s Case No. 20014-277
Date of Birth: April 1, 1994	Age: 20
Race: White	Sex: Female
Date of Death: 5/30/14	Body Identified: Mark Denning (Father of Deceased)
Case No. LPD 001294-23E-2014	Investigative Agency: Armadillo Police Department

### **Evidence of Treatment:**

The subject was treated and on life supportive measures for six days at the Dallas County Hospital. Medical records from the ambulance company and from the hospital accompany this report. Neurologists determined that the subject was brain dead on admission to the hospital. Heroic measures were used to try to save her life, but after being on life support for six days, life support was removed and subject expired.

### **External Examination:**

The autopsy is begun at 8:30 A.M. on June 2, 2014. The body is presented in a black body bag. The victim is dressed in hospital gown. She is not wearing jewelry, undergarments, or footwear. She has several IV heparin locks, one in each arm, and what appears externally to be a PIC line. The body is that of a normally developed white female measuring 68 inches and weighing 120 pounds, and appearing generally consistent with the stated age of twenty years. The body is cold and unembalmed. Lividity is fixed in the distal portions of the limbs. The eyes are open. The irises are blue and corneas are cloudy. The pupils measure 0.3 cm. The hair is natural blonde, about 13 inches in length at the longest point. The head is shaved on the left side. She has two tattoos, a butterfly on the left shoulder, and a sunburst at the base of her spine. The fingernails are red with polish.

The genitalia are that of an adult female and there is no evidence of injury. Limbs are equal, symmetrically developed and show no evidence of injury.

### **Internal Examination**

**HEAD--CENTRAL NERVOUS SYSTEM:** The brain weighs 1,303 grams and within normal limits. Examination shows massive cerebral contusions on the left hemisphere, along with contracoup contusions on the right, and evidence of intracerebral (subarachnoid and intraventricular) hemorrhage and subdural hematoma.

Summary autopsy report

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## **Exhibit 11**

**SKELETAL SYSTEM:** The skull shows depressed fractures of the left frontal bone, the left parietal bone, and the left temporal bone. There are no fractures other than in the skull.

**RESPIRATORY SYSTEM--THROAT STRUCTURES:** Normal. The airway shows evidence of intubation. The mucosa of the epiglottis, glottis, piriform sinuses, trachea and major bronchi are anatomic. No injuries are seen and there are no mucosal lesions.

The lungs weigh: right, 367 grams; left 359 grams. The lungs are unremarkable.

**CARDIOVASCULAR SYSTEM:** The heart weighs 248 grams, and has a normal size and configuration.

**GASTROINTESTINAL SYSTEM:** The mucosa and wall of the esophagus are intact and gray-pink, without lesions or injuries. The gastric mucosa is intact and pink without injury. The mucosa of the duodenum, jejunum, ileum, colon and rectum are intact.

**URINARY SYSTEM:** The kidneys weigh: left, 120 grams; right, 117 grams. The kidneys are anatomic in size, shape and location and are without lesions.

**FEMALE GENITAL SYSTEM:** The structures are within normal limits. Examination indicates subject had not given vaginal birth, and she was not pregnant at time of death. There is evidence of recent sexual activity but no indications that the sexual contact was forcible. Vaginal fluid samples were removed for analysis.

**TOXICOLOGY:** Sample of right pleural blood and bile are submitted for toxicologic analysis.

**SEROLOGY:** A sample of right pleural blood is submitted in the EDTA tube. Routine toxicologic studies were ordered on blood preserved at time of death and on blood and urine removed and preserved upon admission to the hospital.

### **Laboratory Data**

Cerebrospinal fluid culture and sensitivity:

Gram stain: Unremarkable

Culture: No growth after 72 hours

Cerebrospinal fluid bacterial antigens:

Hemophilus influenza B: Negative

Streptococcus pneumoniae: Negative

N. Meningitidis: Negative

Neisseria meningitidis B/E. Coli K1: Negative

Summary autopsy report

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# Exhibit 11

## Drug Screen Results:

Blood and Urine were taken and preserved on 5/25/14, at 2:30 a.m.

Urine screen {Immunoassay} was NEGATIVE.

Ethanol: .19 gm/dl, Blood as of 2:20 a.m. 5/24/14.

Ethanol: 0 gm/dL at time of death

THC: 37 ng/mL

Rosemary Maroni, PhD.

Chief Toxicologist

May 25, 2014

## Evidence Collected

1. Samples of Blood (type A-), bile, tissue (heart, lung, brain, kidney, liver, spleen).
2. 15 swabs from various body locations to test for various chemicals or drugs.
3. 23 Autopsy photographs.
4. One postmortem CT scan.
5. One postmortem MRI scan.

## Opinion

Time of death: 11:15 a.m. 5/30/14 (from hospital records).

Immediate cause of death: trauma to the skull and brain.

Manner of death: reported dive or fall into shallow pool.

Rusty O'Kane, M.D.

Dallas County Coroner

June 2, 2014

## Exhibit 12

# LONESTAR DEPARTMENT OF PUBLIC SAFETY

LABORATORY SERVICES  
701 S. Taylor, Suite 500  
Armadillo, LS 79101

**Laboratory Case Number: LPD 001294-23E-2014**

**Alcohol Content Laboratory Report**

Issue Date: May 25, 2014

**Agency Case Information:** Lone Star Police Department

**Subject(s):** Kay Denning (DOB 4/1/94)

**Submission Information:** DPS Blood Kit on May 25, 2014

**Requested Analysis:** Examine for alcohol content.

**Description, Results of Analysis and Interpretation:**

DPS Blood Kit

Blood in (2) gray top tubes from Kay Denning

0.19 (+/- 0.010) grams of alcohol per 100 milliliters of blood.

This report has been electronically prepared and approved by:

Brandon Draper  
Forensic Scientist  
Lone Star DPS Laboratory

**Exhibit 13**



**Exhibit 14**





VICTORIA DENNING, individually and § IN THE 479TH DISTRICT COURT  
in her capacity as Administrator of the §  
Estate of KAY DENNING, § IN AND FOR DALLAS COUNTY,  
§ STATE OF LONE STAR

*Plaintiff,*

v.

ZETA LAMBDA NU FRATERNITY,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§

**FINAL JURY INSTRUCTIONS**

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you to the facts as you find them, from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received into evidence, and all facts that may be admitted or agreed to by the parties. In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts shown by the evidence in this case, but you should not speculate on any matters outside the evidence.

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while

testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in light of all the evidence in the case and in light of your own experience and common sense.

The issues for your determination are (1) whether the death of Kay Denning was the result of the negligence, if any, of Zeta Lambda Nu Fraternity or of Kay Denning herself, and (2) if both Zeta Lambda Nu's negligence and Kay Denning's own negligence contributed to her death, whether Kay Denning's degree of fault is greater than Zeta Lambda Nu's. In that regard, you are instructed that Victoria Denning has the burden of proof on the negligence claim against Zeta Lambda Nu, meaning that Victoria Denning must convince you by a preponderance of the evidence that Kay Denning's death was the result of Zeta Lambda Nu's negligence, if any. You are further instructed that Zeta Lambda Nu has the burden of proof on the claim that Kay Denning's death was caused in whole or in part by her own negligence, if any.

You are instructed that the term "negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“Proximate cause” means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

You are instructed that an organization like Zeta Lambda Nu Fraternity can act only through its officers and members. An action by an officer or member of Zeta Lambda Nu is an act of Zeta Lambda Nu itself only if the act was within the scope of the person’s office or authority. An act is within the scope of a person’s office or authority if it is reasonably related to the kinds of tasks that the person was expected to perform on behalf of the organization, or if it is reasonably foreseeable in light of the organization’s business or the person’s responsibilities for the organization.

Answer “Yes” or “No” to all questions unless otherwise instructed. A “Yes” answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a “Yes” answer, then answer “No.” The term “preponderance of the evidence” means the greater weight and degree of credible evidence admitted in this case. Whenever a question requires an answer other than “Yes” or “No,” your answer must be based on a preponderance of the evidence unless you are otherwise instructed.

At this point in the trial, you, as jurors, are deciding if Kay Denning’s death was proximately caused, in whole or in part, by the negligence, if any, of Zeta Lambda Nu or of

Ms. Denning herself. If you find that Zeta Lambda Nu was at fault in whole or in part, you may hear additional argument from the attorneys and testimony from additional witnesses concerning damages. Unless and until that proceeding occurs, you are not to concern yourselves with any question of damages.

Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy, or any other sentiment for or against any party. When you retire to the jury room, you should select one of your members to act as foreperson, to preside over your deliberations, and to sign your verdict. You will be given a verdict form, which I shall now read and explain to you.

**(READ VERDICT FORM)**

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the verdict form and return it to the courtroom. You may now retire to consider your verdict.

---

Hon. Ashley Hymel  
Dallas County Circuit Judge

NO. 14-033971-CV

<b>VICTORIA DENNING, individually</b>	§	
<b>and in her capacity as Administrator</b>	§	<b>IN THE 479<sup>th</sup> DISTRICT COURT</b>
<b>of the Estate of KAY DENNING,</b>	§	
	§	
<i>Plaintiff,</i>	§	<b>IN AND FOR</b>
	§	
<b>v.</b>	§	<b>DALLAS COUNTY</b>
	§	
<b>ZETA LAMBDA NU FRATERNITY</b>	§	
	§	<b>STATE OF LONE STAR</b>
<i>Defendant.</i>	§	

**VERDICT FORM**

**JURY QUESTION NO. 1**

Did the negligence, if any, of the parties below proximately cause the death of Kay Denning?

Answer “Yes” or “No” for each of the following:

- 1. Zeta Lambda Nu Fraternity \_\_\_\_\_
- 2. Kay Denning \_\_\_\_\_

If you have answered “yes” with respect to more than one party in response to Jury Question No. 1, answer the following Jury Question No. 2; otherwise, do not answer the following Jury Question.

**JURY QUESTION NO. 2**

What percentage of the negligence that caused the death of Kay Denning do you find to be attributable to each of those listed below and found by you, in your answer to Jury Question No. 1, to have been negligent?

1. Zeta Lambda Nu Fraternity \_\_\_\_\_

2. Kay Denning \_\_\_\_\_

Total 100%

**CERTIFICATE**

We the jury have answered the above and foregoing questions as herein indicated, and herewith return same into Court as our verdict.

\_\_\_\_\_  
Presiding Juror