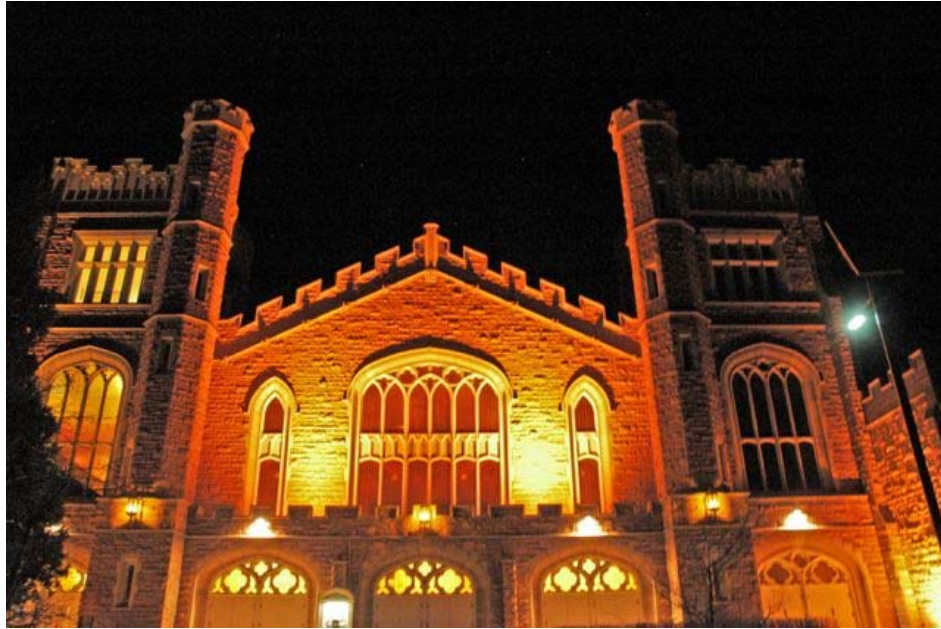


Macky Auditorium



History:

Mr. Macky donated \$300,000 in his will to the University.

After Macky's death, C.U. President Baker asked architects Gove and Walsh of Denver to combine features of buildings he had seen and admired in his travels abroad – the Palazzo Vecchio in Florence, The King's Chapel in Cambridge, The Magdalene Tower in Oxford, and a New York City Church. Photographs were turned over to the architects with the request to "harmonize" the elements, if possible and make "something different." The result seems to be generally approved.

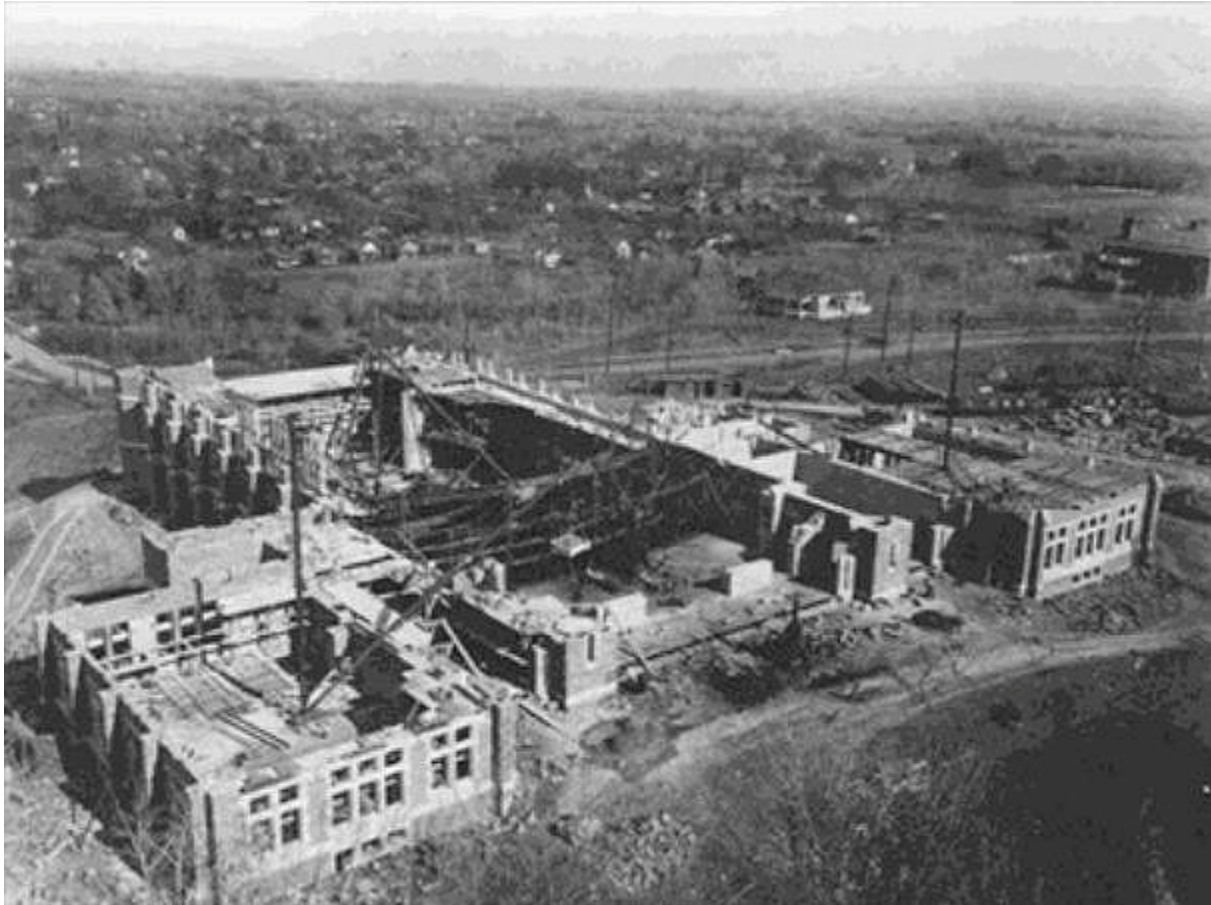


Mr. Macky

The Macky Auditorium was constructed in 1923 and is one of the most recognized buildings on-campus. As with the rest of the campus, it suggests medieval Europe, built in sandstone and brick with neo-gothic towers.

Some of the amazing talent that has appeared at the Macky over the years:

Harry Bellefonte, Benny Goodman, Herbie Hancock, YoY o Ma, Wynton and Branford Marsalis, Penn and Teller, Tori Amos, REM, The Dalai Lama, Dr. Jane Goodall, the Archbishop Desmond Tutu and countless others.



Construction of the auditorium

Other happenings at the Macky:

In 1953 someone made it to the top of the tower by scaling it without any climbing equipment



Stairs in west tower

In 1969 Students for a Democratic Society rioted as a lecture by S.I. Hayakawa by throwing lighted cigarettes, folding chairs and a bottle at him.



Stairs leading to tower room

In 1971 several hundred students attempted to crash a Neil Young concert, breaking the front doors and all of the front windows. The police eventually broke-up the crowd using fire hoses.

Technical Director J. P. Osnes said that during the weeks just before and after Halloween there is a significant increase in the number of attempted break ins

Alan Cass was quoted as saying "I quite frankly have been concerned about these ghost stories, That's not how (Elaura) she should be remembered. Those familiar with her case and her family say the murdered student would not be the type supposed to haunt the scene of her death. Elaura was a devout Christian, they say. She would have forgiven her killer and been eager to be with her Lord." A family friend who wished to remain anonymous says, "If ghosts are supposed to haunt scenes of their demise because of the horrific nature of the crime, of their inability to accept their death, then that wouldn't have been her"



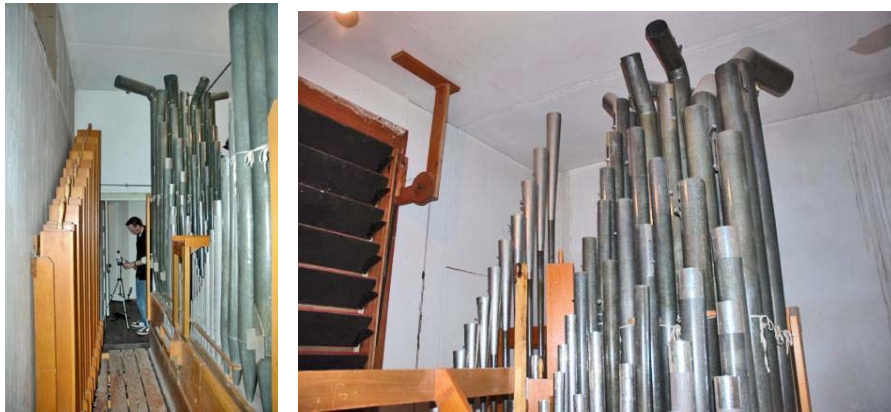
Entrance to Tower room

The Murder:

On July 6, 1966 a 20-year old zoology major named Elaura Jeanne Jacquette was having her lunch and bird watching on the grass near the Macky while she waited for a couple of children that she was babysitting to get out of a nearby theatre watching the Incredible Mr. Limpet. The

remains of her lunch, her binoculars and her wallet were found near the irrigation channel that runs between the Guggenheim and Hale buildings.

Her body was discovered later that afternoon by a couple of students in the organ recital room in the west tower of the Macky Auditorium. Elaura had been raped and beaten to death so ferociously several of her teeth were knocked out. Someone had tried to set her face on fire, possibly to hide her identity, but the blood had thwarted the attempt.



Practice organ pipes

A Police investigation concluded Elaura had tried to crawl away from her attacker, who had swung her by the feet until blood splattered as high as seven feet on most of the room's walls.

More than 1,000 people were interviewed and 30 days later, a campus janitor named Joseph Dyre Morse was arrested. Morse, 37, had two teenage daughters who had seen their dad on the day of the murder carrying a bucket of bloody clothing. The print on the plywood board at the crime scene also matched Morse.

Witnesses had seen Morse drinking at a bar near the campus that day. There were also reports of him making passes and threatening people at the bar.

Morse was sentenced to 888 years in prison. He claimed innocence until 1980 when he confessed. He met Elaura when she worked at the CU admissions office. He never said how he lured her up the stairs, but Elaura was an accomplished singer, pianist and loved music. He may have used that as an excuse.

Once he had her in the Macky tower, Morse said he made sexual advances which she rejected. Then, he said "things got out of hand". He refused to say anything more and died in prison in 2005 at the age of 77.

The Appeal:

Robert L. Pitler, Denver, Colo., for plaintiff-appellant. E. Ronald Beeks, Asst. Atty. Gen. (John P. Moore, Atty. Gen., and John E. Bush, Deputy Atty. Gen., on the brief), for defendant-appellee. Before LEWIS, Chief Judge, and MOORE* and DOYLE, Circuit Judges. WILLIAM E. DOYLE, Circuit Judge. The judgment which the appellant here seeks to reverse is that of a denial of his petition filed pursuant to 28 U.S.C. 2254, wherein he prayed for the issuance of a writ of habeas corpus releasing him from confinement in the Colorado State Penitentiary. This petition was filed January 29, 1973 and the trial court rendered its opinion denying it on June 1, 1973. Defendant was convicted in State District Court on a charge that he murdered one Elaura Jeanne Jaquette on July 9, 1966. The Supreme Court of Colorado affirmed the conviction on March 24, 1969. See 168 Colo. 494, 452 P.2d 3. After that, a Rule 35(b) case was filed in State District Court which raised points and contentions which had not been brought to the attention of the Colorado court on the writ of error. The trial court fully considered these additional contentions and denied relief. Again, the Colorado Supreme Court affirmed this decision in *Morse v. People*, 501 P.2d 1328 (1972). Soon thereafter, the 2254 petition was filed in the District Court for the District of Colorado, and we now review the judgment rendered in that proceeding.

On the original appeal the Colorado Supreme Court refused to consider the two issues mentioned above because of failure to raise them in the trial court. The inadequate record also precluded the requested review. The contentions were considered in a subsequent review and were determined to be wholly lacking in merit. The main contentions are, first, that the appellant's constitutional rights were violated as a result of the admission at the trial of depositions of his daughters which contained evidence which strongly inculpated him. In this connection, a related argument is that his right to confront witnesses as guaranteed by the Sixth Amendment to the Constitution of the United States was violated. Second, that at the original trial appellant's right to be represented by counsel was violated in that the counsel assigned to him were ineffective. Still a further point is that appellant's rights under the Fifth and Fourteenth Amendments were violated because, according to the argument of the present counsel, he was not given adequate Miranda warnings in the second opinion of the Supreme Court of Colorado and that of the United States District Court as well, the issues which are now raised were fully explored and tested. Furthermore, a careful consideration of the record in the District Court fails to show any meritorious basis for the granting of relief. We shall nevertheless comment briefly on the points advanced. The argument and contention concerning the alleged prejudice arising from the use of the depositions of defendant's minor daughters stem from the provision of the Colorado Constitution, Article II 17, which contains a prohibition against the use of depositions if the presence of witnesses can be obtained. Such an issue is not here appropriate, however, unless it contravenes the Constitution of the United States. Our inquiry is, of course, limited to whether appellant's federally protected rights were violated and with particular reference to appellant's rights granted by the Fourteenth Amendment, for obviously the state court's decision construing and applying its Constitution cannot be reviewed for the purpose of determining whether it is erroneous. However, the defendant is not precluded from arguing that there has been a violation of his constitutional rights, even though the basic violation relied on is Article II 17 of the Colorado Constitution,

supra, and there is no problem here of failure to exhaust state remedies nor intentional bypass thereof. Cf. *Fay v. Noia*, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963). See also *Henry v. Mississippi*, 379 U.S. 443, 85 S.Ct. 564, 13 L.Ed.2d 408 (1965). It is to be noted that the deponents were minors, one being 12 years old and the other 17. At the 35(b) motion hearing the judge found that there was ample opportunity for the defendant through his counsel to object to the introduction of these depositions but he did not do so. The judge also called attention to the fact that the testimony given was highly prejudicial to the defendant. He summarizes it as follows: That the testimony contained in the depositions, in summary, is that on the day of the murder, the defendant arrived home late in the afternoon; that he was wearing clothes which were ill-fitting that he had his clothes in a bucket in which some fluid was contained; that he was bare footed; that his shoes were muddy and matted with what appeared to be blood; that he requested his daughter to wash his clothes for him and clean and shine his shoes, which she did; and that he later put the clothes he had worn home into the incinerator and burned them. The trial court in the Rule 35(b) hearings also took notice of the fact that there was evidence at the trial of concern for the juvenile witnesses on the part of the judge and the attorneys on both sides because of the trauma to both the defendant-father and the daughters which would flow from the reading of these depositions. The court made the obvious observation that there would have been additional trauma had the testimony been presented live. The opinion of Mr. Justice Erickson, in reviewing the 35(b) motion wherein he wrote that the deposition route was taken as a matter of strategy, was fully supported. In view of these facts, we are unable to perceive federal constitutional basis. It is argued that the right granted by the Colorado constitutional provision is absolute and not subject to waiver. We disagree. The clause of Article II 17 dealing with the use of a deposition is an incidental provision. The main thrust of the section is prevention of imprisonment of a witness who cannot give bond or security for his or her appearance and thus the clause limits use of the testimony of an itinerant witness. This very clause allows the defendant to secure the presence of the witness if he wishes. Reading the provision in its entirety and considering its object and purpose, we are convinced that there could be a waiver and that indeed there was. Nor is there any merit to the contention that the defendant's right to confront the witnesses was infringed. The object of the confrontation provision of the Sixth Amendment is to insure the right of examination and cross-examination. An early decision mentioned that its object was prevention of 'depositions or ex parte affidavits . . . being used against the prisoner in lieu of a personal examination and cross-examination of the witness, in which the accused has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.' *Mattox v. United States*, 156 U.S. 237, 242-243, 15 S.Ct. 337, 339, 39 L.Ed. 409 (1895). The Supreme Court has also held, however, that the right may be waived, but it must be uncoerced waiver. See *Brookhart v. Janis*, 384 U.S. 1, 86 S.Ct. 1245, 16 L.Ed.2d 314 (1966). The case most often cited in support of exclusion of the testimony is *Pointer v. Texas*, 380 U.S. 400, 406-407, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965). The complaining witness in that case had testified at a preliminary hearing at which defendant was not represented by counsel and had not cross-examined. By the time of trial, the witness had left the state and no effort had been made to secure his presence. See also *Barber v. Page*, 390 U.S. 719, 725, 88 S.Ct. 1318, 20

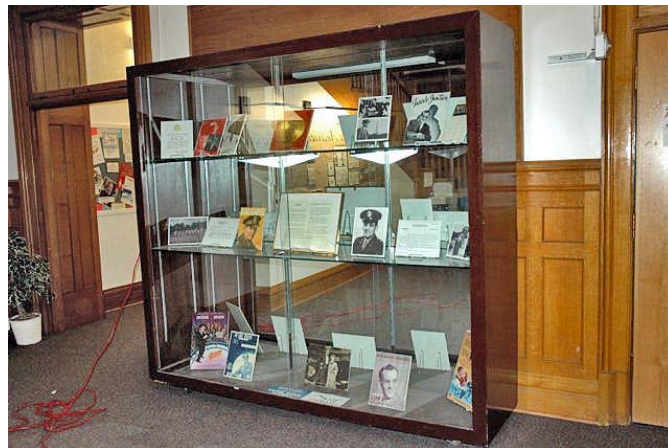
L.Ed.2d 255 (1968) in which the preliminary hearing testimony of a witness who was in a federal prison was offered; the Supreme Court held that such testimony could not be used because the witness was not unavailable. See also *Mancusi v. Stubbs*, 408 U.S. 204, 92 S.Ct. 2308, 33 L.Ed.2d 293 (1972). But see *Dutton v. Evans*, 400 U.S. 74, 91 S.Ct. 210, 27 L.Ed.2d 213 (1970) and *California v. Green*, 399 U.S. 149, 155-156, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970), wherein prior hearsay statements of a witness were ruled admissible, notwithstanding that he claimed at the trial that because he was under the influence of LSD at the time of the occurrence he could neither deny nor affirm the truth of the prior statements which were offered and received; the witness was present at trial and was subject to cross-examination. A final contention of appellant that his rights were violated in connection with the obtaining of post arrest statements is also without merit. He, of course, contends that he was not given adequate warning. However, the record belies this. As the Supreme Court of Colorado noted in the first review, following the defendant's arrest the first thing that the officers did was to read and explain the so-called advisement form, which form was signed by the defendant. The Court further noted that the appellant was readvised on several occasions and signed one or two of the so-called advisement forms. Soon after his arrest he was taken before the municipal judge at Boulder and was again advised of his constitutional rights and of his right to counsel. In the light of this, it is impossible to hold that the defendant's constitutional rights were violated. There is no merit in any of the petitioner's contentions. Hence, the judgment of the District Court should be and the same is hereby affirmed.



Organ still in tower room

On October 14, 2006 a small sandstone memorial with the inscription “It is neither spring for summer: it is always – Theodore Roethke” was placed at the location that Elaura’s belonging were found. It was placed there on her birthday; she would have been 61.

Her mother Opal Jaquette said “She was such a good student who spent as much time serving the Lord as she did in school.” She keeps memories of her daughter in a three ring binder filled with report cards, Bible certificates, and programs from her piano recitals” One page is a wedding anniversary card that Elaura had purchased for her parents, it is blank. She had purchased it six months in advance of her parents twenty-second anniversary.



Glen Miller display

Elaura loved to sing and often performed in solos and duets in church. She had just started skiing and want to become a biology teacher. She worked various jobs and earned extra cash one summer by picking fruit to help pay for contact lenses.



Tower room with equipment set up

After Elaura's death, the family moved to Guam to cope, twenty-two years later they moved back to Western Colorado. Frank (Elaura's father) chooses not to talk about his daughter. His wife said "It's been a hard forty years and he is not doing well"



Chair in original organ location



Original organs keyboard



Our base location

Reported Activity:

- The sounds of singing coming from all over the building
- Reports of a man in a brown suit wandering the Auditorium
- Reappearing blood stains on the wall of the organ practice room
- The sound of talking coming from the tower room
- Reports of the lights in the tower room turning on and off when there is nobody in the building



The tower room

Additional notes:

Director Alan Cass stated “The whole room was cleaned up and painted over, years ago. I saw it soon after and you would never know what happened up there.”

After the murder the room was turned into an office for a retired professor, and he kept the location off-limits because he wanted his privacy.

Over the years many different people have had keys to the room and probably looked in or invited others to see the room.

Investigation:



Ceiling of the tower room

Bryan & Baxter visited the Macky and the room where the murder had taken place to discuss the logistics and interview people about the legends. It was determined that the investigation would take several days of monitoring to collect enough data to gather accurate baselines for the location. We scheduled a three-day period to conduct the investigation.



Tower room entrance

The team arrived around 9:00 p.m. Friday evening and started setup and baseline EMF and Temperature readings.

The first night we located the base monitoring location on the east side of the main staircase opposite the door to the tower. On Sunday we move the base location to the west wall of the stairs just next to the door to the tower. The reason for the relocation of the base on Sunday was due to a production company filming on the second floor. Their filming lasted the entire night.

We discovered that the practice organ was still in the room (not hooked up)



Entrance area and door to pipe

Equipment:

- Video camera located on the landing just below the base monitoring location. The camera was facing down the hallway towards the door of the organ practice room covering the entire room



Examining the organ

- Video camera located at the door of the tower looking back towards the base monitoring location > This camera was moved on Sunday to the north-east corner of the stairs to monitor the base location.
- Video camera located ten feet away from the door of the tower room looking back towards the door

- Video camera located at the base of the tower stairs looking up
- Video camera located at the north top of the pipe room in the tower room looking down at the location where the practice organ was originally located



Using Luminol to find blood



Entrance to pipe room

- Video camera located on the bookshelf on the east side of the room looking at the entire room
- Video camera located in the south-west corner of the room looking at the entire room

- Video camera located at the door to the organ practice room looking at the entire room
- Video camera located at the top of the tower stairs looking down
- Microphone located on the landing just below the base monitoring location, On Sunday this microphone was moved to the door of the organ practice room.
- Microphone located at the base of the stairs
- Microphone located in the middle of the organ practice room



Tower entrance

- Microphone located on the bookshelf on the east side of the organ practice room

- Natural EMF meter located on the bookshelf on the east side of the organ practice room
- Natural EMF meter located in the middle of the organ practice room sitting on a wood chair
- Natural EMF meter located on the practice organ located in the north-east corner of the room
- Thermometer located in the stairs near the entrance to the organ practice room
- Thermometer located at the base monitoring location
- Control object (ball) located on the chair in the middle of the organ practice room



Wall opposite organ location

- Control object (ball) located on the bookshelf near the south side of the organ practice room
- Control object (ball) located on the practice organ located in the north-east corner of the organ practice room
- Tri-Field meter used to sweep the entire location on hourly sweeps

- A/C- D/C multi-meter used to monitor power quality of building
- Nikon D-70 used to document location for duration of investigation
- Special light source and luminal to look for the reported blood-stains



View down to tower room entrance

During the investigation we witnessed multiple people trying to break into the building to go to the tower room. Some of them had even brought sleeping bags so they could spend the night.

During the initial EMF sweeps there were no unusual readings

We used luminal to look for the reported blood stains. The luminal was sprayed over most of the surfaces in the room. We used the crime scene photographs to determine where the blood was after the murder. We could not find any blood remaining. The luminal that we used was a brand that destroys any blood after about 30 seconds of exposure, so if there are claims of bloodstains after our investigation we know that they are false.

After the equipment was set up we did new baseline reading and there was no significant difference

The EMF (Manmade and natural) readings were unremarkable throughout the investigation with the exception of two different events. The first noted change in EMF was on Friday night when Bryan & Baxter were in the organ practice room. It was early in the morning when all three meters started randomly detecting low levels of EMF (.5- 1 milligauss) this lasted approximately five minutes. We could not determine a source. The second time was on Sunday when all three meters recorded a large fast changes in EMF (3+ milligauss). It was noted that just after the spike we all heard thunder. This spike in the EMF was caused by a “Thunder-snow” that was happening nearby. The average reading was .5 milligauss for the duration of the investigation.



View down stairs to lobby

We monitored the locations power in an attempt to determine if “dirty power” could account for the claims of electrical issues. Throughout the investigation there was a variance from 102 – 117 volts.

Temperatures in the location were steady and we noted no variances throughout the investigation. The temperature was within a 5-degree variance and averaged 75 degrees.



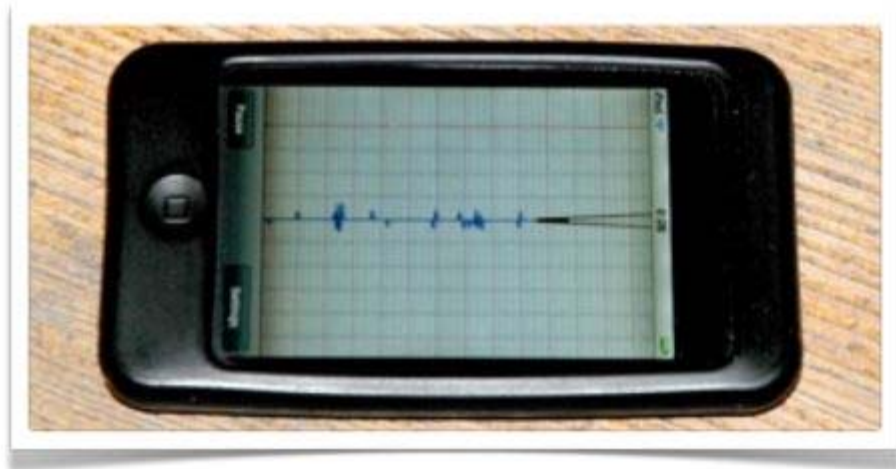
Wall in tower

Audio during the entire investigation was unremarkable. We noted the sound of passing cars. The building did make very loud creaks due to structural settling and contraction/expansion caused by the temperature difference between the inside and exterior of the building.



In tower room

Thunder-snow reached the location and the wind started to pick up. We noted what sounded like people in the organ practice room. The wind was causing the leaded glass windows to pop and whistle very loudly.



**A seismograph shows the
constant vibration of the building**

The radiators located in the organ practice room started to heat up Friday evening. When they reached temperature the pressure relief valves made a sound that was similar to a crowd of people or music at a distance.

At one point the lights in the organ practice room turned on by themselves. We determined that this was caused by the motion sensor on the light being triggered by one of the exterior windows moving in the wind.



Our base location



View from tower entrance to lower floor

The video recordings showed nothing unusual through the duration on the investigation.

None of the control objects showed any signs of movement.

Throughout the investigation we monitored the vibration of the building with seismometers and noted that everywhere in the building there was a small but notable vibration.



Room in opposite tower

Conclusion:



Entrance to tower room

While the Macky has a reputation for being a very active haunt, we found nothing unusual.

Data collected during the investigation did provide some possible explanations for the previously reported activity:

The sounds that the radiators were making could be mistaken for the practice organ or someone singing.

The variance in electricity in the building could account for the reported electrical problems such as lighting turning on and off by itself.



West stairs

The sounds that were caused by a minor wind could be mistaken for the sounds of singing or people walking around in the organ practice room.

The low vibration that we discovered could cause people to feel different types of perceived paranormal experiences, such as sensing something/someone in the room, feelings of being watched, seeing shadows out to the corner of the eyes and religious experiences.



Main entrance hallway

The graffiti that is located at the top of the tower shows that the location has become a local urban legend and a place for the locals to “dare” each other to stay. This was also confirmed by the students trying to break in while we were conducting the investigation.



Basement Hall

While we cannot prove that the location does not have any paranormal activity, we can state that while we monitored the location under several different conditions we were unable to document any unusual activity.

We would like to thank the staff of the University for the assistance with this investigation.



Main entrance and stairs



R.I.P.

Elaura Jacquette

MAY this room
remain peaceful.

AMEN!