

# State of Oregon

v.

# Christina Archer

The State of Oregon charges Christina Archer with the following violations of the Oregon Code:

Count 1	1 <sup>st</sup> Degree murder in violation of 2-745
Count 2	Criminal hazing in violation of 4-1213

# The Case

## A. Statement of Stipulated Facts

*All parties to this action do hereby agree and stipulate to the accuracy of the following facts:*

On August 22, 2007, 15 year old Milan Jackson died as a result of a 26 foot fall from the top of the press box at Dutch Meyer Stadium onto the track at the Crater campus. Her death occurred during a dare issued by the Crater Cheerleading squad which Milan was trying to join. Milan was enrolled in the Crater School of Business, Innovation and Science and would have been a freshman once school started.

Popularity plays a large role on the Crater campus. The cheerleaders in particular are known for having members in high academic and social standing. Milan was eager to become a part of this organization, as had her aunt, Tanya Maddox in 1986.

Tryouts are the process the cheerleading squad uses to select which new students they will accept into their group that year. In the Crater squad, the last week of tryouts is known as "Hell Week." During Hell Week, applicants are given various tasks by the squad's upper-classmen, which they must complete if they want to be considered for membership. The defendant, Christina Archer, is the captain of the squad and was in charge of planning all "newbie" activities.

On the last night of tryouts, known as "Hell Night," all applicants were blindfolded e in side of a nearby football player's house. Then they were led, one at a time outside of the house where the "Back to School" party was held to perform one last task before they were informed who had made it onto the squad and who had not. While Milan was outside and blindfolded, the defendant whispered something into her ear. Shortly thereafter, Milan ran toward Crater High School and into the stadium. It was from the top of the stadium, and off of the press box that she fell.

At the time of her death, Milan's blood alcohol content was 0.10. Milan was a minor, but the legal level of intoxication for adults is 0.08.

**B. Additional Stipulations:**

The parties have stipulated to the authenticity of the following item:

November 18<sup>th</sup> memorandum sent to students of Crater Campus and the note to Chris Archer written by AD Jeff Johnson.

**C. Exhibit:**

To: Students of Crater High School

From: Office of the Athletic Director

Date: November 18, 2006

Re: Campus Hazing Policy

This memo is a reminder to all the CHS students that hazing is a violation of the campus policy and a CRIME. We will suspend any extra-curricular organization group or any other group that hazes their potential members. In addition, if we find any student has hazed another student, that student will be brought before the campus administration with the risk of expulsion.

A student who hazes is also at risk of criminal prosecution, and if found guilty may have to face up to a year of jail time. IF YOU ARE THINKING OF HAZING, THINK AGAIN!!!

*Chris,*

*Whatever you do, do not let me hear any complaints from cheerleaders about you or the seniors.*

*AD Jeff Johnson*

#### **D. Charges and Defense**

The State of Oregon charges Christina Archer with the following violations of the Oregon Code:

- Count 1      1<sup>st</sup> Degree murder in violation of 2-745
- Count 2      Criminal hazing in violation of 4-1213

Christina Archer denies all charges, claiming that the death of Milan Jackson was accidental and solely the direct result of Milan Jackson's own actions.

#### **E. Witnesses to Appear Before the Court**

##### **For the State:**

- Pat Smith
- Dr. Alex Richards
- Tyler Johnson

##### **For the Defense:**

- Christina Archer
- Athletic Director Jeff Johnson
- Dr. Jordan Mitchell

#### **F. Applicable Law**

Oregon Criminal Code

##### **2-745: first Degree Murder**

- a) First Degree Murder is the deliberate and premeditated unlawful killing of a human being. Premeditation means that the defendant actually reflected on the idea of killing, if only for a brief period.
- b) First Degree Murder is punishable by life imprisonment.
- c) There is no death penalty in Oregon.

##### **2-746: Second Degree Murder**

- a) Second degree murder is the unlawful killing of a human being with malice aforethought. Malice aforethought may be expressed or implied \*
- b) Malice aforethought exists if the defendant has any of the following state of mind:
  - (1) Intent to kill ("express" malice)
  - (2) Intent to inflict great bodily injury
  - (3) Reckless indifference to an unjustifiably high risk to human life
  - (4) Intent to commit a felony

\*In the case of (2), (3), or (4), the malice is "implied" (assumed)
- c) Second degree murder is punishable by a maximum period of imprisonment not less than 20 years and not to exceed a sentence of life.

##### **2-747: Involuntary Manslaughter**

A) Involuntary manslaughter is killing which occurs as a result of an unreasonable failure to perceive the risk of harm to others, while engaging in conduct resulting in extreme danger to life or of serious bodily injury. This conduct is also known as criminal negligence.

- B) Involuntary manslaughter is punishable by a maximum of 20 years imprisonment.

#### **4-1213: Anti-Hazing/Gang Initiation Statute**

- a) A person commits criminal hazing if:
  - Serious physical injury or death results, or is likely to result an act or the direct influence of a gang or fraternity/Sorority member during the initiation process.
  - This charge may be brought in conjunction with any other violent crimes against a human being.
  
- b) Hazing is a class D misdemeanor and is punishable by fine of not less than ten dollars nor more than one hundred dollars, or imprisonment of not less than thirty days nor more than one year, or both, at the discretion of the court.

#### **Criminal Rule 31- Verdict**

- a) CONVICTION OF A LESSER, INCLUDED OFFENSE. The defendant may be found guilty of an offense necessarily included in the offense charged. In a non-jury trial, the judge will make such a finding, without motion by either prosecution or defense.

## Case Law

Richards v. New Columbia, 908 A.2d 1096(1995).

Summary of facts: On appeal. John Richards, leader of a gang known as the “Nines” was convicted of 2<sup>nd</sup> degree murder under 2-745 and criminal hazing under the Anti-Hazing/Gang Initiation Statute. As part of gang initiation ritual, Richards instructed potential gang members to lay on train tracks and count to ten after feeling the initial vibrations of an oncoming train. After drinking heavily, Mark Yoba, a young man being initiated into the gang, lay on the tracks. However, in his intoxicated state, Mr. Yoba did not start counting until the train was almost upon him. Mr. Yoba did not react quickly enough to move himself from harm’s way and was consequently killed.

Holding: Although the behavior of Mr. Richards was hazardous, he should not be held responsible for Mr. Yoba’s death. In analyzing culpability for this tragedy, the court must examine the extent that outside pressure caused the victim to act in such a life-threatening manner. Laying on train tracks is an obviously dangerous activity. Despite his intoxication, there is no evidence that blood alcohol levels were high enough to completely impair Mr. Yoba’s judgment. Despite intense peer pressure, Mr. Yoba should have been aware of the risks of undertaking such an activity. The facts do not support conviction of 2<sup>nd</sup> degree murder.

Regarding criminal hazing, on the other hand, the activities that Mr. Richards selected for initiation put people at serious risk of injury or death. As leader of the Nines, Mr. Richards could have avoided this tragedy by not selecting such a dangerous activity.

*Judgment of the trial court is affirmed on the charge of criminal hazing and reversed on the charge of 2<sup>nd</sup> degree murder.*

Nichols v. New Columbia, 908 A.2d 1011(1995)

Summary of the Facts; On appeal, Deborah Nichols, president of the Alpha Delta Alpha sorority, was convicted of involuntary manslaughter under 4-1213 and criminal hazing under 4-1213 of the New Columbia Code. As part of an annual sorority drinking competition, pledges were told to compete against each other to see who could consume the greatest amount of beer. Tamara Wilcox, a freshmen at Dreyfuss University, was a pledge at Alpha Delta Alpha sorority. As a pledge, Ms. Wilcox was required to engage in this drinking state of intoxication made her incapable of making rational choices. This activity was clearly a dangerous one that put people at risk of serious injury and, in this case, death. Though Ms. Wilcox may not have intended to kill Ms. Nichols, she was fully aware of the potential dangers of such hazing. *Judgment of the trial affirmed.*

Anderson v. New Columbia, 907 A.2d 410(1993).

Holding: Past behavior or incidents involving the alleged victim or defendant are admissible when used to establish motive for murder or suicide.

Thomas v. Sylva, 908 A.2d 128(1993)

Holding: In a case where the charge is first degree murder, lesser included offenses in the meaning of criminal rule 31 include second degree murder and involuntary manslaughter, where defendant introduces evidence of lack of deliberation, premeditation and malice.

## **CHRISTINA ARCHER**

### **Defendant**

My name is Christina Archer. I am the captain of the varsity cheerleading squad at Crater. We are known for our amazing stunts and our significant contribution to the community. As a result, numerous freshmen want to join. August is the time of year when students on campus visit various clubs and teams to figure out which ones they would like to join. Likewise, the teams and clubs decide which freshmen and other underclassmen they would like to invite to try out. Once someone decides to tryout, they are what you call a “newbie.” For the next couple of weeks they are tested in a variety of ways to see whether they have what it takes to “cross over the line” and become a member of one of the group’s or teams on campus.

I met Milan Jackson and her friend Pat in the beginning of August 2007, during tryouts. Milan was pretty, bright and very ambitious. She asked me a lot of questions about the squad. She wanted to know what would be required of her as a “newbie.” I thought that she was a little overconfident, since we hadn’t made decisions as to which girls we would invite to tryout. I was not offended, however, because confidence is one of the qualities we seek in a cheerleader. I told her that if we invited her to try out she would have to cross the line before becoming a junior varsity member. I also told her that if she showed some strong leadership potential while on the line, that she might be elected captain of the junior varsity squad. Captain of the junior varsity squad as a freshman is a good way to become captain of the varsity squad during senior year. She said, “I am going to be captain of the varsity next year.” I laughed and told her that she would have to be invited to try out before she made all those plans for the future. Then I joked, “Well you know, if you really want to impress us, you will do something so great people will be talking about it for years to come.” We both laughed.

I noticed that Milan’s friend Pat didn’t seem to be the type of person to be a cheerleader. She was kind of reserved and nerdy and didn’t seem to fit in very well. Because they seemed so different, I asked how they knew each other. Milan told me that Pat had been a friend of hers since grade school. She said that she cared very much for Pat, and she hoped that they would become cheerleaders together, but that she would not give up becoming a cheerleader, even for Pat. Even though I knew that Pat would never be chosen to become a

cheerleader, I was really turned off by that remark. After all, one of our strongest principles is loyalty, and I thought that Milan's attitude was not very loyal to her friend.

The seniors voted to ask Milan to tryout. As captain, I did not vote. I also did not warn them about some of Milan's less desirable qualities. I was hoping that maybe I was mistaken, and Milan had not been herself that day. Unfortunately, I was wrong. Milan began to show her true colors shortly after she tried out. She could be really sweet sometimes and really stuck up other times. She was always nice to the seniors, but she could be really snotty to other "newbie's". When the news came out that she and her boyfriend broke up, a lot of guys started asking her out. I even tried to set her up with my friend Bryan. I thought that they would make a really nice couple. She turned the offer down flat and gave any guy that showed interest in her the cold shoulder.

Many of the seniors began to dislike Milan. I was hurt by her attitude at times, but I did not dislike her. I figured she must have had something serious going on in her life that made her behave that way. She could be a lot of fun sometimes. She was a lot of fun at parties. She would drink and be a lot more outgoing. We all enjoyed her at those times.

The last week of tryouts is known on campus as "Hell Week." This is when the seniors on the team play pranks on the "newbie." The seniors like to give newbies a hard time, but we would never do anything to endanger their physical or emotional well being nor would we violate campus anti-hazing rules of the anti-hazing law. The "newbies" are responsible for knowing the history of both Crater High School and the Crater cheerleaders. We also had the "newbies" scrub the bathrooms with their toothbrushes, eat things sprinkled with hot pepper, and other harmless things of that nature. We never touched the "newbies," nor did we encourage them to drink. We have had a couple of people get hurt while trying out, but these incidents were due to the recklessness of the "newbies" and not us. We encourage people to be responsible, but we cannot force them to act that way. These people are almost adults and should be held accountable for their actions. Besides, it is an extra-curricular activity and is not mandatory. So people choose to go out and do what we do.

Pat Smith is a perfect example of someone who does not want to be held responsible for her actions. One night during Hell Week, Pat forgot her inhaler when we were all hanging out. She was sitting quietly in the

corner and no one noticed her until she had passed out. We rushed her to the hospital. We were so worried. A few other seniors and I went to visit Pat in the hospital. She seemed really happy to see us, and I could tell that she really appreciated the visit. I think that the only reason she is telling these lies now is because she did not make the squad. She never raised any of these allegations when she talked to the police. I think that it is strange that she reported all of these things that we supposedly did only after she was not accepted as a cheerleader. It really hurts to see her react this way. Even though she didn't make it, we were still nice to her. I don't understand why she is telling so many lies about us. I think that all of us have been though enough suffering with the death of Milan.

On the evening of her death, Milan seemed to have had a little too much to drink at our "Back to School" party. She started crying and saying that she knew we all hated her. I told her that that was not true. I said, "Sometimes we get offended by your attitude but we certainly do not hate or dislike you." Later, we blindfolded all the "newbies" as part of our initiation tradition. On the last night of Hell Week, we have them do one last task. It is always something harmless and in good fun. We brought each of the girls out one at a time to perform the task. When we entered the house to bring Milan outside, I said, "We have something special in mind for you." After we brought her out, I whispered to her, "You are going to have to do a trick somewhere no one else ever has." What I intended for her to do was run down to the softball field or something, which was down the road. I just wanted to scare her a bit. We always do that to the "newbies". But Milan went nuts!

Before we could stop her, Milan snatched off her blindfold, and ran off toward the softball field. She started yelling that she was going to show everyone how great she was. A few of us chased her because she was drunk and upset and we had no idea what she might do. She ran past the field and toward the football stadium. The lights of the stadium were on, but no one seemed to be there. She slipped through a crack in the fence and ran toward the stadium. We followed her, yelling for her to stop. But she ran to the stairs that led to the press box and somehow got the door open. Then she went up the stairs. I was close behind her, telling her to stop, and I followed her up the stairs to bring her back down. I was so terrified. I begged her to come down, but she said that she wanted to do the trick where everyone in town could see it. Then she went in front of the Crater Comets

sign and started doing tricks. The rest of the people from the party were cheering and egging her on from down below. Some even had their phones out taking pictures. I tried to get her to come down. I grabbed her arm, but she pulled away. Suddenly, she turned and ran toward the press box. There was a ladder and some paint. I guess someone was doing some work up there earlier. She climbed up the ladder, got on top of the press box, and started doing tricks. I followed her, demanding that she get down. It was so high up! I reached for her, to bring her back to the ladder, but she stumbled. I reached out and grabbed her shoulder to stop her from falling but it was of no use. Milan fell over the edge and landed on the track. It was horrible!

I am so sorry that Milan died, but I am not a murderer. She got drunk and chose to go up on the press box without any prodding from me or any of the other seniors. I tried to stop her and now I am being accused of murder. The fact is that she put too much pressure on herself to be the best and that is what led to her death. Tyler Johnson is testifying against me because s/he is jealous. S/he expected to become varsity captain, but I was elected to the position instead. I did not intend for this to happen, but Tyler has such a horrible drinking problem that no one felt s/he was capable of handling such an important position.

Even if I wanted to haze, I would not do it. The consequences are too severe. Johnson sent a memo warning students about the consequences of hazing. He wrote an added note to me on the memo and he also called me to say Milan seemed unhappy.

**AD JEFF JOHNSON**

**Witness for the Defense**

My name is Jeff Johnson, and I have been Athletic Director at Crater since 2006. I am proud to be a member of the Central Point community. This school provides numerous sports, clubs, support systems, and most important, exceptional academics. As A.D. it is my responsibility to help maintain this campus' good reputation. I do this by overseeing the extra-curricular faculty, staff and students. I am also a major fundraiser for the campus.

I am very familiar with the cheerleaders. The Crater Cheer squad has been in existence since 1940. It is an extremely popular organization whose members tend to be well-rounded students. Also, the alumni cheerleaders are the most generous of the campus organizations. Alumni cheerleaders have contributed over fifteen thousand dollars to the campus. Much of this money was used to help pay for the new PAC. We enforce strict campus rules about hazing. We send out a letter to all the clubs, teams & organizations during the first week of the beginning of each year, reminding them of the law and the school rules against hazing. Although we have had to discipline a few organizations in the past, most students seem to respect the policy and we have very few reported incidents of hazing. However, all groups on campus have had their share of mishaps, and the cheerleaders are no exception. (Sometimes the students play pranks that misfire and people get hurt.) This is no different from sport team injuries or injuries that occur when students go to parties. As a matter of fact, there have not been any substantiated reports of hazing by cheerleaders in the past five years. Although reports of hazing have gone down in all campus organizations, none can beat that record. We have had to discipline several of the other teams or clubs due to reports of paddling or other physical abuse of students. Fortunately, none of the hazing we have discovered in the past few years has resulted in serious injury.

Due to our low rate of reported incidents in hazing, we were named the "Best Place to go to High School in Oregon" in two statewide newspapers. I am proud to say that I have personally received several awards based on these statistics. As a result of the reputation I have for reducing the number of hazing incidents, our campus

has received several donations from charitable organizations and Crater has increased my salary. Furthermore, other schools have paid me to lecture about pledging safety.

I know Christina Archer personally. She is a credit to this school. She and other cheerleaders often volunteer at the local battered women's shelter and tutor elementary school students in the area. She plays a huge leadership role on this campus. At a campus-wide extra-curricular meeting two years ago, she publicly denounced hazing of any kind. She was one of the students who helped me organize an anti-hazing rally. I also had my office send a detailed memo to every student that explained the law and school policy on hazing. I wrote a special note to Christina on the memo I sent to her on November 18th.

In conjunction with dealing with physical abuse, the campus administration has also cracked down on underage drinking. We post alcohol awareness posters all over campus. This, unfortunately, is a much more persistent problem than hazing. Every student on this campus has been warned about the problem. However, it does not seem to go away. Short of following each student everywhere they go, or ordering all students to undergo drug and alcohol testing, we cannot avoid cases of underage drinking.

I remember when Pat Smith came into my office to report the hazing activities of the cheerleaders. She told me that the seniors were picking on some of the "newbies". I tried to tell her that some teasing and pranks during tryouts were to be expected. I asked Pat whether there were any instances where she put in physical danger as a result of hazing activity. Pat told me that she had just gotten out of the hospital due to an asthma attack. She said that she began to have an asthma attack after being paddled by some upperclassmen at an off-campus function. She said that they did not take her to get medicine or any type of medical attention until after she had passed out. I told her that I was sure that the senior cheerleaders meant no harm and that it was all in good fun, but these allegations were serious and should be looked into. As soon as Pat left my office, I called the school resource officer, Dan Brown, as required by law. You can't imagine how confused I was when Officer Brown told me that Pat had recanted her statement. I closed the investigation because we cannot base an investigation on what was admittedly a lie.

This is not the first time that I have received a complaint about the seniors on the cheer squad where the complainant has changed his or her story. In order for us to use campus resources to investigate an incident of hazing, we must get a report from a complainant. If that complainant recants, then it is a waste of time for campus security or the local police to investigate when there are other things to which they can devote their time, like campus security. Because there are no records of recanted allegations, I do not know how many times a complainant has come to me specifically about hazing by the senior cheerleaders and then changed his or her story. Perhaps a couple of the allegations that have been made included a bit of truth, but it is not fair to investigate a reported incident when the accuser won't stick to one story. The accused would have to go through the humiliation of the campus & police investigation and would be at risk of expulsion as a result of a story we cannot be sure is true. I refuse to ruin someone's future by putting something false on their permanent academic record, especially the bright futures that most of the cheerleaders have!

Milan came by my office on the Thursday before her death and said that she had something to tell me about the situation with Pat. She said that she did not have time to talk but that she would come back on Monday. When Milan left my office, I immediately called Christina to find out what was going on. I told her that Milan had some information for me and that if it had anything to do with hazing, I would suspend the cheerleaders involved and bring her [Christina] before the campus administration. Christina assured me that there was no hazing going on, nor would there be any in the future. I believed her.

I was greatly saddened by the news of Milan's death. She was obviously a seriously disturbed young woman. She has been seeing a school psychologist since before she ever tried out to be a cheerleader. Unfortunately, the lack of self-esteem in young adults is a problem nationwide. Milan wanted to be popular, and that desire probably drove her to act irrationally. I was here when Milan's cousin, Tanya Maddox, attended Crater about six or seven years ago. Tanya was captain of the cheerleaders and a real credit to the school. She was certainly a hard act to follow and I would not be surprised if Milan jumped off the press box because she could not measure up to the successes of her cousin. If I had known that Milan was experiencing emotional problems I certainly would have offered her support.

## **TYLER JOHNSON**

### **Witness for the Prosecution**

My name is Tyler Johnson. I am a senior in the Crater Academy of Health and Public Services (CAHPS), and I am also co-captain of the Crater cheer squad. Christina and I worked together to plan all of the CHS cheer events. We are also in charge of newbies and co-plan all of their activities. I was captain of JV when I was a freshman at Crater. Usually, being the captain of JV means that you are the most promising new member of the JV team, and will likely become captain of the varsity when you are a senior. However, when I became a senior, Christina Archer was elected captain of Varsity instead of me. I couldn't believe it! That back stabber was supposed to be my friend. I also can't believe that the other girls elected her to be captain. I knew one day the entire squad would find out Christina's true colors and regret electing her to such an important position. I bet they regret it now! Fortunately, if Christina goes to jail for this horrible crime, as co-captain, I will automatically assume her position as captain. When that happens, I will make this squad great again.

I got to know Milan pretty well when she tried out for our squad. I liked her right away. She was smart, good-looking and really enthusiastic about cheering. She was exactly what we look for in a cheerleader. When I met her during tryouts, I told her why being a cheerleader is so special. Being a part of any club or team is like having your own home away from home. It means being part of a family. We all support and look out for each other. Even after we graduate, cheerleaders are known for keeping in touch and doing a lot of professional and social networking. We also throw wonderful parties, but we are also really concerned about social and political issues. We believe in giving back to the community.

I also remember a statement Christina made to Milan the first day we met her during the first week of tryouts. Christina said, "If you really want to impress us, you have to do something that people will talk about for years." Then she smiled. It sounded innocent enough, but I knew that Christina was setting Milan up.

Milan seemed to realize and appreciate the unique qualities of being a part of our organization, especially the honor of being on the varsity squad. She told me that she had a cousin named Tanya Maddox who was captain of the team several years ago. Although this did not make her a legacy (you are automatically

accepted if one or both of your parents was a cheerleader), I was really pleased that she had a connection to, and was familiar with, our organization.

Milan had a personality that was somewhat reserved. She would really come out of her shell when she was talking about cheering and her plans to be captain of the varsity team one day. She was also more expressive when she was drinking. Other than those times, however, she was pretty quiet. If you did not know her well, her attitude could easily be mistaken as “stuck-up.” A lot of the girls thought she was too snotty to the other newbies and them. Christina was especially offended by Milan’s personality. I think that the final straw for Christina was when Milan turned down her offer to go out with her boyfriend’s friend Bryan, another senior on campus. Both Bryan and Trevor seemed to be paying a little too last much attention to Milan for Christina’s taste. I think that Christina tried to set Milan up with Brian to prevent her from going after her own boyfriend.

After that, it seemed like Christina was out to get Milan. Christina did not do anything at first, but she told me that she was going to plan something special for Milan on Hell Night, the night of tryouts. I asked Christina what she meant by that but she only said, “Hell Night will give Milan a permanent attitude change.” I was really nervous about how weird Christina looked when she made this statement, and I begged her to tell me what she meant. She never mentioned her plans again until the night of Milan’s death. By then, of course, it was too late.

I have to admit that I really love to drink and party. Unfortunately, that has led to problems with my grades and some of the squad thinks I have a drinking problem. I could tell right away that Milan was also a drinker. A lot of times, Milan and I would chill, drinking and have really long, personal discussions. She drank a lot, as much as I do. I think that the pressure she has put on herself, along with the pressure of trying out, was sometimes a lot for her to take. She was a real perfectionist. She told me that she really wanted to be a cheerleader more than anything else. She also said that just being a cheerleader was not enough. She said she wanted to live up to her Cousin Tanya’s memory by becoming Captain of Varsity. I thought she was a little to obsessed with this whole captain thing, but I could relate to some degree. After all, I was JV captain when I was a freshman. Unfortunately, Christina was elected to be varsity captain. Some said it was because everyone

thought I drank too much, but I know it was a conspiracy started by Christina. I told Milan what happened to me. I also told her that a lot of the seniors thought she was stuck-up. I suggested that perhaps she should try to do something spectacular to impress them. She really needed to outshine the other “newbies”.

We also talked about her friend Pat. Milan said that she really loved Pat, but that Pat seemed jealous whenever Milan made new friends. I knew that Pat did not have what it took to be a cheerleader. I asked Milan what she would do if she made the squad and Pat did not. She said that she would always be friends with Pat, but that she would not give up being a cheerleader for anyone. I was relieved to hear this, because I thought that Milan would make a wonderful captain. I never really got to know Pat. I know that Pat had an asthma attack once during an activity Christina and I planned. Christina let things get out of hand and had the senior guys at the party hit the newbies on the backside with a wooden paddle. Pat freaked out and had an asthma attack. I do remember that Christina and a couple of other senior girls went to visit her in the hospital the next day.

On the night of Milan’s death, all the senior cheerleaders planned tasks for the newbies as part of Hell Night. Hell Night is the last night of tryouts, before we decide who makes the squad to become a cheerleader, and who does not. That night, at our “Back to School Party”, we blindfolded all of the newbies and had them line up in the house. Then we brought each one out separately to perform a task. Usually, the tasks are pretty simple, but they are created to scare the newbies. For example, we told one newbie to chew on a piece of glass. Then we put an eggshell in her mouth. Since she was blindfolded, there was no way for her to know whether the object was really glass until she chewed it. It really is harmless, but all in good fun.

When we brought Milan out to perform her task, Christina whispered something in her ear. I couldn’t hear all of what Christina said but I know I heard the words “climb” and “school”. After hearing what Christina said, Milan snatched off the blindfold, and started running toward the high school. Christina and a couple of the other people, including myself, ran after her. The next thing I knew, we were chasing Milan through the student parking lot and into the football stadium. Christina was right behind her. By the time the rest of us caught up to the two of them, both Milan and Christina were on top of the stadium. Milan was doing tricks and Christina was standing near her, trying to grab her arm. Suddenly Milan turned and ran further up the stadium roof. We

couldn't really see what she was doing. We heard some grunting and then heard Milan doing a trick. We all ran down the stadium steps, toward the track to see what was happening. Before we got there, we saw Milan fall and land on the track. It was horrible. We didn't see what happened on top of the press box. Only Christina was close enough to see what had happened. I am sure, however, that Christina pushed her. I bet she had been planning to kill her all along.

## **PAT SMITH**

### **Witness for the Prosecution**

Milan and I had been best friends since we met in the third grade. She was a chubby new girl at school and everyone teased her for being such a “plain Jane” and a “nerd.” Like her, my classmates often teased me and called me “nerdy,” so I introduced myself to her and we became instant friends. As we grew up, Milan began to transform into a gorgeous young woman. She lost her baby fat in middle school. Then, the summer after the seventh grade, she got a great haircut and bought contact lenses and a whole new wardrobe to celebrate her new, shapely figure. By the time we graduated from the eighth grade, all the people who has teased Milan and I while we were growing up wanted to invite her to parties and other events. It seemed like every girl in school wanted to be her best friend and every guy wanted to date her.

I thought that with her new popularity, Milan wouldn't want to be my friend anymore. After all, now that she could be with the cool kids, why would she want to be with me? Fortunately, Milan was still the same shy, sweet girl she always was. She refused to go to any parties of anywhere else unless I was invited. The summer before our freshman year, Milan began to date Craig, the captain of the football team at school. We spent less time together, but I knew that we would always be friends.

During the summer, Milan and I decided to apply to join the cheer squad together so that we would not have to go through the high school experience alone. We were both excellent students and athletes and we knew that we would probably make the squad easily. When we got our notice for tryouts we were thrilled. It is a reputable squad who always places high in competition. We were enrolled in Crater's Academy of Health and Public Services, one of the four small schools at Crater, but anyone can try out for sports at Crater. Milan and I thought it would be great to be part of the squad and be popular so we could go to lots of parties. We were so excited about being cheerleaders! We decided that we would try to be more social now that we were trying out. Everybody wants to be a cheerleader. It is the most popular organization on campus. I also knew that I had an advantage because I was a legacy (both my mom & aunt were cheerleaders for Crater). My mom loves to tell

me stories about all their wild and crazy days at Crater. She made it sound like so much fun! Milan was also very excited about cheering. She was not a legacy, but she told me that her favorite cousin had been captain.

When Milan and I met the senior cheerleaders during tryout week, they seemed so nice. They were like the “Who’s Who” on campus. Many of the students who held the most prestigious positions on campus were cheerleaders. The student body president, the most popular campus DJ, and more were all cheerleaders. Milan and I were amazed. We were so impressed that we were willing to do whatever it took to be part of this squad. Chris Archer, the captain, seemed so welcoming to the “newbies” on the first day of tryouts. She told all of us that if we were lucky enough to become Crater Cheerleaders, we would be part of a family. She told us that the squad was about more than just pumping up the crowd during games and school spirit. She said that cheer sisters and brothers are also really supportive of each other and the community in general.

Milan and I were so excited when we were first selected to show our tryout routines. Then things quickly changed for the worse. While we were trying out, the seniors were nice. But after tryouts, off campus, they made us do really horrible things. They made us eat dirt, drink large quantities of alcohol, clean toilets without toothbrushes and more! Milan told me that Christina said that if she would sleep with her friend Bryan, that she would not only be guaranteed to become a cheerleader, but that Christina would make sure that she would be elected captain her junior year. Milan really wanted to become the captain, but she said that it was not worth selling her body. After that, all the seniors were really mean to her. They started calling her “Miss Stuck Up”, and they would always tease her.

The last week of tryouts is called Hell Week and the last night of Hell week is called Hell Night. On Monday night of Hell Week, at an off-campus party, the seniors made the “newbies” strip to our underwear. They stood around and made fun of us. We were all really frightened, and a couple of girls started crying. The guys at the party swatted each of us on the behind really hard with a wooden paddle. Then they made us stand outside in our underwear. I got so upset that I started to have an asthma attack. I kept telling the seniors that I

needed my asthma inhaler, but they wouldn't let me get it out of my purse. The next thing I knew I had passed out, and I awakened in a hospital.

A few of the senior girls, including Chris, came to visit me Tuesday in the hospital. I thought they had come to apologize. Instead, they threatened me! Chris told me that if I told anyone what happened, they would make me an outcast on campus. When I returned to campus on Wednesday, I built up enough courage to tell AD Johnson what happened. Instead of supporting me, he told me that I was over-reacting, and that the cheerleaders were harmless. He said that, "It was all in good fun." All in good fun! I could have died.

Later, that very same afternoon, Officer Brown asked me about the incident. I was so scared that I lied. The seniors had threatened me, and I knew that I had no support from the administration. I felt so alone. I told Officer Brown that I was playing around, and that I had forgotten to take my asthma medicine. Now I wish I had told the truth. When AD Johnson found out what I told the police, he called me back into his office. He said that they would not report my complaint as an act of hazing because I had retracted my original statement.

When the girls found out that I hadn't told the police anything, they allowed me to return to tryouts. Even after this incident, I still refused to drop out. I can't believe how stupid I was! Maybe if I had quit, Milan would have too. Then she would still be alive today. Instead, we kept putting up with abuse from the senior cheer squad. August 22, 2007 was the last and worst night of Hell week. It was Hell Night, and the night of Milan's death. That night the seniors had a "Back to School Party". They pressured all of us to drink. All of the girls there drank. Milan and I drank about three shots of tequila. We both got a little tipsy. However, I have seen Milan drink a couple of times and this certainly was not one of those times. She laughed and talked. Her words were not slurred and she seemed focused. Later that night, at about 1 am each of the "newbies" was blindfolded and taken out one at a time by a group of upperclassman. I heard Chris' voice call for Milan. She said, "We have something special in mind for you, Milan." Milan responded and I heard her footsteps as she was led away. Approximately five minutes later I heard people yelling and shouting. I pulled the blindfold off of my eyes and ran outside to see what was going on. I saw a bunch of upperclassmen following Milan down the street

toward the high school. I ran after them. I saw everyone run up to the football stadium. Milan was on top of it doing a cheer or something. Then I saw her and Christina move further back on the roof. I followed everyone else down the steps toward the track to see what was happening. I will never forget what happened next. I saw Milan's lifeless, broken body on the track, and I saw Christina's face looking down from on top of the press box.

I know Chris is lying about having tried to stop Milan from going up on the press box. Milan would never have gone up on top of the stadium on her own. She has always been deathly afraid of heights. I think that is why Christina told her to go up there. She wanted to terrify her or maybe they even intended to kill her. I know Chris must have been pushing Milan instead of trying to pull her back down. She is just that mean! It was clear that they were making Milan do more than the other girls trying out. What she did was cold-hearted murder.

By the way, even though I have spoken with Jordan Mitchell. I am not receiving any money for the interviews I have given him/her.

## **Dr Jordan Mitchell**

Witness for the defense

My name is Jordan Mitchell. I graduated from Steven Biko University in 1971 with a PhD in American History. I am a local historian and I have studied the history of the four state colleges and universities in Oregon as well as other groups for the last twenty-five years. I have written thirteen articles and two books on this topic. One of the books is titled: The History of the Oregon Schools from Studies to Socials. It is about the lives of students. My books did not sell well until this incident. My new book on the history of Oregon Schools is a bestseller. I am also in the midst of writing a book about this case, for which I will receive a two million dollar advance and 5% of the profit from its sale.

One of the more interesting aspects of Crater High School's Administration is its relationship with campus extra-curriculars. The School Board was actually founded by a strong supporter of extra-curriculars, Samuel Richardson. Mr. Richardson believed that the highest form of learning could be achieved if students are connected to their school. Richardson also believed that extra-curriculars were an important way for people to create a strong sense of humanity and brotherhood. As a result, Richardson stressed three principles in his vision for Crater; academics, extra-curriculars and community.

Unfortunately, there is a more sinister side to the "Brotherhood's" history. There were a few groups known for their dangerous initiation techniques. From 1955 until the mid 1980's, many unexplained injuries occurred on Oregon high school campuses, including on the Crater campus, and the most frequent victims were those involved in varsity athletics. Unfortunately, few students would step forward to implicate the members of their group. Even those who were hurt would usually offer weak explanations, if any, for the cause of their injuries. With no one to testify, the problem continued. One of the dangerous activities that were part of the initiation tradition occurred during the 1960's and 70's. It was called "raising the flag." This required a new member to climb to the highest point on campus and hang up a school flag. Because heavy drinking usually preceded this venture, it was extremely

dangerous. There were five falls that occurred as a result of this activity; four resulted in serious injuries and one resulted in death. There has been no known occurrence of this act at an Oregon high school since 1978.

In the early 1980's, campuses across the country began to crack down on dangerous hazing or initiation activities. They began to institute severe punishment to those groups that were found to have hazed their new members or new students. As a result, many of these organizations either cut down on their hazing or were much more secretive about what was going on. Crater was no exception to this trend. From about 1897 to the present, there have been only five reported hazing incidents from Crater.

One of the most fascinating aspects of Milan's death is its similarity to the suicide of Milan's paternal cousin, Tanya Maddox. Like Milan, Tanya attended Crater High School. Tanya was extremely pretty and well liked on campus. She successfully made the varsity cheerleading squad and became a team leader as a freshmen, and eventually became captain of the team. In 1990, during Tanya's senior year, a freshmen named Richard Doe died under mysterious circumstances. Although the coroner ruled the death an accident, it was widely rumored that his death was a result of hazing by the football team.

Tanya Maddox was thought to have been involved in his death, but it was never proven. Two years after Tanya graduated, on the anniversary of Richard's death, she committed suicide by jumping off the ledge of a building. Her then twelve-year old cousin, Milan, was sole witness to her death.

Hazing has historically had a secretive air. As a result, it is difficult to detect and equally difficult to stop. In my book, I have documented several instances where the pledges and even some members of a fraternity or sorority have recanted their stories of alleged abuse due to fear of repercussions.

Unfortunately, some schools, of which Crater High School is one, only report those cases that are fully investigated.

Although I never knew the deceased, I did attempt to interview her alleged murderer, Chris Archer. S/he was extremely nice and cooperative. I asked her/him several questions about her/his involvement with the murder. S/he told me that s/he was unwilling to discuss the facts of the case before trial, but

would be happy to meet with me once this horrible ordeal is over. I also paid Pat Smith \$1000 to give me information about the incident to use in my book.

Dr Jordan Mitchell  
Witness for the defense

My name is Jordan Mitchell. I graduated from Steven Biko University in 1971 with a Ph.D in American History. I am a local historian and I have studied the history of the four state colleges and universities in Oregon as well as other groups for the last twenty-five years. I have written thirteen articles and two books on this topic. One of the books is titled: The History of the Oregon Schools from Studies to Socials, and is about the lives students. My books did not sell well until this incident. Now my book on the history of Crater is a bestseller. I am also in the midst of writing a book about this case for which I will receive a two million dollar advance and 5% of the profit from its sale.

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Unfortunately, there is a more sinister side to the Gamma's history. Gammas were once known for their dangerous hazing techniques. From 1955 until the mid 1980's, many unexplained injuries and even a few deaths occurred on the Columbus University campus during pledging, and the most frequent victims were Gamma pledges.

Unfortunately, few students would step forward to implicate the members of Gamma.

Even those who were hurt would usually offer weak explanations, if any, for the cause of their injuries. With no one to testify, the problem continued. One of the dangerous activities that were part of the Gamma's hazing tradition occurred during the 1960's and 70's. It was called "raising the flag." This required a pledge to climb to the highest point on campus and hang up a Gamma flag. Because heavy drinking usually preceded this venture, it was extremely dangerous. There were five falls that occurred as a result of this activity; four resulted in serious injuries and one resulted in death. There has been no known occurrence of this act since 1978.

In the early 1980's, college campuses across the country began to crack down on dangerous hazing activities. They began to institute severe punishment to those fraternities and sororities that were found to have hazed their pledges. As a result, many of these organizations either cut down on their hazing or were much more secretive about what was going on. Gamma was no exception to this trend. From about 1897 to the present, they have been only five reported hazing incidents from Gamma.

One of the most fascinating aspects of Milan's death is its similarity to the suicide of Milan's paternal aunt, Tanya Maddox. Like Milan, Tanya attended Columbus University. Tanya was extremely pretty and well liked on campus. She successfully pledged Gamma, became the fraternity's head of New Gammas as a freshmen, and eventually the president of the fraternity. In 1990, during Tanya's senior year, a freshmen named Richard Doe died under mysterious circumstances. Although the coroner ruled the death an accident, it was widely rumored that his death was a result of hazing by the Gammas. Tanya Maddox was thought to have been involved in his death but it was never proven. Two Years after Tanya graduated, on the anniversary of Richard's death, she

committed suicide by jumping off the ledge of a building. Her then twelve-year old niece, Milan, was sole witness to her death.

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**G. Exhibit**

To: Students of Crater High School

From: Office of the Athletic Director

Date: November 18, 1998

Re: Campus Hazing Policy

This memo is a reminder to all the CHS students that hazing is a violation of the campus policy and a CRIME. We will suspend any extra-curricular organization group or any other that haze their potential members. In addition, if we find any student has hazed another student, that student will be brought before the campus administration with the risk of expulsion.

A student who hazes is also at risk of criminal prosecution, and if found guilty may have to face up to a year of jail time. IF YOU ARE THINKING OF HAZING, THINK AGAIN!!!

*Christina,  
Whatever you do, do not let me hear any complaints from cheerleaders about you or the seniors.*

*AD Jeff Johnson*

(iv) Intent to commit a felony

\*In the case of (ii),(iii),or (iv), the malice is “implied”(assumed)

c) Second degree murder is punishable by a maximum period of imprisonment not Less than 20 years and not to exceed a sentence of life.

#### **2-747: Involuntary Manslaughter**

- A) Involuntary manslaughter is killing which occurs as a result of an unreasonable failure to perceive the risk of harm to others, while engaging in conduct resulting in extreme danger to life or of serious bodily injury. This conduct is also known as criminal negligence.
- B) Involuntary manslaughter is punishable by a maximum of 20 years imprisonment.

#### **4-1213: Anti-Hazing/Gang Initiation Statute**

- a) A person commits criminal hazing if:
  - (1) Serious physical injury or death results, or is likely to result an act or the direct influence of a gang or fraternity/Sorority member during the initiation process.
  - (2) This charge may be brought in conjunction with any other violent crimes against a human being.
- b) Hazing is a class D misdemeanor and is punishable by fine of not less than ten dollars nor more than one hundred dollars, or imprisonment of not less then thirty days nor more than one year, or both, at the discretion of the court.

#### **Criminal Rule 31- Verdict**

- a) CONVICTION OF A LESSER, INCLUDED OFFENSE. The defendant may be found guilty of an offense necessarily included in the offense charged. In a non-jury trial, the judge will make such a finding, without motion by either prosecution or defense.

## Case Law

Richards v. New Columbia, 908 A.2d. 1096(1995).

Summary of facts: On appeal. John Richards, leader of a gang known as the "Nines" was convicted of 2<sup>nd</sup> degree murder under 2-745 and criminal hazing under the Anti-Hazing/Gang Initiation Statute. As part of gang initiation ritual, Richards instructed potential gang members to lay on train tracks and count to ten after feeling the initial vibrations of an oncoming train. After drinking heavily, Mark Yoba, a young man being initiated into the gang, lay on the tracks. However, in his intoxicated state, Mr. Yoba did not start counting until the train was almost upon him. Mr. Yoba did not react quickly enough to move himself from harm's way and was consequently killed.

Holding: Although the behavior of Mr. Richards was hazardous, he should not be held responsible for Mr. Yoba's death. In analyzing culpability for this tragedy, the court must examine the extent that outside pressure caused the victim to act in such a life-threatening manner. Laying on train tracks is an obviously dangerous activity. Despite his intoxication, there is no evidence that blood alcohol levels were high enough to completely impair Mr. Yoba's judgment. Despite intense peer pressure, Mr. Yoba should have been aware of the risks of undertaking such an activity. The facts do not support conviction of 2<sup>nd</sup> degree murder.

Regarding criminal hazing, on the other hand, the activities that Mr. Richards selected for initiation put people at serious risk of injury or death. As leader of the Nines, Mr. Richards could have avoided this tragedy by not selecting such a dangerous activity. *Judgment of the trial court is affirmed on the charge of criminal hazing and reversed on the charge of 2<sup>nd</sup> degree murder.*

Nichols v. New Columbia, 908 A.2d 1011(1995)

Summary of the Facts; On appeal, Deborah Nichols, president of the Alpha Delta Alpha sorority, was convicted of involuntary manslaughter under 4-1213 and criminal hazing under 4-1213 of the New Columbia Code. As part of an annual sorority drinking competition, pledges were told to compete against each other to see who could consume the greatest amount of beer. Tamara Wilcox, a freshmen at Dreyfuss University, was a pledge at Alpha Delta Alpha sorority. As a pledge, Ms. Wilcox was required to engage in this drinking state of intoxication made her incapable of making rational choices. This activity was clearly a dangerous one that put people at risk of serious injury and, in this case, death. Though Ms. Wilcox may not have intended to kill Ms. Nichols, she was fully

aware of the potential dangers of such hazing. *Judgment of the trial affirmed.*

Anderson v. New Columbia, 907 A.2d 410(1993).

Holding: Past behavior or incidents involving the alleged victim or defendant are admissible when used to establish motive for murder or suicide.

Thomas v. Sylva, 908 A.2d 128(1993)

Holding: In a case where the charge is first degree murder, lesser included offenses in the meaning of criminal rule 31 include second degree murder and involuntary manslaughter, where defendant introduces evidence of lack of deliberation, premeditation and malice .