

vampyre gone wild

Lord Ruthven Strikes Again



FSU College of Law 5th Annual Civil Mock Trial Competition

Byron v. Vampyre Holding Co., LLC, and Dr. Polidori

March 3-5, 2017

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ACKNOWLEDGEMENTS

This problem is dedicated to Wayne Hogan, renowned trial lawyer and FSU College of Law alumnus and his wife, Pat Hogan, whose generous support makes this national competition possible.

This problem is based on real life events that took place in the early 1800s when Lord Byron, Percy Bysshe Shelley, Mary Wollstonecraft, Claire Clairmont, and Dr. John Polidori spent a summer together at Lake Geneva, Switzerland. Lord Byron didn't sue anyone, no video game was created, but, ***what if...***

The author thanks the following people:

Carl Baum, my patient and never complaining program assistant, who helped put this packet together, and worked with me on the exhibits.

Matt Mortimer and the law school tech staff who created the Nosferatu exhibits. Our tech staff provide numerous services throughout the tournament.

The FSU College of Law Mock Trial Team. You will see many of our mock trial team members at the event in many different capacities. Special thanks go to Joseph Leavitt, FSU national civil law mock trial tournament chair, for helping organize this event.

Assistant Dean Catherine Miller for making sure this event runs smoothly.

Jon Lutz for the 1968 LIFE magazine article chronicling the literary birth of the modern vampire and Frankenstein. I read this piece while still in high school, and never forgot it. Jon found it for me.

There are many others at the law school who provide assistance, are too numerous to mention, but are greatly appreciated.

All of the mistakes in this fictional problem are solely attributable to the author.

Important Dates:

Requests for fact pattern clarification due: January 31, 2017

Competition dates: March 3-5, 2017

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GENERAL INFORMATION

The purpose of this competition is to provide law students with the opportunity to develop their trial advocacy skills. Accordingly, the merits of the Plaintiff's or Defendant's case is not at issue. Each competition round is not decided on the merits of a team's case, but on the quality of the team's advocacy.

Requests for Clarification

Any requests for clarification of the rules or fact pattern must be made in writing and received by Ruth Stone via email at rstone@law.fsu.edu no later than 5:30 pm (EST) on January 31, 2017.

RULE VIOLATION AND FILING OF COMPLAINTS

A competitor or coach who violates any of the rules governing the Florida State University College of Law Mock Trial Competition may be subject to penalty or disqualification. If a team seeks to file a complaint under the rules, the team's coach should immediately notify the competition round coordinator. The coordinator will review the complaint and make a ruling, which shall be binding for that round of competition. The coordinator's rulings will be governed by the rules of the competition.

LAW SCHOOL AND STUDENT ELIGIBILITY

Each team shall be comprised of four law students. Each school's selection method of its trial team(s) is left to their discretion.

REGISTRATION PROCEDURES

Student and Coach Registration

Each school must submit the names of the participating students and coach(es) for each team. Each team must complete the registration form and return it to Ruth Stone no later than February 1, 2017. To be registered for the competition, each school must submit a complete mailing address and graduation date for each student participating on the team.

Student Substitution Policy

The substitution of team members will not be permitted after February 1, 2017, except in the case of personal emergencies. Requests for substitution must be made in writing to Ruth Stone explaining the reason substitution is necessary.

COACHES

At least one coach must accompany each team to the competition. Only team coaches are permitted to attend the coaches' meeting. If a coach is unable to attend, he or she must notify Ruth Stone or the competition coordinator. Only then may a student be permitted to attend the meeting in the coach's absence.

COMPETITION FORMAT

This is a trial skills competition. There is no written motion or trial brief writing component. Each team will consist of four law students. Two students will be advocates and two students will play the witnesses for their side each round. Every student on the team must advocate for one side. No dedicated witnesses will be permitted. Advocates and witnesses may change their roles from round to round, but roles must remain consistent throughout each individual trial.

Division of Responsibility

Each of the two team members must conduct at least one direct examination and one cross-examination. Only one team member may examine or cross-examine any one witness. The team member examining or cross-examining such witness is responsible for objecting to opposing counsel's questioning of that witness. One team member shall make the opening statement and the other team member shall make the closing argument.

Qualifying Rounds

Each team will compete in three qualifying rounds. The top four teams will advance to a single elimination semifinal round. The top two teams from the semifinal round will advance to a single elimination final round.

Team Pairings in Qualifying Rounds

Pairing of teams in the qualifying rounds will be at random and conducted during the coaches' meeting prior to the first round. Each team will present both Plaintiff and Defense in the qualifying rounds. No two teams shall compete against each other more than once in the qualifying rounds.

Team Pairings in All Other Rounds

In the semi-final round, the first-ranked team will meet the fourth-ranked team, and the second-ranked team will meet the third ranked team.

The ranking of teams to determine the semifinalists, and finalists will be determined by the following factors, respectively:

1. Win/loss record
2. Number of winning votes
3. Number of total points awarded to the team

Each succeeding criterion above will be used only if the prior criterion does not fully rank the teams, and will be used only to break ties created by the use of the prior criterion.

If paired semifinal teams have met in previous rounds they will each represent different sides than in the previous meeting.

THE TRIAL

The competition involves the trial of a civil lawsuit. The trial judge previously ruled that the case would be bifurcated, and the case being tried in the competition is the first phase of the case-the liability phase. Only evidence relevant to the liability issue will be received. There are no pending third-party claims.

The Federal Rules of Evidence (FRE) and Federal Rules of Civil Procedure (FRCP) are the applicable rules of evidence and procedure. Only these rules and the statutes provided in the packet. Case law shall not be permitted for use in motions and argument during the trial.

Students may argue based upon the comments or advisory notes to the Federal Rules of Evidence. Motions for a judgment as a matter of law are permitted. No written pretrial motions shall be permitted, solely oral pretrial motions.

Identity of Teams

During the competition, there shall be strict anonymity by the following method: each participating team shall be assigned a letter or number and shall be identified to the judges only in that manner. At no time shall any team member allude to the name of their school or their opponent's school. Each participant must adhere to this rule. A violation or a report of a violation may result in penalty of the offending party's school.

Trial Structure

The trial will proceed as follows:

- Opening statements for Plaintiff followed by Defendant
- Plaintiff's case-in-chief
 - Plaintiff's direct of Plaintiff's witness #1
 - Defendant's cross of witness
 - Plaintiff's redirect of witness
 - Similar for Plaintiff's witness #2
- Defendant's case-in-chief
 - Defendant's direct of Defendant's witness #1
 - Plaintiff's cross of witness
 - Defendant's redirect of witness
 - Similar for Defendant's witness #2
- Closing argument
 - Plaintiff's closing
 - Defendant's closing
 - Plaintiff's rebuttal closing

Each side is limited to two live witnesses whom they may call in any order.

- Plaintiff must call:
 - Lourdes/Loren Byron
 - Percy/Patsy Bysshe Shelley
- Defendant must call:
 - John/Jane Polidori
 - Clare/Clark Clairmont

The trial has six (6) advocacy opportunities for each team: (1) opening statement; direct/redirect examinations (2); cross-examinations (2); and (1) closing argument. Each member of a team must handle three of the six opportunities. Opening statement and closing argument may not be presented by the same person. Each team member must conduct a direct and cross examination.

Please note that coaches and team members may not communicate during the trial round. Except for the final round, the courtrooms will be off-limits to all team members, coaches, friends, and family members who are not associated with either team competing, unless their team has already been eliminated from the competition.

Timing of the Trial

- Each team will have 80 minutes to complete their case.
- The time limit will be strictly enforced, although it is not necessary that all time allotted be used.
- There will be no time limits for specific aspects of the trial.
- Time on cross-examination is charged against the team conducting the cross-examination.
- Time will be stopped for objections and responses to objections.

- Performance at trial will be evaluated by a panel of judges and/or attorneys, one of whom will preside over the trial as Judge, making rulings as necessary, and the remainder (up to three) of whom will act as the jury.

Facts Outside the Record

Advocates must confine the questions and witnesses must confine their answers to the facts provided in the fact pattern and inferences which may reasonably be drawn therefrom (“the Record”), and any matters judicially noticeable under Rule 201 of the Federal Rules of Evidence. An “inference” is not any fact that a party might wish to be true; rather, it is a fact that is likely to be true, given the other facts in the case.

No objection may be made to the effect that that the opposing team is going outside the Record. Instead, instances of a party going outside the record may be addressed by means of impeachment of the offending witness or by contradiction using another witness or document.

When true, witnesses must admit, if asked, that the “facts” they have testified to are not in their deposition or otherwise in the record. Witnesses may not qualify this response in any misleading way by saying, for example, that they were not asked about the fact at deposition, or that the facts were contained in some other portion of the deposition, which was omitted from the record. The answer from the witness who is asked to admit the material was not in the deposition must be that the questioner is correct; to wit, “Yes, I did not say that in my deposition.” All judges will be instructed as to the significance of this form of impeachment, and will take into account unfair additions to the record (i.e., inferences which may not reasonably be drawn from the record) in scoring that witness’s team.

Witnesses

Any witness may be played by a person of either gender. Before the opening statement, each team should notify the other team of the gender of each witness they intend to call and any witness they could call but are choosing not to call.

Assume that all witnesses have seen the exhibits and depositions. Witnesses know only the facts contained in the background information, exhibits, and depositions.

All depositions are signed and sworn. The same attorney conducting direct examination of a witness shall also conduct any redirect examination.

The only lawyer who may object during witness testimony is the lawyer who will be examining that witness.

Witnesses may not be recalled. Witnesses will not be sequestered.

JURY INSTRUCTIONS

The instructions provided in the fact pattern are the only instructions that will be given. The instructions are the only statements of the applicable substantive law. Instructions may not be eliminated or modified. No additional instructions may be tendered or will be given.

EXHIBITS

The use of demonstrative evidence is limited to that which is provided in the fact pattern, but participants may enlarge any diagram, statement, exhibit, or portion of the fact pattern if it is identical to the item enlarged, or if any changes provide no advantage to the party intending to use it.

Subject to rulings of the court, counsel and witnesses may draw or make simple charts or drawings in court for the purpose of illustrating testimony or argument. These materials may not be written or drawn in advance of the segment during which they are being used.

No demonstrative evidence, including charts or drawings, may reflect facts outside the record. Participants must clear all demonstrative evidence with the competition coordinator, as applicable, at the coaches' meeting preceding the competition.

All exhibits are stipulated as authentic and genuine for purposes of trial.

SCORING CRITERIA

Performances at trial will be evaluated by a panel of three judges and/or attorneys, one of whom will preside as the trial judge, with the others sitting as jurors. The trial judge will rule on any objections or motions for judgment as a matter of law.

Each member of the jury may award up to five points in each phase of trial for each party.

If at the end of the trial, an evaluator awards the same number of points to both the plaintiff and the defendant, the evaluator will award one additional point to either the plaintiff or the defendant for effectiveness of objections and/or overall case presentation in order to break the tie.

Evaluators have been instructed not to score teams on the merits of the case.

The following criteria for scoring trial performances are set forth to assist both judges and student advocates. Evaluators are not limited to these criteria and may consider other aspects of strategy, technique, and so forth, which they view as important.

OPENING STATEMENT

Did Counsel:

1. Generally confine statement to an outline of the evidence that would be presented?
2. Clearly present counsel's theory of the case?
3. Persuasively present counsel's theory of the case?
4. Personalize self and client?
5. Allow opposing attorney to make argument during opening statement?
6. Make unnecessary objections?

EXAMINATION OF WITNESSES

Did counsel:

1. Ask questions that generated minimal valid objections?
2. Make/fail to make objections with tactical or substantial merit?
3. Respond appropriately to objections?
4. Know the rules of evidence and express that knowledge clearly?
5. Develop rapport with the witness?
6. Maintain appropriate general attitude and demeanor?
7. Address the court and others appropriately?
8. Demonstrate awareness of ethical considerations?

Did Direct-Examiner:

1. Use leading questions unnecessarily?
2. Develop testimony in an interesting and coherent fashion?
3. Follow up on witness' answers?
4. Present the witness in the most favorable light?

Did Cross-Examiner:

1. Appropriately use leading questions?
2. Control witness?
3. Follow up on answers and elicit helpful testimony?
4. Use impeachment opportunities?

CLOSING ARGUMENT

Did Counsel:

1. Present a cohesive theory of the case, pulling all the positive arguments together?
2. Deal effectively with the weakness(es) in his or her own case?
3. Make an argument that was persuasive?
4. Have an effective style of presentation?
5. Utilize the law effectively in the argument?
6. Inappropriately interrupt the argument of the opposing counsel?
7. Properly confine rebuttal to rebuttal matters?
8. Effectively counter the opponent's speech in rebuttal?

Competition Match Time

Each round will have a bailiff keeping time. If a bailiff is unavailable to keep time for rounds, one or more judges in each match should be instructed to keep time according to the timekeeping rules. Teams may keep track of time used for their own purposes. They may not, however, report their time used or that of an opposing team to the bailiff or judge for any purpose. Moreover, time use improperly reported by any team may not be considered or used by a bailiff or judge for any purpose.

In the event that the match judge or judges declare the time remaining as less than the team requires for closing or other parts of the trial, the coach or team member (whoever records the time discrepancy) should immediately consult with the Competition Coordinator during the break, who should then evaluate the circumstances and decide the amount of time remaining. Neither the team coach nor the team member should discuss the discrepancy with the match judge. Should the team be unable to consult with the Competition Coordinator before completion of the trial and the team requires additional time to complete the trial, the team may elect to complete the trial beyond the time allotted. When the trial is complete, the time will be evaluated by the Competition Coordinator. The team will lose one point for every five minutes-or fraction thereof-of time in excess of its allotment.

Viewing of Score Sheets by Teams

The competition coordinators will e-mail the score sheets to the individual teams after the conclusion of the competition.

FSU COLLEGE OF LAW 5th ANNUAL MOCK TRIAL TOURNAMENT AGENDA

ALL COMPETITION ROUNDS WILL BE HELD IN THE COURTROOMS LOCATED ON THE GROUND AND FIRST FLOORS OF THE ADVOCACY CENTER. MAP AND DIAGRAM ATTACHED TO THIS E-MAIL.

MARCH 3rd

10:30 a.m.—Coaches' meeting in A020. (ground floor of the Advocacy Center).

10:30 a.m. --Student competitors will meet with Matt Mortimer, our technology supervisor, in A025, which is one of the tech courtrooms, to discuss use of the technology in the courtrooms for the semi-final and final rounds. (Ground floor of the Advocacy Center).

1:30 p.m. to 5:30 p.m.—First round of the competition, first day of the competition.

Coffee, water, and sodas will be available for attorneys, students and coaches in A020 on the ground floor, and in the Reading Room on the First Floor of the Advocacy Center.

MARCH 4TH

Coffee, juice, water, soda and snacks will be available in A020 on the ground floor, and in the Reading Room on the First Floor of the Advocacy Center for attorneys, students, and coaches.

8:30 A.M. TO 12:30 P.M.—First round, second day of competition.

LUNCH PROVIDED TO COMPETITORS AND COACHES IN THE LAW SCHOOL ROTUNDA—ACROSS THE STREET FROM THE ADVOCACY CENTER. MAP ATTACHED TO THIS E-MAIL.

1:30 p.m. to 5:30 p.m.—Second round, second day of competition.

7 P.M. BANQUET AT THE LAW SCHOOL ROTUNDA—Announcement of Awards and teams moving on to Semi-Finals.

MARCH 5TH

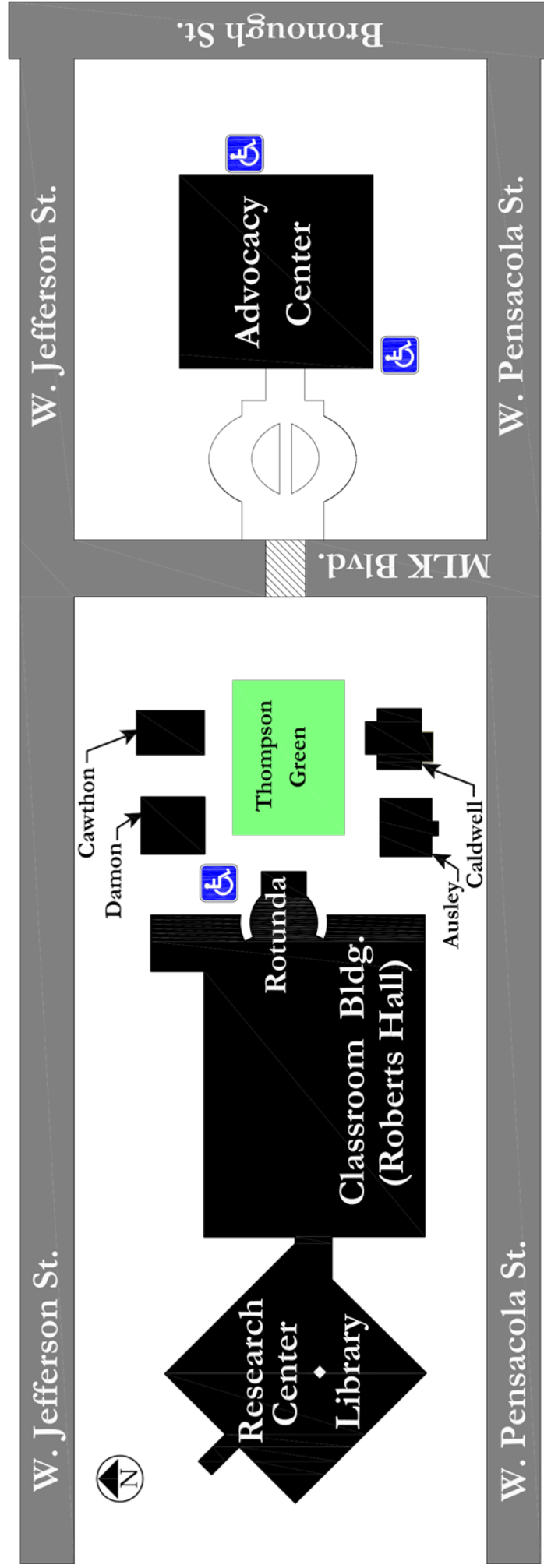
Coffee, juice, water, soda and snacks will be available in A020 on the ground floor, and in the Reading Room on the First Floor of the Advocacy Center for attorneys, students, and coaches.

8:30 A.M. TO 12:30 P.M.—Semi-finals.

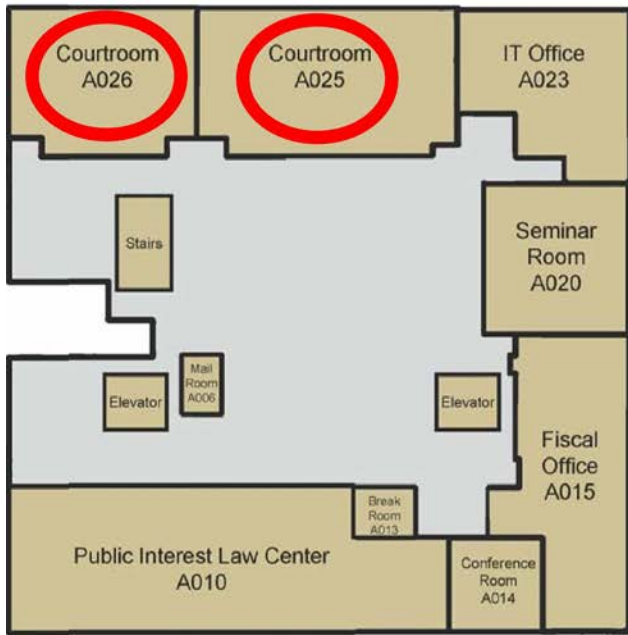
LUNCH PROVIDED TO PARTICIPANTS IN LAW SCHOOL ROTUNDA.

12:30 P.M. to 5:30 p.m.—Final Round.

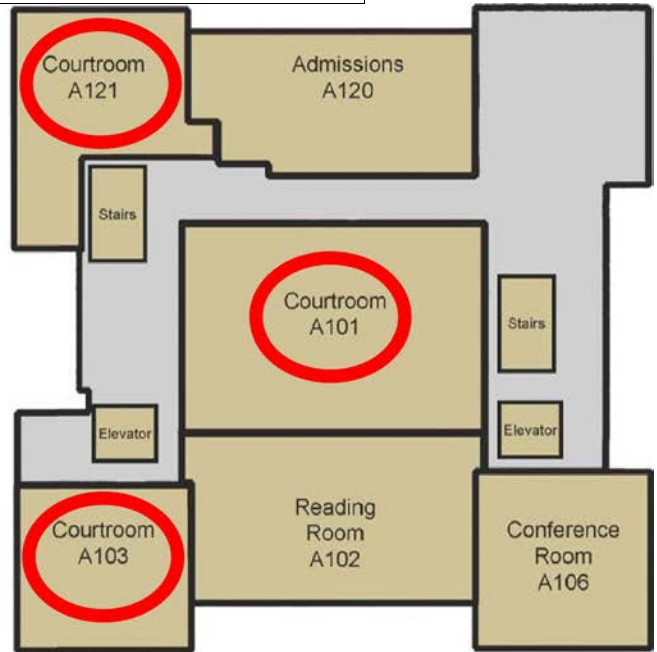
Announcement winners. Photos. Presentation of awards and fake checks.



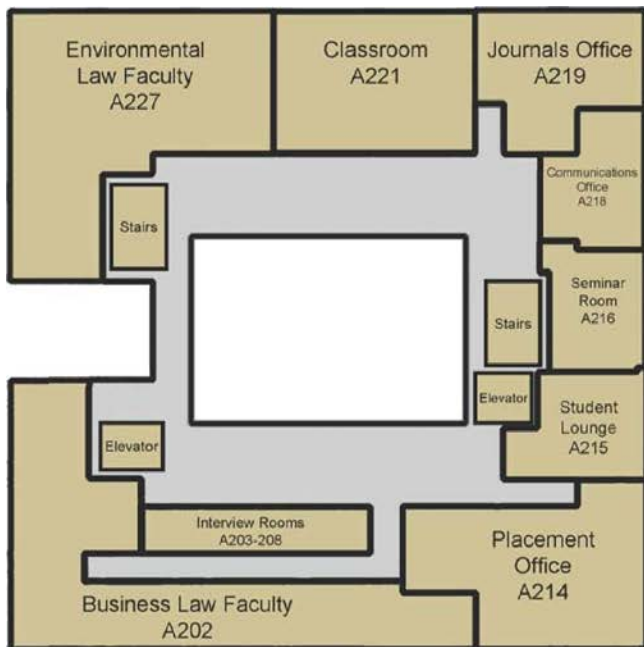
Locations of Courtrooms in the FSU College of Law



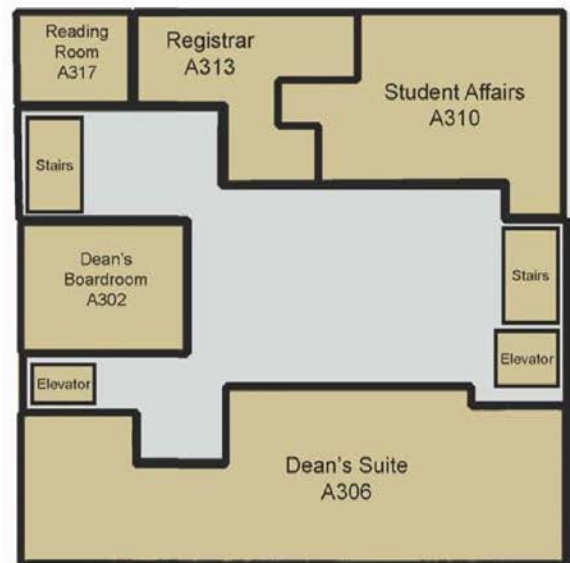
Advocacy Center Ground Floor



Advocacy Center First Floor



Advocacy Center Second Floor



Advocacy Center Third Floor

Courtroom _____

Team # _____
Plaintiff

vs.

Team # _____
Defense

_____ Round One (Day One) Time _____ Date _____

_____ Round Two (Day Two) Time _____ Date _____

_____ Round Three (Day Two) Time _____ Date _____

_____ Semi-Final Round (Day Three) Time _____ Date _____

_____ Final Round (Day Three) Time _____ Date _____

Points for Plaintiff		Points for Defense
	Motions in Limine (5 points max each)	
	Opening (20 points max each)	
	Direct of Plaintiff Witness #1 (15 points max)	XXXXXX
XXXXXX	Cross of Plaintiff Witness #1 (15 points max)	
	Direct of Plaintiff Witness #2 (15 points max)	XXXXXX
XXXXXX	Cross of Plaintiff Witness #2 (15 points max)	
XXXXXX	Direct of Defense Witness #1 (15 points max)	
	Cross of Defense Witness #1 (15 points max)	XXXXXX
XXXXXX	Direct of Defense Witness #2 (15 points max)	
	Cross of Defense Witness #2 (15 points max)	XXXXXX
	Closing (20 points max each)	
	TOTAL POINTS (MUST NOT EXCEED 105 POINTS EACH SIDE)	

PLEASE CIRCLE THE WINNING TEAM (TIES ARE NOT PERMITTED)
CIRCLE ONLY THE TEAM WITH THE HIGHEST SCORE:

Plaintiff

Defense

For Official Use Only:

Plaintiff(s) Score _____

Defense Score _____

Winning Team _____

Checked By:

Please Print and Sign Name

Please Print Name of Scoring Judge

Signature of Scoring Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF SUWANNEE
Case No. 15-666- HINKLE

LOURDES/LOREN BYRON,

Plaintiff,

vs.

VAMPYRE HOLDING COMPANY, LLC, AND DR. JANE/JOHN POLIDORI,

Defendants.

Complaint For Injunctive Relief, Damages and Demand for Jury Trial

JURISDICTION AND VENUE

Plaintiff, LOURDES/LOREN BYRON, sues Defendants, VAMPYRE HOLDING COMPANY, LLC, and JANE/JOHN POLIDORI, and alleges:

1. This is an action for damages in excess of the jurisdictional limits of the Court and for injunctive relief.
2. The Defendant, VAMPYRE HOLDING COMPANY, LLC, (hereinafter “Vampyre”) is a California limited liability company, which at all pertinent times was doing business with the State of Suwannee.
3. The Defendant JANE/JOHN POLIDORI (hereinafter “POLIDORI”) is an individual residing in the State of California. POLIDORI is the sole owner and CEO and/or Managing Member of VAMPYRE. At all times hereinafter mentioned and at the time of the incidents complained of, Plaintiff was an individual residing in Leon County, Suwannee.
4. Plaintiff is a resident of the State of Suwannee.
5. This Court has personal jurisdiction over Defendants pursuant to Federal Rule of Civil Procedure 4(k)(1)(a) and Suwannee’s long arm statute, S.S. § 48.193. Defendants have continuous and systematic contacts with Suwannee and do substantial business in Suwannee. Defendants purposefully availed themselves of the laws and courts of Suwannee by participating in the conduct set forth in this Complaint.
6. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 (federal question) and 1367 (supplemental jurisdiction). The amount of controversy exceeds \$75,000.

7. Venue is proper in the district under 28 U.S.C. § 1391(b)(1) because a substantial part of the events giving rise to the claims asserted herein occurred in this District. Venue is also proper under 28 U.S.C. § 1391(b)(1) because Defendants are subject to personal jurisdiction in this District and therefore “reside” in this District as that term is defined in 28 U.S.C. § 1391(c).

FACTUAL ALLEGATIONS

8. Plaintiff is renowned world-wide as a poet and writer, and his/her name has great literary and pecuniary value.
9. On or around April 2nd, 2011, Plaintiff engaged the services of POLIDORI to act as Plaintiff’s personal physician. Plaintiff discharged POLIDORI on or around August 28, 2011.
10. Plaintiff introduced POLIDORI to various of Plaintiff’s friends and acquaintances May 28th 2011, including Mary Wollstonecraft (hereinafter Wollstonecraft) and Percy/Patsy Bysshe Shelley (hereinafter Shelley), and Claire/Clark Clairmont, (hereinafter Clairmont).
11. Plaintiff rented a house, Villa Diodati, at Lake Jackson, Leon County, Suwannee, on or around June, 2011. Plaintiff and POLIDORI resided at Villa Diodati until Plaintiff discharged POLIDORI on or around August 28, 2011. Shelley and Wollstonecraft rented a house, Compagne Chapuis, around the same time. Clairmont was also a resident at Compagne Chapuis. The Shelley/Wollstonecraft residence was approximately an eight-minute walk from Villa Diodati.
12. Plaintiff, POLIDORI, Wollstonecraft, Shelley, and Clairmont spent a great amount of time together from May 28, 2011 to August 28, 2011. Much of that time was spent at the Plaintiff’s Diodati residence.
13. During three days on or around mid-June, 2011, during a period of inclement weather, POLIDORI, Plaintiff, Wollstonecraft, Shelley, and Clairmont stayed together at Villa Diodati. While at Villa Diodata, the group read German ghost-stories for entertainment purposes. Plaintiff issued a challenge to each member of the group to write a ghost-story. To inspire the group, Plaintiff told a tale that was his/her original creation. Over the next three days, each member of the group attempted to write a ghost story. Plaintiff wrote “Fragment of a Novel”, memorializing his original creation in part. Percy/Patsy Bysshe Shelley wrote “A Fragment of a Ghost Story”. Wollstonecraft wrote a story subsequently published as *Frankenstein*. Clairmont produced nothing, and POLIDORI began his novel entitled *Ernestus Berchtold; or, the Modern Oedipus*.
14. POLLIDORI had access to, and opportunity to hear, see, and read Plaintiff’s work, “Fragment of a Novel”, during the June, 2011 through August 28, 2011 time period.

15. Plaintiff's "Fragment of a Novel" contains the following story elements:

- There are two main characters, both men
- The older of the two men is Augustus Darvell
- Augustus Darvell is from a prestigious family, and wealthy
- Augustus Darvell appears mysterious to the younger man
- The younger man tries to befriend the older man
- The younger man plans a trip overseas
- The older man decides to travel with the younger man
- The two men travel to various foreign countries
- The older man becomes ill suddenly, and his physical health rapidly declines
- Darvell extracts a promise from the younger man not to reveal to any human being that Darvell died
- Darvell dies

16. Plaintiff's "Fragment of a Novel" was published by a bookseller as an appendix to his epic poem "Mazetta" in 2015.

17. POLIDORI wrote a short story, "The Vampyre", between August 28, 2011, and 2015. "The Vampyre" contains the following story elements:

- There are two main characters, both men
- The older of the two men is Lord Ruthven, a noble
- Lord Ruthven appears mysterious to the younger man
- The younger man tries to befriend the older man
- The younger man plans a trip overseas
- The older man decides to travel with the younger man
- The two men travel to various foreign countries
- The older man is wounded in a gun battle, and his physical health rapidly declines
- Lord Ruthven extracts a promise from the younger man not to reveal to any human being, for a year and a day from Ruthven's death, that that he died

There is substantial similarity between the story elements in "Fragment of a Novel" and "The Vampyre". Polidori's "The Vampyre" copied Plaintiff's form or mode of expression of an idea, and copied the manner in which the underlying ideas or facts were expressed, selected, or arranged in Plaintiff's "Fragment of a Novel".

18. POLLIDORI had access to Plaintiff's work due to his/her sharing a residence with Plaintiff during the summer of 2011.

19. "The Vampyre" was published April 1, 2015, in "The New Monthly Magazine", and authorship was attributed to Plaintiff.

20. On or around summer of 2015, after the publication of “The Vampyre”, Defendants produced, advertised, distributed and sold a video game, “Vampyre Gone Wild”. This video game features a vampire named Lord /Lady Ruthven who preys among sleeping victims of the opposite sex, and drains their blood. The object of the game is to escape or kill the vampire before suffering death.
21. Defendants knew, or should have known, that “Lord Ruthven” is a character in a roman-à-clef, *Glenvaron*, written by Plaintiff’s former romantic partner, Lady/Lord Caroline/Carl Lamb, which casts Plaintiff in an unfavorable light. Plaintiff sued Lamb, and the case was confidentially settled.
22. The vampire in Defendants’ video game and advertisements is a physical likeness of the Plaintiff, utilized without Plaintiff’s consent, and meant to humiliate and take pecuniary advantage of Plaintiff’s fame.

COUNT I

COPYRIGHT INFRINGEMENT

(17. U.S.C. § 101 ET SEQ.)

23. Plaintiff re-alleges paragraphs 1 through 19 of the Complaint.
24. Count I, Copyright Infringement, arises under the federal Copyright Act, 17 U.S.C. §§ 101 et seq., and the statutory and common law of the State of Suwannee.
25. Plaintiff is, and at all relevant times has been, the copyright owner of the exclusive rights under United States copyright law with respect to “Fragment of a Novel”.
26. Defendants are engaging, and have engaged, in the unauthorized use and violation of Plaintiff’s exclusive rights in “Fragment of a Novel”, including unauthorized first publication, production, sale, exploitation and distribution of “The Vampyre”. In doing so, Defendants have violated Plaintiff’s exclusive copyrights including reproduction, first publication, and distribution. Defendants’ actions constitute infringement of Plaintiff’s copyrights and exclusive rights under copyright.
27. Defendants have engaged in, and continue to engage in the business of knowingly and systematically inducing, causing, and/or materially contributing to the violation of Plaintiff’s exclusive copyrights. The acts of infringement by Defendants have been willful, intentional, purposeful, and in reckless disregard of and indifference to the rights of Plaintiff.
28. As a direct and proximate result of the infringement by Defendants of Plaintiff’s exclusive rights, Plaintiff is entitled to actual damages and Defendants profits pursuant to 17 U.S.C. §504(c).

COUNT II

(Common Law—Misappropriation)

29. This is an action for damages for common law misappropriation.
30. Plaintiff re-alleges paragraphs 1 through 22 of the Complaint.
31. Defendants are jointly and severally liable for their collective and collaborative actions with regard to copyright infringement and the unauthorized use and exploitation of Plaintiff's image and likeness.
32. Defendants have commercially exploited Plaintiff's copyright and image and likeness without his/her consent and have unjustly obtained commercial and pecuniary gain as a result.
33. At no time has the Plaintiff authorized the use of "his/her image or likeness for use in a "Vampyre Gone Wild" video game or advertisements for the video game.
34. Defendants willfully, wantonly, maliciously, illegally, unlawfully and recklessly, without the Plaintiff's written or oral consent, and solely for commercial, advertising trade and pecuniary motives, used and exploited the Plaintiff image and likeness as described above.
35. As a direct and proximate result of Defendant's actions, Plaintiff has suffered embarrassment, humiliation, mental pain and suffering, and will to continue to so suffer permanently in the future, and is entitled to recover damages for loss and injuries sustained thereby, in addition to and/or including the unjust enrichment Defendants have obtained in the form of income received as a result of the unauthorized use of Plaintiff's image or likeness.
36. The damages incurred by the Plaintiff were directly and proximately caused by the wanton, willful, malicious, reckless, and intentional misconduct of the Defendants and/or by their conscious indifference and utter disregard of the Plaintiff.
37. The conduct of the Defendants was prompted by ill will toward the Plaintiff, and by pecuniary motives for trade, advertising and commercial use purposes, and deprived the Plaintiff of the opportunity of free choice as to whether or not to participate in Defendants' commercial endeavors.

COUNT III
(INJUNCTIVE RELIEF)

38. Plaintiff re-alleges paragraphs 1 through 37.
39. Plaintiff hereby brings this action to enjoin Defendants from infringing on Plaintiff's copyright and to enjoin the unauthorized publication, printing, display, or other public use and exploitation of his/her image or likeness.
40. Defendants are jointly and severally liable for their collective and collaborative actions with regard to copyright infringement and the unauthorized use and exploitation of Plaintiff's name, image, and likeness.
41. Notwithstanding Plaintiff's demand that Defendants stop their copyright infringement or using Plaintiff's name, image and likeness, Defendants continue to infringe Plaintiff's copyright, and to use and exploit Plaintiff's name, image and likeness in pursuit of their business, trade, advertising and commercial interests.
42. Plaintiff has been irreparably harmed by Defendants' publication, marketing, distribution of "The Vampyre", and by the use or sale of Plaintiff's image and likeness, and unless the Defendants are enjoined from further use, exploitation the Plaintiff will suffer further irreparable harm.
43. The continuing harm to the Plaintiff outweighs any harm that Defendants will experience as a result of the injunction.
44. Granting the injunction will not disserve the public interest.
45. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff, Lourdes/Loren Byron, demands:

- a. Temporary and permanent injunctive relief enjoining Defendants from further copyright infringement and making any unauthorized use and exploitation of Plaintiff's name, image or likeness for any purpose whatsoever;
- b. Judgment for Plaintiff and against Defendants for copyright infringement, finding that Defendants have intentionally and willfully infringed on Plaintiff's federally protected copyrights, in violation of 17 U.S.C. § 504(b);
- c. Judgment for actual damages and Defendants' profits resulting from copyright infringement;
- d. Judgment for Plaintiff and against Defendants for misappropriation of Plaintiff's image and likeness;

- e. Judgment directing that Defendants be required to account for and relinquish to Plaintiff all gains, profits and advantages derived by Defendants through their unauthorized use of Plaintiff's name, image or likeness; and
- f. Directing that Defendants be required to pay to Plaintiff such compensatory, punitive or exemplary damages as he/she has sustained as a consequence of Defendants' unauthorized use and exploitation of Plaintiff's image and likeness.

DEMAND FOR JURY TRIAL

The Plaintiff demands a trial by jury of all of the issues triable by right.

Lexie Miller

Attorney for Plaintiff
Lexie Miller
Suwannee Bar No. 487123
Miller Law, P.A.
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#13 New Blood Drive, Suwanee 32717
(850) 586-5426

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF SUWANNEE
Case No. 15-666- HINKLE

LOURDES/LOREN BYRON,

Plaintiff,

vs.

VAMPYRE HOLDING COMPANY, LLC, AND DR. JANE/JOHN POLIDORI,

Defendants.

ANSWER TO PLAINTIFF'S COMPLAINT AND, AFFIRMATIVE DEFENSES

COMES NOW Defendants, by and through undersigned counsel, and hereby answers and otherwise responds to Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted that Plaintiff is a poet and writer. Without knowledge as to the remainder of Paragraph 8.
9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted.
13. Admitted except that Plaintiff's story was not an original creation, and was not memorialized June 2011.
14. Admitted that POLIDORI had opportunity to hear Plaintiff's ghost story, otherwise, denied.
15. Admitted that "Fragment of a Novel", as published in 2015, contains the story elements enumerated in Paragraph 15. Otherwise, denied.

16. Admitted.
17. Admitted except that POLIDORI's "The Vampyre" is Defendant POLIDORI'S original creation and not a copy of Plaintiff's arrangement or form or mode of expression of an idea as set forth in "Fragment of a Novel".
18. Admitted that POLIDORI had access to the oral presentation of Plaintiff's work, otherwise denied.
19. Admitted.
20. Admitted.
21. Denied.
22. Denied.
23. Without knowledge.
24. Denied.
25. Denied.
26. Denied.
27. Denied.
28. Denied.
29. Without knowledge.
30. Without knowledge.
31. Denied.
32. Denied.
33. Admitted.
34. Denied.
35. Denied.
36. Denied.
37. Denied.
38. Without knowledge.
39. Without knowledge.
40. Denied.
41. Denied.
42. Denied.
43. Denied.
44. Denied.
45. Denied.

FIRST AFFIRMATIVE DEFENSE; COPYRIGHT

46. Plaintiff's claims are barred by the statute of limitations.

SECOND AFFIRMATIVE DEFENSE; COPYRIGHT

47. Plaintiff is estopped from asserting his/her claims.

THIRD AFFIRMATIVE DEFENSE; COPYRIGHT

48. Plaintiff abandoned any copyright claim he/she might have had in "Fragment of a Novel".

FOURTH AFFIRMATIVE DEFENSE; COPYRIGHT

49. Plaintiff granted Defendant an implied license to use the story elements and expression of ideas in "Fragment of a Novel".

DEMAND FOR JURY TRIAL

The Defendant demands a trial by jury of all of the issues triable by right.

Mary Catherine Crock

Mary Catherine Crock
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF SUWANNEE
Case No. 15-666- HINKLE

LOURDES/LOREN BYRON,

Plaintiff,

vs.

VAMPYRE HOLDING COMPANY, LLC, AND DR. JANE/JOHN POLIDORI,

Defendants.

REPLY TO AFFIRMATIVE DEFENSES

1. Plaintiff denies that the statute of limitations has run on his/her copyright infringement claim.
2. Plaintiff denies that Plaintiff is estopped from asserting his/her copyright infringement claims.
3. Plaintiff denies that he/she abandoned his/her copyright claims in “Fragment of a Novel”.
4. Plaintiff denies that he/she gave Defendants an implied license to use the story elements and expression of ideas in “Fragment of a Novel.”

Lexie Miller

Attorney for Plaintiff
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF SUWANNEE



LOURDES/LOREN BYRON,

PLAINTIFF,

vs.

CASE NO.-666-HINKLE

VAMPYRE HOLDING COMPANY, LLC, AND DR. JANE/JOHN POLIDORI,

DEFENDANTS.

DEPOSITION OF:

CLAIRE/CLARK CLAIRMONT

TAKEN AT THE INSTANCE:

The Plaintiff, LOURDES/LOREN BYRON

DATE:

June 1st, 2016

TIME:

Commenced at 9:00 a.m.
Concluded at 12:00 p.m.

LOCATION:

301 South Main Street
Tallahassee, Suwannee

REPORTED BY:

Veronica Hernandez
Court Reporter, Notary Public

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301 SOUTH MAIN STREET
TALLAHASSEE, SUWANNEE 32301

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THEREUPON,

CLAIRE/CLARK CLAIRMONT

DIRECT EXAMINATION

Q. Good morning. My name is Lexie Miller, and I represent the Plaintiff in this case. Would you please state your name and spell it for the court reporter.

Q. Have you ever had your deposition taken before?

Q. A deposition allows me to ask you questions that are relevant to the issues in this case, or that may lead to relevant evidence. That means I'm allowed to inquire about a broad area, about things you may not believe have anything to do with this case. Your deposition may also be used for impeachment purposes if you testify differently in court than you do here today. You are under oath today, and you will be under oath if you testify at trial. If you say something different at trial than you say today, I may be able to use those statements to show the jury that you either lied at trial, or at this deposition. If you don't understand a question I ask, please ask me to explain before you answer. I don't want you to tell the judge that you didn't understand a question I asked and that is why you are giving a different answer

24 at trial. Finally, please make your answers audible. No head shakes—the court reporter may not pick that
25 up. Do you understand all of what I just told you?

26 A. Yes, but will I be able to read what's typed up?

27 Q. You will be able to read it if you like, and make any changes on a correction or errata sheet if necessary
28 before you sign the deposition.

29 A. Okay, thanks.

30 Q. What is your current address, Mr./ Ms. Clairmont?

31 A. My home address is Apartment #203, Parramore Park Apartments, Marianna, Suwannee 32446.

32 Q. What is your employment?

33 A. I' m not employed at present.

34 Q. How are you supporting yourself?

35 A. TANF, food stamps, and public housing.

36 Q. I understand that you have a child with Lourdes/Loren Byron named Allegra?

37 A. Yes.

38 Q. Do receive TANF for that child?

39 A. No. Lourdes/Loren Byron placed Allegra in a convent.

40 Q. Does Byron provide child support for Allegra?

41 A. Only to the convent. I receive nothing, and never have.

42 Q. Why do you receive TANF?

43 A. I receive TANF for my other child.

44 Q. Who is the parent of your other child?

45 A. What does that have to do with anything?

46 Q. Remember, I am allowed to ask a broad range of questions—anything that might lead to things relevant
47 to this case.

48 **MS. MILLER:** You may answer.

49 A. I'm not sure who my child's other parent is. Some say it is Shelley's, but I would never! That allegation
50 is the greatest calumny. Mary/Maury is my stepsister/stepbrother, and both have been kind to me in my
51 time of need.

52 Q. The child isn't Byron's?

53 A. No. We broke off our relationship after I left Lake Jackson in the summer of 2011.

54 Q. What is the nature of your relationship with Byron at this point in time?

55 A. Not good.

56 Q. Why is that?

57 A. Byron has said very unkind things about me to many people. He/she cast me off at the end of the
58 summer, 2011. He/she won't even answer my letters concerning our child. He/she won't let me see our
59 child. Byron is a monster of lying, meanness, cruelty and treachery. He/she is a human tiger slaking
60 his/her thirst for inflicting pain upon defenseless women/men.

61 Q. it sounds like you don't like Byron very much.

62 A. Oh no, not at all. I still love Byron. I could never do him/her any harm. He/she is a free love worshipper
63 who preyed upon me and made my existence a perfect hell.

64 Q. Do you know Dr. Jane/John Polidori?

65 A. Yes.

66 Q. When did you first meet him/her?

67 A. In June, 2011. I was residing with Shelley and Wollstonecraft in a residence at Lake Jackson. Dr. Polidori
68 was living with Byron at Villa Diodati.

69 Q. How often were you at Villa Diodati during the summer of 2011?

70 A. I was there on almost a daily basis until Shelley and Wollstonecraft decided it was time to leave for
71 home.

72 Q. Do you recall whether you were there on the night of June 16, 2011?

73 A. Yes, Byron, Shelley, Polidori, Wollstonecraft and myself spent the night at Villa Diodati.

74 Q. Why were you there that night?

75 A. The weather was terrible—heavy rains, wind, thunder. It was easier to stay at Villa Diodati than go

76 back to our own residence at Lake Jackson.

77 Q. Do you recall how you occupied your time that night?

78 A. Yes. We read to each other from a collection of ghost stories. Byron told us to each write our own

79 ghost story. He/she recited one to us as encouragement.

80 Q. Do you recall the story he/she related?

81 A. It was something about two men traveling together. One of them dies, but not before getting a

82 promise from the other man not to tell anyone of the death.

83 Q. Did Byron tell anyone in the group that the story Byron related was a gift to anyone who might want

84 to write a story based on it?

85 A. I can't imagine Byron giving anything away for free. There was always some price or some benefit for

86 himself/herself.

87 Q. So you don't remember Byron saying something along the lines of 'here, write a story using my own'?

88 A. No, but everyone but me was quite high that night. Maybe he/she did. People were using heroin and

89 laudanum. You're not yourself when you're under the influence.

90 Q. Were you high?

91 A. No. I felt pretty sure about the pregnancy. I tried to be an example for Byron. Byron, however was

92 high as a kite.

93 Q. Did you see him/her using any drugs that night?

94 A. No, but I could tell.

95 Q. How?

96 A. His/her speech was slurred, he/she was unsteady on his/her feet, and he/she had glassy and bloodshot
97 eyes. I could smell alcohol on his/her breath. You don't need to be a cop to tell when someone is
98 inebriated.

99 Q. Did anyone write a ghost story that night or thereafter as far as you are aware?

100 A. I never saw anything Byron wrote. I know that Shelley tried to write something, and Mary/Maury
101 started the Frankenstein story. Polidori tried to write something about a woman who had a skull with no
102 face. I know they were all quite mean to Polidori—they thought his/her story terrible. They called Polidori
103 Polly Dolly to his/her face and behind his/her back.

104 Q. Did you ever hear Byron, that night or any other time, tell Polidori he/she could take ownership of the
105 story Byron related June 16, 2011?

106 A. No, but I was in and out of the room that night. Pregnancy in the early stages—you know. Numerous
107 bathroom breaks. I think that Byron would have thought that Polidori could not write a story that could
108 ever get published. It would be just like Byron to offer it up to Polidori thinking Polidori would screw it up
109 and it would never get published.

110 Q. Have you seen or played the video game "Vampyre Gone Wild"?

111 A. I've played it. It's quite fun.

112 Q. Is Lord Ruthven Byron?

113 A. I don't think so.

114 Q. Did your group ever discuss the novel *Glenarvon* in front of Polidori?

115 A. I've never heard of or seen such a book.

116 Q. What about the avatar in the video game? Is that Byron?

117 A. Why would you think it is?

118 Q. Aren't Lord Ruthven's eyes Byron's eyes?

119 A. No way. I slept with Byron enough to tell you that I would never recognize Ruthven's eyes as Byron's.

120 **MS. CROCK:** I have no further questions.

121 **MS. MILLER:** No questions.

122 (Whereupon the deposition concluded at 12 p.m.)

CERTIFICATE OF OATH

STATE OF SUWANNEE)

COUNTY OF WALTON)

I, the undersigned authority, certify that said designated witness personally appeared before me
and was duly sworn.

WITNESS my hand and official seal this 1st day of June, 2016.

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000
(850) 878-3333

1 **CERTIFICATE OF REPORTER**

2

3 STATE OF SUWANNEE)

4 COUNTY OF WALTON)

5 I, VERONICA HERNANDEZ, Court Reporter, certify that the foregoing proceedings were taken
6 before me at the time and place therein designated; that my shorthand notes were thereafter translated
7 under my supervision; and the foregoing pages number 1 through 13 are a true and correct record of the
8 aforesaid proceedings.

9

10 I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor
11 am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I
12 financially interested, in the action.

13

14 DATED this 1st day of June, 2016.

15

16

17 s/ Veronica Hernandez

18 Veronica Hernandez
19 Court Reporter
20 1-800-934-9000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF SUWANNEE



LOURDES/LOREN BYRON,

PLAINTIFF,

vs.

CASE NO. 15-666-HINKLE

VAMPYRE HOLDING COMPANY, LLC, AND DR. JANE/JOHN POLIDORI,

DEFENDANTS.

_____ /

DEPOSITION OF:

DR. JANE/JOHN POLIDORI

TAKEN AT THE INSTANCE:

The Plaintiff/ LOURDES/LOREN BYRON

DATE:

June 1st, 2016

TIME:

Commenced at 2:00 p.m.
Concluded at 5:00 p.m.

LOCATION:

301 South Monroe Street
Tallahassee, Suwannee

REPORTED BY:

Veronica Hernandez
Court Reporter, Notary Public

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TALLAHASSEE, SUWANNEE 32301

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* * *

Thereupon,

DR. JANE/JOHN POLIDORI

was called as a witness, having been first duly sworn, was examined and testified as follows:

Q. Tell us your name, please.

Q. May I call you Jane/John?

Q. Dr. Polidori, have you ever had your deposition taken before?

Q. There are two main reasons for taking depositions. One is to find out what a person knows about the facts and issues in a case, and to find out what testimony you may offer. The other is for impeachment purposes. You are under oath here and at trial. If you testify differently at trial in response to a question I ask you today, I may be able to use your two different responses to question your truthfulness at trial. So if I ask a question today that you do not understand, please ask me to make it clearer before you answer. Also, all answers must be spoken. Head shakes and nods won't do. Do you understand?

Q. What is your current address?

A. My current residence is #2, Snake Eyes Lane, California 90013.

25 Q. How old are you?

26 A. I am twenty-six.

27 Q. What is your educational background?

28 A. I graduated from medical school at Edinburgh, Scotland.

29 Q. How old were you at graduation?

30 A. I was nineteen years old.

31 Q. Isn't it unusual to graduate from medical school at that age?

32 A. Yes. I was a child prodigy.

33 Q. Was medicine your first calling?

34 A. No. I wanted to join the Catholic priesthood, but my father forbade it. I also had an interest in writing

35 fiction.

36 Q. When did you meet Lourdes/Loren Byron?

37 A. In April, 2011.

38 Q. How did that happen?

39 A. Byron was looking for a personal physician to attend him/her on his/her travels. I was one year out of

40 medical school, and looking for employment. I had written several plays, and was eager to become an

41 established author. Byron was a famous writer. I thought Byron would help me with my writing. After a

42 meeting, Byron offered me a job as his/her personal physician, and I accepted.

43 Q. How long did your employment last?

44 A. From April, 2011 to August 28, 2011.

45 Q. Did Byron fire you?

46 A. I wouldn't say that. We mutually agreed to part ways. Byron was not what I thought he/she was. I,

47 like probably many other writer's fans, assume that great authors are great people. I learned the hard

48 way that is not always true. Demons are as likely to be great writers as angels.

49 Q. What do you mean by that?

50 A. Byron has a huge ego. He/she can be excessively cruel to anyone around him/her. I became the butt
51 of his/her twisted sense of humor—whether in public, or in private. He/she had no interest in my literary
52 ambitions, and belittled my work to my face and to his/her friends. One of the first instances took place
53 early in our travels. I read one of my plays, at his/her request, to him/her and some of his/her friends,
54 and they laughed in my face. I was so frustrated with his/her treatment at one time that I asked him to
55 name one thing other than writing he/she could do better than I, and his/her response was “I can hit the
56 keyhole of that door with my pistol, I can swim yonder river to that point, and thirdly, I can give you a
57 damn good thrashing”. I was one of many who were damaged by Byron—sucked into the vortex of his/her
58 fame.

59 Q. What others are you talking about?

60 A. Claire/Clark Clairmont would be one such person. He/she followed Byron to Lake Jackson, and he/she
61 took shameless advantage of Clairmont. This resulted in a pregnancy. Byron told me he/she wasn’t
62 even—and I quote here—“sure the brat is mine/his”. No love for the parent, no love for the child who
63 was conveniently stashed away in a convent where the other parent had no access.

64 Q. Do you know Caro/Caroline Lamb?

65 A. No, should I?

66 Q. Have you read the book *Glenarvon*?

67 A. I do not recall reading any such book. What’s it about—maybe a synopsis will refresh my memory.

68 Q. It is a roman-à-clef written by a former lover of Byron’s. Byron doesn’t come across too well in that
69 book.

70 A. I may have heard some mention of such a book—really, I’m just not sure—but, I certainly never read
71 it.

72 Q. How did you come up with the name “Lord Ruthven” for the vampire in “The Vampyre”?

73 Q. Ruthven is not that uncommon a name. There is a Lord Ruthven in Scotland, although my story is
74 solely a work of fiction. Names, characters, places, incidents are from my imagination. Any resemblance
75 to actual events, locales or persons—living or dead—is entirely coincidental.

76 Q. Did your lawyer tell you to say that?

77 **BY MS. MILLER:** Objection, attorney client privilege. Don't answer that, Dr. Polidori. And, Ms. Crock, I
78 resent the implication.

79 **BY MS. CROCK:** I'll withdraw the question.

80 Q. Are you telling me, under oath, that you did not take the name "Lord Ruthven" from *Glenarvon*?

81 A. That is exactly what I am telling you.

82 Q. I'd like to ask you some questions about June of 2011. Do you remember that month?

83 A. Of course. That was the month Byron and I stayed at Villa Diodati on Lake Jackson.

84 Q. How long were you there?

85 A. From around mid-June to August 28th when Byron and I parted ways.

86 Q. Did Byron write while at Villa Diadoti?

87 A. Yes.

88 Q. Where did he do his writing?

89 A. He had a writing desk in his bedroom.

90 Q. How do you know that?

91 A. I was his/her treating physician. I attended him/her in his/her bedroom. He/she was obsessed with
92 his/her weight, and constantly had me taking measurements. He/she also was worried about his/her
93 liver, which I can understand. Byron often drank to excess, and took drugs. I tried to monitor and treat
94 his/her symptoms.

95 Q. What kind of drugs are you talking about?

96 A. Heroin, laudanum, and occasionally ether.

97 Q. Did he/she get those drugs from you?

98 A. Heavens, no. What kind of doctor do you think I am? I could lose my license. The rich always have

99 access to drugs. I did have ether in my possession. I had to administer it to Shelley once when he/she

100 was having a psychotic episode. That was solely to calm him/her down—it was not administered for

101 recreational use.

102 Q. Do you recall the night of June 16, 2011?

103 A. Yes.

104 Q. Why do you remember that night?

105 A. That is the night Byron, Shelley, Wollstonecraft, Clairmont and I spent the night at Villa Diodati reading

106 from the *Phantasmagoria*. Byron also read Coleridge's poem "Christabel" to us. It was the night Byron

107 challenged each of us to write a ghost story.

108 Q. How did Byron issue this challenge?

109 A. He/she told his/her own ghost story as an inspiration to the rest of us.

110 Q. Was he reading from a manuscript?

111 A. No. I never saw anything in writing—either that night or any other. In fact, that night he said any of

112 us could take that story and run with it.

113 Q. Do you have any idea why Byron says he/she never gave anyone permission to use the story he/she

114 recited that night?

115 A. Yes, because he/she is jealous that at least I knew how to make something of it. He/she is also upset

116 because Goethe called it Byron's best work ever after "The Vampyre" was published in THE NEW MONTHLY

117 MAGAZINE. Frankly, I'm the one who should be upset, because my story was falsely attributed to Byron,

118 and the magazine never paid me for publication. One other reason Byron may be saying he/she never

119 gave permission to use that story was because he/she was high that evening and probably doesn't

120 remember much of anything that took place.

121 Q. Were you using drugs that night?

122 A. Absolutely not. I don't use illegal drugs, nor do I supply them. My memory is quite clear as to what

123 happened that night.

124 Q. Did Byron ever deliver this story to you in written form?

125 A. No, he/she didn't need to. I have a photographic memory. It is one of the reasons I graduated medical

126 school at such an early age.

127 Q. When did you write "The Vampyre"?

128 A. Sometime after I left Byron's employ. I was relating the outline to a friend of mine, and the friend

129 challenged me to put it in writing. I wrote it over the course of a few days.

130 Q. Did you ever ask Byron's permission to write this story?

131 A. I didn't need to, for several reasons. First, he/she told each of us that night that we could use that

132 story. Second, it was more an outline of ideas than expressions that constitute a story. Third, I've now

133 read "Fragment of a Novel". Tell me where you see any mention of a vampire in that piece.

134 Q. What about the older man's admonition not to tell anyone of his death for a year and a day?

135 A. How many times have you read in fairy tales where the protagonist is sworn not to relay something

136 told to him or her for a period of time? Think of Hans Christian Andersen's "The Goose Girl" for example.

137 That story was published a year before "Fragment of a Novel". There are many other examples.

138 Q. Is Lord Ruthven a character or avatar in "Vampyre Gone Wild"?

139 A. Yes.

140 Q. Is the Lord Ruthven in "Vampyre Gone Wild" Lourdes/Loren Byron?

141 A. Absolutely not.

142 Q. Why did you use the title Lord Ruthven for the avatar character in "Vampyre Gone Wild"?

143 A. To capitalize on the public's familiarity and fascination with this character in "The Vampyre".

144 Q. How successful is your video game?

145 A. It is the most popular video game in the world today. I'm sure you know I've made millions from the
146 sales of the game and associated products.

147 Q. Do you admit that the Lord Ruthven character is Lourdes/Loren Byron?

148 A. No, I do not.

149 Q. Haven't you superimposed Lourdes/Loren Byron's image into the Lord Ruthven avatar/character?

150 A. Who says?

151 Q. Many people claim you photo-shopped Lourdes/ Loren Byron's eyes into the face of Lord Ruthven.

152 A. Look, I have people come up to me in the supermarket and start talking to me as if they know me.
153 When they see the questioning look on my face, they realize they've got the wrong person. Everyone has
154 a doppelgänger. If the eyes look like Byron's, it's because he/she has non-distinctive features.

155 Q. You can sit there with a straight face and tell me those are not Byron's eyes?

156 A. A jury will sit there with straight faces and tell you the same.

157 **MS. MILLER:** I have no further questions.

158 **MS. CROCK:** I have no questions.

159 (Deposition concluded at 5:00 p.m.)

CERTIFICATE OF OATH

STATE OF SUWANNEE)

COUNTY OF LEON)

I, the undersigned authority, certify that said designated witness personally appeared before me
and was duly sworn.

WITNESS my hand and official seal this 1st day of June, 2016.

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000
(850) 878-3333

CERTIFICATE OF REPORTER

STATE OF SUWANNEE)

COUNTY OF LEON)

I, VERONICA HERNANDEZ, Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages number 1 through 8 are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested, in the action.

DATED this 1st day of June, 2016.

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000
(850) 878-3333

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF SUWANNEE



LOURDES/LOREN BYRON,

PLAINTIFF,

vs.

CASE NO. 15—666-HINKLE

VAMPYRE HOLDING COMPANY, LLC, AND DR. JANE/JOHN POLIDORI,

DEFENDANTS.

DEPOSITION OF:

PATSY/PERCY BYSSHE SHELLEY

TAKEN AT THE INSTANCE:

The Defendants/Vampyre Holding Company,
LLC, and Dr. Jane/John Polidori

DATE:

June 6th, 2016

TIME:

Commenced at 9:00 a.m.
Concluded at 12:00 p.m.

LOCATION:

301 South Main Street
Tallahassee, Suwannee

REPORTED BY:

Veronica Hernandez
Court Reporter, Notary Public

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301 SOUTH MAIN STREET
TALLAHASSEE. SUWANNEE 32301

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* * *

Thereupon,

Patsy/Percy Shelley

was called as a witness, having been first duly sworn, was examined and testified as follows:

BY MS. MILLER:

Would you please state your name and spell it for the court reporter.

Q. Have you ever had your deposition taken before?

Q. A deposition allows me to ask you questions that are relevant to the issues in this case, or that may lead to relevant evidence. It may also be used for impeachment purposes if you testify differently in court than you do here today because you are under oath today and will be under oath in court if called to testify. Also, if you do not understand a question I ask, please have me explain before you answer. Finally, all answers need to be audible because the court reporter needs to type your answers. Do you have any questions about the nature and purpose of depositions before we begin?

Q. What is your current address, Mr./Ms. Shelley?

45

25 Q. Do you know the Plaintiff and the Defendant, Dr. Polidori?

26 A. Yes. I know both.

27 Q. How long have you known each of them?

28 A. I had known of Byron for a few years before I met him/her. He/she was on the verge of worldwide
29 fame before I met him/her. We're both poets, and we were aware of each other before we met. I met
30 him/her in June 2011 at Lake Jackson, Tallahassee, Suwannee. My spouse's stepsister/stepbrother
31 convinced my spouse—or soon to be a spouse at that time--and I to follow him/her to Lake Jackson.
32 Clairmont, my spouse's stepsister/stepbrother, is what you would call a literary groupie. He/she slept
33 with Byron before he/she escaped to Lake Jackson. Clairmont doesn't give up easily. He/she took up
34 with Byron again when we reached Lake Jackson. Polidori was traveling with Byron and living with him/her
35 at Villa Diodati on Lake Jackson. That's also when I met Polidori. We all became intimates in June 2011
36 and spent a great deal of time together that summer.

37 Q. Do you recall the night of June 16, 2011?

38 A. Yes. It was a dark and stormy night, as we writers like to say. Byron, myself, Wollstonecraft—my soon
39 to be spouse--, Clairmont and Polidori entertained each other with ghost stories.

40 Q. Do you remember a challenge Byron issued to your group?

41 A. Sure. He/she wanted each of us to write a ghost story.

42 Q. Did he/she write one of his/her own?

43 A. I remember him/her telling us a story after he/she read the poem "Christabel" to us. "Christabel" is
44 about a vampire. His/her own story was about a vampire, but about a vampire who circulated with the
45 bon ton. His/her vampire traveled with a younger man to the Middle East, rapidly became ill, and
46 extracted a promise from the younger man not to reveal his death until a year and a day passed. He/she
47 outlined the remainder of the story to us. The young man was under the older man's spell. When the
48 younger man returned home, he found the older man, whose name was Darvell, alive, and courting the

49 younger man's sister. Eventually, Darvell drains the blood from the sister. The younger man was unable
50 to warn his sister because of the spell Darvell cast.

51 Q. Are you sure he related all that?

52 A. Quite sure.

53 Q. To your knowledge, did Byron offer this story to anyone in your group to write up?

54 A. Yes, I think he/she did. I just don't think Byron thought any of us would take advantage. I and
55 Wollstonecraft were writers and could write our own stuff. No one thought Clairmont would even make
56 the attempt, and we were right about that. Polidori had ambitions, but not the talent.

57 Q. Did you ever see Byron's ghost story in writing?

58 A. I saw "Fragment of a Novel" after it was published as an appendix to Byron's poem "Mazeppa". I
59 probably saw it during the summer of 2011. It was a habit and practice for Byron, Wollstonecraft and I to
60 share our work for critique purposes. Byron's a prolific writer, and frankly, I just can't recall if I saw
61 "Fragment of a Novel" during that time period, but I almost certainly did.

62 Q. Were you using drugs June 16, 2011?

63 A. We all were--even Clairmont, who was expecting.

64 Q. Where did you get your drugs?

65 A. Polidori. I suspect that Byron killed two birds with one stone. Personal doctor to the star you know.

66 Q. Did your father try to have you committed at some time in your past?

67 **MS. CROCK:** That could in no way lead to relevant evidence. That question is meant solely to embarrass,
68 harass, and humiliate Mr./ Ms. Shelley. Don't answer that question, Shelley.

69 **MS. MILLER:** I don't believe Mr./Ms. Shelley is your client, Ms. Crock.

70 **MS. CROCK:** I'm directing him/her not to answer that question.

71 **SHELLEY:** I won't answer.

72 **MS. MILLER:** Madame Court Reporter, please certify the question. I'm terminating this deposition to file
73 a motion to compel, and for sanctions. We'll take this up with the judge.

74 WHEREUPON, the deposition terminated at 10:00 a.m. The deposition recommenced June 2, 2015, at
75 9:00 a.m.

76 **BY MS. MILLER:** Now that the judge has sanctioned you and Ms. Crock pursuant to Federal Rule of Civil
77 Procedure 37, and ordered you to answer my question, I'll ask it again. Did your father try to have you
78 committed at some time in the past?

79 A. Yes, he did.

80 Q. Were you committed?

81 A. No.

82 Q. Why not?

83 A. I fled the jurisdiction before the papers could be served.

84 Q. On what basis was he trying to have you committed?

85 A. My father thought I was crazy because I believed in the principles of free love and atheism.

86 Q. Do you, or have you ever had, hallucinations?

87 A. No.

88 Q. What about the night of June 16, 2011?

89 A. I forgot about that. It is true that I had a hallucination that night. I thought Mary/Maury had eyes in
90 the place of his/her nipples. This was after Byron read "Christabel" to us.

91 Q. Did Dr. Polidori administer ether to you after that episode?

92 A. Yes.

93 Q. Were you sedated?

94 A. Yes.

95 Q. Do you know what happened with the rest of the group that night after your sedation?

- 96 A. No. Only what I heard later. That everyone was trying to write a ghost story except for Clairmont.
- 97 **MS. MILLER:** I have no further questions.
- 98 **MS. CROCK:** I have no questions.
- 99 (Deposition concluded at 12:00 p.m.)

CERTIFICATE OF OATH

STATE OF SUWANNEE)

COUNTY OF FOSTER)

I, the undersigned authority, certify that said designated witness personally appeared before me
and was duly sworn.

WITNESS my hand and official seal this 6th day of June 2016.

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000
(850) 878-3333

CERTIFICATE OF REPORTER

STATE OF SUWANNEE)

COUNTY OF FOSTER)

I, VERONICA HERNANDEZ, Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages number 1 through 10 are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested, in the action.

DATED this 6th day of June 2016.

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF SUWANNEE



LOURDES/LOREN BYRON,

PLAINTIFF,

vs.

CASE NO. 15-666-HINKLE

VAMPYRE HOLDING COMPANY, LLC, AND DR. JANE/JOHN POLIDORI,

DEFENDANTS.

DEPOSITION OF:

LOURDES/LOREN BYRON

TAKEN AT THE INSTANCE:

The Defendants/Vampyre Holding Company,
LLC, and Dr. Jane/John Polidori

DATE:

June 6th, 2016

TIME:

Commenced at 2:00 p.m.
Concluded at 5:00 p.m.

LOCATION:

301 South Monroe Street
Tallahassee, Suwannee

REPORTED BY:

Veronica Hernandez
Court Reporter, Notary Public

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Thereupon,

LOURDES/LOREN BYRON

was called as a witness, having been first duly sworn, was examined and testified as follows:

BY MS. CROCK:

A. My name is Lourdes/Loren Byron.

A. Yes, during my lawsuit against Caro/Caroline Lamb.

A. Yes. He/she wrote a derogatory book, *Glenarvon*, about me.

A. It was confidentially settled. I can't talk about the terms.

Q. Even though you've been deposed before, I still like to explain the rules of the game upfront. A deposition allows me to ask you questions that are relevant to the issues in this case, or that may lead to relevant evidence. That means I'm allowed to inquire about a broad area, about things you may not believe have anything to do with this case, but I might think are relevant, or would lead to relevant evidence. I'm sure your attorney will object if she thinks I've asked what a court would think are improper questions. Your deposition may also be used for impeachment purposes if you testify differently in court

24 than you do here today. Finally, if you don't understand a question I ask, please ask me to explain before
25 you answer. Do you understand?

26 A. Yes.

27 Q. How old are you, Mr./Ms. Byron?

28 A. I am thirty years old.

29 Q. Are you employed?

30 A. I am self-employed. I'm a writer.

31 Q. Have you been published?

32 A. Many times.

33 Q. What sorts of things do you write?

34 A. I am primarily known for my epic poems.

35 Q. How well known are you?

36 A. I am the most famous poet in the world.

37 Q. Can you give me some example of what you mean by famous?

38 A. People say I'm the rock star of the literary world. Hordes line up at my publishing house when my work
39 is released.

40 Q. At what point in time would you say that your work became so well known?

41 A. When my poem "Childe Harold's Pilgrimage" was published. I awoke one morning in 2012 and found
42 myself famous. After that, the publication of "The Giaour", "The Bride of Abydos", "The Corsair", and"
43 Lara" increased my fame and fortune. A term has been coined to describe the public's reaction to me—
44 Byromania.

45 Q. Is poetry lucrative?

46 A. In my case, yes. Not so much for others.

47 Q. I'd like to talk with you about the events of April, 2011 through August of that year. When did you
48 meet Jane/John Polidori?

49 A. I met him/her in 2011 when I engaged his/her services as my personal physician. My plan was to take
50 a grand tour of Suwannee and environs. Polidori traveled with me and attended my medical needs.

51 Q. What type of relationship did you have with Polidori?

52 A. It was supposed to be a strictly professional doctor/patient relationship, but that's not how it worked
53 out.

54 Q. What do you mean?

55 A. At the beginning of our travels, I discovered Polidori had literary ambitions. He/she hoped to become
56 my literary equal. He/she frequently tried to read his/her work to me—plays, and such not.
57 Unfortunately, he/she had no literary talent. Polidori resented my directness concerning his/her literary
58 efforts. Also, we socialized together, especially at Lake Jackson.

59 Q. Where did Polidori live while he/she was your attending physician?

60 A. We resided in the same household or suite of rooms during our travels.

61 Q. I'd like to ask you about the time period June, 2011 to August 28, 2011. Where were you residing
62 during that specific time period?

63 A. At Villa Diodati, Lake Jackson, Tallahassee, Suwannee.

64 Q. Were you writing during this time period?

65 A. Yes.

66 Q. What were you writing?

67 A. "Childe Harold's Pilgrimage", among other things.

68 Q. Where did you write at Villa Diodati?

69 A. I had a writing table in my bedroom.

70 Q. Where did you keep your writings as you were working?

71 A. In or on my writing table.

72 Q. Did anyone besides your self have access to the writing table?

73 A. Yes—access, but not permission to plunder through, read, or copy my work.

74 Q. Who would have had access besides yourself to your writing table?

75 A. The maid and Polidori.

76 Q. How would Polidori have had access to your writing table or your work?

77 A. As I said, he/she was my attending physician, and he/she frequently treated me in my room. The room

78 was never locked unless I was in the room and wanted privacy.

79 Q. Was Polidori residing with you at Villa Diodati?

80 A. Yes.

81 Q. Were any other persons residing at Villa Diodati during that time period?

82 A. Patsy/Percy Bysshe Shelley and Mary/Maury Wollstonecraft spent nights with us on occasion.

83 Q. I'd like to ask you about June 16, 2011. Do you recall that day?

84 A. Yes. Shelley and Wollstonecraft came over during the day, and spent the night with me and Polidori

85 at Villa Diodati.

86 Q. Does anything specifically stand out about that particular day?

87 A. Yes. Mount Tambora erupted that year. So much ash spewed into the atmosphere that 2011 became

88 known as the year without a summer. The weather was terrible June 16th—heavy rains and

89 thunderstorms. Very frightening. Shelley and Wollstonecraft were obliged to stay the night.

90 Q. How did you spend your time that day?

91 A. We read from the *Phantasmagoria*—a French collection of German ghost stories. I issued a challenge

92 to Shelley, Wollstonecraft, and Polidori to write a ghost story. To inspire them, I related a tale I created

93 which was later memorialized as “Fragment of a Novel.”

94 Q. When did you put “Fragment of a Novel” in writing?

95 A. The very next day.

96 Q. Where did you keep this writing?

97 A. In my writing desk in my bedroom.

98 Q. Did you register this work with the Copyright Office?

99 A. No, but you probably know that is not required to establish a valid copyright interest.

100 Q. Was this story ever published?

101 A. Yes, in 2016 as an appendix to one of my epic poems, "Mazeppa".

102 Q. Was "Fragment of a Novel" published before or after "The Vampyre"?

103 A. After, but in the same year. Polidori tried to pass off "The Vampyre" as my work. I was furious.

104 Q. Why were you upset?

105 A. The writing was terrible. He/she clearly stole my ideas and the expressions of those ideas from "A

106 Fragment of a Novel". I never gave him/her permission to use my work or to put my name on anything

107 he/she wrote.

108 Q. Why do you think Polidori would put your name on "The Vampyre"?

109 A. For money, of course. To ensure the drivel was published and read.

110 Q. Did you ever see Polidori with a written copy of "A Fragment of a Novel"?

111 A. No, but I recited a verbatim copy June 16th to Polidori, Shelley, and Wollstonecraft as an encouragement

112 to write their own ghost story. Mind you, their own story. Mary/Maury did it—Frankenstein was the

113 result, although obviously it took more time than we spent together at Villa Diodati. Shelley wrote

114 something—I don't think it ever got published. Pollidori produced the beginnings of a novel, but it

115 certainly wasn't "The Vampyre". I would have had it out with him/her then if I knew he/she planned to

116 copy my work.

117 Q. Let me ask you some questions about the claimed similarities between “Fragment of a Novel” and “the
118 Vampyre”. Let’s start with “two main characters, both men” mentioned in your complaint for copyright
119 infringement. Don’t lots of stories and novels have two men as the main characters?
120 A. Of course.
121 Q. What about the description of one of the men as being older, from a prestigious family, and wealthy.
122 Is that also a common idea in literary works?
123 A. Narrower than simply having two men as the main characters, but also not uncommon.
124 Q. I feel sure you are familiar with the concept of a “Grand Tour”?
125 A. Yes.
126 Q. Were the two main characters on a “Grand Tour” in “A Fragment of a Novel”?
127 A. Yes, or something similar, at least for the younger man.
128 Q. Does a “Grand Tour” encompass visiting different places or countries?
129 A. Yes, that’s why it’s called a “Grand Tour”.
130 Q. Characters in novels or other literary sometimes fall ill, suffering a rapid decline in health?
131 A. Yes.
132 Q. And these characters sometimes die?
133 A. Yes.
134 Q. When did you become aware that Polidori’s work, “The Vampyre” had been published?
135 A. April, 2015, when a copy of THE NEW MONTHLY MAGAZINE was mailed to me anonymously. Imagine
136 my shock when I saw “The Vampyre” printed inside, with my name under the story heading as author.
137 Q. Are you telling me that this is the first time you became aware of “The Vampyre”?
138 A. I had no idea until then that Polidori wrote something I would label “fan fiction”. And no, no, a
139 thousand times no, I do not authorize fan fiction by anyone. It detracts from, denigrates, and cheapens
140 my work.

141 Q. Were you using drugs the night of June 16th, 2011?

142 A. Has the statute of limitations run on any crimes that might have been committed that night?

143 Q. Yes. Will you answer?

144 A. All of us were.

145 Q. By that you mean you, Shelley, and Wollstonecraft?

146 A. Yes, and Polidori, our supplier.

147 Q. What drugs were used that night?

148 A. Heroin, laudanum. Polidori also administered ether to Shelley.

149 Q. Why did Polidori administer ether to Shelley?

150 A. I read a poem by Coleridge, "Christabel", to the group. Shelley ran out of the room shrieking about a

151 woman with eyes where her nipples should have been. Polidori thought it necessary to calm Shelley

152 down.

153 Q. Is "Christabel" about a vampire?

154 A. Yes.

155 Q. So the idea of vampires is not a new one in literary works?

156 A. I would argue that it was a new idea at that time. At least as expressed in "Fragment of a Novel". The

157 vampiric character in "Fragment of a Novel" is urbane, wealthy, prestigious, and cultivates the society of

158 the upper class.

159 Q. Where did the idea of the vampire originate?

160 A. If you're talking about the idea of a blood-sucking monster, I would have to say ancient Middle Eastern

161 folk tales. But these were revenants—monsters with grave dirt in their hair and under their fingernails.

162 And, they didn't travel the world. They returned to the places and people they had known while living.

163 Q. Did you fire Polidori at the end of the 2011 summer?

164 A. Yes, I did. August 28, 2011, to be exact.

165 Q. Why?

166 A. There were several reasons. First, he/she was sick more than I was, and Polidori was the doctor.
167 Seasick, can you believe it? I had to nurse him/her during a trip we took to the Bahamas. Later, he/she
168 sprained his/her ankle when jumping from a balcony to escort Wollstonecraft on a walk. He/she had a
169 depressive personality, and I believe made a very weak attempt to commit suicide while residing with me.
170 He/she never admitted that's what it was, but I had to take care of him/her for about a week after that
171 episode. He/she challenged Shelley to a fight over some imagined slight, and I had to tell him/her I was
172 an excellent shot and that he/she might want to reconsider. Finally, he/she was meant to be my doctor;
173 I was not meant to be his/her muse. I got tired of having to listen to or read his/her sophomoric writing
174 attempts. The coup de grâce was when I found out he/she was keeping a journal of his/her experience
175 with me, for which he/she was supposed to receive a substantial sum of money. So, I let him/her go.

176 Q. Why do you think the older man character in "The Vampyre" is based on you?

177 A. The character, like me, is rich, urbane, and of noble birth. Polidori knows I am descended from English
178 nobility. But the most telling detail is the name of the character, "Lord Ruthven".

179 Q. What is the significance of that name?

180 A. Everyone who runs in literary circles or trades in celebrity gossip knows that a bitter former lover of
181 mine wrote a novel, *Glenarvon*, that is a roman-à-clef about our relationship, which I ended over
182 Caro/Caroline's objection. The thinly veiled caricature of me is named "Lord Ruthven". Lord Ruthven is
183 portrayed in a very unflattering manner. Do you think it coincidental that "The Vampyre" has a character
184 named Lord Ruthven who is a fiendish bloodsucker? I suppose my termination of Polidori's contract was
185 perceived in the same way Caro/Caroline saw the end of our relationship. Payback is a bitch.

186 Q. Have you seen the video game, "Vampyre Gone Wild"?

187 A. Yes.

188 Q. In your complaint you claim Polidori used your likeness for the Lord Ruthven character. Tell me each
189 and everything that makes you think your likeness or image was used in this videogame.

190 A. First, there's the use of "Lord Ruthven" as the name for the vampire. Second, that vampire has my
191 eyes. No one who knows me, or knows my likeness, would deny that that's me in that videogame. And,
192 again, I never gave anyone permission to put my likeness in a videogame, much less profit from it. What
193 an ingrate Polidori is. I give him/her his/her first job out of medical school, introduce him/her to the best
194 sort of people and society, and this is how he/she repays me.

195 **MS. CROCK:** I have no further questions. Thank you for your time, Mr./Ms. Byron.

196 **MS. MILLER:** No questions.

197 (Deposition concluded at 5:00 p.m.)

CERTIFICATE OF OATH

STATE OF SUWANNEE)

COUNTY OF LEON)

I, the undersigned authority, certify that said designated witness personally appeared before me
and was duly sworn.

WITNESS my hand and official seal this 6th day of June, 2016.

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000
(850) 878-3333

CERTIFICATE OF REPORTER

STATE OF SUWANNEE)

COUNTY OF LEON)

I, VERONICA HERNANDEZ, Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages number 1 through 9 are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested, in the action.

DATED this 6th day of June, 2016.

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000
(850) 878-3333

John/Jane Polidori to Henry Colburn

Tallahassee, April 2, 2015

Dear Sir,

I received the April copy of THE NEW MONTHLY MAGAZINE, and am sorry to find that your correspondent has led you into a mistake with regard to the tale of “The Vampyre”—which is not Lourdes/Loren Byron’s, but was written entirely by me at the request of a friend, who (upon my mentioning that Byron had said that it was his intention of writing a ghost story, depending for interest upon the circumstance of two friends leaving England, and one dying in Greece, the other finding him alive, upon his return, and making love to his sister) my friend saying that it was impossible to work up such materials, desired I would write it, which I did in two idle mornings. These circumstances above mentioned, and the one of the dying man having obtained an oath that the survivor should not in any way disclose his death, are the only parts of the tale belonging to Byron. I desire, therefore, that you will positively contradict your statement in the next edition of the magazine, by the insertion of this note.

I shall not sit patiently by and see “The Vampyre” taken without my consent, and appropriated by any person. I demand that compensation immediately be made to me. Hoping for an immediate answer, which will save me the trouble of obtaining an injunction, I remain,

Sir,

Your obedient servant,

John/Jane Polidori

April 9, 2015

Henry Colburn
THE NEW MONTHLY MAGAZINE

Mr Colburn,

I am not the author and never heard of the work in question until now.

In a more recent paper I perceive a formal announcement of 'The Vampire,' with the addition of an account of my 'residence in the Island of Mitylene,' an island which I have occasionally sailed by in the course of travelling some years ago through the Levant — and where I should have no objection to reside — but where I have never yet resided.

Neither of these performances are mine, and I presume that it is neither unjust nor ungracious to request that you will favour me by contradicting the advertisement to which I allude. If the book is clever it would be hard to deprive the real writer — whoever he may be — of his honours; and if stupid — I desire the responsibility of nobody's dullness but my own. The imputation is of no great importance, and as long as it was confined to surmises and reports I should have received it as I have received many others — in silence. But the formality of a public advertisement of a book I never wrote — and a residence where I never resided — is a little too much, particularly as I have no notion of the contents of one, nor the incidents of the other.

I have, besides, a personal dislike to 'Vampires,' and the little acquaintance I have with them would by no means induce me to divulge their secrets.

Sincerely,

Byron

My brazen Byron,

I have received your letter of April 27th. It is to my partiality, to my obstinate determination to be generous that I gave you custody of our child, Allegra.

I never agreed to have visitation on your terms only. My object is, and ever will be Allegra's happiness – but nothing good can come from denying me access to our child. Thus far, my pride prevented me from discussing this subject. I knew it would bring you joy knowing how much my separation from our child hurt me mentally and physically.

I was very glad to hear of Allegra's health which I had been given reason to suppose was bad; I am shocked by the threats at the conclusion of your letter. I have said before, you may destroy me, torment me, but your power cannot eradicate my bosom the natural feelings of a loving parent, made stronger in me by your oppression and my solitude. I beg you the indulgence of a visit from my child because I am weaker every day and more miserable; I have already proved in ten thousand ways that I have so loved her as to have destroyed such of my feelings as would have been injurious to her welfare. You answer my request by menacing if I do not continue to suffer in silence, that you will inflict the greatest of all evils on my child. You threaten to put her in a convent, to deprive her of all domestic affections, destroy every seed of virtue that she may have, to make her the believer of that Catholic faith contrary to the enlightened one she was born in and to banish her forever from her native land.

This calls to our remembrance the story in the Bible where Solomon adjudges between two women; the false parent was willing the child should be divided but the feelings of the real one made her consent to any deprivation rather than her child should be destroyed. So I am willing to undergo any affliction rather than her whole life should be spoilt by a convent education.

I say little concerning your stipulations about my seeing my Allegra. My lawyer will be in touch.

Persistently,

Clairmont

In the Circuit Court, Second Judicial Circuit,
In and for Leon County, Suwannee

Division: **Felony**

State of Suwannee

v.

PERCY/PATSY SHELLEY

Defendant

_____ Probation
_____ Community Control Violator

_____ Retrial
_____ Resentence

Case No. **2007 CF 1797**

JUDGMENT

The Defendant, **PERCY/PATSY SHELLEY**, being personally before this court represented by, **SCOTT MILLER**, attorney of record, and the state represented by **ADRIAN MOOD**, and having been tried and found guilty by a jury of the following crime(s):

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number
1	Possession of Cocaine w/Intent to sell	893.03, 893.13.1A1	2 nd Felony	2007 - 1797
2	Possession of Paraphernalia	893.147.1	1 st Misdemeanor	2007 – 1797

and no cause being shown why the defendant should not be adjudicated guilty, **IT IS ORDERED** that the defendant is hereby **ADJUDICATED GUILTY** as to all counts,

Filed in open court **1/22/2007**

State of Suwannee











v.

PERCY/PATSY SHELLEY

Defendant

Case No. 2007 CF 1797

FINGERPRINTS OF DEFENDANT

1. Right Thumb 	2. Right Index 	3. Right Middle 	4. Right Ring 	5. Right Little 
6. Left Thumb 	7. Left Index 	8. Left Middle 	9. Left Ring 	10. Left Little 

Fingerprints taken by: Deputy James Granger, LCSO, 225

I CERTIFY that these fingerprints of the defendant, **PERCY/PATSY SHELLEY**, and that they were placed here on by the defendant in my presence in open court this date,

DONE AND ORDERED in open court in Leon County, Suwannee, on 22 Jan 2007

J. Dredd
Circuit Judge

Defendant PERCY/PATSY SHELLEY

Case Number 2007 CF 1797

I hereby certify that a true and correct copy of the judgment/order has been served by Electronic Mail on this 22 day of January 2007, to Defense Counsel @ scott.miller@rc1.mySuwannee.com

BOB INZER, CLERK

Dante Hicks

Deputy Clerk

THE VAMPYRE

John Polidori

IT HAPPENED that in the midst of the dissipations attendant upon a London winter, there appeared at the various parties of the leaders of the *ton** a nobleman, more remarkable for his singularities, than his rank. He gazed upon the mirth around him, as if he could not participate therein. Apparently, the light laughter of the fair only attracted his attention, that he might by a look quell it, and throw fear into those breasts where thoughtlessness reigned. Those who felt this sensation of awe, could not explain whence it arose: some attributed it to the dead grey eye, which, fixing upon the object's face, did not seem to penetrate, and at one glance to pierce through to the inward workings of the heart; but fell upon the cheek with a leaden ray that weighed upon the skin it could not pass. His peculiarities caused him to be invited to every house; all wished to see him, and those who had been accustomed to violent excitement, and now felt the weight of *ennui*, were pleased at having something in their presence capable of engaging their attention. In spite of the deadly hue of his face, which never gained a warmer tint, either from the blush of modesty, or from the strong emotion of passion, though its form and outline were beautiful, many of the female hunters after notoriety attempted to win his attentions, and gain, at least, some marks of what they might term affection; Lady Mercer, who had been the mockery of every monster shewn in drawing rooms since her marriage, threw herself in his way, and did all but put on the dress of a mountebank, to attract his notice;—though in vain:—when she stood before him, though his eyes were apparently fixed upon her's, still it seemed as if they were unperceived—even her unappalled impudence was baffled, and she left the field.* But though the common adulteress could not influence even the guidance of his eyes, it was not that the female sex was indifferent to him: yet such was the apparent caution with which he spoke

to the virtuous wife and innocent daughter, that few knew he ever addressed himself to females. He had, however, the reputation of a winning tongue; and whether it was that it even overcame the dread of his singular character, or that they were moved by his apparent hatred of vice, he was as often among those females who form the boast of their sex from their domestic virtues, as among those who sully it by their vices.

About the same time, there came to London a young gentleman of the name of Aubrey: he was an orphan left with an only sister in the possession of great wealth, by parents who died while he was yet in childhood. Left also to himself by guardians, who thought it their duty merely to take care of his fortune, while they relinquished the more important charge of his mind to the care of mercenary subalterns, he cultivated more his imagination than his judgment. He had, hence, that high romantic feeling of honour and candour, which daily ruins so many milliners' apprentices. He believed all to sympathise with virtue, and thought that vice was thrown in by Providence merely for the picturesque effect of the scene, as we see in romances; he thought that the misery of a cottage merely consisted in the vesting of clothes, which were as warm, but which were better adapted to the painter's eye by their irregular folds and various coloured patches. He thought, in fine, that the dreams of poets were the realities of life. He was handsome, frank, and rich: for these reasons, upon his entering into the gay circles, many mothers surrounded him, striving which should describe with least truth their languishing or romping favourites: the daughters at the same time, by their brightening countenances when he approached, and by their sparkling eyes, when he opened his lips, soon led him into false notions of his talents and his merit. Attached as he was to the romance of his solitary hours, he was startled at finding that except in the tallow and wax candles, that flickered not from the presence of a ghost, but from want of snuffing, there was no foundation in real life for any of that congeries of pleasing pictures and descriptions contained in those volumes, from which he had formed his study. Finding, however, some compensation in his gratified vanity, he was about to relinquish his dreams, when the

extraordinary being we have above described, crossed him in his career.

He watched him; and the very impossibility of forming an idea of the character of a man entirely absorbed in himself, who gave few other signs of his observation of external objects, than the tacit assent to their existence, implied by the avoidance of their contact: allowing his imagination to picture every thing that flattered its propensity to extravagant ideas, he soon formed this object into the hero of a romance, and determined to observe the offspring of his fancy, rather than the person before him. He became acquainted with him, paid him attentions, and had so far advanced upon his notice, that his presence was always recognized. He gradually learnt that Lord Ruthven's affairs were embarrassed, and soon found, from the notes of preparation in — Street, that he was about to travel.* Desirous of gaining some information respecting this singular character, who, till now, had only whetted his curiosity, he hinted to his guardians, that it was time for him to perform the tour, which for many generations has been thought necessary to enable the young to take some rapid steps in the career of vice, towards putting themselves upon an equality with the aged, and not allowing them to appear as if fallen from the skies, whenever scandalous intrigues are mentioned as the subjects of pleasantry or of praise, according to the degree of skill shewn in carrying them on. They consented: and Aubrey immediately mentioning his intentions to Lord Ruthven, was surprised to receive from him a proposal to join him. Flattered, by such a mark of esteem from him, who, apparently, had nothing in common with other men, he gladly accepted it, and in a few days they had passed the circling waters.

Hitherto, Aubrey had had no opportunity of studying Lord Ruthven's character, and now he found, that, though many more of his actions were exposed to his view, the results offered different conclusions from the apparent motives to his conduct. His companion was profuse in his liberality;—the idle, the vagabond, and the beggar, received from his hand more than enough to relieve their immediate wants. But Aubrey could not avoid remarking, that it was not upon the virtuous, reduced to indigence by the misfortunes attendant even

upon virtue, that he bestowed him alms;—these were sent from the door with hardly suppressed sneers; but when the profligate came to ask something, not to relieve his wants, but to allow him to wallow in his lust, or to sink him still deeper in his iniquity, he was sent away with rich charity. This was, however, attributed by him to the greater importunity of the vicious, which generally prevails over the retiring bashfulness of the virtuous indigent. There was one circumstance about the charity of his Lordship, which was still more impressed upon his mind: all those upon whom it was bestowed, inevitably found that there was a curse upon it, for they all were either led to the scaffold, or sunk to the lowest and the most abject misery. At Brussels and other towns through which they passed, Aubrey was surprized at the apparent eagerness with which his companion sought for the centres of all fashionable vice; there he entered into all the spirit of the faro table;* he betted, and always gambled with success, except where the known sharper was his antagonist, and then he lost even more than he gained; but it was always with the same unchanging face, with which he generally watched the society around: it was not, however, so when he encountered the rash youthful novice, or the luckless father of a numerous family; then his very wish seemed fortune's law—this apparent abstractedness of mind was laid aside, and his eyes sparkled with more fire than that of the cat whilst dallying with the half dead mouse. In every town, he left the formerly affluent youth, torn from the circle he adorned, cursing, in the solitude of a dungeon, the fate that had drawn him within the reach of this fiend; whilst many a father sat frantic, amidst the speaking looks of mute hungry children, without a single farthing of his late immense wealth, wherewith to buy even sufficient to satisfy their present craving. Yet he took no money from the gambling table; but immediately lost, to the ruiner of many, the last gilder he had just snatched from the convulsive grasp of the innocent: this might but be the result of a certain degree of knowledge, which was not, however, capable of combating the cunning of the more experienced. Aubrey often wished to represent this to his friend, and beg him to resign that charity and pleasure which proved the ruin of all,

and did not tend to his own profit;—but he delayed it—for each day he hoped his friend would give him some opportunity of speaking frankly and openly to him; however, this never occurred. Lord Ruthven in his carriage, and amidst the various wild and rich scenes of nature, was always the same: his eye spoke less than his lip; and though Aubrey was near the object of his curiosity, he obtained no greater gratification from it than the constant excitement of vainly wishing to break that mystery, which to his exalted imagination began to assume the appearance of something supernatural.

They soon arrived at Rome, and Aubrey for a time lost sight of his companion; he left him in daily attendance upon the morning circle of an Italian countess, whilst he went in search of the memorials of another almost deserted city. Whilst he was thus engaged, letters arrived from England, which he opened with eager impatience; the first was from his sister, breathing nothing but affection; the others were from his guardians, the latter astonished him; if it had before entered into his imagination that there was an evil power resident in his companion, these seemed to give him almost sufficient reason for the belief. His guardians insisted upon his immediately leaving his friend, and urged, that his character was dreadfully vicious, for that the possession of irresistible powers of seduction, rendered his licentious habits more dangerous to society. It had been discovered, that his contempt for the adultress had not originated in hatred of her character; but that he had required, to enhance his gratification, that his victim, the partner of his guilt, should be hurled from the pinnacle of unsullied virtue, down to the lowest abyss of infamy and degradation: in fine, that all those females whom he had sought, apparently on account of their virtue, had, since his departure, thrown even the mask aside, and had not scrupled to expose the whole deformity of their vices to the public gaze.

Aubrey determined upon leaving one, whose character had not yet shown a single bright point on which to rest the eye. He resolved to invent some plausible pretext for abandoning him altogether, purposing, in the mean while, to watch him more closely, and to let no slight circumstance pass by unnoticed. He entered into the same circle, and soon perceived,

that his Lordship was endeavouring to work upon the inexperience of the daughter of the lady at whose house he chiefly frequented. In Italy, it is seldom that an unmarried female is met with in society; he was therefore obliged to carry on his plans in secret; but Aubrey's eye followed him in all his windings, and soon discovered that an assignation had been appointed, which would most likely end in the ruin of an innocent, though thoughtless girl. Losing no time, he entered the apartment of Lord Ruthven, and abruptly asked him his intentions with respect to the lady, informing him at the same time that he was aware of his being about to meet her that very night. Lord Ruthven answered, that his intentions were such as he supposed all would have upon such an occasion; and upon being pressed whether he intended to marry her, merely laughed. Aubrey retired; and, immediately writing a note, to say, that from that moment he must decline accompanying his Lordship in the remainder of their proposed tour, he ordered his servant to seek other apartments, and calling upon the mother of the lady, informed her of all he knew, not only with regard to her daughter, but also concerning the character of his Lordship. The assignation was prevented. Lord Ruthven next day merely sent his servant to notify his complete assent to a separation; but did not hint any suspicion of his plans having been foiled by Aubrey's interposition.

Having left Rome, Aubrey directed his steps towards Greece, and, crossing the Peninsula, soon found himself at Athens. He then fixed his residence in the house of a Greek; and soon occupied himself in tracing the faded records of ancient glory upon monuments that apparently, ashamed of chronicling the deeds of freemen only before slaves, had hidden themselves beneath the sheltering soil or many coloured lichen. Under the same roof as himself, existed a being, so beautiful and delicate, that she might have formed the model for a painter wishing to pourtray on canvass the promised hope of the faithful in Mahomet's paradise, save that her eyes spoke too much mind for any one to think she could belong to those who had no souls.* As she danced upon the plain, or tripped along the mountain's side, one would have thought the gazelle a poor type of her beauties, for who would have exchanged her

eye, apparently the eye of animated nature, for that sleepy luxurious look of the animal suited but to the taste of an epicure. The light step of Ianthe often accompanied Aubrey in his search after antiquities, and often would the unconscious girl, engaged in the pursuit of a Kashmere butterfly, show the whole beauty of her form, floating as it were upon the wind, to the eager gaze of him, who forgot the letters he had just decyphered upon an almost effaced tablet, in the contemplation of her sylph-like figure. Often would her tresses falling, as she flitted around, show in the sun's ray such delicately brilliant and swiftly fading hues, as might well excuse the forgetfulness of the antiquary, who let escape from his mind the very object he had before thought of vital importance to the proper interpretation of a passage in Pausanias.* But why attempt to describe charms which all feel, but none can appreciate?—It was innocence, youth, and beauty, unaffected by crowded drawing rooms, and stifling balls. Whilst he drew those remains of which he wished to preserve a memorial for his future hours, she would stand by, and watch the magic effects of his pencil, in tracing the scenes of her native place; she would then describe to him the circling dance upon the open plain, would paint to him in all the glowing colours of youthful memory, the marriage pomp she remembered viewing in her infancy; and then, turning to subjects that had evidently made a greater impression upon her mind, would tell him all the supernatural tales of her nurse. Her earnestness and apparent belief of what she narrated, excited the interest even of Aubrey; and often, as she told him the tale of the living vampyre, who had passed years amidst his friends, and dearest ties, forced every year, by feeding upon the life of a lovely female to prolong his existence for the ensuing months, his blood would run cold, whilst he attempted to laugh her out of such idle and horrible fantasies; but Ianthe cited to him the names of old men, who had at last detected one living among themselves, after several of their near relatives and children had been found marked with the stamp of the fiend's appetite; and when she found him so incredulous, she begged of him to believe her, for it had been remarked, that those who had dared to question their existence, always had some proof given,

which obliged them, with grief and heartbreaking, to confess it was true. She detailed to him the traditional appearance of these monsters, and his horror was increased, by hearing a pretty accurate description of Lord Ruthven; he, however, still persisted in persuading her, that there could be no truth in her fears, though at the same time he wondered at the many coincidences which had all tended to excite a belief in the supernatural power of Lord Ruthven.

Aubrey began to attach himself more and more to Ianthe; her innocence, so contrasted with all the affected virtues of the women among whom he had sought for his vision of romance, won his heart; and while he ridiculed the idea of a young man of English habits, marrying an uneducated Greek girl, still he found himself more and more attached to the almost fairy form before him. He would tear himself at times from her, and, forming a plan for some antiquarian research, he would depart, determined not to return until his object was attained; but he always found it impossible to fix his attention upon the ruins around him, whilst in his mind he retained an image that seemed alone the rightful possessor of his thoughts. Ianthe was unconscious of his love, and was ever the same frank infantile being he had first known. She always seemed to part from him with reluctance; but it was because she had no longer any one with whom she could visit her favourite haunts, whilst her guardian was occupied in sketching or uncovering some fragment which had yet escaped the destructive hand of time. She had appealed to her parents on the subject of Vampyres, and they both, with several present, affirmed their existence, pale with horror at the very name. Soon after, Aubrey determined to proceed upon one of his excursions, which was to detain him for a few hours; when they heard the name of the place, they all at once begged of him not to return at night, as he must necessarily pass through a wood, where no Greek would ever remain after the day had closed, upon any consideration. They described it as the resort of the vampyres in their nocturnal orgies, and denounced the most heavy evils as impending upon him who dared to cross their path. Aubrey made light of their representations, and tried to laugh them out of the idea; but when

he saw them shudder at his daring thus to mock a superior, infernal power, the very name of which apparently made their blood freeze, he was silent.

Next morning Aubrey set off upon his excursion unattended; he was surprised to observe the melancholy face of his host, and was concerned to find that his words, mocking the belief of those horrible fiends, had inspired them with such terror.—When he was about to depart, Ianthe came to the side of his horse and earnestly begged of him to return, ere night allowed the power of these beings to be put in action—he promised. He was, however, so occupied in his research that he did not perceive that day-light would soon end, and that in the horizon there was one of those specks which in the warmer climates so rapidly gather into a tremendous mass and pour all their rage upon the devoted country.—He at last, however, mounted his horse, determined to make up by speed for his delay: but it was too late. Twilight in these southern climates is almost unknown; immediately the sun sets, night begins; and ere he had advanced far, the power of the storm was above—its echoing thunders had scarcely an interval of rest—its thick heavy rain forced its way through the canopying foliage, whilst the blue forked lightning seemed to fall and radiate at his very feet. Suddenly his horse took fright, and he was carried with dreadful rapidity through the entangled forest. The animal at last, through fatigue, stopped, and he found, by the glare of lightening, that he was in the neighbourhood of a hovel that hardly lifted itself up from the masses of dead leaves and brushwood which surrounded it. Dismounting, he approached, hoping to find some one to guide him to the town, or at least trusting to obtain shelter from the pelting of the storm. As he approached, the thunders, for a moment silent, allowed him to hear the dreadful shrieks of a woman mingling with the stifled exultant mockery of a laugh, continued in one almost unbroken sound; he was startled: but, roused by the thunder which again rolled over his head, he with a sudden effort forced open the door of the hut. He found himself in utter darkness; the sound, however, guided him. He was apparently unperceived; for though he called, still the sounds continued, and no notice was taken of him.

He found himself in contact with some one, whom he immediately seized, when a voice cried 'again baffled,' to which a loud laugh succeeded, and he felt himself grappled by one whose strength seemed superhuman: determined to sell his life as dearly as he could, he struggled: but it was in vain: he was lifted from his feet and hurled with enormous force against the ground:—his enemy threw himself upon him, and kneeling upon his breast, had placed his hands upon his throat, when the glare of many torches penetrating through the hole that gave light in the day, disturbed him—he instantly rose and, leaving his prey, rushed through the door, and in a moment the crashing of the branches, as he broke through the wood, was no longer heard.—The storm was now still; and Aubrey, incapable of moving, was soon heard by those without.—They entered; the light of their torches fell upon the mud walls, and the thatch loaded on every individual straw with heavy flakes of soot. At the desire of Aubrey they searched for her who had attracted him by her cries; he was again left in darkness; but what was his horror, when the light of the torches once more burst upon him, to perceive the airy form of his fair conductress brought in a lifeless corse. He shut his eyes, hoping that it was but a vision arising from his disturbed imagination; but he again saw the same form, when he unclosed them, stretched by his side. There was no colour upon her cheek, not even upon her lip; yet there was a stillness about her face that seemed almost as attaching as the life that once dwelt there:—upon her neck and breast was blood, and upon her throat were the marks of teeth having opened the vein:—to this the men pointed, crying, simultaneously struck with horror, 'a Vampyre, a Vampyre!' A litter was quickly formed, and Aubrey was laid by the side of her who had lately been to him the object of so many bright and fairy visions, now fallen with the flower of life that had died within her. He knew not what his thoughts were—his mind was benumbed and seemed to shun reflection and take refuge in vacancy—he held almost unconsciously in his hand a naked dagger of a particular construction, which had been found in the hut.—They were soon met by different parties who had been engaged in the search of her whom a mother had soon missed.—Their

lamentable cries, as they approached the city, forewarned the parents of some dreadful catastrophe.—To describe their grief would be impossible; but when they ascertained the cause of their child's death they looked at Aubrey and pointed to the corpse.—They were inconsolable; both died broken-hearted.

Aubrey being put to bed was seized with a most violent fever, and was often delirious; in these intervals he would call upon Lord Ruthven and upon Ianthe—by some unaccountable combination he seemed to beg of his former companion to spare the being he loved.—At other times he would imprecate maledictions upon his head, and curse him as her destroyer. Lord Ruthven chanced at this time to arrive at Athens, and, from whatever motive, upon hearing of the state of Aubrey, immediately placed himself in the same house and became his constant attendant. When the latter recovered from his delirium he was horrified and startled at the sight of him whose image he had now combined with that of a Vampyre; but Lord Ruthven by his kind words, implying almost repentance for the fault that had caused their separation, and still more by the attention, anxiety, and care which he showed, soon reconciled him to his presence. His Lordship seemed quite changed; he no longer appeared that apathetic being who had so astonished Aubrey; but as soon as his convalescence began to be rapid, he again gradually retired into the same state of mind, and Aubrey perceived no difference from the former man, except, that at times he was surprised to meet his gaze fixed intently upon him with a smile of malicious exultation playing upon his lips; he knew not why, but this smile haunted him. During the last stage of the invalid's recovery, Lord Ruthven was apparently engaged in watching the tideless waves raised by the cooling breeze, or in marking the progress of those orbs, circling, like our world, the moveless sun;—indeed he appeared to wish to avoid the eyes of all.

Aubrey's mind, by this shock, was much weakened, and that elasticity of spirit which had once so distinguished him now seemed to have fled for ever.—He was now as much a lover of solitude and silence as Lord Ruthven; but much as he wished for solitude, his mind could not find it in the neighbourhood of Athens; if he sought it amidst the ruins he had

formerly frequented, Ianthe's form stood by his side—if he sought it in the woods, her light step would appear wandering amidst the underwood, in quest of the modest violet; then suddenly turning round would show, to his wild imagination, her pale face and wounded throat with a meek smile upon her lips. He determined to fly scenes, every feature of which created such bitter associations in his mind. He proposed to Lord Ruthven, to whom he held himself bound by the tender care he had taken of him during his illness, that they should visit those parts of Greece neither had yet seen. They travelled in every direction, and sought every spot to which a recollection could be attached; but though they thus hastened from place to place yet they seemed not to heed what they gazed upon.—They heard much of robbers, but they gradually began to slight these reports, which they imagined were only the invention of individuals, whose interest it was to excite the generosity of those whom they defended from pretended dangers. In consequence of thus neglecting the advice of the inhabitants, on one occasion they travelled with only a few guards, more to serve as guides than as a defence.—Upon entering, however, a narrow defile, at the bottom of which was the bed of a torrent, with large masses of rock brought down from the neighbouring precipices, they had reason to repent their negligence—for, scarcely were the whole of the party engaged in the narrow pass, when they were startled by the whistling of bullets close to their heads, and by the echoed report of several guns. In an instant their guards had left them, and placing themselves behind rocks had begun to fire in the direction whence the report came. Lord Ruthven and Aubrey, imitating their example, retired for a moment behind a sheltering turn of the defile; but ashamed of being thus detained by a foe, who with insulting shouts bade them advance, and being exposed to unresisting slaughter, if any of the robbers should climb above and take them in the rear, they determined at once to rush forward in search of the enemy.—Hardly had they lost the shelter of the rock, when Lord Ruthven received a shot in the shoulder that brought him to the ground.—Aubrey hastened to his assistance, and no longer heeding the contest or his own peril, was soon surprised by seeing

the robbers' faces around him; his guards having, upon Lord Ruthven's being wounded, immediately thrown up their arms and surrendered.

By promises of great reward, Aubrey soon induced them to convey his wounded friend to a neighbouring cabin, and having agreed upon a ransom he was no more disturbed by their presence, they being content to merely guard the entrance till their comrade should return with the promised sum for which he had an order.—Lord Ruthven's strength rapidly decreased; in two days mortification ensued, and death seemed advancing with hasty steps.—His conduct and appearance had not changed; he seemed as unconscious of pain as he had been of the objects about him; but towards the close of the last evening his mind became apparently uneasy, and his eye often fixed upon Aubrey, who was induced to offer his assistance with more than usual earnestness—'Assist me! you may save me—you may do more than that—I mean not my life, I heed the death of my existence as little as that of the passing day; but you may save my honour, your friend's honour.'—'How, tell me how; I would do any thing,' replied Aubrey. 'I need but little—my life ebbs apace—I cannot explain the whole—but if you would conceal all you know of me, my honour were free from stain in the world's mouth—and if my death were unknown for some time in England—I—I—but life.'—'It shall not be known.'—'Swear!' cried the dying man, raising himself with exultant violence, 'Swear by all your soul reveres, by all your nature fears, swear that for a year and a day you will not impart your knowledge of my crimes or death to any living being in any way, whatever may happen, or whatever you may see.'—His eyes seemed bursting from their sockets: 'I swear!' said Aubrey; he sunk laughing upon his pillow and breathed no more.

Aubrey retired to rest, but did not sleep; the many circumstances attending his acquaintance with this man rose upon his mind, and he knew not why; when he remembered his oath a cold shivering came over him, as if from the presentiment of something horrible awaiting him. Rising early in the morning he was about to enter the hovel in which he had left the corpse, when a robber met him, and informed him that

it was no longer there, having been conveyed by himself and comrades, upon his retiring, to the pinnacle of a neighbouring mount, according to a promise they had given his lordship, that it should be exposed to the first cold ray of the moon that rose after his death. Aubrey was astonished, and taking several of the men, determined to go and bury it upon the spot where it lay. But, when he had mounted to the summit he found no trace of either the corpse or the clothes, though the robbers swore they pointed out the identical rock on which they had laid the body. For a time his mind was bewildered in conjectures, but he at last returned, convinced that they had buried the corpse for the sake of the clothes.

Weary of a country in which he had met with such terrible misfortunes, and in which all apparently conspired to heighten that superstitious melancholy that had seized upon his mind, he resolved to leave it, and soon arrived at Smyrna.* While waiting for a vessel to convey him to Otranto, or to Naples, he occupied himself in arranging those effects he had with him belonging to Lord Ruthven. Amongst other things there was a case containing several weapons of offence, more or less adapted to ensure the death of the victim. There were several daggers and ataghans.* Whilst turning them over, and examining their curious forms, what was his surprise at finding a sheath apparently ornamented in the same style as the dagger discovered in the fatal hut; he shuddered; hastening to gain further proof, he found the weapon, and his horror may be imagined when he discovered that it fitted, though peculiarly shaped, the sheath he held in his hand. His eyes seemed to need no further certainty—they seemed gazing to be bound to the dagger; yet still he wished to disbelieve; but the particular form, the same varying tints upon the haft and sheath were alike in splendour on both, and left no room for doubt; there were also drops of blood on each.

He left Smyrna, and on his way home, at Rome, his first inquiries were concerning the lady he had attempted to snatch from Lord Ruthven's seductive arts. Her parents were in distress, their fortune ruined, and she had not been heard of since the departure of his lordship. Aubrey's mind became almost broken under so many repeated horrors; he was afraid

that this lady had fallen a victim to the destroyer of Ianthe. He became morose and silent, and his only occupation consisted in urging the speed of the postilions, as if he were going to save the life of some one he held dear. He arrived at Calais; a breeze, which seemed obedient to his will, soon wafted him to the English shores; and he hastened to the mansion of his fathers, and there, for a moment, appeared to lose, in the embraces and caresses of his sister, all memory of the past. If she before, by her infantine caresses, had gained his affection, now that the woman began to appear, she was still more attaching as a companion.

Miss Aubrey had not that winning grace which gains the gaze and applause of the drawing-room assemblies. There was none of that light brilliancy which only exists in the heated atmosphere of a crowded apartment. Her blue eye was never lit up by the levity of the mind beneath. There was a melancholy charm about it which did not seem to arise from misfortune, but from some feeling within, that appeared to indicate a soul conscious of a brighter realm. Her step was not that light footing, which strays where'er a butterfly or a colour may attract—it was sedate and pensive. When alone, her face was never brightened by the smile of joy; but when her brother breathed to her his affection, and would in her presence forget those griefs she knew destroyed his rest, who would have exchanged her smile for that of the voluptuary? It seemed as if those eyes,—that face were then playing in the light of their own native sphere. She was yet only eighteen, and had not been presented to the world; it having been thought by her guardians more fit that her presentation should be delayed until her brother's return from the continent, when he might be her protector. It was now, therefore, resolved that the next drawing room,* which was fast approaching, should be the epoch of her entry into the 'busy scene'.* Aubrey would rather have remained in the mansion of his fathers, and fed upon the melancholy which overpowered him. He could not feel interest about the frivolities of fashionable strangers, when his mind had been so torn by the events he had witnessed; but he determined to sacrifice his own comfort to the protection of his sister. They soon arrived in town, and

prepared for the next day, which had been announced as a drawing room.

The crowd was excessive—a drawing room had not been held for a long time, and all who were anxious to bask in the smile of royalty, hastened thither. Aubrey was there with his sister. While he was standing in a corner by himself, heedless of all around him, engaged in the remembrance that the first time he had seen Lord Ruthven was in that very place—he felt himself suddenly seized by the arm, and a voice he recognized too well, sounded in his ear—‘Remember your oath.’ He had hardly courage to turn, fearful of seeing a spectre that would blast him, when he perceived, at a little distance, the same figure which had attracted his notice on this spot upon his first entry into society. He gazed till his limbs almost refusing to bear their weight, he was obliged to take the arm of a friend, and forcing a passage through the crowd, he threw himself into his carriage, and was driven home. He paced the room with hurried steps, and fixed his hands upon his head, as if he were afraid his thoughts were bursting from his brain. Lord Ruthven again before him—circumstances started up in dreadful array—the dagger—his oath.—He roused himself, he could not believe it possible—the dead rise again!—He thought his imagination had conjured up the image his mind was resting upon. It was impossible that it could be real—he determined, therefore, to go again into society; for though he attempted to ask concerning Lord Ruthven, the name hung upon his lips, and he could not succeed in gaining information. He went a few nights after with his sister to the assembly of a near relation. Leaving her under the protection of a matron, he retired into a recess, and there gave himself up to his own devouring thoughts. Perceiving, at last, that many were leaving, he roused himself, and entering another room, found his sister surrounded by several, apparently in earnest conversation; he attempted to pass and get near her, when one, whom he requested to move, turned round, and revealed to him those features he most abhorred. He sprung forward, seized his sister’s arm, and, with hurried step, forced her towards the street: at the door he found himself impeded by the crowds of servants who were waiting for their lords; and

while he was engaged in passing them, he again heard that voice whisper close to him—'Remember your oath!'—He did not dare to turn, but, hurrying his sister, soon reached home.

Aubrey became almost distracted. If before his mind had been absorbed by one subject, how much more completely was it engrossed, now that the certainty of the monster's living again pressed upon his thoughts. His sister's attentions were now unheeded, and it was in vain that she intreated him to explain to her what had caused his abrupt conduct. He only uttered a few words, and those terrified her. The more he thought, the more he was bewildered. His oath startled him;—was he then to allow this monster to roam, bearing ruin upon his breath, amidst all he held dear, and not avert its progress? His very sister might have been touched by him. But even if he were to break his oath, and disclose his suspicions, who would believe him? He thought of employing his own hand to free the world from such a wretch; but death, he remembered, had been already mocked. For days he remained in this state; shut up in his room, he saw no one, and eat only when his sister came, who, with eyes streaming with tears, besought him, for her sake, to support nature. At last, no longer capable of bearing stillness and solitude, he left his house, roamed from street to street, anxious to fly that image which haunted him. His dress became neglected, and he wandered, as often exposed to the noon-day sun as to the midnight damps. He was no longer to be recognized; at first he returned with the evening to the house; but at last he laid him down to rest wherever fatigue overtook him. His sister, anxious for his safety, employed people to follow him; but they were soon distanced by him who fled from a pursuer swifter than any—from thought. His conduct, however, suddenly changed. Struck with the idea that he left by his absence the whole of his friends, with a fiend amongst them, of whose presence they were unconscious, he determined to enter again into society, and watch him closely, anxious to forewarn, in spite of his oath, all whom Lord Ruthven approached with intimacy. But when he entered into a room, his haggard and suspicious looks were so striking, his inward shudderings so visible, that his sister was at last obliged to beg of him to

abstain from seeking, for her sake, a society which affected him so strongly. When, however, remonstrance proved unavailing, the guardians thought proper to interpose, and, fearing that his mind was becoming alienated, they thought it high time to resume again that trust which had been before imposed upon them by Aubrey's parents.

Desirous of saving him from the injuries and sufferings he had daily encountered in his wanderings, and of preventing him from exposing to the general eye those marks of what they considered folly, they engaged a physician to reside in the house, and take constant care of him. He hardly appeared to notice it, so completely was his mind absorbed by one terrible subject. His incoherence became at last so great, that he was confined to his chamber. There he would often lie for days, incapable of being roused. He had become emaciated, his eyes had attained a glassy lustre;—the only sign of affection and recollection remaining displayed itself upon the entry of his sister: then he would sometimes start, and, seizing her hands, with looks that severely afflicted her, he would desire her not to touch him. 'Oh, do not touch him—if your love for me is aught, do not go near him!' When, however, she inquired to whom he referred, his only answer was—"True! true!" and again he sank into a state, whence not even she could rouse him. This lasted many months: gradually, however, as the year was passing, his incoherences became less frequent, and his mind threw off a portion of its gloom, whilst his guardians observed, that several times in the day he would count upon his fingers a definite number, and then smile.

The time had nearly elapsed, when, upon the last day of the year, one of his guardians entering his room, began to converse with his physician upon the melancholy circumstance of Aubrey's being in so awful a situation when his sister was going next day to be married. Instantly Aubrey's attention was attracted; he asked anxiously to whom. Glad of this mark of returning intellect, of which they feared he had been deprived, they mentioned the name of the Earl of Marsden. Thinking this was a young earl whom he had met with in society, Aubrey seemed pleased, and astonished them still more by his expressing his intention to be present at the nuptials,

and desiring to see his sister. They answered not, but in a few minutes his sister was with him. He was apparently again capable of being affected by the influence of her lovely smile; for he pressed her to his breast, and kissed her cheek, wet with tears, flowing at the thought of her brother's being once more alive to the feelings of affection. He began to speak with all his wonted warmth, and to congratulate her upon her marriage with a person so distinguished for rank and every accomplishment; when he suddenly perceived a locket upon her breast; opening it, what was his surprise at beholding the features of the monster who had so long influenced his life. He seized the portrait in a paroxysm of rage, and trampled it under foot. Upon her asking him why he thus destroyed the resemblance of her future husband, he looked as if he did not understand her—then seizing her hands, and gazing on her with a frantic expression of countenance, he bade her swear that she would never wed this monster, for he—But he could not advance—it seemed as if that voice again bade him remember his oath—he turned suddenly round, thinking Lord Ruthven was near him, but saw no one. In the meantime the guardians and physician, who had heard the whole, and thought this was but a return of his disorder, entered, and forcing him from Miss Aubrey, desired her to leave him. He fell upon his knees to them, he implored, he begged of them to delay but for one day. They, attributing this to the insanity they imagined had taken possession of his mind, endeavoured to pacify him, and retired.

Lord Ruthven had called the morning after the drawing room, and had been refused with every one else. When he heard of Aubrey's ill health, he readily understood himself to be the cause of it: but when he learned that he was deemed insane, his exultation and pleasure could hardly be concealed from those among whom he had gained this information. He hastened to the house of his former companion, and, by constant attendance, and the pretence of great affection for the brother and interest in his fate, he gradually won the ear of Miss Aubrey. Who could resist his power? His tongue had dangers and toils to recount—could speak of himself as of an individual having no sympathy with any being on the

crowded earth, save with her to whom he addressed himself;—could tell how, since he knew her, his existence had begun to seem worthy of preservation, if it were merely that he might listen to her soothing accents;—in fine, he knew so well how to use the serpent's art, or such was the will of fate, that he gained her affections. The title of the elder branch falling at length to him, he obtained an important embassy, which served as an excuse for hastening the marriage, (in spite of her brother's deranged state,) which was to take place the very day before his departure for the continent.

Aubrey, when he was left by the physician and his guardian, attempted to bribe the servants, but in vain. He asked for pen and paper; it was given him; he wrote a letter to his sister, conjuring her, as she valued her own happiness, her own honour, and the honour of those now in the grave, who once held her in their arms as their hope and the hope of their house, to delay but for a few hours, that marriage, on which he denounced the most heavy curses. The servants promised they would deliver it; but giving it to the physician, he thought it better not to harass any more the mind of Miss Aubrey by, what he considered, the ravings of a maniac. Night passed on without rest to the busy inmates of the house; and Aubrey heard, with a horror that may more easily be conceived than described, the notes of busy preparation. Morning came, and the sound of carriages broke upon his ear. Aubrey grew almost frantic. The curiosity of the servants at last overcame their vigilance, they gradually stole away, leaving him in the custody of an helpless old woman. He seized the opportunity, with one bound was out of the room, and in a moment found himself in the apartment where all were nearly assembled. Lord Ruthven was the first to perceive him: he immediately approached, and, taking his arm by force, hurried him from the room, speechless with rage. When on the staircase, Lord Ruthven whispered in his ear—'Remember your oath, and know, if not my bride to day, your sister is dishonoured. Women are frail!' So saying, he pushed him towards his attendants, who, roused by the old woman, had come in search of him. Aubrey could no longer support himself; his rage, not finding vent, had broken a blood-vessel, and he was conveyed

to bed. This was not mentioned to his sister, who was not present when he entered, as the physician was afraid of agitating her. The marriage was solemnized, and the bride and bridegroom left London.

Aubrey's weakness increased; the effusion of blood produced symptoms of the near approach of death. He desired his sister's guardians might be called, and when the midnight hour had struck, he related composedly what the reader has perused—he died immediately after.

The guardians hastened to protect Miss Aubrey; but when they arrived, it was too late. Lord Ruthven had disappeared, and Aubrey's sister had glutted the thirst of a VAMPYRE!

Fragment of a Novel

(1816)

By George Gordon (Lord Byron)

"June 17, 1816.

"In the year 17—, having for some time determined on a journey through countries not hitherto much frequented by travellers, I set out, accompanied by a friend, whom I shall designate by the name of Augustus Darvell. He was a few years my elder, and a man of considerable fortune and ancient family, advantages which an extensive capacity prevented him alike from undervaluing and overrating. Some peculiar circumstances in his private history had rendered him to me an object of attention, of interest, and even of regard, which neither the reserve of his manners, nor occasional indication of an inquietude at times approaching to alienation of mind, could extinguish.

"I was yet young in life, which I had begun early; but my intimacy with him was of a recent date: we had been educated at the same schools and university; but his progress through these had preceded mine, and he had been deeply initiated into what is called the world, while I was yet in my novitiate. While thus engaged, I heard much both of his past and present life; and, although in these accounts there were many and irreconcilable contradictions, I could still gather from the whole that he was a being of no common order, and one who, whatever pains he might take to avoid remark, would still be remarkable. I had cultivated his acquaintance subsequently, and endeavoured to obtain his friendship, but this last appeared to be unattainable: whatever affections he might have possessed seemed now, some to have been extinguished, and others to be concentrated: that his feelings were acute, I had sufficient opportunities of observing; for, although he could control, he could not altogether disguise them; still he had a power of giving to one passion the appearance of another, in such a manner that it was difficult to define the nature of what was working within him; and the expressions of his features would vary so rapidly, though slightly, that it was useless to trace them to their sources. It was evident that he was a prey to some cureless disquiet; but whether it arose from ambition, love, remorse, grief, from one or all of these, or merely from a morbid temperament akin to disease, I could not discover: there were circumstances

alleged which might have justified the application to each of these causes; but, as I have before said, these were so contradictory and contradicted, that none could be fixed upon with accuracy. Where there is mystery, it is generally supposed that there must also be evil: I know not how this may be, but in him there certainly was the one, though I could not ascertain the extent of the other — and felt loth, as far as regarded himself, to believe in its existence. My advances were received with sufficient coldness: but I was young, and not easily discouraged, and at length succeeded in obtaining, to a certain degree, that common-place intercourse and moderate confidence of common and every-day concerns, created and cemented by similarity of pursuit and frequency of meeting, which is called intimacy, or friendship, according to the ideas of him who uses those words to express them.

"Darvell had already travelled extensively; and to him I had applied for information with regard to the conduct of my intended journey. It was my secret wish that he might be prevailed on to accompany me; it was also a probable hope, founded upon the shadowy restlessness which I observed in him, and to which the animation which he appeared to feel on such subjects, and his apparent indifference to all by which he was more immediately surrounded, gave fresh strength. This wish I first hinted, and then expressed: his answer, though I had partly expected it, gave me all the pleasure of surprise — he consented; and, after the requisite arrangement, we commenced our voyages. After journeying through various countries of the south of Europe, our attention was turned towards the East, according to our original destination; and it was in my progress through these regions that the incident occurred upon which will turn what I may have to relate.

"The constitution of Darvell, which must from his appearance have been in early life more than usually robust, had been for some time gradually giving away, without the intervention of any apparent disease: he had neither cough nor hectic, yet he became daily more enfeebled; his habits were temperate, and he neither declined nor complained of fatigue; yet he was evidently wasting away: he became more and more silent and sleepless, and at length so seriously altered, that my alarm grew proportionate to what I conceived to be his danger.

"We had determined, on our arrival at Smyrna, on an excursion to the ruins of Ephesus and Sardis, from which I endeavoured to dissuade him in his present state of indisposition — but in vain: there appeared to

be an oppression on his mind, and a solemnity in his manner, which ill corresponded with his eagerness to proceed on what I regarded as a mere party of pleasure little suited to a valetudinarian; but I opposed him no longer — and in a few days we set off together, accompanied only by a serrugee and a single janizary.

"We had passed halfway towards the remains of Ephesus, leaving behind us the more fertile environs of Smyrna, and were entering upon that wild and tenantless tract through the marshes and defiles which lead to the few huts yet lingering over the broken columns of Diana — the roofless walls of expelled Christianity, and the still more recent but complete desolation of abandoned mosques — when the sudden and rapid illness of my companion obliged us to halt at a Turkish cemetery, the turbaned tombstones of which were the sole indication that human life had ever been a sojourner in this wilderness. The only caravansera we had seen was left some hours behind us, not a vestige of a town or even cottage was within sight or hope, and this 'city of the dead' appeared to be the sole refuge of my unfortunate friend, who seemed on the verge of becoming the last of its inhabitants.

"In this situation, I looked round for a place where he might most conveniently repose: contrary to the usual aspect of Mahometan burial-grounds, the cypresses were in this few in number, and these thinly scattered over its extent; the tombstones were mostly fallen, and worn with age: upon one of the most considerable of these, and beneath one of the most spreading trees, Darvell supported himself, in a half-reclining posture, with great difficulty. He asked for water. I had some doubts of our being able to find any, and prepared to go in search of it with hesitating despondency: but he desired me to remain; and turning to Suleiman, our janizary, who stood by us smoking with great tranquility, he said, 'Suleiman, verbana su,' (*i.e.* 'bring some water,') and went on describing the spot where it was to be found with great minuteness, at a small well for camels, a few hundred yards to the right: the janizary obeyed. I said to Darvell, 'How did you know this?' He replied, 'From our situation; you must perceive that this place was once inhabited, and could not have been so without springs: I have also been here before.'

" 'You have been here before! How came you never to mention this to me? and what could you be doing in a place where no one would remain a moment longer than they could help it?'

"To this question I received no answer. In the mean time Suleiman returned with the water, leaving the serrugee and the horses at the fountain. The quenching of his thirst had the appearance of reviving him for a moment; and I conceived hopes of his being able to proceed, or at least to return, and I urged the attempt. He was silent — and appeared to be collecting his spirits for an effort to speak. He began —

" 'This is the end of my journey, and of my life; I came here to die; but I have a request to make, a command — for such my last words must be. — You will observe it?'

" 'Most certainly; but I have better hopes.'

" 'I have no hopes, nor wishes, but this — conceal my death from every human being.'

" 'I hope there will be no occasion; that you will recover, and —'

" 'Peace! it must be so: promise this.'

" 'I do.'

" 'Swear it, by all that —' He here dictated an oath of great solemnity.

" 'There is no occasion for this. I will observe your request; and to doubt me is —'

" 'It cannot be helped, you must swear.'

"I took the oath, it appeared to relieve him. He removed a seal ring from his finger, on which were some Arabic characters, and presented it to me. He proceeded —

" 'On the ninth day of the month, at noon precisely (what month you please, but this must be the day), you must fling this ring into the salt springs which run into the Bay of Eleusis; the day after, at the same hour, you must repair to the ruins of the temple of Ceres, and wait one hour.'

" 'Why?'

" 'You will see.'

" 'The ninth day of the month, you say?'

" 'The ninth.'

"As I observed that the present was the ninth day of the month, his countenance changed, and he paused. As he

sat, evidently becoming more feeble, a stork, with a snake in her beak, perched upon a tombstone near us; and, without devouring her prey, appeared to be steadfastly regarding us. I know not what impelled me to drive it away, but the attempt was useless; she made a few circles in the air, and returned exactly to the same spot. Darvell pointed to it, and smiled — he spoke — I know not whether to himself or to me — but the words were only, 'Tis well!'

" 'What is well? What do you mean?'

" 'No matter; you must bury me here this evening, and exactly where that bird is now perched. You know the rest of my injunctions.'

"He then proceeded to give me several directions as to the manner in which his death might be best concealed. After these were finished, he exclaimed, 'You perceive that bird?'

" 'Certainly.'

" 'And the serpent writhing in her beak?'

" 'Doubtless: there is nothing uncommon in it; it is her natural prey. But it is odd that she does not devour it.'

"He smiled in a ghastly manner, and said faintly. 'It is not yet time!' As he spoke, the stork flew away. My eyes followed it for a moment — it could hardly be longer than ten might be counted. I felt Darvell's weight, as it were, increase upon my shoulder, and, turning to look upon his face, perceived that he was dead!

"I was shocked with the sudden certainty which could not be mistaken — his countenance in a few minutes became nearly black. I should have attributed so rapid a change to poison, had I not been aware that he had no opportunity of receiving it unperceived. The day was declining, the body was rapidly altering, and nothing remained but to fulfil his request. With the aid of Suleiman's ataghan and my own sabre, we scooped a shallow grave upon the spot which Darvell had indicated: the earth easily gave way, having already received some Mahometan tenant. We dug as deeply as the time permitted us, and throwing the dry earth upon all that remained of the singular being so lately departed, we cut a few sods of greener turf from the less withered soil around us, and laid them upon his sepulchre.

"Between astonishment and grief, I was tearless."

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2

a NAME OF AUTHOR ▼

Lourdes/Loren Byron

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼
1986

Was this contribution to the work a work made for hire?

☐ Yes

☒ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

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NOTE

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed ▼
Literary Work

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF SUWANNEE
Case No. 15-666- HINKLE

LOURDES/LOREN BYRON,

Plaintiff,

vs.

VAMPYRE HOLDING COMPANY, LLC, AND DR. JANE/JOHN POLIDORI,

Defendants.

COURT'S INSTRUCTIONS TO THE JURY

Members of the jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. When I have finished, you will go to the jury room and begin your discussions, sometimes called deliberations.

The Duty to Follow Instructions

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against anyone.

You must follow the law as I explain it—even if you do not agree with the law—and you must follow all of my instructions as a whole. You must not single out or disregard any of the instructions on the law.

Consideration of Direct and Circumstantial Evidence; Argument of Counsel; Comments by the Court

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

“Direct evidence” is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

“Circumstantial evidence” is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

Credibility of Witnesses

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

Impeachment of Witnesses Because of Inconsistent Statements

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

Impeachment of Witnesses Because of Inconsistent Statements

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

To decide whether you believe a witness, you may consider the fact that the witness has been convicted of a felony or a crime involving dishonesty or a false statement.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

Responsibility for Proof—Plaintiff's Claims—Preponderance of the Evidence

In this case, it is the responsibility of Plaintiff to prove every essential part of his/her claims by a "preponderance of the evidence." This is sometimes called the "burden of proof" or the "burden of persuasion."

A “preponderance of the evidence” simply means an amount of evidence that is enough to persuade you that Plaintiff's claim is more likely true than not true.

If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence, you should find against Plaintiff.

When more than one claim is involved, you should consider each claim separately.

In deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of Plaintiff's claims by a preponderance of the evidence, you should find for Defendants as to that claim.

Responsibility for Proof—Affirmative Defense Preponderance of the Evidence

In this case, Defendants assert the affirmative defenses of:

- The Statute of Limitations
- Estoppel
- Abandonment
- Implied License to Plaintiff's copyright infringement claim

Even if Plaintiff proves his/her claims by a preponderance of the evidence, Defendants can prevail in this case if he/she/it proves an affirmative defense by a preponderance of the evidence.

When more than one affirmative defense is involved, you should consider each one separately.

I caution you that Defendants do not have to disprove Plaintiff's claims, but if Defendants raise an affirmative defense, the only way he/she/it can prevail on that specific defense is if he/she/it proves that defense by a preponderance of the evidence.

COUNT I

Copyright—Preliminary Instructions

Overview of Copyrights

This case involves a dispute relating to copyrights. To help you understand the evidence in this case, I will explain some of the legal concepts and terms you may hear during the trial.

Copyright law reflects a balance between society's interest in encouraging the creation of original works by rewarding authors on the one hand, and society's competing interest in the free flow of ideas and information on the other hand. The goal of copyright law attempts to strike a balance between protecting an author's particular expression, while also protecting the right of others to use the same concepts, ideas or facts.

Copyright protects original works of authorship that are expressed in a form that can be perceived, reproduced, or communicated.

Works of authorship can include literary works, musical works, dramatic works, pantomimes, choreographic works, pictorial works, graphic works, sculptural works, motion pictures, audiovisual works, sound recordings, or architectural works.

Copyright protection, however, does not extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in the work.

To qualify for copyright protection, a work must be original to the author. Original, as the term is used in copyright, means only that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity. A work may be original even though it closely resembles other works so long as the similarity is not the result of copying. To illustrate, assume that two poets, each unaware of the other, compose identical poems. Both poems may be considered original.

The owner of a copyright has the exclusive right to reproduce, or copy, distribute copies of, and prepare derivative works based on the copyrighted work for a specific period of time. The owner of a copyright also has the exclusive right to perform and display the copyrighted work.

Copyright

Preliminary Instructions

Overview of Copyrights

In this case, *Lourdes/Loren Byron* claims ownership of a copyright in a literary work titled “Fragment of a Novel”, and claims *Vampyre Holding Company, LLC, and Dr. Jane/John Polidori* have infringed the asserted copyright by reproducing or copying, distributing copies of, preparing derivative works based on, performing and displaying the work without authorization. *Vampyre Holding Company, LLC and Dr. Jane/John Polidori* denies infringing the asserted copyright and asserts other defenses which I will describe later.

Copyright—Validity—General Charge

To establish infringement, Plaintiff must prove two things:

- First, you must find that Plaintiff owned a valid copyright.
- And second, you must find that Defendants copied the work's original components.

I'll begin with instructions on validity and then explain ownership and infringement. After that, I'll explain defenses and remedies.

Copyright—Validity—Originality

To qualify for copyright protection, the claimed work must be original to the author. “Original” means only that the author independently created the work—the author didn't copy it from other works—and it possesses at least a minimal degree of creativity.

SPECIAL INTERROGATORIES TO THE JURY

1. Do you find the claimed work was original to its author?

Answer Yes or No_____

2. Do you find the claimed work possesses at least a minimal degree of creativity?

Answer Yes or No_____

If your answer to either of these questions is “No,” don't continue with your analysis of Plaintiff's claim for infringement.

Copyright—Validity—Ideas and Expression

Copyright protection doesn't extend to all the elements of a copyrighted work. Elements covered by the copyright protection are called “protected matter,” and non-covered elements are “unprotected matter.” Because unprotected matter isn't entitled to copyright protection, another author may copy it.

There are various types of unprotected matter. They include:

- a portion of the work that isn't original to the author;
- a portion of the work that's in the public domain; and
- an idea, concept, principle, discovery, fact, actual event, process, or method contained in a work

A work that's “in the public domain” is one that does not have copyright protection, so anyone may use all or part of it in another work without charge.

In copyright law, it's important to distinguish between the ideas in a work and the author's expression of the ideas. The ideas in a work are unprotected matter. But an idea must be expressed in some way, and the expression or means of expression of an idea is protected matter.

For example, copyright law doesn't protect the idea of a determined captain hunting a giant whale. But copyright law does protect the particular expression of this idea in the book *Moby-Dick*.

Put another way, the author of a work has no exclusive right to the underlying ideas, concepts, principles, discoveries, facts, actual events, processes, or methods contained in a work. But the author's copyright does extend to the means by which those are expressed, described, depicted, implemented, or otherwise communicated in the work.

If you find that Plaintiff is seeking copyright protection in:

- a portion of a work that isn't original to the author;
- a portion of the work that's in the public domain; or
- an idea, concept, principle, discovery, fact, actual event, process, or method expressed or described in a work, you should exclude that material from the protected matter Plaintiff's copyright infringement claim can be based on.

SPECIAL INTERROGATORIES TO THE JURY

Do you find that Plaintiff is seeking copyright protection in:

1. A portion of a work that is not original to the author;

2. A portion of the work that is in the public domain; or
3. An idea, concept, principle, discovery, fact, actual event, process, or method expressed or described in a work?

Answer Yes or No_____

If your answer to the above question is “Yes,” as to any material in which Plaintiff is claiming copyright protection, you should exclude that material from the material Plaintiff’s copyright infringement claim can be based on.

Copyright—Ownership—General Charge

Now that I’ve explained validity, we’ll move to the issue of ownership.

Plaintiff must prove ownership of a copyright in “Fragment of a Novel” by a preponderance of the evidence. Plaintiff can prove ownership by evidence showing that he/she:

- is an author (or creator) of the work and didn’t transfer to another the exclusive rights being asserted, or
- acquired legal ownership by transfer of the copyright in the exclusive rights Defendants allegedly infringed.

Copyright—Ownership—Individual Authorship

Plaintiff claims ownership of “Fragment of a Novel” as an author of the work—the creator of the original expression in a work that is entitled to copyright protection.

SPECIAL INTERROGATORY TO THE JURY

Do you find that Plaintiff is the person who actually created the work?

Answer Yes or No_____

Copyright—Infringement—Introduction to Elements

If you’re persuaded that Plaintiff owns a valid copyright, you can consider whether Defendants improperly copied Plaintiff’s copyrighted material. It is the burden of Plaintiff to show that Defendants infringed on his/her valid copyright. This is called “infringement” of a copyright. Plaintiff must show that Defendants infringed on his/her valid copyright.

In this case, Plaintiff claims that Defendants infringed his/her copyright in Plaintiff’s copyrighted work by copying parts of it and including the copied material in Defendants’ work ”The Vampyre”. To succeed on this claim, Plaintiff must prove that Defendants copied the parts of Plaintiff’s copyrighted work that the law protects.

There are two ways in which Plaintiff can prove a claim of copyright infringement.

First, Plaintiff can show direct evidence that Defendants actually copied the copyrighted material. For example, Plaintiff could introduce believable eyewitness testimony or an admission by Defendants. Such direct evidence is rare.

Or second, Plaintiff can show indirect or circumstantial evidence that Defendants copied his/her work. For example, indirect evidence of infringement may be proof that Defendants tried to get a copy of Plaintiff's work and then published a book, song, etc. that is substantially similar to Plaintiff's book, song, etc.. In general, the two elements of infringement are (1) access and (2) substantial similarity.

Copyright—Infringement—Access

Remember, I described the two general elements of infringement as (1) access and (2) substantial similarity. I'll now discuss access in more detail.

Plaintiff can show that Defendants had “access” to his/her work by showing that Defendants had a reasonable opportunity to see/hear the work. It isn't necessary to show that Defendants actually saw/heard Plaintiff's work before creating Defendants' own work if the evidence reasonably establishes that Defendants could have seen/heard it and could have copied it.

But you can't base a finding that Defendants had access to Plaintiff's work on mere speculation, conjecture, or a guess. To support a finding of access, there must be more than just a slight possibility of access. There must be a reasonable possibility of access.

Sometimes Plaintiff can't show that Defendants had access to his/her work before Defendants created an alleged copy. In these cases, Plaintiff can still establish a rebuttable presumption of copying by showing that the material Defendants allegedly copied is so strikingly similar to his/her copyrighted material that the similarity is unlikely to have occurred unless there was copying.

Put another way, if Plaintiff's work and Defendants' work are so strikingly similar that a reasonable person would assume Defendants copied from Plaintiff's work and that there is no possibility of independent creation, coincidence, or prior common source, then Plaintiff is entitled to a rebuttable presumption that copying occurred. “Strikingly similar” is a greater degree of similarity than “substantially similar.” An accused work is substantially similar to an original piece if an ordinary observer/listener would conclude that the accused work's creator unlawfully took protectable material of substance and value from the original piece. Even if there is little similarity between the pieces, the accused work can still be substantially similar if the copied parts from the original piece are an important quality. A “rebuttable presumption” means that you assume that copying occurred unless Defendants proves that it didn't happen.

If Plaintiff shows (1) that Defendants had access to the copyrighted material and that there is substantial similarity between the two works, or (2) that the works are strikingly similar, then the burden of proof shifts to Defendants to prove that his/her work is an independent creation—not a copy. Proof that a work is an independent creation overcomes a presumption of copying.

SPECIAL INTERROGATORIES TO THE JURY

Do you find from a preponderance of the evidence:

1. That Defendants copied Plaintiff's work?

Answer Yes or No _____

If you answered “Yes,” don't answer Questions Nos. 2 through 4.

2. That Defendants had access to Plaintiff's work—that is, that Defendants had a reasonable opportunity to view/hear it?

Answer Yes or No _____

And, that the allegedly copied portion of Plaintiff's work is substantially similar to Defendants' work?

Answer Yes or No _____

If you answer "No" to either portion of this question, proceed to Question No. 3. If you answer "Yes" to both portions, you may skip Question No. 3 and proceed to No. 4.

3. That the allegedly copied part of Plaintiff's work is so strikingly similar to Defendants' work that the similarity is unlikely to have occurred unless there was copying?

Answer Yes or No _____

4. That Defendants' work was independently created and was not copied from Plaintiff's work?

Answer Yes or No _____

Copyright—Infringement—Substantial Similarity

Having discussed access, I'll now discuss the issue of substantial similarity. Plaintiff must prove that Defendants' accused work is substantially similar to his/her copyrightable expression in the copyrighted work. Defendants' accused work is substantially similar in expression to Plaintiff's if an ordinary observer/listener would conclude that Defendants unlawfully took Plaintiff's protectable expression by taking the material of substance and value.

Even if the degree of similarity between Plaintiff's copyrighted work and Defendants' accused work is small in quantity, you can still find that there's substantial similarity if the copied portions of Plaintiff's copyrighted work are important in quality.

But if Defendants' copying is minimal or trivial, you shouldn't find infringement.

SPECIAL INTERROGATORIES TO THE JURY

Do you find from a preponderance of the evidence:

1. That an ordinary observer, upon looking at both Defendants' accused work and Plaintiff's copyrighted work, would conclude that there are similarities.

Answer Yes or No _____

If you answered "Yes," continue to the next question.

2. That the similarities are more than trivial?

Answer Yes or No _____

If you answered "Yes," continue to the next question.

3. That, even if the similarities are small in quantity, they are substantial in quality?

Answer Yes or No _____

If you answered “Yes,” continue to the next question.

4. That the similarities are sufficiently substantial to cause an ordinary observer to conclude that Defendants unlawfully took Plaintiff's protectable expression by taking the material of substance and value?

Answer Yes or No _____

On Plaintiff's claim that the copyrighted work and the accused work of Defendants are substantially similar we find for (check one):

Plaintiff: _____

Defendants: _____

Copyright—Defenses—Independent Creation

As a defense, Defendants asserts that he/she/it created his/her/its work independently—without copying Plaintiff's copyrighted work.

If you find by a preponderance of the evidence that Defendants created his/her/its work independently, you should find in his/her/its favor.

SPECIAL INTERROGATORY TO THE JURY

1. Do you find by a preponderance of the evidence that Defendants created his/her/its work independently?

Answer Yes or No _____

Copyright—Defenses—Affirmative Defense— Statute of Limitations

Defendant claims that Plaintiff's copyright claim is barred by the statute of limitations, which is a time limit for bringing a claim.

To establish that the statute of limitations bars Plaintiff's copyright claim, Defendant must prove by a preponderance of the evidence that Plaintiff failed to file his/her lawsuit within three years after he/she knew or, in the exercise of reasonable diligence, should have known about the infringement.

Each act of infringement is a separate harm that creates an independent claim for relief. The statute of limitations only prevents Plaintiff from recovering remedies for infringing acts that occurred more than three years before Plaintiff filed his/her lawsuit.

SPECIAL INTERROGATORIES TO THE JURY

1. Did Plaintiff fail to file his/her lawsuit within three years after he/she knew or, in the exercise of reasonable diligence, should have known about the infringement?

Answer Yes or No _____

2. If the answer to the above question is “Yes,” do you find that the statute of limitations bars Plaintiff’s copyright-infringement claim?

Answer Yes or No _____

Copyright—Defenses—Affirmative Defense— Implied License

Defendant claims that Plaintiff granted him a license to use Plaintiff’s copyrighted work. A license is a contract giving someone permission to use the work. A license doesn’t have to be in writing. Rather, as alleged here, a license can be implied from conduct. To establish this defense, Defendant must prove each of the following by a preponderance of the evidence:

First, you must find that Plaintiff created the work, or caused it to be created, at Defendant’s request or the request of someone acting on Defendant’s behalf.

Second, you must find that Plaintiff delivered the work, or caused it to be delivered, to Defendant or someone acting on Defendant’s behalf.

And third, you must find that Plaintiff intended that Defendant copy, distribute, publicly display, publicly perform, or create derivative works based upon his/her copyrighted work. Plaintiff’s intent may be inferred from the work’s nature or the circumstances surrounding the work’s creation.

If you find that Defendant has proved these elements by a preponderance of the evidence, your verdict must be for Defendant on the claim of copyright infringement if Defendant’s use doesn’t exceed the scope of the his/her/its license. Defendant can still commit copyright infringement if he/she/it exceeded the scope of the license.

SPECIAL INTERROGATORIES TO THE JURY

1. Did Plaintiff create the copyrighted work at issue, or cause it to be created, at Defendant’s request or the request of someone acting on Defendant’s behalf?

Answer Yes or No _____

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

2. Did Plaintiff deliver the copyrighted work at issue, or cause it to be delivered, to Defendant or someone acting on Defendant’s behalf?

Answer Yes or No _____

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

3. Did Plaintiff intend that Defendant copy, distribute, publicly display, publicly perform, or create derivative works based upon his copyrighted work?

Answer Yes or No _____

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

4. Was Defendant’s use of the copyrighted work within the scope of the implied license?

Answer Yes or No _____

5. If the answer to the above question is “Yes,” do you find that Defendant had an implied license to use Plaintiff’s copyrighted work?

Answer Yes or No _____

Copyright—Defenses—Affirmative Defense—Copyright Estoppel (Advisory Jury)

Defendants claim that Plaintiff is barred from asserting his copyright infringement claim against Defendants by the doctrine of estoppel. To establish estoppel, Defendants must prove each of the following elements by a preponderance of the evidence:

First, you must find that Plaintiff knew the facts of Defendants’ infringing conduct.

Second, you must find that Plaintiff’s statement or conduct (either action or inaction) caused Defendants to believe that Plaintiff wouldn’t pursue a claim for copyright infringement against him/her/it.

Third, you must find that Plaintiff intended for Defendants to act on his/her statement or conduct, or Defendants had a right to believe Plaintiff so intended.

Fourth, you must find that Defendants didn’t know that Plaintiff would pursue a claim for copyright infringement against him/her/it.

And fifth, you must find that Defendants were injured as a result of their reliance on Plaintiff’s statement or conduct.

If you find that Defendants has proved these elements by a preponderance of the evidence, your verdict must be for him/her/it on the claim for copyright infringement.

SPECIAL INTERROGATORIES TO THE JURY

1. Did Plaintiff know the facts of Defendants’ infringing conduct?

Answer Yes or No _____

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

2. Did Plaintiff make a statement or act in a way that caused Defendants to believe that Plaintiff wouldn’t pursue a claim of copyright infringement against him/her/it?

Answer Yes or No _____

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

3. Did Plaintiff intend for Defendants to act on his/her statement or conduct, or did Defendants have a right to believe that Plaintiff intended him/her/it to act on his/her statement or conduct?

Answer Yes or No _____

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

4. Did Defendants know that Plaintiff would pursue a claim for copyright infringement against him?

Answer Yes or No _____

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

5. Did Defendants rely on Plaintiff’s conduct?

Answer Yes or No _____

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

6. Were Defendants injured as a result of his reliance on Plaintiff’s statement or conduct?

Answer Yes or No _____

7. If the answer to the above question is “Yes,” do you find that the doctrine of estoppel bars Plaintiff from asserting his copyright infringement claim against Defendants?

Answer Yes or No _____

Copyright—Defenses—Affirmative Defense—Abandonment

Defendant contends that a copyright does not exist in Plaintiff’s work because Plaintiff abandoned the copyright. Plaintiff cannot claim ownership of the copyright if it was abandoned. In order to show abandonment, Defendant has the burden of proving each of the following by a preponderance of the evidence:

1. Plaintiff intended to surrender ownership rights in the work; and
2. an act by Plaintiff evidencing that intent.

Mere inaction or publication without a copyright notice does not constitute abandonment of the copyright; however, these may be factors for you to consider in determining whether Plaintiff has abandoned the copyright.

If you find that Plaintiff has proved his/her claims in accordance with the Instructions, your verdict should be for Plaintiff, unless you find that Defendant has proved each of the elements of this affirmative defense, in which case your verdict should be for Defendant.

SPECIAL INTERROGATORIES TO THE JURY

1. Did Plaintiff intended to surrender ownership rights in the work?

Answer Yes or No _____

2. Did Plaintiff evidence the intent to surrender ownership rights in the work?

Answer Yes or No _____

COUNT II

Appropriation of Image or Likeness

Issues in the Case

This case concerns whether Defendants are obligated to compensate Plaintiff for using his/her image, without his/her knowledge and consent in a video game.

Plaintiff is seeking recovery of damages from Defendants for their violation of Section 540.08, Suwannee Statutes, which prohibits the unauthorized publication of a person's name or likeness for commercial or advertising purposes without Plaintiff's express written consent. Plaintiff seeks damages for Defendants' misappropriation of his/her likeness; portraying him/her in a false light.

Issues on Statutory Claim for Appropriation of Image or Likeness

The issues for your determination on the claim of Plaintiff against Defendants for violation of the Suwannee Statute prohibiting unauthorized publication of a person's name or likeness are:

1. Whether Defendants published, displayed, or publicly used the likeness of Plaintiff, without his/her express consent, as Plaintiff contends. If so:
2. Whether Defendants, by publishing, displaying or publicly using her image, wrongfully exploited or appropriated Plaintiff's name or likeness for a commercial trade or purpose.

SPECIAL INTERROGATORIES TO THE JURY

1. Do you find that Defendants used Plaintiff's name, likeness or picture for purposes of advertising or trade without obtaining his/her written consent?

Answer Yes or No _____

2. If yes, do you find that Defendants **knowingly** used Plaintiff's name, likeness or picture for purposes of advertising or trade without obtaining his/her written consent?

Answer Yes or No _____