



UGA MOCK TRIAL

AUDITION PACKET 2020

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WHAT AN AUDITION ENTAILS

Everyone will **audition as both an attorney and witness**, in your audition you will:

- Deliver an argumentative speech (1-2 minutes) on any topic of your choice. Your speech could be as lighthearted as “Why Zaxby’s is Better Than Cane’s,” or concern a serious issue that is important to you. When you deliver your speech, we will be focused on your public speaking and presentation skills.
- Conduct a cross examination (1-2 minutes) of one of the witnesses whose affidavits are included in this packet. Instructions and tips for cross examination are also detailed in this packet (pgs 6 & 8).
- Sit for a cross examination as the **same witness** you chose to cross. That is, if you choose to cross examine Remy Hollis, you will be cross examined as Remy Hollis.

GENERAL AUDITION FAQs

Q: WHAT IS THE DRESS CODE FOR AUDITIONS?

A: In your audition, you can either dress how you normally would in court, or you can choose to wear a costume that you think your character would wear to court. If you don’t dress as your character, you will have the opportunity to describe what you think they would wear. **Our main dress code recommendation is business professional.**

Q: WHO WILL BE PLAYING THE OPPOSING WITNESS/ ATTORNEY IN AUDITIONS?

A: During your audition, one of our Executive Board members will play the opposite of whatever you are playing. If you are an attorney, we will play the witness you are questioning; if you are a witness, we will play the attorney questioning you. The rest of the Executive Board members will serve as the jury.

EXAMPLE AUDITION OUTFITS



TIPS FOR AUDITIONING AS AN ATTORNEY

PRESENTATION

- **VARIATION.** Vary your volume, inflection, and speed to keep us engaged in your performance.
- **USE YOUR HANDS WHEN APPROPRIATE.** Don't use them all the time, but when you're making big points, you can use your hands to emphasize what you're saying. When you're not using your hands, keep them by your side. It might feel uncomfortable, but it looks confident.
- **DON'T BEGIN EVERY QUESTION** with "Um," "Now," "And," or "So." Avoid being repetitive.
- **KEEP IT SLOW.** Talk slower than what comes naturally to you. People tend to speed up their speech in front of an audience. But remember, the "jury" is hearing the facts of your case for the first time, so you want to make sure you're talking at a pace that is clear and easy to follow.

GENERAL

- **STICK TO MAIN POINTS.** You don't have a lot of time, so make every question count.
- **USE TRANSITIONS,** otherwise known as sign-posts. Sign-posts let us know where your direct/ cross examination is going. A sign-post could be something like: "I would like to ask you a few questions about [topic]." These transitions are especially important for a cross examination. If you want to question a witness on more than one topic, then let us know where you're going next. It makes it easier for us to follow along with your line of thinking.
- **USE SIMPLE, PLAIN LANGUAGE.** Real-life juries don't like attorneys who try to impress them with big words. Big points are much more important.

CROSS EXAMINATION

WHAT IS A CROSS EXAMINATION? As an attorney, you want to try to make your side of the case as strong as possible. Attorneys will cross examine witnesses from the other side of the case, and try to weaken any points they made during direct examination. For example, a plaintiff attorney would cross examine a defense witness. The plaintiff attorney will ask the defense witness yes or no questions with the intent to weaken the defense's case. The plaintiff attorney can also ask questions that strengthen the plaintiff's case. Some general tips for cross examination include:

- **ASK ONLY LEADING QUESTIONS.** Leading questions suggest the answer in the question so the witness can only give a yes or no response. For example, "The defendant does not have a permit to work downtown, does he?"
- **YOU SHOULD ONLY ASK ONE FACT PER QUESTION.** Keep your questions clean and simple. Stick to the indisputable facts from the affidavit and don't try to get the witness to draw a conclusion.
- **DON'T SOUND ANGRY.** Be firm and be confident, but don't be a bully to the witness. Show you're in control without being mean.
- **WATCH OUT FOR NERVOUS TICS.** Don't say "right," "OK," "sure," etc. After the witness answers your question.
- **AVOID REFERENCING THE WITNESS'S AFFIDAVIT IN YOUR QUESTION.** Ask your questions as a matter of fact. Don't say, "In your affidavit you said you saw the defendant, didn't you?" Instead say, "You saw the defendant, didn't you?"



TIPS FOR AUDITIONING AS A WITNESS

DIRECT EXAMINATION

How should a witness behave during direct examination? Witnesses should present the facts from their affidavit in a believable, credible, and likable way.

- **BE BELIEVABLE:** Witnesses should seem like they are real people. Use your acting skills to make us believe that you are the person you're playing.
- **BE CREDIBLE:** Appear unbiased while giving answers that help your side of the case.
- **BE LIKABLE:** Being a witness is all about entertaining the jury! If you're playing a character witness (i.e. Remy Hollis) you have the freedom to show off an accent or throw in jokes as you answer questions. If you're playing an expert witness (i.e. Dr. Hawkins) you can still be friendly and pleasant while being knowledgeable.
- **MAKE EYE-CONTACT:** It shows confidence and builds trust with the jury.



CROSS EXAMINATION

How should a witness behave during cross examination? The witness should be trying to help their side of the case. The opposing attorney will attempt to point out the weaknesses for your side and strengths for their side. You want to help your side by softening the blow. You should still be credible, by giving the appearance that you don't have a stake in the case (that you're unbiased). Some ways to help build credibility are:

- **DON'T FIGHT THE SMALL STUFF.** If it's not a major point, just agree to it. If you act like it's a big deal, the jury will think it's not a big deal. Agreeing to less damaging points will also give you more credibility when you need to fight on the big stuff.
- **KEEP THE SAME TONE YOU HAD ON DIRECT.** Don't sound defensive or drop your character. Be calm, cool, and collected.
- **DISAGREE WITHOUT BEING DISAGREEABLE.** When the attorney asks you a damaging Question, don't be afraid to say "Yes, but..." or "No, that's not quite right..." and give an explanation that benefits your side. There's no need to get into a fight with the attorney.
- **THERE ARE LOTS OF WAYS TO SAY YES OR NO.** Keep us engaged in your performance by varying your answers. Alternate between synonyms like "Correct," "That's right," and "That's true." And even though the attorney will only be asking you yes or no questions, you can briefly elaborate or explain your answer after saying yes or no.



CASE SUMMARY

ATTORNEYS: Use this summary to guide you, but do not ask witnesses questions from this case summary.

WITNESSES: You will not be asked questions from this case summary, but you should still understand the basic facts of the case. You will only be asked questions about the information contained in your affidavit.

MIDLANDS TELEVISION STUDIOS IS SUING DANNY KOSACK, AN ANIMAL TRAINER, FOR NEGLIGENCE AFTER KOSACK'S CHIMPANZEE ATTACKED AND KILLED A STUDIO WRITER.

On June 29, Danny Kosack and Kosack's chimpanzee, Elias, were scheduled to appear on the popular television show Midlands After Dark, hosted by Alex Grace. During a pre show rehearsal, Elias became agitated. The chimpanzee attacked and killed Chris Villafana, a studio writer who was watching the rehearsal.

THE PLAINTIFF is alleging that Danny Kosack did not properly train Elias for the television appearance on June 29. In addition, the plaintiff believes Danny Kosack selected a chimpanzee that was too old and aggressive to appear on Midlands After Dark. These factors led Elias to become agitated and attack Chris Villafana.

THE DEFENSE is alleging that Midlands Television Studios, the studio that owns Midlands After Dark, failed to follow Danny Kosack's safety instructions on June 29. The studio's failure to follow Danny Kosack's safety guidelines led Elias to become agitated and attack Chris Villafana.



INDEX OF TERMS

CROSSEXAMINATION - When an attorney asks questions to a witness called by the other side of the case. The questions asked should undermine the witness's credibility and weaken the other side's case.

DIRECT EXAMINATION - When an attorney asks questions to a witness called by their side of the case. The questions asked during direct examination should strengthen the attorney's side of the case and the witness's credibility.

EXPERT WITNESS - A person with expert knowledge (i.e. a medical examiner) who has information to add to a case.

CHARACTER WITNESS - A person with no expert knowledge who has information about a case.

DEFENSE - The party that is being sued

PLAINTIFF - The party that is bringing the lawsuit

NEGLIGENCE - A failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one's previous conduct).

INDEX OF PEOPLE

ALEX GRACE - The host of Midlands After Dark, a popular talk show owned by Midlands Television Studios

REMY HOLLIS - An eyewitness to the attack on June 29, and a band manager for guests on Midlands After Dark

CHRIS VILLAFANA (DECEASED) - The victim of the attack on June 29th
Danny Kosack - The animal trainer who owned Elias

ELIAS - The chimpanzee who attacked Chris Villafana

JAMESON CLARK - The talent booker for Midlands After Dark

DR. WILLOUGHBY HAWKINS - A primatologist hired to investigate the June 29 attack

SELECT ONE WITNESS TO CROSS & BE CROSSED AS:

Remy Hollis is a **DEFENSE** witness, so if you are playing Remy Hollis you should be trying to help the **DEFENSE'S** case. You will cross examine Remy Hollis like you are an attorney for the defense. This means that Remy Hollis will be “switching sides”, but you will be trying to help the defense both as Remy Hollis and as an attorney cross-examining Remy Hollis.

Your cross examinations should help to prove the defense’s case by demonstrating that the television studio, MTS, was breaking the animal safety guidelines (exhibit 23) that Danny Kosack provided to them. Keep in mind that Remy Hollis is a character witness. **CHARACTER WITNESSES** are usually witnesses who explain the facts of the case and what they saw to the jury. When playing a character witness you should tell the story in an entertaining and engaging way. **CREATIVITY** is something we’re looking for!

Dr. Hawkins is a **PLAINTIFF** witness. You will cross examine Dr. Hawkins like you are an attorney for the plaintiff, and when you play Dr. Hawkins you will want to keep in mind you are a plaintiff witness. This means that Dr. Hawkins will be “switching sides”, but you will be trying to help the plaintiff both as Dr. Hawkins and as an attorney cross-examining Dr. Hawkins.

Your cross examinations should help the plaintiff’s case by attempting to prove that Danny Kosack’s chimpanzee, Elias, was too old and too aggressive for the June 29 appearance. Dr. Hawkins like you are an attorney for the June 29 appearance. Dr. Hawkins is also an expert witness. **EXPERT WITNESSES** are people with expert knowledge hired to talk about the case. **CREDIBILITY** is something we’re looking for!



SAFETY GUIDELINES FOR ELIAS AND DANNY KOSACK'S UPCOMING VISIT

A note from Elias:

I am so thrilled to be coming to see you! I love making new friends and memories, but it is important that everyone I meet is aware of a few things.

Entertaining is a lot of fun for me, but it is also very stressful. I am a wild animal, and I have needs that must be addressed so I can do my best. **Please make sure that everyone who I will come into contact with adheres to the following safety rules.**



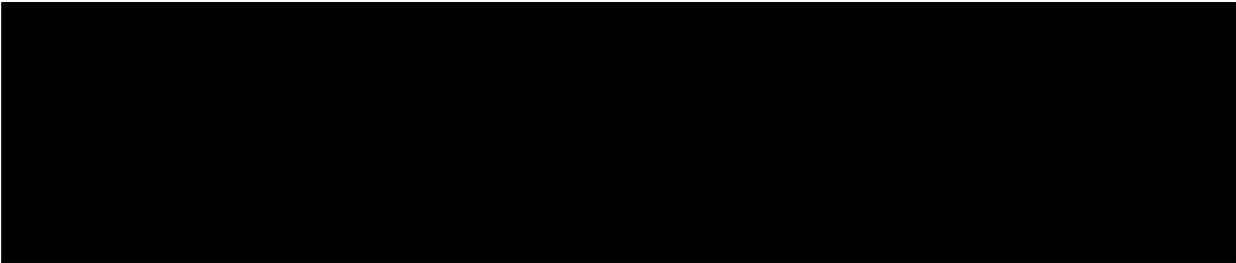
#1. No other animals should be present. This includes service animals. They can make Elias territorial.

#2. Brush your teeth and wash your hands. The smell of food is very confusing for Elias. He is often rewarded with treats for performing his tricks. Please avoid eating or touching food for at least one hour before meeting Elias.



#5. Avoid eye contact and do not make faces at Elias. What you may perceive as a friendly smile could be a declaration of war to our primate friend.

#6. No running or yelling.



S

AFFIDAVIT OF REMY HOLLIS

1 After being duly sworn upon oath, Remy Hollis hereby states as follows: I am over 18 years old
2 and competent to make this affidavit. I am testifying voluntarily and was not subpoenaed or
3 compelled to testify.

4 I work as a band manager and promoter. The bands that I manage often perform on
5 shows aired by Midlands Television Studios (“MTS”). While I stay behind the scenes, I’m the
6 reason that bands like For Those About to Mock are a household name in Midlands. I’ve been in
7 the business for quite a while now, and I’ve managed many bands. Currently, I’m managing The
8 Hound Dogs, who were scheduled to perform on *Midlands After Dark* on June 29, 2017. I was at
9 the studio that morning preparing for their performance.

10 The rehearsal later that day turned out to be one of the most terrifying experiences of my
11 life. The rehearsal was scheduled to take place after lunch and then the shoot with the full
12 audience later that afternoon. I wouldn’t normally be on set for a gig like this, but MTS is
13 notoriously difficult to work with, so I wanted to be there in person to make sure everything went
14 smoothly. Alex Grace is one of the owners of the studio and used to serve as host to the studio’s
15 most popular show. But all of the bookings were handled by Jameson Clark. While Alex was a
16 great show host, Jameson was not good with the administrative tasks needed to run a studio. The
17 first band that I ever booked on *Midlands After Dark* was three or four years ago. These types of
18 bookings were usually pretty straightforward, but Jameson seemed really unorganized about that
19 booking. Jameson was slow to reply to my emails and calls, if Jameson ever replied at all. When
20 my band arrived at the studio that day, they found out that MTS had booked two bands for the
21 same show. I’ve had similar challenges with Jameson and the studio since then too.

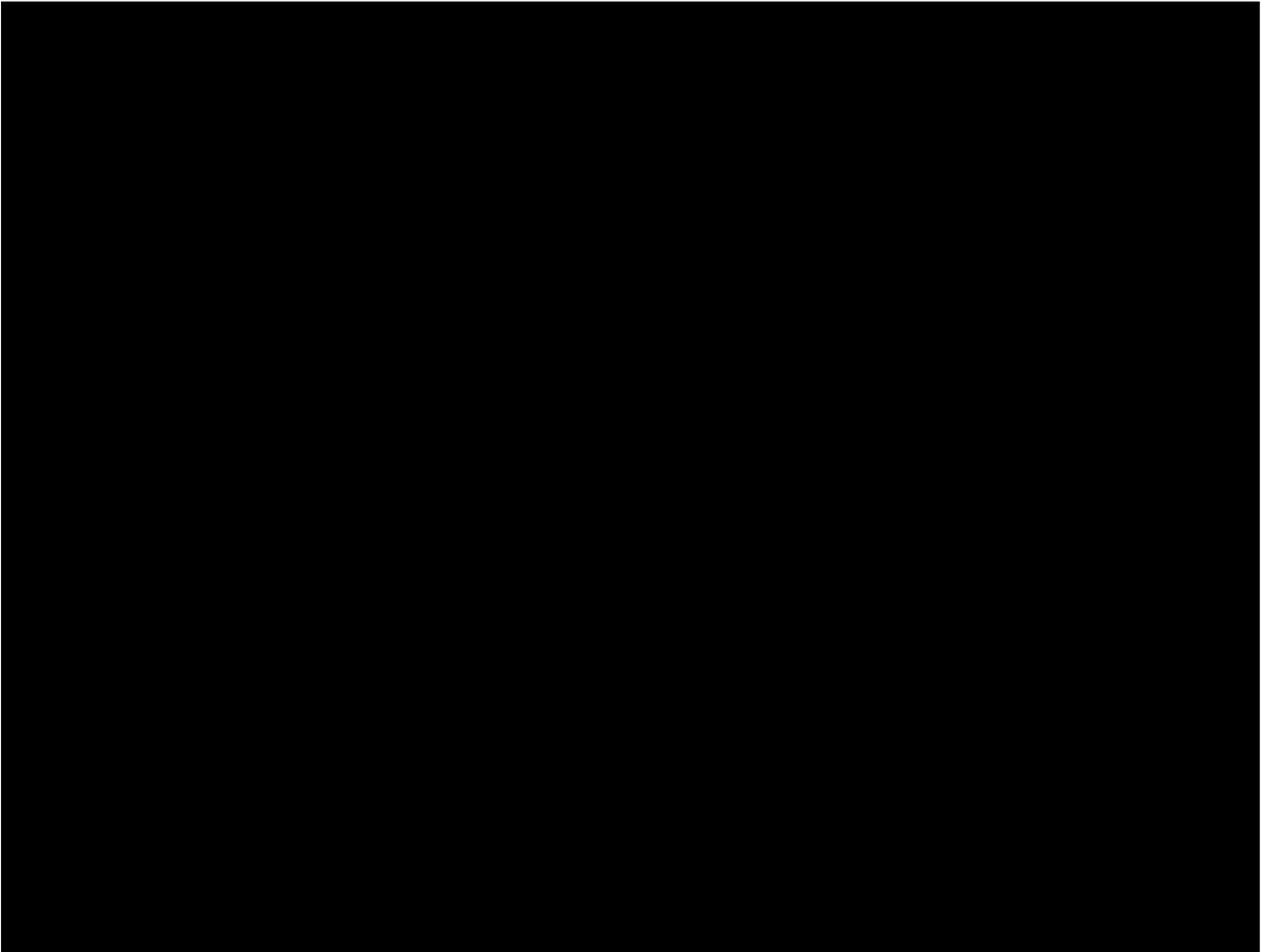
22 For the gig on June 29th, I confirmed with Jameson on the phone and via email that The
23 Hound Dogs were the only musical act for that show. That email also included an attachment. I
24 opened the attachment briefly and immediately closed it when I saw that it seemed to be about
25 some kind of animal act. I reminded Jameson that there are no actual “dogs” in The Hound
26 Dogs. I did not read any of the actual guidelines in the attachment prior to June 29, 2017.

27 Even though I had confirmed everything with Jameson, I decided to attend the rehearsal
28 on June 29, 2017 in person. I arrived at the studio at 11:00 a.m., and the band arrived around
29 11:30 a.m. I did the typical manager stuff with the band and made sure they were comfortable in
30 their dressing room. The drummer, Jackson Lim, seemed to be having an allergic reaction to

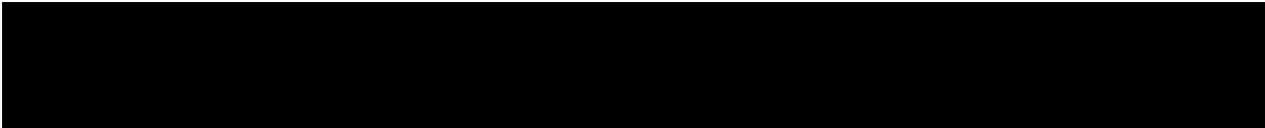
31 something at the studio. The drummer was sneezing constantly. The only other time I had ever
32 seen anything like that occurred when the band and I had a gig at the Midlands Zoo.

33 I left the band's dressing room and saw that the next room down had Danny Kosack's
34 name on the door. The door was cracked open, and I could hear the sounds of some type of
35 animal inside. I thought that this might be causing the drummer's sneezing fit. I knocked on the
36 door to ask if they could move to another room, but no one answered my knocking. I pushed the
37 door open some more, and the room was empty except for an animal in a cage.

38 At the time, I didn't know exactly what kind of animal it was. However, I could tell it
39 was a primate. I later found out that the animal was a chimpanzee named Elias. I've been to the
40 Midlands Zoo a few times. I've also watched a few documentaries about animals. So while I
41 can't say that I'm an expert, the chimp looked agitated to me. While I was in the room, the chimp
42 was holding the bars of the cage with two hands and jumping up and down while making a pretty
43 loud noise. It was like a high-pitched scream. I wasn't worried since the chimp was in a cage. I
44 looked around the room and didn't see anyone there. And then I left.

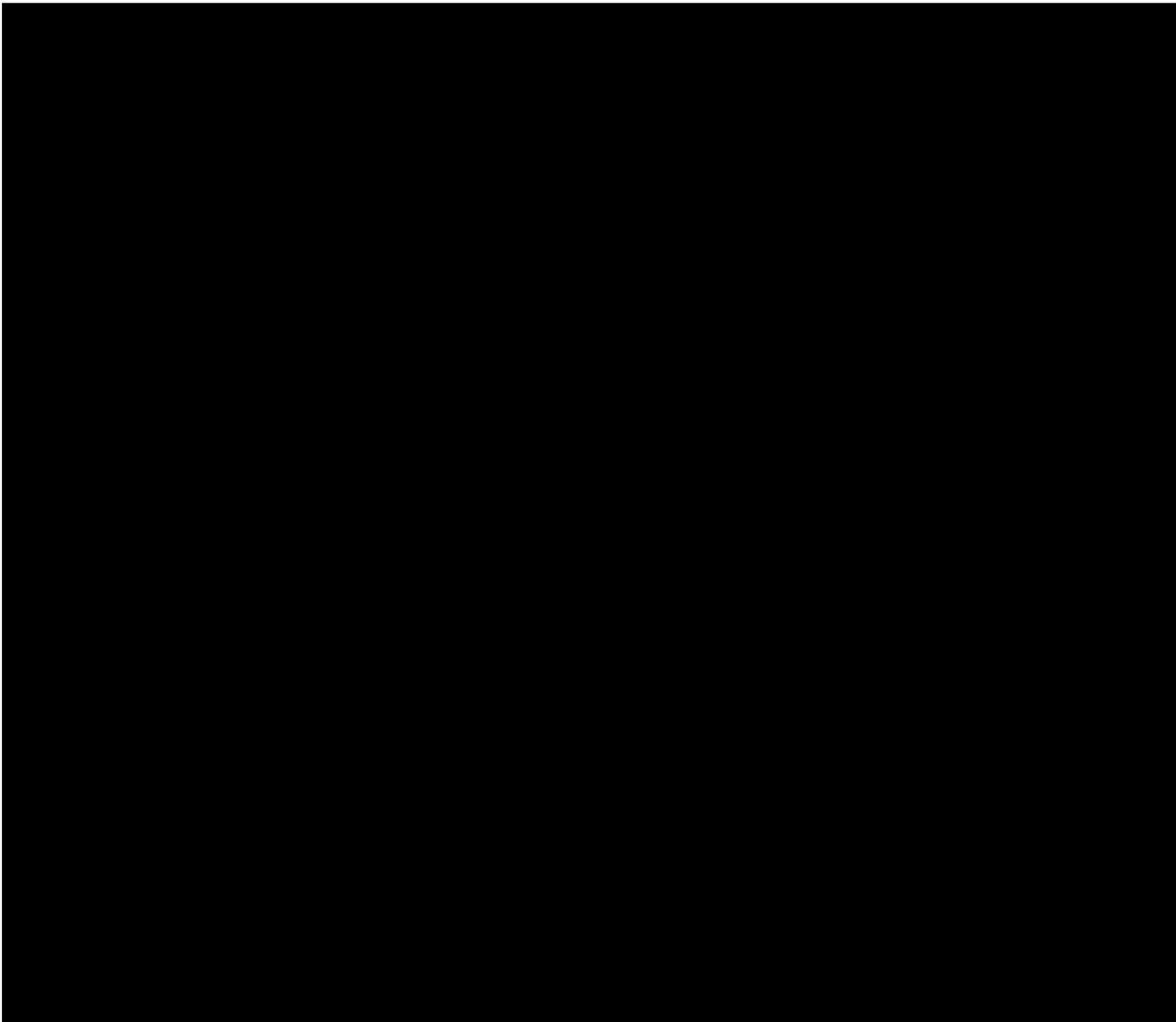


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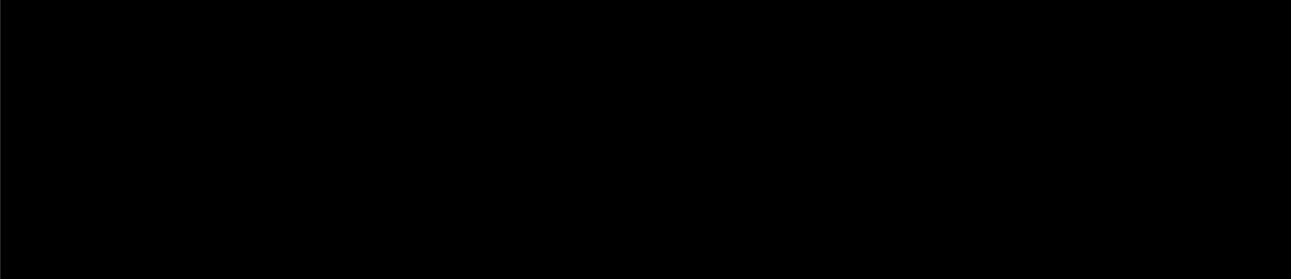


I was worried about my drummer sneezing through their performance. Show sets are a lot smaller than they look on TV. Whatever routine the chimp was going to do was likely to be in the same space where the band was going to perform. If the drummer was bothered by the chimp being in the next room, I assumed he wouldn't be able to play in the same space where the chimp did its act. That's why I decided to go on set to watch. I figured I could get them to clean the area before the band went on. Of course, what happened next changed everything.

I had been in the studio a few times before that day, so I knew my way around. I went towards the set and never saw anyone who worked for the studio. I never saw any signs posted about animals on set, and no one ever stopped me from going to watch. Of course, if someone tried to stop me, I'm sure I could have talked my way on set.

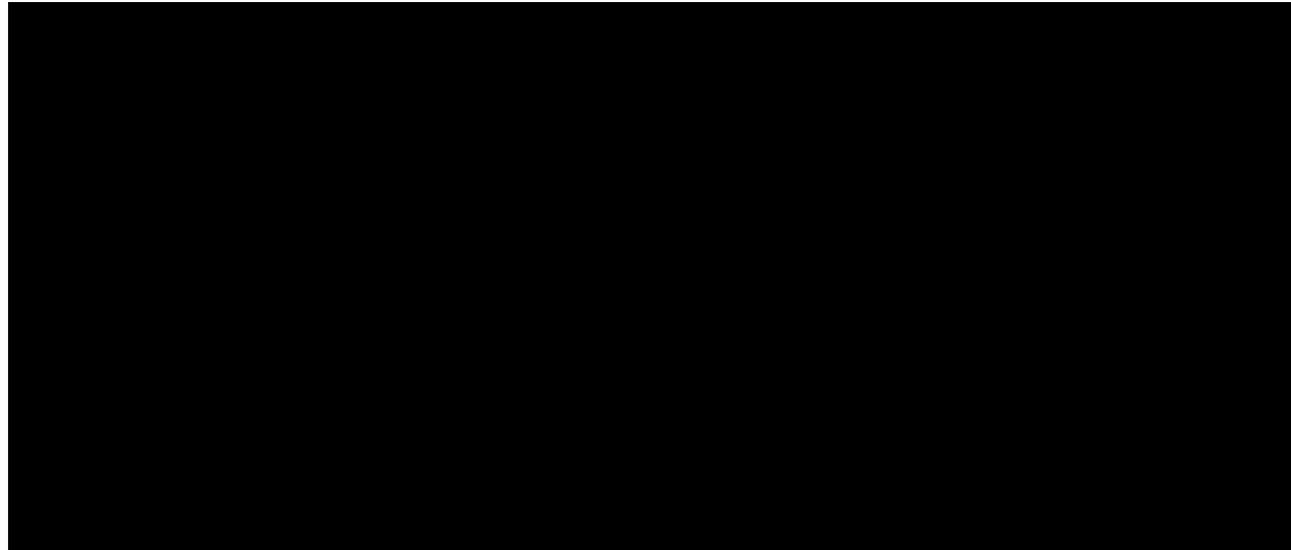


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I was looking at some messages that I received on an app called Tender, when I heard the chimp start to make that loud-pitched screaming noise again. When I looked up, the chimp was now standing in its chair. I couldn't clearly see who the chimp was looking at. Because of the stage lights, only Grace and the chimp were clearly visible to me. But I could see the silhouettes of three or four people standing in an area that would have been off camera if they were actually filming. I would estimate this group was around 15 feet away from the chimp. The group was in between Kosack and the chairs where the chimp was now standing. Kosack was standing several feet behind the group.

After hearing the chimp begin to scream, I stopped looking at my phone and watched everything that happened afterward. While I couldn't hear if Kosack was saying anything, it was clear to me that Kosack was trying to control the chimp through signals or hand motions. The only hand signal I can recall was one where Kosack made a fist with the thumb pointing down. I obviously have no idea if the chimp saw Kosack or understood the gestures. It did seem to me that Kosack was concerned, but at the same time, Kosack didn't move towards the chimp. Grace on the other hand was not concerned at all. Grace probably thought animal acts that posed some danger were good for ratings. I remember seeing Grace provoke guests in the past on Grace's show. But I saw nothing that indicated to me that Grace was trying to provoke the chimp.

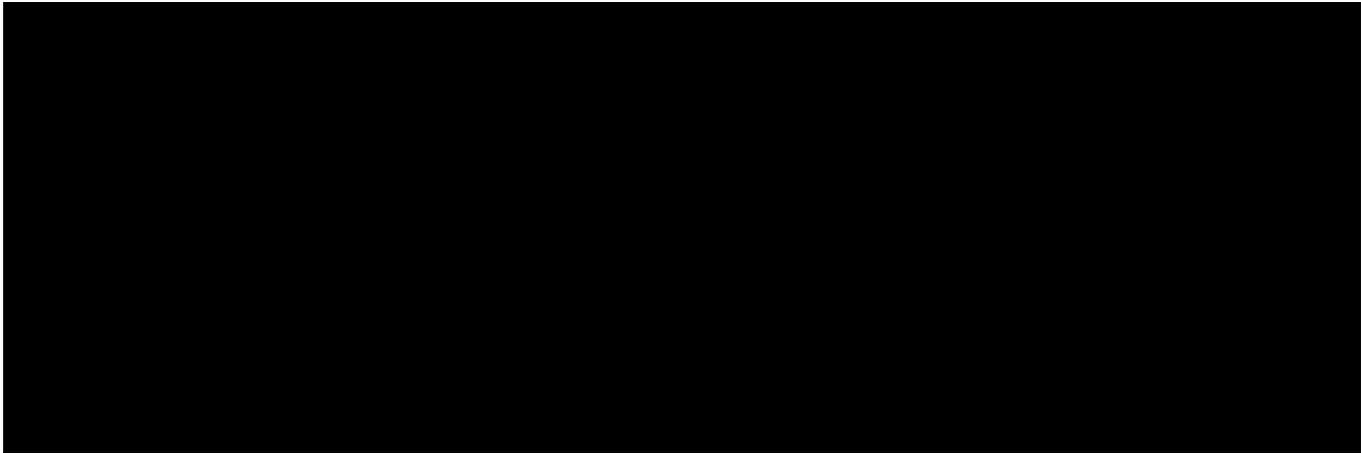


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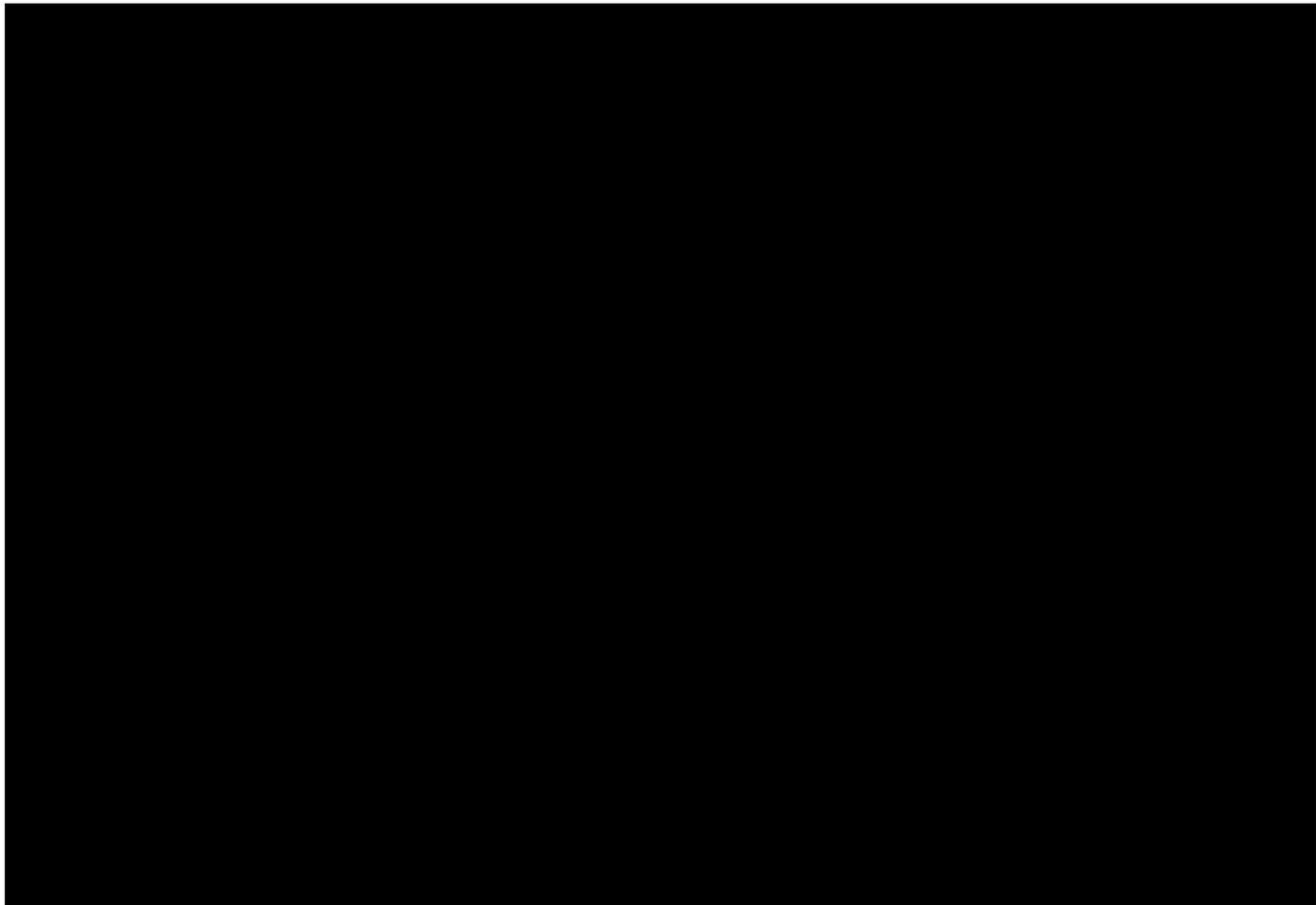
136 Chris was motionless on the floor, and there was a lot of blood on the ground. Since I was
137 already holding my phone, I shouted that I would call 911. It looked like people were surprised
138 to see me there. I called 911 and told the operator someone had been attacked and needed help.
139 While I was on the phone, I saw what I thought was an orange cat right outside the audience exit
140 to the studio. The cat was there for a few seconds and then left the area. I don't recall seeing the
141 cat physically inside the studio or interacting with Elias. But, again, I was mostly paying
142 attention to other things that whole time (including my phone) and certainly wasn't looking for a
143 cat. It's possible the cat was in the studio at some point and nobody noticed—the cat certainly
144 wasn't making any noise. The EMTs arrived just a few minutes later and began to work on
145 Chris. During that time, the chimp stayed in that small room, and Kosack stayed by the door.

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154 As I was helping the band load their van, I saw Grace on the phone outside of the studio
155 in the parking lot. I heard Grace say, "I'm sure Chris Villafana will be fine. Yeah . . . chicken
156 wings. Don't know what they were thinking." I don't know what Grace was talking about and I
157 didn't want to snoop, so I kept loading gear.

158 Having a good relationship with Grace was important for me since Grace decided which
159 bands appeared on Grace’s show. That type of exposure was—and still is—very valuable to me.
160 So I was sure to talk to Grace on my way back into the studio when I saw that Grace was no
161 longer on the phone. I told Grace I was sorry about what happened and that I could get The
162 Hound Dogs back to perform whenever Grace needed. Grace didn’t seem to care about the band,
163 though. Grace asked, “Were you on set during the rehearsal?” I told Grace I was and explained
164 the drummer’s allergy situation. Grace seemed annoyed by my answer. Grace then said, “Well if
165 anyone asks, I gave you a handout about animal safety, okay?” I laughed and explained to Grace
166 that Jameson had sent me that handout via email. I didn’t mention that I thought Jameson sent it
167 accidentally or that I only briefly looked at the file and hadn’t read any of the actual guidelines.
168 Grace’s mood quickly changed. Grace smiled and said, “Perfect! The lawyers have to eat too, so
169 this should satisfy them. Call me next week and we’ll get your band back in here.” After that, I
170 left with the band. *Midlands After Dark* was canceled in the aftermath of the chimpanzee attack,
171 so The Hound Dogs’ appearance was never rescheduled.



Expert Report of Dr. Willoughby Hawkins

Willoughby Hawkins, Ph.D.
1329 Rabionet Road
Compton, Midlands 30405
WHawkins@midlandsstate.edu

June 10, 2018

1

INTRODUCTION

2 Midlands Television Studios (“MTS”) retained me on December 23, 2017 to examine (1)
3 the reasonableness of Danny Kosack’s selection of Elias the chimpanzee to perform on
4 *Midlands After Dark with Alex Grace* on the night of June 29, 2017.

6 Counsel for MTS is compensating me \$300 per hour for my examination into this matter, which
7 is consistent with the standard hourly rate in the industry. I spent 45 hours examining this
8 matter. If I am called to testify at trial, I will receive a flat fee of \$5,000 as compensation for my
9 preparation, travel expenses, and time spent in court.

10

QUALIFICATIONS

11 I am the Amber Lowery Professor and Chair of the Department of Anthropology at
12 Midlands State University. In 1990, I received my B.S. in Psychology and Biological
13 Anthropology from the University of Tennessee at Chattanooga. In 1996, I received my Ph.D. in
14 Animal Sciences (with a concentration in the field of Primatology) from The Ohio State
15 University. I spent the final two years of my doctorate program conducting field research at the
16 Kassandra Fotiadis Chimpanzee Sanctuary, located in Montclair, New Jersey. Over the past two
17 decades, I have taught undergraduate and graduate level courses in the areas of Evolutionary
18 Anthropology, Primatology, and Animal Psychology.

19 I am currently a member of the International Society for Applied Ethology, the American
20 Society of Primatologists, as well as the International Association of Animal Behavior
21 Consultants. I have published over 30 articles in scientific, peer-reviewed journals. The articles
22 most closely related to this case are:

- 23 ● *Trouble at Chimpendales: The Dangers of Using Adult Male Chimpanzees to Entertain,*
24 *Folia Primatologica* (2013) (along with A. Herman and B. Silk)
- 25 ● *Anger Management: The Basics of Training Wild Animals to Be on Stage, Shelby Journal*
26 *of Animal Psychology* (2014) (along with B. Danielson and G. Jacobs)
- 27 ● *A Split Second: The Rapid Onset of the Startle Reaction, American Journal of Primatology*
28 (2015) (along with B. Larkin and C. Vincent)
- 29 ● *The Coach’s Guide to Coaching: Operant Conditioning of Pan troglodytes, Animal*
30 *Behavior* (2016) (along with D. Whiteley and D. Yasinovsky)

- 31 • *Curious George Hits Puberty: The Anatomical Development of Pan troglodytes During*
32 *Adolescence. Journal of Medical Primatology (2018)* (along with D. Florczak and R.
33 Servilio)

34 I have testified in exactly 25 trials: 14 for the plaintiff and 11 for the defense. In every
35 case, I testified about whether the choice of animal and the choice of training contributed to an
36 animal-related incident.

44 MATERIALS REVIEWED

45 In preparing this report, I reviewed and relied on the affidavit of A.J. McClellan, the
46 depositions of Alex Grace and Danny Kosack, as well as the following exhibits: Exhibit 1
47 (blueprint of set); Exhibit 2 (a photograph of the chimpanzee); Exhibit 3 (the chimpanzee's
48 biography); Exhibit 5 (autopsy of Chris Villafana); Exhibit 6-11 (relevant emails involving MTS
49 and Kosack); Exhibit 14 (article detailing the entertainment industry's best practices for safe use
50 of live animals); and Exhibit 23 (the safety guidelines provided by Kosack). These materials
51 provided me with sufficient facts and data in order to reach an expert opinion and are the types
52 of materials usually relied upon by experts in my field.

53 I have included all of my
54 conclusions related to this case in this report.

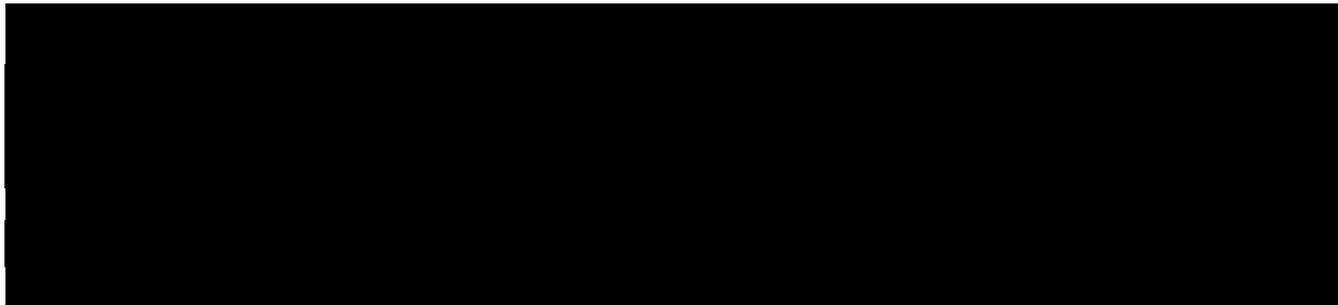
56 In February 2018, I contacted defense counsel and requested to interview Danny
57 Kosack. My request was denied. Attorneys representing the other side in animal attack
58 litigation rarely let me speak to their clients. While an interview with Kosack may have helped
59 my investigation and analysis, it certainly was not necessary for me to reach my conclusions.

60 DISCUSSION

61 I. Background on *Pan troglodytes*

62 Studies show that the use of the common chimpanzee (*Pan troglodytes*) as a performer
63 in television, movies, and advertising influences how we perceive their suitability as pets and
64 their emotional state. The portrayal of chimpanzees in unnatural, human-like situations for
65 comedic effect leads the public to view the primate as a docile, family-friendly creature. This
66 perception is far from reality.

67 When researchers completed sequencing the genome of *Pan troglodytes* in 2005, they
68 discovered a 96% overlap in human and chimpanzee DNA, making them our closest living
69 relatives. Unfortunately, periodic attacks against humans serve as a reminder of what
70 comprises the remaining four percent: brute strength. An undisputed joint study by Cole,
71 O’Reilly, Fish, and Strong analyzed available data gathered since the 1920s and concluded that a
72 fully-grown chimpanzee’s mass-specific muscular performance is somewhere between 1.35 and
73 1.5 times greater than that of a fully-grown human (*i.e.*, a fully-grown chimpanzee is, pound-
74 for-pound, 1.35 to 1.5 times stronger than a fully grown human). This “super human” strength,
75 combined with sharp fingernails and even sharper canine teeth, helps explain why over three
76 dozen chimpanzee attacks have been reported in the United States over the past decade—
77 three of which resulted in at least one fatality.



85 I cannot think of a single expert in my field who believes that a chimpanzee should be
86 kept as a household pet (in fact, 19 states have outright banned private chimpanzee
87 ownership). A handful of experts in my field (not including myself) take their concern a step
88 further and claim that a chimpanzee should never be used in the entertainment industry.
89 Although chimpanzee attacks on humans are oftentimes gruesome and always tragic, they are
90 avoidable on film and television studio sets if (1) the chimpanzee chosen to perform satisfies
91 certain demographic criteria; and (2) that chimpanzee receives proper training.

92 **II. Factors to Consider When Choosing a Performance Chimpanzee**

93 There are four factors which must be considered when choosing a chimpanzee suitable
94 to perform in front of an audience: (1) age; (2) gender; (3) previous environment; and (4) prior
95 incidents of aggressive behavior. I shall address each of these factors individually.

96 1. Age

97 The lifespan for chimpanzees is approximately 40-50 years when living in the wild and
98 approximately 60-70 years when living in captivity. A chimpanzee’s “infancy” period generally
99 lasts from birth through age three. A chimpanzee’s “childhood” period lasts from the end of
100 infancy until the onset of puberty. While all chimpanzees are different, puberty is generally a
101 five-year process, with the female chimpanzee starting roughly one year before her male
102 counterpart. I have provided key milestones for a chimpanzee’s growth and development in
103 the table below.

AGE	MILESTONE
3-6 months	Travels on mother's back
2-3 years	Explores surroundings by walking short distances from mother
4-5 years	Enters childhood; sleeps away from mother; begins weaning
5-6 years	Female enters puberty; begins growing adult canines, muscles, fingernails
6-7 years	Male enters puberty; begins growing adult canines, muscles, fingernails
10-11 years	Female fully matures, reproduces
11-12 years	Male fully matures, reproduces

104 A substantial majority of chimpanzees we see performing on television are infants. The
 105 reason for this is simple: once a chimpanzee reaches puberty, the chimpanzee begins to acquire
 106 the physical features (*e.g.*, strength, canines) that make the chimpanzee's presence a safety
 107 risk. Of the 10 documented chimpanzee attacks that occurred over the past five years in the
 108 United States, only one involved a chimpanzee younger than five years of age (and the victim of
 109 that one attack survived and suffered no major injuries). Excluding Chris Villafana, there has
 110 been one fatal attack over the past five years; that chimpanzee was 13 years of age and male.

111 In this case, Danny Kosack should have chosen to use a chimpanzee under the age of
 112 five for Kosack's appearance on *Midlands After Dark with Alex Grace*. Instead, Kosack chose a
 113 chimpanzee that was 10 years old. While Elias may not have been fully grown by the time of
 114 the attack, at 1.2 meters and 60 kilograms, Elias was certainly large enough to be considered a
 115 danger to those working on the set of *Midlands After Dark with Alex Grace*. As an experienced
 116 animal trainer, Kosack should have known this. In addition to size, Kosack should have
 117 recognized that, at 10 years of age, Elias had already developed the canines to attack his victim
 118 and the muscle strength to ward off any resistance. At the very least, Kosack should have
 119 communicated the risks involved with using a 10-year-old chimpanzee to MTS prior to the
 120 show. I saw no evidence that occurred.

121 2. Gender

122 Generally speaking, it is safer for a human to interact with a female chimpanzee than a
 123 male chimpanzee. While comparable in height, the female chimpanzee is smaller in mass (32 to
 124 47 kilograms) than her male counterpart (40 to 65 kilograms). More importantly, studies
 125 demonstrate that male chimpanzees engage in more aggressive behavior than female
 126 chimpanzees.

127 I believe that Kosack's use of a male chimpanzee made an attack more likely to occur.
 128 Simply put, the numbers do not lie: nine of the 10 above-mentioned chimpanzee attacks
 129 involved only male chimpanzees. For that reason alone, I cannot fathom why Kosack chose to
 130 use a male chimpanzee on that tragic afternoon.

131 3. Previous Environment

132 While seemingly counterintuitive, the longer that an adult chimpanzee is held in human
 133 captivity (*e.g.*, zoo, animal sanctuary, amusement park), as opposed to in the wild, the more
 134 likely the chimpanzee is to attack a human if given the opportunity. The reason for this is
 135 straightforward: adult chimpanzees living in the wild are not familiar with humans. They do not
 136 know that their superior muscles can overpower us or that their canines and fingernails can
 137 easily rip into our flesh. However, the more time that any adult chimpanzee spends with
 138 humans, the more likely it is that the chimpanzee will recognize the chimpanzee’s physical
 139 superiority, and the less likely it is that the chimpanzee will back down when the chimpanzee
 140 perceives a human threat. This is why we caution our newly-minted primatology graduate
 141 students never to stick their fingers through a cage with an adult chimpanzee—and why so
 142 many of my colleagues are now missing digits.

143 In this case, Elias was born in Ngogo National Park in Uganda and spent the majority of
 144 his life in the wild before being purchased in 2013 by the Hardy Compound Animal Sanctuary in
 145 Cameron, North Carolina. Elias was six years old at the time. Having visited the Hardy
 146 Compound multiple times in 2013, I can state that Elias would have been living alongside other
 147 chimpanzees as well as a few other animals (including a kangaroo and a giraffe). Later that
 148 same year, Danny Kosack purchased Elias from the Hardy Compound and moved Elias to the
 149 Midlands Animal Sanctuary.

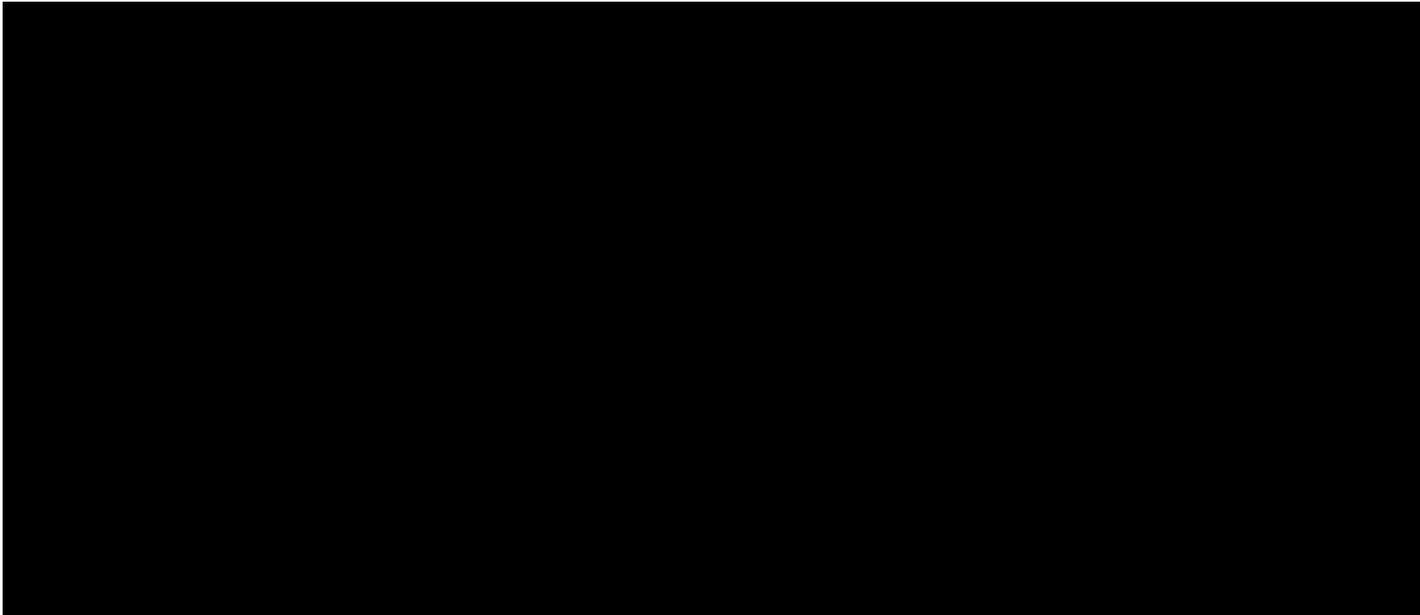
150 Based on the materials I reviewed, given Elias’ age, Elias most likely entered puberty
 151 around the time he left the wild and arrived at the Hardy Compound. This is problematic.
 152 Typically, where a chimpanzee first encounters humans before puberty, the chimpanzee will
 153 view humans as physically stronger, and tend to hold onto this belief through and past puberty,
 154 even when the chimpanzee’s physical strength has surpassed a human’s physical strength.
 155 When faced with a perceived human threat, these chimpanzees are less likely to respond with
 156 physical violence out of fear. However, where a chimpanzee first encounters humans during or
 157 after puberty, the chimpanzee is less likely to view the human as physically stronger, and when
 158 faced with a perceived human threat, is more likely to respond with physical violence.

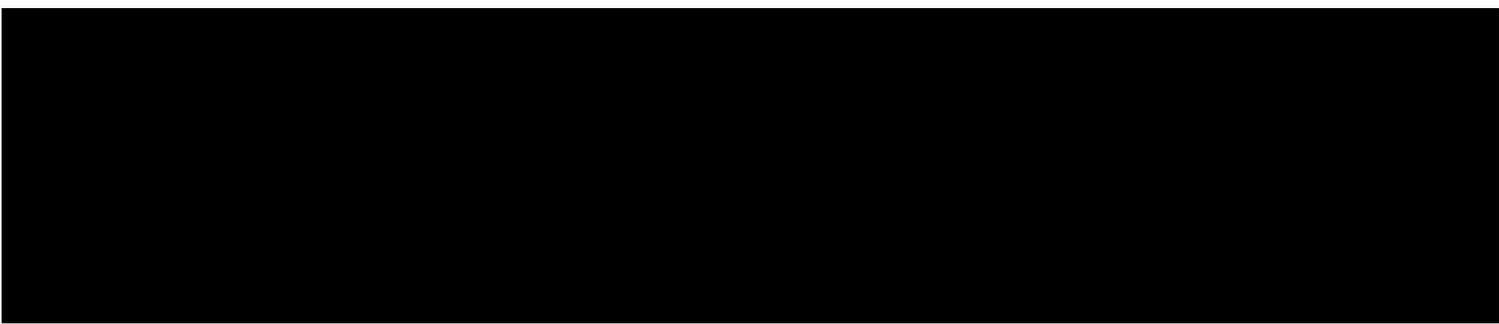
159 Though, it is possible that Elias did not enter puberty until 2014—after Danny Kosack
 160 had purchased Elias. While nearly 80% of male chimpanzees enter puberty at age six, some
 161 have been found to be “late bloomers” (*i.e.*, begin puberty no earlier than age seven). Nothing
 162 I reviewed suggested that Elias was a late bloomer, but if he were, that would have made it less
 163 likely that Elias was predisposed to violence when facing a perceived human threat. However,
 164 even if Elias were a late bloomer, the three-year period between the onset of puberty and the
 165 June 29, 2017 attack would have given Elias sufficient time to realize his own strength relative
 166 to a human.

167 4. Prior Incidents of Aggression

168 When assessing whether a chimpanzee is likely to engage in aggressive, violent
169 behavior, we look to how the chimpanzee has behaved in the past. The chimpanzees that
170 perform in front of a live audience seldom have a history of violence (if they did, it is unlikely
171 that they would still be in the business). However, any sign of unruly or aggressive behavior can
172 be a red flag for future violence.

173 Here, there is no evidence that Elias engaged in any violent behavior prior to June 29,
174 2017. However, when reviewing my materials, there was one incident that I found interesting,
175 and so I wrote it down on my notepad. In late 2015, about two years after Danny Kosack
176 acquired him, Elias performed on Byron Fellows' *Safari Trip*, a sketch comedy program that
177 broadcasts live from New York on Saturday nights. During one of the sketches, Elias was
178 performing a trick in which he threw pieces of fruit at Mr. Fellows, who pretended to be upset
179 by yelling at Elias. Elias screamed back in turn, leading to audible laughter from the live studio
180 audience. It appears that the laughter further upset Elias, who refused to leave the stage at
181 the end of the sketch, and instead screamed at audience members for approximately 15
182 minutes. My understanding is that Kosack was not on stage with Elias until after the end of the
183 sketch. Thankfully, Kosack eventually managed to calm Elias down, and nobody was harmed.





289

CONCLUSION

290 Danny Kosack's selection of Elias to perform on June 29, 2017 was not reasonable due
291 to the Elias' age, gender, and his exposure to humans during puberty.

