

Animals on the Show

1. You would agree it was Alex Grace's idea to bring Kosack onto the show? (44-46)
2. Previously, Mr. Grace had shot down the idea of having animals and their trainers on the show? (42)
3. Mr. Grace had cited crew safety and animal unpredictability when he rejected it? (43)
4. But that was only when you suggested the idea? (41-42)
5. But then later, Grace had forwarded you the email from Danny Kosack? (45)
6. And told you to book Danny for the show? (45)
7. Specifically, he told you to book Danny's friend Elias for the show too? (46)
8. And it wasn't until later that you found out Elias was a chimpanzee (47)
9. Mr. Grace had asked you to book a live animal, after he had previously said that they don't belong on Midlands After Dark? (43)
10. You would agree with me that all of those things Alex previously said, about crew safety, animal unpredictability, those things didn't apply when it was Alex's idea to bring a guest onto the show? (47-49)

Safety on Set

11. You were in charge of safety?
12. You'd say that you followed Danny's list of demands to the best of your ability? (155-156)
13. But you weren't at the studio on the day of the rehearsal?
14. So for some guidelines relevant to safety, you wouldn't be there to make sure they were taken care of?
15. One guideline said Elias needed time to settle in?
16. You wouldn't have been there to make sure that happened?
17. You couldn't see about whether the food was close to the set?
18. In short, there was no way for you to confirm any number of safety precautions because you weren't there?
19. Whose responsibility was it then, Mr. Clark?

Email

- You were the Executive producer of Midlands After Dark on June 29th, 2017? **(pg 2, 50)**
- You would agree with me it was your decision to bring Danny Kosack on your show? **(Pg. 3, 91)**
- And you had E-mail correspondence with my client- isn't that true sir? **(Ex. 9)**
 - *You would recognize those emails if I were to show them to you today?*
 - *Approaching opposing counsel with plaintiff exhibit 9*
 - *May I approach the witness with the same*
 - *Would the bench like a courtesy copy?*
 - *Mr/s. Grace- I have handed you a transcript of the email- this is a fair and accurate copy?*
 - *They have not been changed or altered in any way have they?*
 - *At this time, Plaintiff offers exhibit 9 into evidence*
 - *May I publish to the jury by means of enlargement?*
- In this email safety guidelines were attached right? **(Ex. 9)**
- And it was sent with the subject line reading "IMPORTANT safety info"- Did I read that right sir?/Ma'am? **(Ex. 9)**
- *(As you said on direct examination)* You forwarded these to your staff?
- But you changed the subject line before you sent them right sir? **(Ex. 9)**
- You removed the word "Important and safety" and changed it to "Info for Thursday's show"- did I read that right sir?

Guidelines

- Now- after sending these out, you didn't meet with your staff? **(Pg. 5, 156)**
- Because you didn't want to- in your own words- "Waste everyone's time with some meeting" **(Pg. 5, 157)**
- So you cannot tell the members of this jury that your staff fully read those guidelines. **(Omission)**

Note

- Speaking of sending things, you sent a note to the widow after the attack happened- isn't that right? **(Ex. 20)**
- And you would recognize that note if I were to show it to you today?
 - *Approaching opposing counsel with what has been pre-marked as exhibit 20*
 - *May I approach the witness with the same?*
 - *Would the bench like a courtesy copy?*

Defense

- *This is a fair and accurate copy isn't it?*
- *That's your signature on the back?*
- *And this note is written in your handwriting?*
- *It hasn't been changed or altered in any way has it?*
- *If Villafana is called: Pursuant to stipulation 15 all objections are waived.*
- Now read along silently while I read aloud the top of page 2: "Maybe if listened to rules, or said yes to different animal." Did i read that correctly? **(Ex. 20)**
- And if you'll look on top of page 3 it says: "We could have done way more" doesn't it Sir/Ma'am? **(Ex. 20)**
- "Chris could still be here", that's what it says?

Thank you, Mr(s). Grace. No further questions, your Honor.

Training

1. Dr, I'd like to ask you about something in your report where you wrote about Elias' training. Now Danny Kosack trained Elias in an environment that included similar external stimuli to those found on a television studio set? (261)
2. Part of this training involves training a chimpanzee in an environment that resembles the performance environment? (238)
3. Lights? (262)
4. Music? (262)
5. And even food? (262)
6. Which drastically reduces the risk that a chimpanzee will experience a startle reaction? (237)
7. Because it desensitizes the chimpanzee to unfamiliar external stimuli? (239)
8. And allows the chimpanzee to realize that it can perform without feeling threatened? (239)
9. Or attacked? (239)
10. And you're also aware that Danny Kosack did over 150 hours of training for media appearances? (Kosack 94)
11. Elias had appeared on 18 shows before appearing on Midlands After Dark?
12. And he had never exhibited any violent behavior on any of those shows?
 - a. *If they bring up 2015*: Now in 2015, Danny Kosack was able to calm Elias down?
 - b. And Elias did not attack anyone during that incident?

Startle Reaction

13. Let's talk about what that means. Now, a startle reaction causes a chimpanzee to enter fight or flight mode? (232)
14. Meaning the chimpanzee will choose to either flee or to attack? (232)
15. And chimpanzees do not always choose to attack, correct?
16. They make this decision based on their assessment of their environment? (230)
17. Now once a chimpanzee enters the startle reaction no one should make sudden movements towards the chimpanzee? (229)
18. Dr. Hawkins would an expert in primatology such as yourself agree with me that a sudden movement could cause a chimpanzee in a startle reaction to attack? (231)
19. And once the chimpanzee perceives an attack he will make that fight or flight decision? (232)
20. And you've even concluded that Elias' attack of Chris Villafana was the result of Elias experiencing the startle reaction followed by Elias perceiving a threat?
21. And that threat, quite possibly, could have been Alex Grace. (278)
22. You read Danny Kosack's deposition?
23. And in Danny Kosack's deposition, she testified that immediately before Elias attacked Alex Grace suddenly reached towards him? (Kosack 484)

Meeting (June 27 2017)

1. The last time you were at MTS studio was two days before the attack (Line 64)
2. You were there to return your husband's phone to him (Line 64-65)
3. You walked on a meeting held by Jameson Clark (Line 68)
4. He was reading through a set of guidelines (Line 68)
5. But as he was going through the guidelines, you noticed the writers other than Chris were glued to their phones (Line 73)
6. Some of them had headphones in (Line 73)
7. Jameson didn't say anything about it
8. Jameson didn't tell anyone "hey, pay attention this important"
9. And at this meeting, Alex Grace was not present (90-91)
10. Even though you saw Grace's car outside (92)

Voicemail (exhibit 17)

11. Chris had left a voicemail for you on the day of the attack (162)
12. You heard it? (163)
13. In fact, you'd say that you've listened to it many times to the point that you have it memorized? (163-164)
14. DO NOT ENTER EXHIBIT. USE TO REFRESH IF NEEDED.
15. He said that Alex was stumbling onto the set literally as I speak (ex. 17)
 - a. (803 (1) Present Sense impression)
 - b. Pretrial Order 3-- Vicarious Liability (Party Opponent)
16. He told you it looked like Alex had a rough night (ex. 17)

Letter (exhibit 20)

17. You recognize this letter (165)
18. You received it from Alex Grace (146)
19. You acknowledge that it was written by Alex Grace (149)
20. You would say that you're "positive Alex wrote the letter" (Line 149)
 - a. Stipulation 8 - letter is written by Grace
 - b. Stipulation 15 - letter is admissible
21. Grace had sent it to you after the funeral (141)
22. You weren't there during the attack (99)
23. But Grace was
24. He told you about it in this letter
25. He admits that "we knew. maybe if listen to rules or said yes to different animal." (ex. 20)

Defense

26. He then, addressing you as heather, apologized to you for what happened (ex. 20)

27. Alex Grace said, "We could have done way more"

Directs

Hunter Cooper Direct

1

Defense

- 1. Please introduce yourself to the members of the jury.**
 - a. Hi everyone my name is Hunter Cooper, I AM ALEX's BIGGEST FAN!!
- 2. Mr(s). Cooper, how are you involved in this case?**
 - a. Hello?! Alex Grace? The monkey? Alex Grace? The attack? The dead man?
- 3. Were you on the set of Midlands After Dark when that attack happened?**
 - a. Yeah... sadly, I was
- 4. Are you an employee of Midlands After Dark?**
 - a. Oh... my.. Gosh *table smack* I freakin' wish.
- 5. Were you a guest on the show that day?**
 - a. No. I'm still waiting for my phone call
- 6. Well- Why were you at the studio on the day of the attack?**
 - a. To see Alex Grace! Let me explain. You see I'm a screenwriter and Alex Grace is the inspiration for my new Musical, Amazing Grace.
- 7. Well- Did Ms. Grace know you were going to be on set that day?**
 - a. Well no.. there was this little misunderstanding and a restraining order that I had to stay so many feet away from her. You know how lawyers can be.... No offense.
- 8. Now Sir- you've talked a lot about alex...why the interest in Alex Grace?**
 - a. Why the interest? If you have to ask then you don't know. But I'll enlighten you, Alex Grace is the songbird of our generation. It's like if you mix Mariah Carey's whistle tones and Beyonce's *pause* everything. It's perfect for my musical.

Display/Enter Ex. 1 for Demo Purposes to aid the witnesses testimony

Mr. Cooper, I assume you would you recognize a map of the Midlands After Dark set if i were to show it to you today?

Approaching opposing counsel with what has been pre-marked as defense exhibit 1

Would the bench like a courtesy copy?

May I approach the witness with the same?

Mr. Cooper is this the set we were discussing?

Is it a fair and accurate copy?

Changed or altered in any way?

At this time Defense offers Exhibit One into evidence.

May I publish to the members of the jury by means of enlargement?

May the witness step down to make use of the enlargement?

9. Let's just start at the beginning. Can you show us where were you on set?

a. I was- right here... well under here

10. Sir, are.. those the bleachers?

a. Yes

11. Why were you under the bleachers?

a. I had the perfect view of Alex.... I could see her but she couldn't see me.

12. Well what all could you see that day?

a. Well I had triangulated the best view with the best acoustics so if that songbird Alex ever got out of her cage I would get the full experience... so I saw everything.

13. Mr. Cooper- Do you know who Danny Kosack is?

a. Yeah that's her right over there in the *Identifying feature*

14. Did you see Danny or Alex prior to the start of the rehearsal ?

a. I saw Danny Kosack talking with Alex about Elias and rules or something. Ms. Kosack kept complaining and complaining a real prima donna. But Alex, as graceful as ever said "Guidelines and rules are different, and either way, in show business everyone needs to improvise." Beautifully spoken. I'm using that in my play. (51-53)

15. From what you heard-did Alex Grace mention touching the chimpanzee?

a. 1. Yes, actually Alex kept asking how much she could touch the chimpanzee just like the hands-on host she is. (51,97-101)

16. Let's take this step by step Mr. Cooper- What did you see when the rehearsal began?

a. It started off pretty amazing, as usual. Alex did another one of her hilarious monologues. She said, "something about the Kardashians having enough plastic to make Barbie jealous". Can you believe it? Gold, I tell you. And after that, that's when Danny Kosack brought out the chimp.

17. What happened when Danny and Elias came out?

a. After a while- Danny, got up and walked off the set...she stood off to the side and was making some gestures and stuff at Elias...I didn't know what she was doing...It was just Alex and Elias on the stage.

18. What did Alex do when Ms. Kosack left the stage?

a. For a minute or two I thought it was going good. Alex kept asking questions and she asked about the president's hairdresser. And then, get this!. She actually started leaning towards Elias.

19. Mr. Cooper, what did Elias do when Ms. Grace leaned in?

- a. After Alex leaned in, that monkey jumped out of his chair, ran straight towards the group of writers, like Planet of the Apes style and tore some guys face off, like face off (do face off thing)

20. Did you leave the set after the attack?

- a. Well I was trying to leave before the cops showed up but I wasn't fast enough, the cops stopped me and started asking me a bunch of questions about the attack. I know it was really bad for the guy that got killed and everything... BUT I'm so relieved Alex was unharmed. I mean, she almost touched Elias.

Thank you, Ms Cooper. No further questions, your honor.

Redirect:

1. What happened immediately before Elias attacked Chris Villafana?

- a. Alex Grace leaned towards the chimpanzee... and then he attacked.

Character Tips: Be passionate about Elias and how much you love him

- 1. Please introduce yourself to the members of the jury.**
 - a. My name is Danny Kosack.

- 2. Are you currently employed?**
 - a. Yes, I work at the Red Hawk Animal Sanctuary. I just started a position there as a caretaker. I've taken care of animals all my life.

- 3. How did you start out your career as an animal trainer?**
 - a. I've been taking care of animals professionally ever since I started working at the Cincinnati Zoo after I got my degree in animal science. I wanted to follow the path of my role model, like Jane Goodall. Her care and passion for chimpanzees made me want to adopt all animals who need help too.

- 4. Where did you work before you started at Red Hawk?**
 - a. Well, before that I owned and operated Midlands Animal Sanctuary, where we took care of 65 animals. Each with their own needs and personalities. They were all either at risk or abandoned, so I took care of all of them, and they took care of me.

- 5. What sort of animals would you have there?**
 - a. We had a real Noah's Ark... ostriches, chimpanzees, lions, tigers, ... If we added bears it'd start to sound like the Wizard of Oz. And a few of our animals did performances too.

- 6. Can you explain those performances for us?**
 - a. It was a great way to gain publicity for the sanctuary -- after all, we operate of donors and they find out about us somehow. Also, public appearances help familiarize audiences with the fact that these animals, when respected, are nothing to be afraid of. But people do have to understand that, at the end of the day, they're still animals. So, when a TV show host physically threatens an animal, they're going to react.

- 7. Well, let's back up. When has there ever been an instance of one of your animals being threatened?**
 - a. Well it happened during a performance on June 29th, 2017. Elias my chimpanzee was doing a show with Alex Grace, the host of Midlands After Dark. At one point, Elias started getting agitated and just when I was going to calm him down, Alex Grace reached towards him. He broke the rules and there's no way we can prepare for that. That's when Elias attacked the writer.

8. Let's start from the beginning. Had Elias done performances before the Midlands After Dark appearance?

- a. Yes, he had done 18 shows and 2 movies in the four years we were together since I rescued him from the Hardy Animal Compound. Elias absolutely loved to perform. And the audience fell in love with him too. How could you not? He was the happiest animal I ever took care of.

9. What sort of things would you do to get Elias ready for these performances?

- a. Mostly my concern was with training Elias to deal with the stresses of media appearances. I had worked to expose him to all kinds of stimuli, including lights, food, noise, that he might typically encounter on a set. I would introduce the stimulus and reward Elias when he focused for a set amount of time. He was a complete natural.

10. How long did you spend training Elias?

- a. We did safety training for 150 hours. I spent so much time bonding with Elias. The only thing I couldn't train him for -- was a TV host who wouldn't listen and cause a disaster.

11. And, again Ms. Kosack, who was that TV show host?

- a. That was Alex Grace, he/she is sitting right over there.

12. How did you and Elias come to be on Alex Grace's TV show?

- a. I thought it would be a good opportunity for Elias and I to appear on the show. In May of 2017, Alex Grace responded and said he'd love to have us on the show. We were booked for the June 29th spot. Jameson Clark, the talent booker, said that Alex wanted something game-changing for that day and I thought my tricks with Elias would be perfect.

13. Did you discuss that routine with anyone at the show before the performance?

- a. Yes of course, week before the show, I sent the plan for Elias' performance to Jameson Clark. I just wanted to make sure everyone's on the same page and happy with the trick that I'm working on.

14. What response did you receive about your plan for the trick?

- a. I received a confirmation and instructions on when to arrive at the studio. I figured our plan was set!

15. Moving to the day of the performance, did you speak in person with Mr. Grace about what you all would be doing for the show?

- a. I did, I discussed the procedure again with Alex. The idea was that Elias would be seated next to Grace and answer his questions as if he was a guest on the show. I would be standing off stage giving Elias signals to perform each trick.

16. What was Mr. Grace's reaction to the plan?

- a. Well, right away he told me it was dull, even though I had already confirmed with his booking assistant that this is how the show would go. He had all sorts of ideas once we got there. I mean, at the last minute he tells *me* that we need to spice it up. What he didn't understand was that Elias is a wild animal, not an improv actor. They aren't able to adjust like that. We had to go with the original plan.

17. What sort of things was Mr. Grace suggesting for the act?

- a. Well he started off this whole ordeal by asking whether Elias could come up onto his lap, which I obviously said no to. I reminded him that he cannot touch Elias or make any sudden movements.

18. Why was it important that Alex Grace not try to move towards Elias?

- a. Well, a chimpanzee doesn't know the difference between a fake fight and an attack. So any sudden movement towards Elias might frighten him. But Alex kept asking. He even referenced a previous show when the host had ignored my instructions and gotten into a fake fight with Elias. Elias got scared and started screaming. Really, it was a dangerous situation and that host had not listened to my instructions either. Fortunately, I was able to calm him down that day. I learned from that I had to be stern with hosts going forward.

19. So then how did you react to these requests from Mr. Grace?

- a. I couldn't believe he wanted to get into an argument just like on that show!! I was very opposed to that idea and I can guarantee I made that clear to Alex. You don't want to pretend to fight with a chimpanzee because the chimpanzee might not understand that it is pretend. I was explaining all of this, but then he just stormed off, saying "We need to find a way for him to do something more interesting than nod." I had taken all of that time to give clear instructions to Grace. But, in the end, he just wouldn't listen.

20. When did you and Elias actually go on set with Mr. Grace?

- a. Around 2:30. When we got on set, Elias was seated next to Alex Grace, just as we had planned. Once I thought Elias was comfortable, I went off stage to do the bit *that we had rehearsed*. Not the Alex Grace version.

21. How did the show start out?

- a. For the first few questions, it seemed like it was going well. I thought Alex was actually going along with it. But then, a few questions into the trick, Elias started getting upset. Look, with animals, there's any number of things that can make them upset and cause what we call a startle reaction. That in itself is not dangerous. I've calmed him down before.

22. How would you go about calming Elias down?

- a. What trainers are supposed to do is make everyone stop and then I approached Elias slowly to settle him down. We would stop the rehearsal and we'd just get Elias through this some other time.

23. Were you able to calm him down that day?

- a. Look, all you have to do is listen to what I say. I know what I'm doing. When I say stop, you need to stop. Everybody stopped what they were doing so I started slowly approaching Elias like I've done *every* other time, just like you would do with a frightened dog. Textbook technique. I took a step. Paused. And before that next step, out of nowhere, Alex Grace stuck his hand out and reached for Elias. So no, he never calmed.

24. Ms. Kosack, could you tell us what happened next?

- a. Because of what Alex Grace did, he took away my ability to handle the situation. Elias went into fight mode when Alex reached. He attacked one of the writers and ****dramatic stop**** there's nothing you can do to stop a full grown chimpanzee at that point. I later learned that the writer's name was Chris Villafana.

25. Did you try to stop Elias from attacking Chris Villafana?

- a. When a chimp decides to fight... I ran towards them but there was nothing I could do. Elias eventually stopped and ran into the sound booth. I sat in front of the door so he couldn't get back out. Soon the EMTs arrived and pulled me away. I heard gunshots and... it's all a blur from there.

Thank you, Ms. Kosack. No further questions, your Honor.

Cross Answers

1. You were not the closest one to Elias. You said everything would be fine as long as you were the closest one to Elias.
 - a. I could see how you might be confused -- I need to be the closest one whenever we are in close quarters or just meeting people. But during a performance, which is something we had trained for, it would be okay. We trained from a distance.

- 1. Please introduce yourself to the members of the jury.**
 - a. Good ___ I am THE AJ McClellan.

- 2. What do you do for a living?**
 - a. I'm an actor: I've done it all I've been- A doctor. A football coach. I've been a single father trying to raise his 3 children and find love at the same time. Simply put, I take life as you see it and tell a story on the big screen.

- 3. Were you on the set of Midlands After Dark on June 29th, 2017?**
 - a. Yes, I was there when the attack happened.

- 4. How did you end up on the set?**
 - a. Alex and I... we go way back and we used to have the same agent. So when I have a new movie to promote, which is quite often you're welcome, I always offer Alex the first chance to promote my newest project. More views for her, more publicity for me. Win-win.

- 5. When your appearance was booked, did you know there would a live animal on set?**
 - a. Alex's people informed me that there would be an animal on set. Regardless if the animal is live or not, I'm always ready. Look at this face. If you stay ready you never have to get ready.

- 6. Was this going to be the first time working with animals on set?**
 - a. No, it's not my first rodeo. I've done this before.

- 7. Did anyone from Midlands Television Studios send you any animal safety guidelines?**
 - a. Uhhh yes, their booking assistant, Jameson Clark (he's adorable) sent me a list of animal safety guidelines for some monkey named Elias. That was it.

- 8. Did anyone from the Studio ever meet with you to discuss the guidelines?**
 - a. Usually when I'm on major film sets with an animal the studio always sends someone to discuss animal safety guidelines. To make sure I'm safe... being a star and all. However MTS surprisingly did not.

Defense

9. Now, Mr. McClellan, I want to discuss the events of June 29th, 2017. What did you do you when you arrived on set?

- a. Well, I arrived on set and walked into my dressing room which was to my specification. An evenly square room with the door facing North to center my chi, and table with custom pink M&M's There's a process to greatness, stay with me. They also included the same safety guidelines from before. Since nobody was going to brief me on them, I reread them myself to make sure nothing had changed... I get ready to stay ready.

10. Did you ever speak to Alex Grace that day?

- a. Yes actually, Alex came to my room and we chatted for a good while. Catching up on the latest and greatest. Who's getting married, who's getting cheated on. You know, the usual Hollywood news.

11. Were you present during the rehearsal?

- a. Yes when I got to the rehearsal Alex was mid way through her monologue so I stood by the writers. After she finished her monologue Mrs. Kosack and Elias came onto the stage and started their performance.

12. Could you see the full stage?

- a. I could.

13. Well, let's take this step by step. What happened when Danny Kosack left the stage?

- a. Well, Danny went off stage left and Alex, Oh my gosh Alex was alone with the chimpanzee! I was shook- Alex was just about a foot away from the chimpanzee! this monkey...He's jumping in the his chair, his screaming to high heaven. You know. The ooo-ooo's and the ah-ah's. I'm talking the total package. I'm over here fearing for my life. But Alex, oh... my... lord..., my girl was sitting right there.

14. Did you know what was happening?

- a. I was in shock and I looked to see what Alex was going to do and as this chimp was screaming - and Alex seemed happy about all of this (138), Then that's when she did one of the craziest things I have ever seen her do and trust me I have seen her do some out there things,

15. Sir, what did Alex Grace do?

She took her hand and reached towards the chimpanzee I was beyond confused like “girl what are you doing!?!?” And right after the reach that’s when Elias jumped out of his chair. (143)

15. Wait- so Mr. Mclellan- Alex Grace did *WHAT* while this chimpanzee was screaming and jumping?

- a. She reached right over!!!

16. Then what happened?

- a. That chimp jumped off that chair and charged across the set towards a group of people...it was screaming and yelling...it was awful.

17. Mr. McClellan what did *you* do next?

- a. Well let me tell you when I saw that chimp jump out of its chair and run towards me I WAS GONE, I was the closest to the door and I ran off that set.

18. Did you see the attack happen?

- a. I looked through the window on the door and I saw a little bit of the attack it was traumatic. I just couldn’t bear to see anything else so I went back to my dressing room

19. What happened once you got back to your dressing room?

- a. I waited for the police to arrive so I could give them my statement. I left the set and once I hit that parking lot I called my agent and told him never *ever* to schedule me with an animal act again- or she would be out of a job.

Thank you Mr(s). McClellan. No further questions, your Honor.

Defense

1. Please introduce yourself to the members of the jury.

- a. I'm Dr. Miller McCoy.

2. Why are you here today Dr. McCoy?

- a. I've been retained by the defense to investigate the environmental causes of the events of June 29th, 2017, *as well as the expert opinion of Dr. Willoughby Hawkins.* (2-4)

3. Tell us about your educational background.

- a. I have a Bachelors in Biomedical Engineering, two Masters, one in Ethology and one in Zoology, and a Phd in Primatology.

4. What are ethology, zoology, and primatology?

- a. Well you can think of them as being almost like those Russian nesting dolls. Zoology starts big, looking at where animals live and how they fit into ecosystems on a large scale. Ethology is a bit more specific, focusing in on how animals behave and why they act how they do. Primatology is the most focused of the three, looking into the behaviors and habits of primates in particular, chimpanzees, gorillas, monkeys... creatures like that.

5. Have you ever performed field research with primates?

- a. Yes. For 11 years I worked in the Mahale Mountains National Park in Tanzania, studying the behavior and habits of chimpanzees in their natural habitat and learning about how they react in all sorts of situations.

6. Have you ever published any of your research?

- a. Yes, I have. I've published over 20 peer reviewed articles on topics such as primate safety, training primates for performances, and the startle reaction in chimpanzees, which I'll talk about more in a moment.

7. What do you currently do for a living?

- a. Currently I am a visiting professor of ethology for Columbia University, a position which has allowed me to continue my research into the altruistic tendencies of primates, in essence examining their human-like behaviors. (16-17)

8. Have you ever been retained as an expert in a lawsuit before?

- a. I have, 6 times to be exact. Two involved canines four involved primates. For each case I conducted a thorough review of the case materials and provided a report just like I did today. The only thing I didn't do was testify, as the cases settled once my report had been filed. (36-39)

9. What materials did you review as part of your work in this case?

- a. I reviewed the Affidavit of AJ McClellan and the Depositions of Alex Grace and Danny Kosack. I also reviewed the guidelines sent to MTS by Danny Kosack, emails between the parties, and a photograph and biography of Elias, among other materials. All of the materials I reviewed are standard and they allowed me to reach my conclusions to a reasonable degree of scientific certainty. (47-50) (55-59)

10. What principles and methods did you use in conducting your investigation?

- a. I performed an analysis of the materials provided to me and then applied my knowledge of the proper environment for chimpanzees to draw my conclusions for the report I have provided today. (60-62)

11. Dr. McCoy, are you familiar with Dr. Hawkins' work?

- a. Yes I am, doctor Hawkins is an expert in my field and I've worked with her in the past. Her academic writing in particular is quite admirable. (64-66)

12. Did you find anything wrong with her conclusions?

- a. I was and while I still have a great deal of respect for Dr. Hawkins, I found her conclusions, which focus on the selection and training of Elias, to be flawed in today's case. (67-69)

13. Can you explain what flaws you found in her opinion regarding the selection of Elias?

- a. Her opinion was almost entirely based on a theoretical approach which stereotyped Elias' demographics into a scientific model. The problem with using such a model is that chimpanzees are very unique, much like humans, so to say that because Elias was a 10 year old male he was inherently violent is just as flawed as saying an 18 year old male human is inherently violent.

14. So can you render a concrete opinion as to Elias' personality?

- a. Without the chance to interact with Elias, neither Dr. Hawkins nor myself can render a concrete opinion as to his personality or whether he had a tendency to be violent. That being said, nothing in the materials I reviewed raised any red flags for me that Elias was a safety risk-- before the Midlands After Dark appearance, he seemed quite safe. (94-96)

15. What about her opinion regarding the training of Elias, what flaws did you find?

- a. Dr. Hawkins showed a great understanding of the principles of animal training but I disagreed with her opinion that the decision to use continuous reinforcement was inappropriate. Given Elias' experience and the fact that the tricks themselves were the same ones used previously, just in response to different commands, I found Mr(s). Kosack's training reasonable. (199-120)

16. Doctor, we've heard a lot about Elias' behavior on June 29th. How would an expert such as yourself describe the state Elias was in immediately preceding the attack?

- a. Elias was exhibiting a startle reaction at that time. (138)

17. You mentioned earlier that you've written on startle reactions, and now we've heard that Elias exhibited one. Given that, what is a startle reaction?

- a. A startle reaction is, at its core, the result of the chimpanzee become overstimulated by something in its environment. This stimulus can be anything, but for our purposes we are not too worried about this stimulus. Following this stimulus, whatever it is, the chimpanzee goes into what we call fight or flight mode.

18. What is the flight or flight response?

- a. The best way to understand fight or flight to chimpanzees is to compare it to what happens to humans when they're being mugged. During a mugging you have a choice to fight the attacker or flee. When chimpanzees in a startle reaction perceive a threat it's just like that. Some kind of trigger makes the chimpanzee feel threatened and they either choose to flee or fight. What this means for us is that we need to find this trigger to determine why Elias chose to attack that day. (184-186)

19. So this trigger is what causes the attack?

- a. Yes. Kind of like how if you blow up a balloon it has the potential to pop, but unless you poke with something sharp it will not pop. The trigger is the something sharp.

20. What would happen if there was no trigger?

- a. Well, there wouldn't be an attack. Without it, the animal will either choose to flee or will calm itself down. (184-186)

21. Does this trigger have to be intended to harm the chimpanzee?

- a. No, not at all. Chimpanzees are smart but they're still animals, a trigger could be something as simple as a smile. The way chimpanzees perceive our actions is different from how you or I might perceive our actions.

22. Did you see evidence that anyone made a sudden movement towards Elias?

- a. Not before the startle reaction, but there is some dispute about Alex Grace moving suddenly towards Elias once he was in the startle reaction. If that did in fact happen, that movement could have contributed to Elias' behavior. What's important here is that the reports indicate that this movement occurred DURING the startle reaction, which means that if it did happen there is a very good chance that this report acted as the trigger which prompted the attack.

23. Doctor, based on your education, experience, and training what are your conclusions in today's case?

- a. My conclusions are that the startle reaction Elias had would have been experienced by any chimpanzee and the attack was likely caused by some kind of trigger. (197-200)

Dr. Miller McCoy Direct
Defense

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Thank you, Dr. McCoy. No further questions, your Honor.

Your Honor, Opposing Counsel, Members of the jury- May it please the court?

Don't Do That.

We can all remember our moms and dads saying it- usually they said it when we get too close to a hot stove, when we're running when we aren't supposed to be, or if it could put us in danger. Whenever it is said to us- it's meant in the interest of safety.

A lot of times you hear attorneys say "This is a simple case" and this case...This case comes down to three words that everyone has heard before **[HEAVY PAUSE]** "Don't do that." When someone with knowledge and experience in something says "Don't do that"- You simply *do not do it.*

On June 29th, 2017 Animal trainer Danny Kosack was preparing for her *19th* performance with Elias- Her trained chimpanzee.

She was booked on Midlands After Dark (A popular talk show here in Midlands) hosted by Mr/s. Alex Grace. The plan was that she would bring Elias out, leave the stage and feed Elias hand signals to answer Mr. Grace's questions- as if the chimpanzee was finishing the interview alone. Mr. Grace, however thought the show needed something more entertaining and wanted to change the act planned by the professional animal trainer.

*Today- AJ Mclellan, a movie star and close friend to Mr. Grace will explain what truly happened that day. Mr. Mclellan will recount the moments of Elias becoming agitated, How this seemed to excite Mr. Grace and even the moment when Alex Grace ignored Danny Kosacks instructions and deliberately made a sudden movement by reaching out toward the chimpanzee.

Next- Dr. Miller McCoy, an expert in primatology will provide her expert opinion on how Elias was experiencing what is known as a "Startle reaction" which- doesn't mean he is going to attack...For that to happen he would have to perceive some sort of threat- But Dr. McCoy can explain that much better than I can.

Finally, Ms. Kosack herself will tell you how moments before the rehearsal, Mr. Grace wanted to change the planned act. She will tell you why they needed to perform the original act- but most importantly, Ms. Kosack will explain why she warned Mr. Grace about making sudden movements toward Elias-

Alex Grace continued pressuring Ms. Kosack to get into a fake fight with Elias and Ms. Kosack said "Absolutely not." Alex Grace asked to Hold Elias on his lap- and Ms. Kosack warned him not to do that and reiterated that he could not touch Elias. Translation members of the jury: Don't do that.

Members of the jury, this case is one of negligence and has been bifurcated- this is just a fancy legal word meaning it has been divided into 2 separate issues... duty and damages. today, you are here to decide who breached their duty.

The Plaintiffs duty was to provide an appropriate environment for Elias' performance and listen to all instructions provided by the trainer. It was Danny Kosacks duty to reasonably select a performance animal, to properly train that animal and to take reasonable steps to ensure everyone's safety.

Danny Kosack will testify how she trained Elias for over 150 hours to ignore stimulus found on a television set. A reasonable step to ensure safety and proper training of Elias. You will hear how she reasonably selected Elias and how he had *never* had this incident prior to June 29th, 2017. Members of the jury- She met her duty.

You will also hear today how the plaintiff breached their duty and violated instructions by Ms. Kosack- that members of the jury, is negligence.

We as the defense have asserted a counterclaim of negligence against the plaintiff- . We will prove to you by the same burden that the plaintiff failed to follow their duty to listen to the instructions by our client- including the ones given on June 29th.

There is something I want you to think about during the course of this trial: Alex Grace was warned not to make sudden movements toward Elias...But He did. "Would a reasonable person do that?"

That is why at the end of the trial- My Co counsel _____ will ask you that same question..."Would a reasonable person do that?". Actions have consequences and when you're told "Don't do that"- It's for a reason.

Your Honor, Opposing Counsel, Members of the Jury. May it please the Court?

Don't do that.

It ought to be a reflex to each of us. When we hear that phrase, our minds should immediately jump to childhood memories of our parents saying those very words: **Don't do that**. You heard in the opening that it's no different than a small child reaching for a hot stove. And, deep down, what we know to be true about those words, is that they are said to us out of concern. Our parents, our family, our teachers told us those things because they were worried about our safety and well-being. Members of the jury, that's our client was. Danny Kosack was concerned about safety. And so she said it, over and over again. **Don't do that**.

On June 29th, 2017 our client Danny Kosack arrived on the set of Midlands After Dark with Elias the chimpanzee, excited to premiere her newest trick to the world. Now, it's important to note that she didn't just arrive at the studio that day to perform on a whim. Weeks of preparation had gone into this performance. And it wasn't just any animal that she was bringing with her to the studio. Elias the chimpanzee had performed in 18 TV shows and 2 movies before appearing on MTS. And of course, her top concern, in this appearance just like all of those others, was safety. You heard today that, in that time period, Ms. Kosack had dedicated 150 hours of training for safety alone. She acclimated Elias to all sorts of things that one would find on a TV set. Lights, crowd noise, food smell, the list goes on. But the one thing she didn't train for -- the one thing she couldn't -- was a sudden threat launched by a TV show host. Today, you learned that host's name is Alex Grace.

Our client, as a professional animal trainer, had prepared a routine for the show that day. She communicated the show plan with Alex Grace's team well before the day of the performance. But Alex Grace didn't like that plan. Mr. Grace didn't like what the professional animal trainer said would be safe. So he made his own recommendations. We'll get to those suggestions, but the crux of that conversation is that our client told the Plaintiff exactly what to do. Her most important instruction was not to touch Elias. **Don't do that**. This is something we've all heard before. **Don't do that**. It's an instruction even a child can understand, simple, clear, and to the point. But members of the jury, on June 29th, 2017, Alex Grace showed that she was incapable of following this simple instruction. And because of his actions, we are here today.

Today's case is about negligence. What negligence means is that a duty was owed, the duty was breached, and as a result of that breach, harm was suffered. A previous court has already ruled that each side owed a duty and that each side suffered harm. "Breach of duty" just means is that

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one party, in this case, had a job and they didn't do it. MTS had a duty to follow the instructions provided by our client. Let me say that again, **their duty was to follow Ms. Kosack's instructions. Including the one we've all heard - don't do that.** Mr. Kosack, on the other hand, had a duty to ensure that Elias was ready to appear on the show and that his appearance would not pose a threat to the safety of anyone on set that day. All you had to do today members of the jury was determine which side breached their duty and was more responsible for the attack that occurred on June 29th, 2017. Ms. Kosack did her job, members of the jury. The plaintiff did not.

Ms. Kosack sent out her usual guidelines, intended to keep Elias comfortable and ensure that he did not experience a startle reaction. On top of sending these guidelines, Ms. Kosack was sure to speak with Alex Grace directly. She knew that Alex would be the person closest to Elias - the one interacting with him the most. She gave him clear instructions: do not touch Elias, and do not make sudden movements near Elias.

Ms. Kosack did her duty, members of the jury. Just as she did for the other 18 TV shows and 2 movies. You heard her talk about it today. She brought a trained, prepared chimpanzee onto the set of Midlands After Dark and trusted that the plaintiff would be reasonable enough to listen to her instructions. But Alex Grace wanted to change the performance. You heard our client testify that a chimpanzee is not meant to do improv. Alex Grace asked if Elias could come up on her lap. Our client, being the professional animal trainer she was, said no. **Don't do that.** Alex, again trying to push the envelope, asked if she could get into an argument with Elias. Again, our client said **Absolutely not.** Each of these last minute changes, our client said **Don't do that.** With her most important instruction being not to try to touch Elias.

Ultimately, on the day of the performance, for reasons only known to Elias, he began to have a startle reaction. He started screaming, yelling, jumping up and down. Now, a startle reaction is not necessarily an attack. You heard today that our client had calmed Elias down from this sort of thing before. On that day, Danny Kosack followed the textbook procedure. She told everyone to be calm, took a step, paused... but before she could take that second step Alex Grace did something so negligent that it brought all of us here today. He reached out towards Elias.

One test that you can use in a case of negligence is the reasonable person standard. This test requires that you ask yourselves a simple question: what would a reasonable person have done? In this case, you must ask: Would a reasonable person have ignored the trainer's clear instructions not to touch or move towards the chimpanzee? Would a reasonable person have ignored the trainer's instruction to stay calm when the chimpanzee became upset? Would a reasonable person have looked at this screaming, screeching, jumping, clearly agitated

Defense

chimpanzee and decided to reach towards it? If you find that the answer is no, you must find that Alex Grace, as an agent of MTS, acted negligently.

Today you have heard from multiple witnesses that Alex Grace made a movement, a reach towards Elias as he was experiencing a startle reaction.

To use the but-for test, you must ask yourselves: but-for which factor would this attack have never happened? Today you heard that a startle reaction is not an attack. Danny Kosack would calm Elias down like she had before, Elias would have gone off stage, the performance would have happened another time, and Chris Villafana would still be alive today.

So that begs the question: how did Elias go from a startle reaction to an attack? Today Dr. McCoy, an expert in primatology, came before you and explained the three-step process that turns a startle reaction into an attack. He told you that first, the chimpanzee becomes agitated. He begins to scream, to jump in his chair—in other words, he makes it very clear that he is unhappy. Next, there must be a trigger. Now, members of the jury, this trigger is *key* in turning the startle reaction into an attack.

Members of the jury, this case is about what happened on the day of the attack. Not the month before, not two weeks before - what happened on the day of the attack which caused this to happen? You had to decide what happened on the set of that studio to make Elias, an experienced performance chimpanzee, attack someone for the first time in his life. Members of the jury, today you have heard that the cause of this attack is sitting at that council table. Alex Grace reached towards Elias. Ms. Kosack said **don't do that**, and what did Alex Grace do? She ignored her. She ignored that simple command, that we've all heard since we were little. Alex Grace, acting like a child, chose to be disobedient and reach for the hot stove anyway. It was irresponsible, it was reckless and, ultimately, it was fatal. **Don't do that.**

Because MTS's representative Alex Grace failed to listen to that one instruction, you must find them liable for negligence.

Thank you.