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*Attorney at Law*  
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*Attorney at Law*  
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*Attorney at Law*  
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*Attorney at Law*

November 9, 2012

Dear Students & Coaches:

Welcome to the 2012-2013 Maryland State Bar Association Statewide High School Mock Trial Competition. This is the 30<sup>th</sup> year for Mock Trial—over 52,000 students have participated in this competition since its inception. We are pleased that you are joining in this exciting opportunity.

This year's case explores the topic of animal cruelty and neglect. Recently, there have been horrific accounts of people abusing animals, including someone who slashed horses, sadly setting a dog on fire, and of people mutilating or abusing animals. In other instances, well-intentioned people try and rescue animals but because of their own limitations, cannot adequately care for them. With the economic downturn even more cases are surfacing of people who simply can't afford to care for their animals. If we educate about the importance of caring for animals and the penalties that potentially occur when one does not take proper care then perhaps we can have a preventative and protective role. We hope that you find this case to be challenging, interesting and informative.

Our four primary objectives for the MSBA Mock Trial competition are:

- To further understanding and appreciation of the rule of law, court procedures, and the legal system;
- To increase proficiency in basic life skills such as listening, speaking, reading, and critical thinking;
- To promote better communication and cooperation between the school system, the legal profession, and the community at large;
- To heighten enthusiasm for academic studies as well as career consciousness for law-related professions.

Mock Trial works best when everyone competes fairly and honestly. Your goal should be learning, rather than winning. Mock Trial provides opportunities to learn through case preparation with your attorney advisor, teacher coach, and teammates, as well as during each of the competitions.

Please remember that Mock Trial parallels the real world in terms of proceedings, interpretations, and decisions by the Bench. Decisions will not always go your way and you will not always prevail. BUT—you will succeed if you learn from both wins and losses!

We ask that you read carefully through the rules, guidelines and score sheet included in this casebook. We wish you a very successful year and a rewarding learning experience.

Best Regards,

*Shannon McClellan*  
Shannon McClellan, Esq.  
Co-Chair, CLREP

*Hon. Diane O. Leasure*  
Hon. Diane O. Leasure  
Co-Chair, CLREP

*Ellery M. "Rick" Miller, Jr.*  
Ellery M. "Rick" Miller, Jr.  
Executive Director, CLREP

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**2012-2013**  
**MSBA HIGH SCHOOL MOCK TRIAL COMPETITION**

**PART I: ORGANIZATIONAL RULES**

1. **Forfeits are prohibited.** As a registered team, you agree to attend all scheduled competitions. If a team does not have an adequate number of students (i.e. due to illness, athletics, or other conflicts), it is still expected to attend and participate in the competition. In these instances, a team will “borrow” students from the opposing team. While this is treated as an automatic win for the opposition, both teams still gain the practice experience. Further, it maintains the integrity of the competition and is respectful of the Court, Presiding Judge, attorneys and the other team that has prepared and traveled to the competition. If this occurs, coaches should make every effort to notify the local coordinator AND the other coach in advance of the competition. When an opposing team does not have enough students to assist the other team, students may depict two or more of the roles (i.e. they may depict 2 witnesses or play the part of 2 attorneys).
2. Student attorneys are expected to keep their presentations limited to specific time guidelines. It is the presiding judge’s sole discretion as to how or if the time guidelines will be implemented during each competition. Teams should NOT object if they perceive a violation of these *guidelines*.
  - Opening statements/closing arguments—5 minutes each;
  - Direct examination—7 minutes per witness;
  - Voir Dire, if necessary— 2 minutes per expert witness (in addition to the time permitted for direct and cross examination)
  - Cross-examination—5 minutes per witness;
  - Re-Direct and Re-Cross Examination—3 minutes and a maximum of 3 questions per witness.
3. Local competitions must consist of enough matches that each participating high school presents both sides of the Mock Trial case at least once.
4. A team must be comprised of no fewer than eight (8) but a maximum of twelve (12) student members from the same high school, with the exception of high schools with a Maryland State Department of Education inter-scholastic athletics designation of Class 2A or Class 1A, which may combine with any other schools in the LEA in those classifications to field a team. Two “alternate” students are permitted during the local competition only. If a team advances beyond the local competition, an official roster must be submitted not exceeding 12 students.
5. A team may use its members to play different roles in different competitions. (See Part II: Hints on Preparing for the Competition). For any single competition, all teams are to consist of three (3) attorneys and three (3) witnesses, for a total of six (6) different students. For any single competition, a student may depict one role only of either witness OR attorney. (Note: In Circuits 1 and 2, where teams typically participate in two competitions per evening – once as prosecution and once as defense – students may change roles for the second competition.)
6. Any high school which fields more than one team (Team A and Team B, for example) may NEVER allow, under any circumstances, students from Team A to compete for Team B or vice-versa. If a high school fields two or more teams, each team must have a different teacher coach and a different attorney coach than the other team. Additionally, if a high school has multiple teams, then those teams MUST compete against one another in local (circuit) competition.
7. A.) Areas of competition coincide with the eight Judicial Circuits of Maryland. Each circuit must have a minimum of four (4) teams. However, in order to provide the opportunity for as many teams to participate as possible, if a circuit has two (2) or three (3) teams, they may compete in a “Round Robin” to determine who will represent the circuit in the circuit playoff. The runner-up team from another circuit would be selected to

compete based upon their winning record and average points scored during local competition rounds. This team would compete with the circuit representative in a playoff prior to the Regional Competition. When a circuit has only one registered team, CLREP may designate another circuit in which this team may compete.

B.) OR, under the discretion of a circuit coordinator and CLREP, if a circuit so chooses, it may combine with the “un-official” circuit to increase the number of opportunities to compete. In this case, a “circuit opening” arises and will be filled by the following method. To create the most equity, a sequential rotation of circuits will occur. If willing, the second place team from the specified circuit will advance to the regional competitions to fill the opening. If that team is unable to advance, the opportunity will move to the next circuit, and so on, until the opening is filled. In the event that all circuits are officially comprised of a minimum of four teams, the designated circuit will remain the next in-line to advance in future years.

<b>2012-2013</b>	<b>Circuit 1</b>	2016-2017	Circuit 5
2013-2014	Circuit 2	2017-2018	Circuit 6
2014-2015	Circuit 3	2018-2019	Circuit 7
2015-2016	Circuit 4	2019-2020	Circuit 8

8. Each competing circuit must declare one team as Circuit Champion by holding local competitions based on the official Mock Trial Guide and rules. That representative will compete against another Circuit Champion in a single elimination competition on April 10 or 11, 2013.
9. The dates for the Regionals, the Semi-Finals, and the Finals will be set and notice given to all known participating high schools by November 13, 2012. Changes will only occur due to conflicts in judicial schedules.
10. District Court judges, Circuit Court judges, and attorneys may preside and render decisions for all matches. If possible, a judge from the Court of Appeals or Court of Special Appeals will preside and render a decision in the Finals.
11. Any team that is declared a Regional Representative must agree to participate on the dates set for the remainder of the competition. Failure to do so will result in their elimination from the competition and the first runner-up in that circuit will then be the Regional Representative under the stipulations.
12. Winners in any single round should be prepared to switch sides in the case for the next round. Circuit Coordinators will prepare and inform teams of the local circuit schedule.
13. CLREP encourages Teacher Coaches of competing teams to exchange information regarding the names and gender of their witnesses at least 1 day prior to any given round. The teacher coach for the plaintiff/prosecution should assume responsibility for informing the defense teacher coach. A physical identification of all team members must be made in the courtroom immediately preceding the trial.
14. Members of a school team entered in the competition—including Teacher Coaches, back-up witnesses, attorneys, and others directly associated with the team’s preparation—are **NOT** to attend the enactments of **ANY** possible future opponent in the contest.
15. All teams are to work with their attorney coach in preparing their cases. It is suggested that they meet with their Attorney Advisor at least twice prior to the beginning of the competition. For some suggestions regarding the Attorney Advisor’s role in helping a team prepare for the tournament, see PART II: Hints on Preparing for Mock Trial and Appendix A.
16. **THERE IS NO APPEAL TO A JUDGE’S DECISION IN A CASE.** CLREP retains the right to declare a mistrial when there has been gross transgression of the organizational rules and/or egregious attempt to undermine the intent and integrity of the Mock Trial Competition. **Upon the coaches’ review of, and signature on the score sheet, THE OUTCOME IS FINAL.**

17. There shall be **NO** coaching of any kind during the enactment of a mock trial: i.e. student attorneys may not coach their witnesses during the other team's cross examination; teacher and attorney coaches may not coach team members during any part of the competition; members of the audience, including members of the team who are not participating that particular day, may not coach team members who are competing; and team members must have their cell phones and all other electronic devices turned off during competition as texting may be construed as coaching. Teacher and Attorney Coaches **MAY NOT** sit directly behind their team during competition as any movements or conversations may be construed as coaching.
18. It is specifically prohibited before and during trial to notify the judge of students' ages, grades, school name or length of time the team has competed.
19. The student attorney who directly examines a witness is the only attorney who may raise objections when that same witness is being cross-examined. The student attorney who raises objections on direct examination must be the same attorney who then cross-examines that same witness. This same principle applies if a student attorney calls for a bench conference; i.e., it must be the attorney currently addressing the Court. The student attorney who handles the opening statement may not perform the closing argument.
20. Judging and scoring at the Regional, Semi-Final and Statewide Final Competitions are distinct from judging and scoring in some local competitions. As in a real trial, the judge will preside, hear objections and motions, instruct counsel, and determine which team prevailed based on the merits of the law. Two attorneys will independently score team performance at the trial, using the score sheet from the official Mock Trial Guide. At the conclusion of the trial and while in chambers, the judge will award the tie point without informing the attorney scorers. The Tie Point will only be added into the final score only in the case of a tie. The attorneys will meet and work out any differences in scoring so that the two attorneys present one score sheet to the judge, and eventually, the two teams. The judge retains the right to overrule any score on the score sheet. Both teams shall receive a copy of this score sheet, signed by the judge. Teams will not have access to the original, independent score sheets of the attorneys.
21. **Evidentiary materials that have been modified for use during trial (e.g., enlarged), must be made available during the trial for the opposing team's use. During witness identification exchanges, please alert the other team if you plan to use modified materials.**

## **PART II: HINTS ON PREPARING FOR A MOCK TRIAL COMPETITION**

*The following tips were developed by long-time Mock Trial Coaches.*

1. Every student, teacher and attorney participating in a team's preparation should read the entire set of materials (case and guide) and discuss the information, procedures and rules used in the mock trial competition. Students: you are ultimately responsible for all of this once Court is in session.
2. Examine and discuss the facts of the case, witness testimony and the points for each side. Record key information as discussion proceeds so that it can be referred to in the future.
3. Witness' credibility is very important to a team's presentation of the case. Witnesses: move into your roles and attempt to think as the person you are portraying. Read over your affidavits many times and have other members of your team ask you questions about the facts until you know them.
4. Student attorneys: you should have primary responsibility for deciding what possible questions should be asked of each witness on direct and cross-examination. Questions for each witness should be written down and/or recorded. Write out key points for your opening statements and closing arguments before trial; then, incorporate additional points that arose during the competition for inclusion in your closing argument to highlight the important developments that occurred during the trial. Concise, summary, pertinent statements

which reflect the trial that the judge just heard are the most compelling and effective. Be prepared for interruptions by judges who like to question you, especially during closing arguments.

5. The best teams generally have student attorneys prepare their own questions, with the Teacher and Attorney Coaches giving the team continual feedback and assistance. Based on these practice sessions, student attorneys should continue revising questions and witnesses should continue studying their affidavits.
6. As you approach your first round of competition, you should conduct at least one complete trial as a dress rehearsal. All formalities should be followed and notes should be taken by everyone. Evaluate the team's presentation together. Try to schedule this session when your Attorney Coach can attend.
7. **Some of the most important skills for team members to learn are:**
  - Deciding which points will prove your side of the case and developing the strategy for proving those points.
  - Stating clearly what you intend to prove in an opening statement and then arguing effectively in your closing that the facts and evidence presented have proven your case.
  - Following the formality of court; e.g., standing up when the judge enters or whenever you address the Bench, and appropriately addressing the judge as "Your Honor," etcetera.
  - Phrasing direct examination questions that are not leading (carefully review the rules of evidence and watch for this type of questioning in practice sessions).
  - Refraining from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, learn to limit additional questions, as they often lessen the impact of previously made points.
  - Thinking quickly on your feet when a witness gives you an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at you.
  - Recognizing objectionable questions and answers, offering those objections quickly and providing the appropriate basis for the objection.
  - Paying attention to all facets of the trial, not just the parts that directly affect your presentation. All information heard is influential! Learn to listen and incorporate information so that your presentation, whether as a witness or an attorney, is the most effective it can be.
  - The Mock Trial should be as enjoyable as it is educational. When winning becomes your primary motivation, the entire competition is diminished. **Coaches and students should prepare AT LEAST as much for losing as they do for winning/advancing.** Each member of the team—student or coach—is personally responsible for his/her behavior prior to, during, and at the close of the trial. There are schools and individuals across the state that are no longer welcome to participate based on previous behavior.

### **Part III: Trial Procedures**

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom, as well as with the events that generally take place during the competition and the order in which they occur. This section outlines the usual steps in a "bench" trial—that is, without a jury.

1. **The Opening of the Court**
  - a. Either the clerk of the Court or the judge will call the Court to order.

- b. When the judge enters, all participants should remain standing until the judge is seated.
- c. The case will be announced; i.e., “The Court will now hear the case of \_\_\_\_\_ v. \_\_\_\_\_.”
- d. The judge will then ask the attorneys for each side if they are ready.

2. Opening Statements (5 minutes maximum)

a. Prosecution (criminal case)/ Plaintiff (civil case)

After introducing oneself and one’s colleagues to the judge, the prosecutor or plaintiff’s attorney summarizes the evidence for the Court which will be presented to prove the case. The Prosecution/ Plaintiff statement should include a description of the facts and circumstances surrounding the case, as well as a brief summary of the key facts that each witness will reveal during testimony. The Opening Statement should avoid too much information. It should also avoid argument, as the statement is specifically to provide facts of the case from the client’s perspective.

b. Defense (criminal or civil case)

After introducing oneself and one’s colleagues to the judge, the defendant’s attorney summarizes the evidence for the Court which will be presented to rebut the case (or deny the validity of the case) which the plaintiff has made. It includes facts that tend to weaken the opposition’s case, as well as key facts that each witness will reveal during testimony. It should avoid repetition of facts that are not in dispute, as well as strong points of the plaintiff/ prosecution’s case. As with the Plaintiff’s statement, Defense should avoid argument at this time.

3. Direct Examination by the Plaintiff/Prosecutor (7 minutes plus 2 minutes for Voir Dire)

The prosecutor/ plaintiff’s attorney conducts direct examination (questioning) of each of its own witnesses. At this time, testimony and other evidence to prove the prosecution’s/plaintiff’s case will be presented. The purpose of direct examination is to allow the witness to relate the facts to support the prosecution/plaintiff claim and meet the required burden. It also allows counsel for each side to establish the credibility of each of their witnesses. (If opposing counsel chooses to voir dire a witness, 2 minutes are permitted, in addition to the 7 minutes allowed for direct examination.)

General Suggestions:

- Ask open-ended questions, rather than those that draw a “yes” or “no” response. Questions that begin with “who,” “what,” “where,” “when,” and “how” or “explain…” and “describe…” are helpful during direct examination.
- Questions should be clear and concise, and should help guide your witness through direct examination. Witnesses should not narrate too long, as it will likely draw an objection from opposing counsel.
- Do not ask questions that “suggest” a specific answer or response.

4. Cross-Examination by the Defendant’s Attorneys (5 minutes)

After the attorney for the prosecution/plaintiff has completed the questioning of a witness, the judge then allows the defense attorney to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of the opposing witness. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through cross-examination. (If an attorney chooses to voir dire a witness, 2 minutes are permitted, in addition to the 5 minutes allowed for cross examination. These 2 minutes are typically allotted during the witness’ direct examination.)

General Suggestions:

- Use narrow, leading questions that “suggest” an answer to the witness. Ask questions that require “yes” or “no” responses.
- In general, it is never a good idea to ask questions to which you do not know the answer – unexpected responses can be costly and may leave you unprepared and off-guard.

- Never ask “why.” You do not want to give a well-prepared witness an opportunity to expand upon a response.
  - Avoid questions that begin with “Isn’t it a fact that...”, as it allows an opportunistic witness an opportunity to discredit *you*.
5. Direct Examination by the Defendant’s Attorneys (7 minutes plus 2 minutes for Voir Dire)  
Direct examination of each defense witness follows the same pattern as above which describes the process for prosecution’s witness. (See #3 above for suggestions.)
  6. Cross-Examination by the Prosecution/ Plaintiff (5 minutes)  
Cross-examination of each defense witness follows the same pattern as above for cross-examination by the defense. (See #4 above for suggestions.)
  7. Re-Direct Examination by the Plaintiff/ Prosecution (3 minutes and/or 3 questions)  
The Plaintiff’s/Prosecution’s attorney may conduct re-direct examination of the witness to clarify any testimony that was cast in doubt or impeached during cross-examination. (Maximum of three minutes or three questions.)
  8. Re-Cross Examination by the Defense Attorneys (3 minutes and/or 3 questions)  
The defense attorneys may re-cross examine the opposing witness to impeach previous testimony. (Maximum of three minutes or three questions.)
  9. Voir Dire Examination by Either the Plaintiff/ Prosecution or the Defense Attorneys (2 minutes)  
Voir Dire is the process of asking questions to determine the competence of an alleged expert witness. Before giving any expert opinion, the witness must be qualified by the court as an expert witness. The court must first determine whether or not the witness is qualified by knowledge, skills, experience, training or education to give the anticipated opinion. After the attorney who called the witness questions him/her about his/her qualifications to give the opinion, and before the court qualifies the witness as an expert witness, the opposing counsel shall (if he/she chooses to do so) have the opportunity to conduct a brief cross-examination (called “voir dire”) of the witness’ qualifications.
  10. Closing Arguments (Attorneys) (5 minutes)  
For the purposes of the Mock Trial Competition, the first closing argument at all trials shall be that of the Defense.
    - a. Defense  
A closing argument is a review of the evidence presented. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not substantiate the elements of a charge or claim, stresses the facts and law favorable to the defense, and asks for a finding of not guilty (or not at fault) for the defense.
    - b. Prosecution/ Plaintiff  
The closing argument for the prosecution/plaintiff reviews the evidence presented. The prosecution’s/plaintiff’s closing argument should indicate how the evidence has satisfied the elements of a charge, point out the law applicable to the case, and ask for a finding of guilty, or fault on the part of the defense. Because the burden of proof rests with the prosecution/plaintiff, this side has the final word.
  11. The Judge’s Role and Decision  
The judge is the person who presides over the trial to ensure that the parties’ rights are protected and that the attorneys follow the rules of evidence and trial procedure. In mock trials, the judge also has the function of determining the facts of the case and rendering a judgment, just as in actual bench trials.

**PART IV: SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE**



In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. **The burden is on the attorneys to know the rules, to be able to use them to present the best possible case, and to limit the actions of opposing counsel and their witnesses.**

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this Mock Trial Competition, the rules of evidence have been modified and simplified. Not all judges will interpret the rules of evidence or procedure the same way, and you must be prepared to point out the specific rule (quoting it, if necessary) and to argue persuasively for the interpretation and application of the rule you think proper. No matter which way the judge rules, attorneys should accept the ruling with grace and courtesy!

### 1. SCOPE

RULE 101: SCOPE. These rules govern all proceedings in the mock trial competition. The only rules of evidence in the competition are those included in these rules.

RULE 102: OBJECTIONS. An objection which is not contained in these rules shall not be considered by the Court. However, if counsel responding to the objection does not point out to the judge the application of this rule, the Court may exercise its discretion in considering such objections.

### 2. RELEVANCY

RULE 201: RELEVANCY. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probable than it would be without the evidence. It is that which helps the trier of fact decide the issues of the case. However, if the relevant evidence is unfairly prejudicial, confuses the issues, or is a waste of time, it may be excluded by the Court.

Example of a Relevant Question: "Alex, what, if any, interaction have you had with Danny's dogs?"

Example of an Irrelevant Question: "Alex, how many siblings do you have?"

Objection:

*"I object, Your Honor. This testimony is irrelevant to the facts of the case."*

RULE 202: CHARACTER. Evidence about the character of a party or witness (other than his or her character for truthfulness or untruthfulness) may not be introduced unless the person's character is an issue in the case.

Objection:

*"Objection. Evidence of the witness' character is not proper given the facts of the case."*

### 3. WITNESS EXAMINATION

#### A. DIRECT EXAMINATION (attorney calls and questions witness)

RULE 301: FORM OF QUESTION. Witnesses should be asked direct questions and may not be asked leading questions on direct examination. Direct questions are phrased to evoke a set of

facts from the witnesses. A leading question, on the other hand, is one that implies, suggests or prompts the witness to answer in a particular manner -- typically a "yes" or "no" answer.

Example of a Direct Question:

The State asks, "Lynne, how many times have you had to confiscate animals from their owners?"

Example of a Leading Question:

The State asks, "Lynne, isn't it true that you make a habit of confiscating animals, even when there's little evidence of abuse?"

Objection:

*"Objection: Counsel is leading the witness."*

NARRATION. While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or narrate an entire story. Narrative questions are objectionable.

Example of Narrative Question:

"Danny, tell the Court about your childhood."

Objection:

*"Objection. Question asks for narration."*

At times, a direct question may be appropriate, but the witness' answer may go beyond the facts for which the question was asked. Such answers are subject to objection on the grounds of narration.

- RULE 302: SCOPE OF WITNESS EXAMINATION. Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.
- RULE 303: REFRESHING RECOLLECTION. If a witness is unable to recall a statement made in an affidavit, the attorney on direct may show that portion of the affidavit that will help the witness to remember.

**B. CROSS EXAMINATION (questioning the other side's witness)**

- RULE 304: FORM OF QUESTION. An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions that tend to evoke a narrative answer should be avoided in most instances.
- RULE 305: SCOPE OF WITNESS EXAMINATION. Attorneys may only ask questions that relate to matters brought out by the other side on direct examination or to matters relating to the credibility of the witness. This includes facts and statements made by the witness for the opposing party. Note that many judges allow a broad interpretation of this rule.

Example: On direct examination, a witness is not questioned about a given topic, and the opposing attorney asks a question about this topic on cross examination.

Objection:

*“Objection. Counsel is asking the witness about matters which did not arise during direct examination.”*

RULE 306: IMPEACHMENT. On cross-examination, the attorney may impeach a witness (show that a witness should not be believed) by (1) asking questions about prior conduct that makes the witness’ credibility (truth-telling ability) doubtful, or (2) asking questions about previous contradictory statements. These kinds of questions can only be asked when the cross-examining attorney has information that indicates that the conduct actually happened.

**C. RE-DIRECT EXAMINATION**

RULE 307: LIMIT ON QUESTIONS. After cross-examination, up to three (3), but no more than three (3), questions may be asked by the direct examining attorney, and such questions are limited to matters raised by the attorney on cross-examination. (The presiding judge has considerable discretion in deciding how to limit the scope of the re-direct.)

**NOTE:**

If the credibility or the reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to “save” the witness’ truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Please note that at times it may be more appropriate NOT to engage in re-direct examination.

**D. RE-CROSS EXAMINATION**

RULE 308: LIMIT ON QUESTIONS. Three (3) additional questions, but no more than three (3), may be asked by the cross-examining attorney, and such questions are limited to matters on re-direct examination and should avoid repetition. (The presiding judge has considerable discretion in deciding how to limit the scope of the re-cross.) Like re-direct examination, at times it may be more appropriate not to engage in re-cross examination.

Objection:

*“Objection. Counsel is asking the witness about matters that did not come up on re-direct examination.”*

**4. HEARSAY**

**A. THE RULE**

RULE 401: HEARSAY. Hearsay is a statement, other than one made by the declarant while testifying at the trial, offered in evidence to prove the truth of the matter asserted made outside of the courtroom. Statements made outside of the courtroom are usually not allowed as evidence if they are offered in court to show that the statements are true. The most common hearsay problem occurs when a witness is asked to repeat what another person stated to him or her. **For the purposes of the Mock Trial Competition, if a document is stipulated, you may not raise a hearsay objection to it.**

Example: Alex states: “I heard other neighbors talking about how loud and disruptive Danny’s dogs were being.”

Objection: *“Objection. The statement is hearsay, Your Honor.”*

Possible Response to the Objection: “Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show....”

## **B. EXCEPTIONS**

**RULE 402:** ADMISSION AGAINST INTEREST. A judge may admit hearsay evidence if it was said by a party in the case and contains evidence which goes against the party’s side.

**RULE 403:** STATE OF MIND. A judge may admit hearsay evidence if a person’s state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person’s state of mind.

**RULE 404:** BUSINESS RECORDS. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of the information or the method of circumstances of preparation indicate lack of trustworthiness, shall be admissible. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and callings of every kind, whether or not conducted for profit.

**RULE 405:** EXCITED UTTERANCE. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

## **5. OPINION AND EXPERT TESTIMONY**

**RULE 501:** OPINION TESTIMONY BY NON-EXPERTS. Witnesses who are not testifying as experts may give opinions which are based on what they saw or heard and are helpful in explaining their story. A witness may NOT testify to any matter of which the witness has no personal knowledge, nor may a witness give an opinion about how the case should be decided.

Example: “Sam, do you believe, based on your observations, that Danny was engaged in training dogs for the purpose of fighting them?”

Objections:

*“Objection. The witness has no personal knowledge that would enable him/her to answer this question/ make this statement.”*

*“Objection. The question asks the witness to give a conclusion that goes to the finding of the Court.”*

**RULE 502:** OPINION TESTIMONY BY EXPERTS. Only persons qualified as experts may give opinions on questions that require special knowledge or qualifications. An expert may be called as a witness to render an opinion based on professional experience. An expert must be qualified by the attorney for the party for whom the expert is testifying. This means that before the expert witness can be asked for expert opinion, the questioning attorney must bring out the expert’s qualifications, education and/or experience.

Example: (Prior to being qualified as an expert) “Dr. Martin, please explain injuries that would be consistent with dog fighting.”

Objection: *“Objection. Counsel is asking the witness to give an expert opinion for which the witness has not been qualified.”*

RULE 503: VOIR DIRE. (“To speak the truth.”) After an attorney who has called a witness questions him/her about his/her qualifications, and before the court qualifies the witness as an expert, the opposing counsel shall have the opportunity, if he/she chooses, to conduct voir dire. After the voir dire examination has been conducted, the cross-examining attorney should advise the court as to whether there are any objections to the witness being qualified as an expert witness and/or whether there are any objections to the witness’ expertise to give the specific opinion the opposing counsel is trying to elicit from this witness.

Example:

(after questioning by an attorney to create a foundation for his/her witness to be qualified by the Court as an expert witness): “At this time, your Honor, I request that the Court accept and qualify the witness as an expert in the field of ....”

Objection:

*“Your Honor, we would like permission to voir dire the witness.”*

## 6. PHYSICAL EVIDENCE

RULE 601: INTRODUCTION OF PHYSICAL EVIDENCE. Physical evidence may be introduced only **if it is contained within the casebook** and relevant to the case. Physical evidence will not be admitted into evidence until it has been identified and shown to be authentic or its identification and/or authenticity has been stipulated. That a document is “authentic” means only that it is what it appears to be, not that the statements in the document are necessarily true.

Physical evidence need only be introduced once. The proper procedure to use when introducing a physical object or document for identification and/or use as evidence is (for example):

- a. Show the exhibit to opposing counsel.
- b. Show the exhibit and have it marked by the clerk/judge. “Your Honor, please have this marked as Plaintiff’s Exhibit 1 for identification.”
- c. Ask the witness to identify the exhibit. “I now hand you what is marked Plaintiff’s Exhibit 1. Would you identify it, please?”
- d. Ask the witness about the exhibit, establishing its relevancy.
- e. Offer the exhibit into evidence. “Your Honor, we offer Plaintiff’s Exhibit 1 into evidence at this time.”
- f. The Judge will ask opposing counsel whether there is any objection, rule on the objection if there is one, and admit or not admit the exhibit into evidence.
- g. If the exhibit is a document, hand it to the clerk/judge.

NOTE: After an affidavit has been marked for identification, a witness may be asked questions about it without its introduction into evidence.

## 7. INVENTION OF FACTS (Special Rules for the Mock Trial Competition)

RULE 701: DIRECT EXAMINATION. On direct examination, the witness is limited to the facts and evidence provided in the casebook. If a witness testifies in contradiction of a fact given in the witness’ statement, opposing counsel should impeach (prove untrue) the witness’ testimony during cross-examination. If the witness goes beyond the facts given, such that they directly conflict with the stipulated facts or witness affidavits, a bench conference may be requested by opposing counsel, at which time the counsel may object to invention of facts. (It should be noted that the granting of a bench conference

is a discretionary decision of the judge. A request for a bench conference might not be granted.)

Example:

“Sam, exactly how many dogs have you seen living at the Harding home over the years you have been delivering mail.”

Sam replies: “Oh, at least a dozen.”

Objections:

*“Objection, your honor, the witness is creating facts which are not in the record.”*

*“Objection. The witness is inventing facts that directly contradict case material.”*

*“Your Honor, the witness is intentionally creating facts which could materially alter the outcome of the case.”*

RULE 702: CROSS-EXAMINATION. Questions on cross-examination should not seek to elicit information that is not contained in the fact pattern. If on cross-examination a witness is asked a question, the answer to which is not contained in the witness’ statements of the direct examination, the witness may respond with any answer which does not materially alter the outcome of the trial. An answer which is contrary to the witness’ affidavit may be impeached by the cross-examining attorney. If the witness invents facts material to the case, a bench conference may be called and, if granted, an objection made to the invention of facts.

## 8. SPECULATION

RULE 801: Speculation, or someone’s idea about what *might* have occurred, is generally not permitted. A witness may not jump to conclusions that are not based on actual experiences or observations, as this is of little probative value. Some leeway is allowed for the witness to use their own words, and greater freedom is allowed with expert witnesses.

Objection:

*“Objection. This calls for speculation on part of the witness.”*

## 9. PROCEDURE RULES

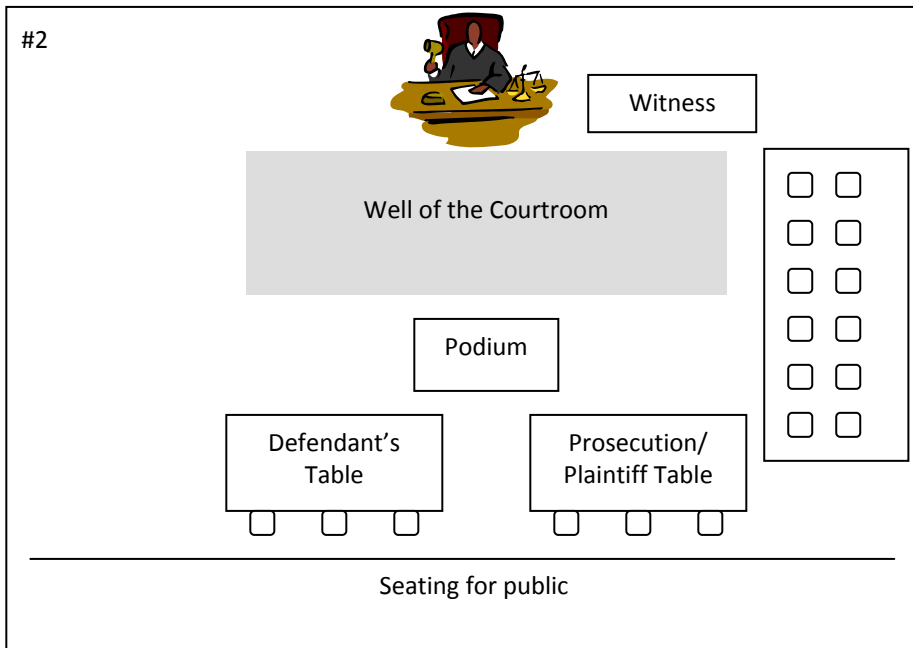
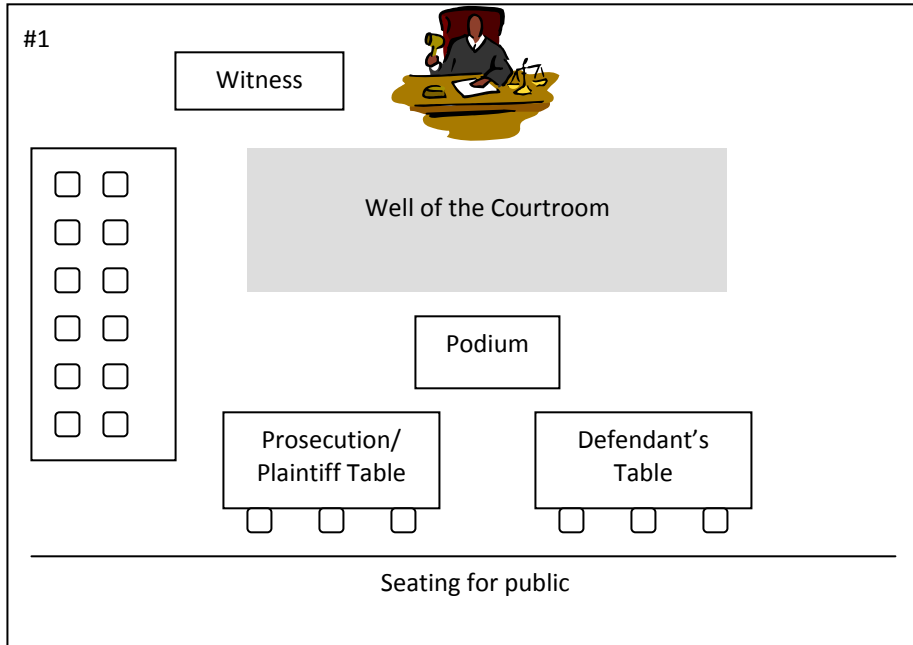
RULE 901: PROCEDURES FOR OBJECTIONS. An attorney may object anytime the opposing attorney has violated the Rules of Evidence.

NOTE: The attorney who is objecting should stand up and do so at the time of the violation. When an objection is made, the judge will usually ask the reason for it. Then the judge will turn to the attorney who asked the question and that attorney will usually have a chance to explain why the objection should not be accepted (“sustained”) by the judge. The judge will then decide whether to discard a question or answer because it has violated a rule of evidence (“objection sustained”), or whether to allow a question or answer to remain on the trial record (“objection overruled”).

RULE 902: MOTIONS TO DISMISS. Motions for dismissal at the end of the prosecution’s case are NOT permitted.

RULE 903: CLOSING ARGUMENTS. Closing arguments must be based on the evidence and testimony presented during the trial. Offering new information at this point is prohibited.

# Courtroom Diagram



Note: The layout of courtrooms varies widely from courthouse to courthouse. Prosecution and defense tables are usually dictated by where the jury box is situated (if there is a jury box). In most instances, prosecution sits closest to the jury, and the defense sits at the far table. This is based on the premise that the defendant is innocent until proven guilty, and so is removed (as far as possible) from the scrutiny of the court.

IN THE CIRCUIT COURT OF THE STATE OF MARYLAND  
IN AND FOR MONTGOMERY COUNTY

State of Maryland )  
 )  
 v. )  
 )  
 Danny Harding, )  
 )  
 Defendant. )

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**CASE SUMMARY / STATEMENT OF STIPULATED FACTS**

Danny Harding is a resident of the Everett community in Montgomery County, Maryland. Harding works for ABC Packaging, where the majority of the work is manual labor. Though well liked at work and popular among co-workers, Danny is frequently late and has a rather high number of absences. Harding is commonly known as “Flash” among close friends, as a nod to an obvious preference for fine things; designer labels, a fully-loaded Lexus, and such.

On August 23, 2012, Harding left home at 1:00pm, so there would be sufficient time to stop at the bank and the dry cleaners on the way to ABC Packaging. Danny was scheduled to work the second shift from 3:00pm to 11:00pm. Around 2:05pm, an anonymous call was placed to 311, reporting suspicious sightings and sounds emanating from 1642 Elm Point Lane, the address of Harding’s home. Police were dispatched and logged their arrival at 2:42pm. Hearing strange whimpering noises, police forced their way into the residence.

Police discovered seven pit bull mixed dogs confined in crates inside the residence, and one Doberman in a spacious kennel in the backyard. Five of the crates were located on the first floor of the house, and two of the crates were located in the basement, which was poorly lit, musty, and lined with baffling. The crates lacked food and water, though many bowls were present in the house outside of the crates. By contrast, the kenneled Doberman had an ample supply of food and water inside her pristine space.

Several of the crated dogs had bite marks on their faces, legs, and bodies. With the exception of Bella, none of the dogs were licensed, nor had they received rabies or other core vaccinations. While some of the dogs were unkempt in appearance, none of the dogs appeared to be in imminent danger of death.

In the house and backyard, police discovered dog-training equipment, including harnesses, ropes with metal coils, Velcro weights, a breeding stand, and chains. The police confiscated “Muscle Up Powder” and “K-9 Super Fuel” animal supplements, Betadine Surgical Scrub wound cleanser, steroids labeled for dog use, and IVs. Eight 4-foot by 3-foot panels with connecting hinges were found stacked against the wall in the basement. When latched together, they created an 8-foot by 8-foot box. Lab tests conducted on the boards were inconclusive, as they had been doused with an industrial strength cleaner.

Police called their Animal Control division, and Officer Graham responded. Officer Graham took all eight dogs to the Montgomery County SPCA, where a veterinarian examined them. The dogs were treated for a variety of ailments including dehydration, kennel cough, urinary tract infection, mammary gland tumor, skin infections and diarrhea.

In surveying Harding’s home, police also noted that the house contained an unusual amount of clutter, including many neatly organized stacks of papers and boxes. The clutter created a labyrinthine maze in the house, though each room was accessible and traversable. Lacking a warrant, police did not open any of the boxes or rifle through the papers.



Police tracked Harding down at work and asked that s/he voluntarily come with them to the police station to discuss the situation. The officers noted Harding’s apparent surprise when told of the events that transpired after s/he left for work that day. During the interview with police, Harding volunteered that each dog was a “rescue animal,” saved from largely unknown - but clearly unsavory - circumstances.

Harding explained the presence of the training equipment, supplements, and medical supplies as instruments used in the rehabilitation and training of dogs. Harding explained that the dogs were always crated while s/he was at work, and that they were placed in the only crates s/he had available. Harding also explained that ample food and water was always available to the dogs when s/he was home.

After their interview with Harding, police filed charges against him for abuse and neglect of animals and aggravated cruelty to animals. After review, Harding was indicted on seven counts of animal abuse and neglect and seven counts of aggravated cruelty to animals.

**STATEMENT OF CHARGES AND DEFENSES**

The State of Maryland charges Danny Harding with the following violations of Maryland Code:

**MD Code § 10-604 Abuse or neglect of animal.**

(a)(3). A person may not inflict unnecessary suffering or pain on an animal; 7 counts

-Danny Harding did inflict unnecessary suffering and pain to Dog #1, Dog #2, Dog #3, Dog #4, Dog #5, Dog #6, and Dog #7.

(a)(5). If the person has charge or custody of an animal, as an owner or otherwise, unnecessarily fail to provide the animal with nutritious food in sufficient quantity, necessary veterinarian care, proper drink, air, space, shelter or protection from the weather; 7 counts

-Danny Harding did fail to provide the animal with nutritious food in sufficient quantity, necessary veterinarian care, proper drink, air, space, shelter or protection from the weather to Dog #1, Dog #2, Dog #3, Dog #4, Dog #5, Dog #6, and Dog #7.

**MD Code § 10-607. Aggravated cruelty to animals – Certain activities related to dogfights prohibited.**

(a)(3) A person may not possess, own, sell, transport, or train a dog with the intent to use the dog in a dogfight; 7 counts

-Danny Harding did possess, own, sell, transport, or train a dog with the intent to use Dog #1, Dog #2, Dog #3, Dog #4, Dog #5, Dog #6, and Dog #7 in a dogfight.

**STIPULATIONS**

The parties have stipulated to the authenticity and factual accuracy of the following items. The parties have also agreed that the items are not in dispute:

- 1. 311 Transcript
- 2. SPCA Veterinary Care Reports
- 3. Animal Control Complaint Form & Attachment
- 4. Physical Care Skin & Haircoat Chart

**WITNESSES TO APPEAR BEFORE THE COURT**

<u><b>Witness for the Prosecution</b></u> Lynne Graham, Animal Control Officer Dr. Ty Johnson, Veterinarian / Animal Trainer Alex Vogel, Neighbor	<u><b>Witnesses for the Defense</b></u> Danny Harding, * Defendant Dr. Taylor Martin, SPCA Veterinarian Sam Shelton, USPS Worker
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\* Danny can be portrayed by either gender, and the fact pattern can be adjusted accordingly.

1 **LYNNE GRAHAM, Witness for the Prosecution**

2  
3 I work for the Montgomery County Police Department, where I am an Animal Control Officer for our Animal  
4 Services Division. This is a relatively new division of the police department; back when I first began, Animal Control  
5 was an independent county department. About 15 years ago, they rolled the functions of AC into the county police  
6 department. We respond to, and investigate more than 9,000 complaints annually, most of which are public  
7 nuisance animals. Thanks to high-profile animal cruelty cases like Michael Vick and Travers and Tremayne Johnson,  
8 we have seen an increasing number of calls regarding suspected animal cruelty cases. If there is any good at all  
9 that has come out of these cases, it's the fact that people are much more aware of the signs of animal abuse, and  
10 much less willing to tolerate it.

11  
12 In addition to our investigation, we inspect and license about 150 animal-related business each year, provide  
13 administrative support for the Animal Matters Hearing Board, and oversee a number of contracts relating to  
14 animals. We also investigate about 1,200 animal bite cases a year, and conduct six annual rabies vaccination  
15 clinics. Like the rest of our departments, we stay busy.

16  
17 I have been with the department since it first opened in 1996, and prior to that, served as an Animal Control  
18 Officer for 4 years. I attended Montgomery College and received an AAS – Associate of Applied Science degree - in  
19 Criminal Justice before beginning my career. When I was much younger, I aspired to be a veterinarian because of  
20 my love for animals. But, I married young and we soon began a family, and there just wasn't time and money for  
21 school. That said, I do love my job and the people with whom I work.

22  
23 On the afternoon of August 23, 2012, we received a phone call on our non-emergency line, from an anonymous  
24 caller. The caller noted several concerns, namely about noises that were emanating from a neighbor's home.  
25 Although the caller believed the noises to be associated with animals, our regular police officers were dispatched  
26 to check out the home. Once inside the residence, they found a number of dogs that appeared to be unwell, so  
27 they called my department. The Everett community was in my territory that day, so I responded.

28  
29 Unlike the cartoonish images that many have in their minds when thinking of old-time animal catchers, ACOs are  
30 trained to act with caution, compassion, and common-sense. I've responded to houses where a bunch of officers  
31 have the place surrounded with a dog cowering in the corner of the yard. They want to tranquilize the animal; and  
32 all I do is walk closer and call gently to the poor thing, and it walks over to me wagging its tail. Honestly, that's the  
33 reason why we have specialized departments – I wouldn't dare try to assert any authority where I don't possess  
34 the know-how. When it involves animals, we get called in, because we know how to respond appropriately.

35  
36 One of the first things that tips us off – sometimes well before we enter a residence – is the smell that emanates  
37 from it. This was the case on this day. I don't mean an appalling smell – it's more an odor that you might smell  
38 when you take your pet to the Vet. It's a mix of animals, fear, medicine, pet waste, and cleaners, sort of all mixed  
39 together. I always refer to it as the "sick" smell, though that probably paints the wrong image. In any case, this  
40 house had the "sick smell."

41  
42 I was instructed by officers already on the scene to come around to the back of the house. Upon arriving, I was  
43 greeted by a beautiful Doberman. She was in a substantial kennel in the back yard, with fresh water, food, and a  
44 couple of toys. Part of the kennel was covered by a roof, so that she would be sheltered by inclement weather.  
45 Under the covered part was a fleece pet bed. She was definitely a barker, so at first, I was inclined to think this was  
46 more of a nuisance call.

47 I entered the dwelling through the basement door, and was a bit taken aback by what I saw. The basement, which  
48 had a partially tiled floor, was home to two dogs – both mixed pit bull breeds. The crates were small for the

49 animals, and appeared to have not been cleaned for some time. It's difficult to say how long, however, because it  
50 looked as though they were both suffering from diarrhea.

51  
52 The bottom of the cages, as well as the backsides of the pups themselves, were covered in feces. These two dogs  
53 were in pretty bad condition at first glance. They had deep puncture wounds on their snout which did not look to  
54 be cleaned or treated. Understandably, they were very wary of us, and it took some time to coax them out of their  
55 crates. One of the dogs was whining loudly, and shaking very badly.

56  
57 Propped up against the wall were eight plywood boards laying on the floor, each measuring approximately 4' by 3'.  
58 It looked to be something like a make-shift enclosure, because each board contained latches. I'm guessing it could  
59 probably be put together and taken apart in a matter of minutes.

60  
61 On the main floor of the house, we found five more dogs, all in crates that, in my opinion, were too small for their  
62 sizes. None of the dogs had water or food in their crates, but there were bowls of water and food in virtually every  
63 room of the house. Two of the dogs' crates had urine and feces in them. Three of the dogs' crates were clean.  
64 Some of the dogs appeared a bit unkempt – with some matting on their rear ends. None of the dogs on the main  
65 floor seemed to have serious health conditions, with the exception of one of the female dogs which had a large  
66 growth on her underside. They were uncharacteristically quiet, despite the fact that strangers were traipsing  
67 through their house. In fact, one of the animals – the female with a large mass on her underside – sat shaking in  
68 her crate while we completed the investigation.

69  
70 In addition to the animals, I found a number of items that we usually associate with dog-training. I noted two  
71 different vitamin supplements – Muscle-Up Powder and K-9 Super Fuel - commonly given to dogs that are  
72 receiving strength-training. I also took note of a surgical scrub wound cleanser, steroids, IVs and a number of  
73 pieces of equipment: harnesses, Velcro weights, and even a breeding stand. The items were located throughout  
74 the house, but primarily in the backyard. All of these items raise serious red flags for me as an Animal Control  
75 Officer, as many of them are commonly used by less sophisticated dog-fighting operations.

76  
77 On the other hand, there are also tell-tale, hard to conceal, signs of dog-fighting that were not evident during my  
78 investigation. We routinely see fight pits, where the actual fights occur. Often the pits are splattered with blood,  
79 and in some instances, remains of the unfortunate victims. We see break sticks that are used to disengage one dog  
80 from another. We often find wash basins so that respective owners can cleanse their dog's opponent to remove  
81 any poisonous or caustic substances prior to the match. As noted by police on the scene, the first floor was barely  
82 passable because of boxes everywhere. In the basement, however, there was a large, clear space in the middle of  
83 the basement that was easily 15-feet by 15-feet. One could easily put together the 4' x 3' boards in that space, and  
84 use it for a dog fighting ring.

85  
86 I would note that none of the items found, nor any of the items not found, are stand-alone proof of dog-fighting.  
87 Rather, the totality of all paraphernalia is what creates considerable suspicion.

88  
89 Given the fact that at least a couple of the dogs seemed to be in poor health and unsavory living conditions, I felt it  
90 necessary to remove all of the dogs from the residence and have them examined by the county SPCA. This is  
91 awfully close to animal hoarding, as far as I'm concerned. I learned a long time ago – if my gut says to remove the  
92 animals, then I had better do it, or risk losing many nights' sleep over the guilt and concern. Many of the conditions  
93 that are prevalent among canines that live in this type of environment are as contagious as the common cold to  
94 humans, so we err on the side of caution. I conferred with the police officers who initially responded, and we  
95 agreed that they would question Harding immediately.

1 **ALEX VOGEL, Witness for the Prosecution**

2

3 My name is Alex Vogel, and I live at 1640 Elm Point Lane in Montgomery County, Maryland, next door to Danny  
4 Harding. I work at the delicatessen at Giant Grocers right in my neighborhood. I've been there for more than  
5 fifteen years, and enjoy the short commute. If it's a nice day, I'll sometimes walk to work. It's one of the  
6 reasons I decided to move into my neighborhood nearly fourteen years ago.

7 Our neighborhood is tight. It reminds me of the area where I grew up – nice, brick, row-homes, where front  
8 doors are always open, people sit on their front porches talking to neighbors, and folks are always looking out  
9 for one another. It's almost unheard of these days. We also have a Neighborhood Watch program – it's nothing  
10 formal, but if something or someone is suspicious, we let each other know.

11 I figured Danny would fit right in to the neighborhood. It was a sad situation – Mrs. Harding's passing so  
12 suddenly. I know it was devastating to Danny, and really, the whole neighborhood felt that way. Mrs. Harding  
13 was the eyes and ears of our street – real nice, always doing nice things for others, and ready to gossip about  
14 the latest news. I basically watched Danny grow up. Though I was a little concerned that Danny might be too  
15 young to keep up the house the way Mrs. Harding would've liked, everything seemed okay in the beginning.  
16 Danny's nice enough, social at times, keeps the house and yard reasonably neat – all of the things you'd want  
17 in a neighbor.

18 Up until the start of the new year, it was reasonably quiet over there, too. But, then the dogs arrived. Danny  
19 always had the Doberman – a real sweet dog who doesn't do much more than wag her tail when she sees me.  
20 She barely barked, which is why I thought it odd that I kept hearing barking coming from Danny's house. Then,  
21 out of nowhere it seemed, Danny had a bunch of dogs living over there.

22 On one occasion, Danny asked if I heard the dogs when s/he's out of the house. I was as diplomatic as I could  
23 be with my response, and said something like "I've gotten used to the noise." I mean, what am I supposed to  
24 say – "I can't hear myself think because they make such a racket"? I couldn't even tell you how many dogs live  
25 there. They look the same to me, except for their color. In the mornings and on the weekends, I'd see Danny in  
26 the backyard with the dogs, shouting orders like a military commander. Thank goodness for the chain-linked  
27 fence, because some of them look ferocious. They don't bark much – and if they do, Danny yells at them. But  
28 they are always fighting with one another, or have something clenched in their teeth that they are whipping  
29 around violently. They look like they would tear apart and eat anything in their way.

30 On several occasions, I saw people entering Danny's home late in the evening-like 10pm or so, just as I was  
31 getting home from work. I thought it odd that the guests would sometimes bring their dogs with them. The  
32 dogs looked like they were pulling hard on their leashes and wearing muzzles. I shouted over to say hello, but  
33 Danny just looked away and rushed inside. I thought it strange, too, that I was never invited. I mean, we are  
34 next-door neighbors.

35 I have never reported Danny to the authorities because it's not really my business what Danny does within the  
36 perimeter of the home. I'm a firm believer that what happens in your home should be your own business. But  
37 the danger to the community posed by vicious attack dogs, well, that's another thing. Plus, the noise those  
38 cretins make when Danny is away from the house – it's just awful. Between the incessant barking and whining,  
39 something had to change. The house on the other side of Danny is vacant; it was foreclosed on a couple of  
40 years ago, so I'm probably the only one affected by the noise.

41 And then there's the rabble of people coming and going from Danny's home late at night. They love to show off  
42 their bling and fancy cars — but I'm not jealous. One of Danny's night guests once double-parked his BMW 5-  
43 series next to my '02 Honda Civic, so that I was completely blocked in. It sat there for hours. And then when I  
44 tried to have the guest's car towed, Danny came out and bribed the tow truck driver with cash! Later he  
45 apologized to me and said, "I make a lot of money off the guy who drives that car; I need him and his buddies  
46 to come back as much as possible. You know, ABC Packaging doesn't come close to covering all my bills."

47 Sometimes, I think Danny doesn't have the time or the patience to keep up with all those dogs. I knocked on  
48 Danny's door once, and offered to take Bella or one of the other dogs off Danny's hands; I've always liked the  
49 idea of having a pet and think I could provide a good home. They certainly wouldn't be stuck in cages for hours  
50 on end in my house. Danny got really defensive and said, "They have a perfectly good home right here. Plus  
51 these dogs are too precious and too valuable to be cared for by a stranger. You wouldn't know what to do with  
52 them." A few days later, the police came and saved those dogs.

1 **DR. TY JOHNSON, Witness for the Prosecution**

2

3 I have always aspired to be a veterinarian. I grew up on a farm in Texas, and was surrounded by cows, chickens,  
4 pigs, horses – you name it – from sunrise to sundown. Throughout my childhood, we had any number of  
5 domesticated animals as well: cats, dogs, rabbits and even a hamster or two. My mother intended for the pets to  
6 work: the dogs were herders and the cats were mouse-catchers. But, when they weren't working, I was usually  
7 sneaking them into the house to sleep in my room or to give them dinner scraps. This infuriated my mother, and  
8 usually netted me an extra hour of work on the farm, but it was worth it.

9 Most of the kids I grew up with wound up taking over their family's farm. It's just what everyone did in my town.  
10 But, I knew I would go crazy if I stayed there. Much as I loved my parents and the farm on which I grew up, I knew  
11 I needed a different life. Much to the chagrin of my parents, I finished high school, and was accepted into my first  
12 choice undergraduate program at Penn State. Four years later, and after receiving my BS in Veterinary Science, I  
13 was accepted into Cornell University – which, I might add – was just recognized as the nation's top school for  
14 Veterinary Medicine. I thoroughly enjoyed my schooling, and received a first-class education including paid work  
15 opportunities at local animal shelters and vet practices. After receiving my Doctors of Veterinary Medicine  
16 (DVM), I followed the love of my life to Maryland, because s/he had been offered an excellent job opportunity in  
17 Montgomery County. The rest, as they say, is history. I worked for a local vet practice until 1999 and then opened  
18 my own practice with a former school colleague. MCSPCA calls upon me to provide pro-bono medical service to  
19 its rescues. I typically volunteer about 10-12 hours of time each month.

20 At approximately 4:15pm on Thursday, August 23, 2012 a police officer and two Montgomery County Animal  
21 Control officers notified me that they were bringing in eight dogs. THE MCSPCA has an ad hoc agreement with  
22 the county to take dogs on a case-by-case basis, when the county facility is at full capacity or lacks the expertise  
23 to address a complex case. Apparently, with eight dogs involved and many in need of treatment, the officers  
24 decided to bring the dogs to us.

25 The eight dogs brought to us included seven pit bull mixed dogs and one Doberman. The officers informed me  
26 that they had not located any evidence the dogs were licensed or that they had their required rabies shots. A  
27 second records check performed by the officers confirmed that all dogs but the Doberman were unlicensed.  
28 Based on my immediate impression, six of the dogs appeared to be in some distress and in need of care, but  
29 none of the dogs appeared to be in any immediate danger.

30 Our team immediately began to triage the needs of the dogs. I assessed the dogs' conditions with the help of  
31 another staff veterinarian, a veterinary assistant, and two technicians. The dogs were generally unkempt and  
32 unhealthy in appearance, except for the Doberman. Two of pit bull mixed dogs had bite marks on their faces,  
33 legs, and bodies, which raised some obvious concerns and some suspicions as to how the wounds were received.

34 I was able to determine from examination and standard diagnostic tests that two dogs had kennel cough, one  
35 had a urinary tract infection, another dog was suffering from a mammary gland tumor, and two dogs had skin  
36 infections. The same dogs that had skin infections were also suffering from diarrhea, which was likely caused  
37 from inadequate, or complete lack of medical treatment of the wounds causing the skin infections. We began  
38 treatment immediately for these conditions as they became known to us. For the dogs with bite wounds, we  
39 cleansed the injuries, and administered antibiotics. One dog, "Mark," required suturing for one wound. The bite  
40 wounds the dogs displayed were much more serious than those that normally result from dogs at play. They also  
41 were more serious than the wounds a veterinarian would normally expect to see when dogs that are recently

42 introduced, fight to establish dominance. Those wounds tend to be superficial, occurring as dogs grab at one  
43 another with their mouths without clamping down. When veterinarians see puncture wounds, that usually  
44 indicates that dogs have bitten fast and hard, clamping their jaw. Clamped jaws tend to indicate, in turn, a fight  
45 involving serious aggression and defense.

46 In interacting with the dogs, the MCSPCA staff and I also noticed some behavioral issues. While the dogs were  
47 generally non-aggressive with the staff and allowed us to examine and treat them easily, the dogs showed signs  
48 of aggression when brought into close proximity to one another. The Doberman was an exception, however—she  
49 is a very mild-mannered dog, and seems to love the company of people and animals. The pit bull-boxer was at  
50 the other end of the spectrum; he was extremely aggressive with our staff and easily agitated. Unfortunately, our  
51 dedicated behaviorist has not assessed the dogs. She has been out on medical leave and we weren't able to  
52 find someone with her credentials to substitute. However, veterinarians take basic courses in animal behavior as  
53 part of our training. All of the veterinarians in our facility can recognize and diagnose simple behavior-related  
54 issues.

55 In my professional opinion, the dogs' conditions and injuries were a result of animal neglect. Interestingly, more  
56 and more attention is being given to the concept of animal hoarding, whereas ten years ago most people had  
57 never heard the term. Now, it's depicted in books, on the web, and even television. In most instances of reported  
58 animal hoarding, there are many, many animals – hundreds, in some of the extreme cases. Unfortunately, animal  
59 hoarders justify their behavior with the thinking that no one else will care for the animals, and that, if they seek  
60 help, the animals will be euthanized. Typically, there is a failure to provide minimal standards of care, and  
61 complete denial of the poor living conditions in which the animals are living. Animal hoarding can occur for  
62 various reasons; although research on the topic is in its infancy, it can sometimes begin with the best of  
63 intentions by “The Rescue Hoarder” or “The Overwhelmed Caregiver” – and spiral out of control.

64 The more people talk about and recognize the signs and symptoms of animal abuse, the better for our four-  
65 legged friends. We have seen an increasing number of animal cruelty cases in the news – that's good, people are  
66 talking, observing, recognizing. However, these are the sensationalized cases. The case of a dog being violently  
67 killed is horrifying – shocking – but, the reality is, in animal hoarding cases, the suffering is endured by many  
68 animals for months and months on end.

69 The Harding case is not nice and neat. There are characteristics that indicate abuse, neglect, hoarding, and  
70 criminal intent. Some of the conditions, injuries, and behaviors were suggestive of at least some of the dogs  
71 being used in dogfights. I based this opinion on the breeds of the dogs, the bite wounds apparent on three of the  
72 animals that were in various stages of healing, and the general neglect of at least six of the eight dogs. In  
73 addition, police and animal control officers informed me of the items they found in the house – harnesses, ropes  
74 with metal coils, boards that could be latched together to form a dog fighting ring, Velcro weights, a breeding  
75 stand, chains, various animal supplements, and various medical supplies. These items are common in dog fighting  
76 cases.

77 The fact is, six, possibly seven, of Harding's eight dogs were living in substandard conditions. It was only a matter  
78 of time before something far more serious happened to one or more of them. Fortunately for the pups, someone  
79 recognized the signs and made the appropriate call, rather than turning their back on the situation.

1 **DANNY HARDING, Defendant**

2

3 My name is Danny Harding. I am 21 years old. I reside at 1642 Elm Point Lane in Montgomery County, Maryland. For  
4 the past 2 and a half years, I have worked for ABC Packaging; a job I never anticipated as my career, but am very  
5 proud to have nonetheless.

6 My childhood was fairly normal. I was raised by my stay-at-home mother in a middle-class household. We had one  
7 dog, a Doberman named Bella, who we have always regarded as a member of the family. I got her for my 11<sup>th</sup> birthday  
8 – she is the best present I have ever gotten. My father, who became very ill and passed away when I was 12, had  
9 owned a gym and worked as a personal trainer. Growing up, I idolized my father and wanted to follow in his  
10 footsteps. My aspirations to be a personal trainer and own a fitness center came about soon after he died.

11 Up until about a year ago, I was well on the path to achieving these goals. I did well in high school, excelled in sports,  
12 was blessed with many friends, and had a mother who provided everything that she could for me. I have always been  
13 appreciative of the things I was given and made a conscious effort not to take anything for granted. After high school,  
14 I rented an apartment, took some college courses toward a personal trainer certification, and landed a job at ABC. Life  
15 was good.

16 Everything changed when my mother was killed in a car accident, during the summer of 2011. One of the hardest  
17 things I ever had to do was sort through what she left behind. Going through her personal belongings was  
18 excruciating. I was very depressed. I learned that she didn't part with anything of my father's. It was clear she still  
19 loved him, even after all these years. I decided to move back to my mom's house- my childhood home- after she  
20 passed. In an attempt to hold onto the memories of better days, I found it impossible to throw away anything that  
21 reminded me of those times, including my parents' belongings, newspapers, and the like. I had the best of intentions –  
22 I boxed up a lot of things, and planned to put them in storage. But, I just couldn't seem to do it – the boxes are still  
23 everywhere throughout my house. My friends and colleagues tried to support me through that time, but the only one  
24 who could make me feel better was Bella. She was my salvation.

25 Despite the fact that she is getting up in age, Bella and I frequently go for walks or runs. She's always by my side.  
26 During the last eight months or so, I became a bit of a foster home for dogs. It wasn't really intentional at first; in fact,  
27 it happened a bit by accident. A friend of mine was moving, and couldn't take her two pit bulls, Sashi and Sybil, with  
28 her. I agreed to adopt them, because I know what happens to a large majority of the pit bulls that go into a shelter.  
29 My friend had developed a fitness routine with the dogs, and asked that I keep up on it. She gave me the regimen, as  
30 well as most of her dog training equipment: harnesses, Velcro weights and a few other items.

31 People would see me walking the dogs, and training them in the backyard. It was a conversation starter, especially  
32 when I was with several of the pit bulls and Bella. A couple of months after I took in my friend's pit bulls, a neighbor  
33 approached me with Theo, his pit bull - boxer. He was impressed with my dog training routine, and asked me to work  
34 with his dog, too. Before I knew it, Theo was also living with me, and his owner had moved without telling me.

35 By mid-summer, I had four more dogs in my care – all pit bulls or pit bull mixes. A couple of them came to me pretty  
36 battered – whether they were street dogs or someone else's throw-aways – they just sort of showed up at my house.  
37 It was chaos at first, I'll admit it. And, expensive. But I felt like, for the first time in a long time, I had some direction, or  
38 purpose, in life . A couple of the dogs had a tough time socializing with one another; some were aggressive, some  
39 were timid and submissive. I decided to begin training the dogs I rescued. I figured, if I train them, why not do so with  
40 the purpose of competing them. After some research, I settled on the LUG-NUTS Strong Dog contest, which is basically  
41 a weight pulling/ strength competition. If, after consistent training, one or more of the dogs appeared not to be of the  
42 caliber of LUG-NUTS, then I would place them with other families, who would love and care for them in the way they  
43 deserve. That goal came to a screeching halt when my dogs were taken away from me.



44 I trained the dogs utilizing a rigorous workout routine. I spent most of each morning before I went to work  
45 outside with my dogs - sometimes they would be outside together, and sometimes I would work with them in  
46 rotation. My dogs were my athletes, and I trained them like a loving coach would, which is why I bought  
47 numerous dog supplements and training equipment. Because of my work schedule, they spent eight to nine  
48 hours each day in kennels. Pit bull mixes need a lot of exercise to be happy, healthy, and to alleviate aggression,  
49 so the workout routine was one way I could ensure they were getting enough physical activity.

50 My newest rescues always start in the basement, so that any infection or illness has a lesser chance of spreading  
51 to my other dogs. In fact, I had to move Cole and Sunny upstairs a little sooner than I had hoped, because I took  
52 in my two most recent rescues soon after Cole and Sunny. I thought it apropos to name them "Scar" and "Mark,"  
53 because they came to me in pretty bad shape; in fact, each had a fair number of wounds and scars that I  
54 assumed resulted from life on the streets. I made sure to cleanse them so that they would heal properly, but  
55 they still have a lot of scars. I kept them in the basement, because I have not yet had a chance to get them to the  
56 veterinarian. I've done quite a bit of research on providing medical care and conditioning for animals at home.  
57 That comes with the territory of dog training. I have to think that, while they're not living in the most luxurious of  
58 conditions, they're far better off with me than from where they came. Scar and Mark are in much better shape  
59 now than when they came to me a few weeks ago.

60 The police questioned me about a bunch of things – the size of the crates I was using, the equipment they found,  
61 the vitamin supplements, even the plywood in the basement. I have learned to use what is readily available to  
62 me – I had a couple of crates from when Bella was younger, and I've had a couple given to me. I bought the rest  
63 at yard sales and thrift stores to keep my costs as low as I can. I realize they're not the perfect size, but they  
64 provide adequate, safe space for the dogs to sleep while I am out of the house. I wouldn't dare leave them out of  
65 the crates when I am not home, as a couple of them do not get along that well; and frankly, from experience, I've  
66 learned that they'll tear the house up if they're not crated. As far as the equipment goes – some of it was  
67 purchased second-hand, and some was given to me, with the exception of the supplements and medical  
68 equipment.

69 I only buy dietary and medical supplies from reputable companies. And, as far as the plywood boards go, my Dad  
70 originally built that to serve as a baby-gate of sorts for Bella, when she was a puppy. It gave her more room than  
71 a crate, especially as she grew, but still kept her confined and safe when we weren't home. The boards still serve  
72 their purpose, and I've continued to use them. I'm not going to apologize for that, just because it's not the  
73 prettiest set-up.

74 Because the animals that I took in had no known medical history, I did not want to have rabies and other  
75 vaccines administered for fear of over-vaccination. I always take my dogs for wellness checks, and planned to  
76 have their medical conditions assessed at that time. Of course, life gets busy, and I have not taken the four most  
77 recent rescues. But, my Vet knows me, and many of my dogs, and knows that I care about their well-being.

78 I know my dogs behave well when I'm not home. I have asked my neighbors from time to time to let me know if  
79 they ever hear excess barking or noise, because I do not want to be a nuisance here in the neighborhood. Every  
80 time I have ever asked, they have said they rarely hear anything. The dogs may bark or whimper once in a while,  
81 due to anxiety, because they don't like being alone. They thoroughly enjoy being around people whom they  
82 trust. I have friends over on occasion; in the beginning, a couple of my new "adoptions" were very skittish  
83 around them. But, as they became familiar with my friends, the pups were happy to see them – wagging their  
84 tails, and giving plenty of licks. We'll play poker or rummy, sit around talking, and let the pups wrestle around  
85 with each other and us, which they love. It's their play time, and I guess, you could say ours as well. I completely  
86 resent the fact that they are trying to make a criminal case out of a social hour.

1 **DR. TAYLOR MARTIN, Witness for the Defense**

2

3 My name is Dr. Taylor Martin. I am a licensed veterinarian with Whiskers Animal Hospital in Rockville, Maryland.  
4 I am board-certified in internal medicine. I am 34 years old. I am married and live at 367 Olive Lane in Silver  
5 Spring.

6 I earned my Doctor of Veterinary Medicine from the Virginia-Maryland Regional College of Veterinary Medicine.  
7 I completed my internal medicine residency at the University of Pennsylvania Ryan Veterinary Hospital. I've  
8 worked at Whiskers for four years.

9 Our hospital and kennel are staffed by a team of veterinarians, veterinary assistants, and technicians. Many of  
10 our veterinarians have specialized training. We pride ourselves on being a regional and national leader in  
11 veterinary medicine and animal care. We provide state-of-the-art diagnosis and treatment, and we work as  
12 advocates for animal protection. We offer emergency services twenty-four hours a day, seven days a week. We  
13 have full diagnostic services on site, and in addition to veterinary medical care, we offer a range of behavioral  
14 services. We are considered a boutique practice among private facilities.

15 Because my caseload is high, I had to consult our records at Whiskers in order to remember Danny Harding.  
16 Danny's Doberman, Bella, has been a patient of ours since she was a puppy. In addition to Bella, Danny has  
17 brought in three other dogs—all pit bull mixes. We have records for the following dogs owned by Danny: Sashi,  
18 Theo, Sybil, and Bella. I recall a conversation that we had during Danny's most recent visit about the rescues that  
19 s/he takes in. As a matter of procedure, we talk with our patients' owners and advise them on proper care for  
20 informal "adoptions" or rescues. Danny specifically thanked me for the information, and said that s/he was  
21 training the dogs for the LUG-NUTS Strong-Dog Contest to prove that someone else's "throw-aways" could be  
22 champions, too.

23 Danny brought the pit bulls to our hospital for relatively minor injuries and illnesses over a period of several  
24 months—the first in February and the most recent in May. Danny explained that the dogs were rescues. I'd  
25 consider them adoptions, however, since Danny knew the previous owners. The dogs were well behaved with  
26 our staff. While they displayed some symptoms of aggression towards other dogs when brought into close  
27 proximity with them, this is not unusual when a group of dogs are suddenly forced to share the same space or  
28 home.

29 Our facility did not administer rabies shots, a necessary step in licensing dogs, since Danny informed us that the  
30 shots had been administered previously and the records would be forwarded. Whiskers never received any  
31 records; however, this would have been pursued on or about the anniversary of the each dog's initial visits. It is  
32 our practice to send reminders to our patients' owners regarding vaccinations and such.

33 According to our medical records, Theo was brought to our office in February and treated for kennel cough and a  
34 skin infection—two very common illnesses among dogs. When Theo was brought in a couple months later, it was  
35 for bite wounds. The wounds weren't life threatening, but they were indicative of a dog fight. My notes indicate  
36 that I questioned Danny about the origin of the wounds, as veterinarians are trained to do. Danny explained that  
37 the dog was in a multi-animal home, and that one of the other recent rescue dogs was not socializing well. The  
38 dogs had gotten in a fight.

39 Danny seemed to be over-extended with so many dogs in the house, and I recommended that some of the

40 adoptions be relinquished to a respectable no-kill shelter. I also recommended that Danny take in fewer dogs  
41 in the future, to which Danny seemed taken aback, offended even. Rehabilitating that many animals  
42 requires experience, knowledge, time, patience, and serious resources. Many people don't understand the  
43 time and financial commitment. Danny's heart seemed to be in the right place, but I wasn't sure s/he could  
44 give the animals the care they needed.

45 That was the last medical visit Danny made to Whiskers.

46 I've reviewed the evidence collected in this case by police, which included harnesses, ropes with metal coils,  
47 Velcro weights, a breeding stand, chains, and ply-boards, as well as "Muscle Up Powder" and "K-9 Super  
48 Fuel" animal supplements, Betadine Surgical Scrub wound cleanser, steroids labeled for dog use, and IVs. It  
49 is my professional opinion that these items could all reasonably be possessed by someone who is engaged in  
50 dog training. This is especially true if that person was inclined by either nature or necessity to administer  
51 basic medical attention to the animals at home.

52 I don't know Danny's circumstances, but it can be quite expensive to care for pets. It is even more expensive  
53 to care for rescue animals. The bills for rescue dogs could total several thousand dollars in any given year. I  
54 also fear that my suggestion to give up some animals may have scared Danny from returning to Whiskers or  
55 any other facility. Danny may have believed that some of the dogs were in danger of being taken away if I,  
56 or another veterinarian, believed the animals were neglected.

57 I do not believe, based on my professional experience, that Danny was engaged in dog fighting. The injuries  
58 and illnesses I treated in Danny's dogs were as common as the cold virus in humans. Dog-fighting yields  
59 horrible injuries – even to the supposed "winner." These are not the types of injuries that Danny's dogs had.  
60 The only time I was really concerned was with the bite wound, but the explanation that Danny offered was  
61 completely plausible.

62 As an experienced vet, there are certain red flags that go up if an animal owner is not acting in the best  
63 interest of a pet. If there is ever concern, we document it in the medical files so that we can monitor it, and  
64 follow up as necessary. I don't want to sound callous, but I really believe we are overly sensitized to pit bulls  
65 and dog fighting rings. Pit bulls are stereotyped as these ferocious, aggressive beasts, when in reality, they  
66 make some of the best family pets out there. As a medical professional, I can't jump to the conclusion that  
67 every pit bull suffering a bite has been in an organized fight ring. Frankly, I would think individuals engaged in  
68 dog fighting wouldn't bother bringing in an injured animal. In this case, I believe Danny is being wrongfully  
69 accused based on nothing more than misguided presumption.

1 **SAM SHELTON, Witness for the Defense**

2

3 My name is Sam Shelton. I'm a postal carrier for the United States Postal Service. I'm the person who delivers  
4 your mail everyday if you live on my route. I'm 53 years old, and I live at 21 Argonne Court, Gaithersburg,  
5 Maryland.

6 I've been delivering mail for more than thirty years. For the last twelve years, I've delivered mail in Danny  
7 Harding's neighborhood in Everett on various routes. The last five years have included daily mail delivery to  
8 Danny's address.

9 Mail delivery has become an increasingly sophisticated operation over the years. As the post office has become  
10 more and more efficient at sorting and delivering mail, rival companies and electronic communication have  
11 greatly decreased the amount of business the ordinary person conducts with the post office. I don't know what  
12 will happen to the postal service as traditional paper documents become obsolete, but I still try to learn the  
13 names of the people on my route and to deliver their mail with a cheerful greeting and wave. That's how I know  
14 Danny.

15 Because Danny often works a late shift, I've seen (him/her) on many occasions. Danny always takes a moment to  
16 say hello, and sometimes we chat for a bit – but never too long, because I'm on the job. Danny always has a  
17 welcoming smile.

18 I've also seen Danny out with the pups on countless occasions. They're usually around back as I come down the  
19 block, so I can see them a bit from an angle. I can't say with certainty what he's doing with them, but he seems to  
20 be training them, from the whistles and commands that I hear. On occasion, I'll see Danny walking or running  
21 through the neighborhood with the Doberman. They make quite the pair. Sometimes Danny will come around  
22 front to greet me and get the mail, accompanied by a dog or two. I've even seen Danny in the front yard, working  
23 with the dogs. They are always well-behaved, and completely in his command. I believe the majority of our  
24 conversations have been about the dogs. Danny is really enthusiastic about the training, and has mentioned his  
25 hope of competing them in a weight-pulling contest.

26 It may sound cliché to talk about dogs biting the mail carrier, but I can assure you this is a real problem for the  
27 USPS. There's just something about uniforms that certain dogs do not like. I, myself, have been bitten a handful of  
28 time, but never seriously. Owners almost never expect it or believe their dogs are capable of it. People just don't  
29 understand how their dogs feel about strangers entering their territory; dogs often respond to that as though it's  
30 a threat. Even the littlest dog can go nuts, yapping and growling as it defends its space, its people, or itself from  
31 the perceived encroachment.

32 For as fierce as Danny's dogs look, I've never experienced any such problem. They have never been loose or  
33 unsupervised, and that said, I'd never want them to be. They are generally well-behaved, and certainly none has  
34 ever bitten me or seriously threatened me. If ever Danny's dogs have seemed aggressive, growling or posturing,  
35 Danny has immediately disciplined the dog, sometimes removing it from my presence. Danny always disciplines  
36 the dogs with an air of calm authority. I get the sense that Danny really cares for the animals and knows how to  
37 handle them.

38 As a postal worker, you learn quickly not to pet strangers' dogs. I don't know that I have ever even tried to pet

39 Danny's dogs, but I've allowed them to approach and sniff my hand. I don't recognize the pups by sight, except  
40 the Doberman, Bella. She's a neighborhood fixture – been there as long as I can remember. At one time, there  
41 was a Shepard who lived there, and I've seen any number of pit bulls; at least, they look like pit bulls. Danny  
42 seems to have so many dogs, and they seem to change pretty quickly over time. I sort of assumed that Danny  
43 trains them and cares for them temporarily, but doesn't really own them all. But Danny and I have never talked  
44 about that explicitly.

45 I've never seen Danny abuse the dogs. Some of them have had minor injuries, and more than one have had bad  
46 hair days. But more often than not, I'd see what I believed was the same dog a short time later looking right as  
47 rain. Again, I assumed from what I observed over time and from my scant discussions with Danny on the topic  
48 that this was part of Danny's cycle with the dogs – training dogs and getting them healthy. I never asked about  
49 the dogs' backgrounds or seriously considered where they may have come from. There are enough morbid  
50 commercials on television, and I see enough strays, to know that there are many animals in need of good homes.

51 I don't recall the date of Thursday, August 23, 2012 specifically. There was nothing remarkable about the date to  
52 set it apart in my mind, and I didn't make any notations in my calendar or on my timesheet at work. If Danny's  
53 dogs were whimpering or making any sort of racket or fuss, I didn't notice as I delivered mail to Danny's address.  
54 In fact, only rarely have I ever heard or witnessed any commotion at all from that house, which is pretty  
55 remarkable given the number of dogs that live there.

*The following is a 311 transcript from 08/23/12 in regard to care file #12-018924. This is being transcribed into typewritten form by R. Reynolds on 08/27/12. Time stamp: 2:05:22pm – 2:07:09*

Dispatch: 311

A: Um, I'm not sure exactly what I should report here, but I am, um, worried about some noises I am, um, hearing next door.

Dispatch: What are you hearing?

A: Um, it's sort of, it's like animal noises. Whining...whimpering...but it just keeps going. It hasn't stopped for hours. I know the guy has a lot of dogs.

Dispatch: What is the address?

A: I don't want to give my address. I, um, want this to be anonymous.

Dispatch: No, what is the address of the house where the sounds are?

A: Oh, oh. Um, it's 1642 Elm Point Lane. In Everett.

Dispatch: And you wish to remain anonymous?

A: Yes, please. Yes. He's a nice enough guy, I guess, but I don't want to cause problems. I just want to make sure nothing is hurt over there. The whining is awful. It's killing me to hear it.

Dispatch: How long has it been going on?

A: I mean, it's kind of hard to say. I always hear barking. But the whining, um, I would say probably at least a couple of days. Maybe longer. But it is getting worse. It was real bad last night.

Dispatch: You say you think he has a lot of dogs? Do you know how many?

A: I don't. It seems like there are new dogs over there all the time. He keeps them pretty quiet. At night, there's sometimes some raucous, but I hear more people than I do dogs. I assume he has the TV up loud. I don't know. He does have one dog - a Doberman - that he keeps outside. It's a real nice dog.

Dispatch: Does the Doberman look like he's being cared for? You know - fed? Cleaned up after?

A: Yeah, yes. I mean, I guess. He looks - actually, I think it's a 'she,' she looks like she is healthy. I don't like when people leave their dogs outside all the time, but I guess that's just personal choice.

Dispatch: OK. I have dispatched a police officer to check out the situation. Is anyone home at the residence?

A: No. I made sure he was gone before I called. It's just one guy who lives there, and I think he's at work.

Dispatch: Is there anything else we should know?

A: Um, no, I don't think so. Like I said, I just want to make sure the animals are all right. I don't know if he trains animals or what - there's stuff in his yard. You know, chains and harnesses and stuff. He sometimes lets the other dogs out in the yard - they look to me like pit bulls. He puts them on the chains - again, not something I like to see, but I can't really complain, because they are pretty quiet.

Dispatch: Ok. Anything else?

A: No, no. That's it. Thank you. You said someone's coming out now?

Dispatch: Yes.

A: OK. Thanks again.

*End of 311 transcript.*

## Complaint Report



<b>AC OFFICER:</b> <u>Graham, L. #3257</u>		<b>FOR OFFICE USE ONLY:</b>
<b>DATE:</b> <u>08/23/12</u>	<b>TIME OF ARRIVAL:</b> <u>3:30 pm</u>	<b>COMPLAINT #</b> 812-96
<b>ADDRESS OF INVESTIGATION:</b> 1642 Elm Point Lane		<b>CITY, ZIP:</b> Everett, MD 20853
<b>NAME OF ANIMAL OWNER:</b> <u>Danny Harding</u>		
<b>Phone:</b> <u>443-555-2599</u>	<b>Alt Phone:</b> <u>n/a</u>	<b>Email:</b> <u>n/a</u>
<b>REPORTING PARTY:</b> <u>Anonymous call at 2:05pm</u>		
<b>ADDRESS:</b> <u>unknown</u>		<b>City and Zip:</b> <u>unknown</u>
<b>Phone:</b> <u>unknown</u>	<b>Email:</b> <u>unknown</u>	

**DESCRIPTION OF INCIDENT(S):**

AC Unit received a call from MCPD regarding dogs at above address. Officers initially reported evidence of injury and neglect, possible abuse, and inadequate shelter of multiple dogs. Upon arrival, I found 7 pit bull type dogs in crates throughout first floor and basement of residence. There was one additional dog, a Doberman, outside in the back yard, housed in a large kennel.

Equipment typically associated with dogfight training was found in house and back yard. Each of the eight dogs was seized and taken to the Montgomery County SPCA for examination by a veterinarian.

Description of Animals	Seized?	Related Items	Are photographs available?
<u>1) Pit bull-adult (M)</u>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	<u>1) Ropes w/ metal coils</u>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
<u>2) Pit bull-adult (M)</u>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	<u>2) Velcro weights</u>	If YES, please attach and label. Include description below.  <i>Please see Attachment 1 for photos.</i>
<u>3) Pit bull-adult (M)</u>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	<u>3) Harnesses</u>	
<u>4) Pit bull-adult (M)</u>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	<u>4) Breeding stand</u>	
<u>5) Pit bull-adult (F)</u>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	<u>5) Chains</u>	
<u>6) Pit bull-adult (F)</u>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	<u>6) Muscle Up Powder</u>	
<u>7) Pit bull-adult (F)</u>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	<u>7) K-9 Super Fuel</u>	
<u>8) Doberman-adult (F)</u>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	<u>8) Betadine Surgical Scrub Cleanser</u>	
		<u>9) Steroids</u>	
		<u>10) IVs</u>	
		<u>11) 8 - plywood boards with latches (4' x 3' in size)</u>	

**PHOTO DESCRIPTIONS:**

- A: Photo of Doberman (Dog #8) housed in outside kennel
  - B: Photo of pit bull, male, (Dog #1); wounds on snout, ear and jaw. Severe skin infection visible.
  - C: Photo of pit bull-boxer, male, (Dog #3)
  - D: Photo of two of the basement crates where pit bulls were kept; no water or food contained within
  - E: Photo of pit bull, male, (Dog #2); skin infection, wounds (some very recent) very evident
  - F: Photo of pit bull, female, (Dog #6); scars visible on snout
  - G: Photo of pit bull, female (Dog #5); she had a large growth on her belly. Mammary gland tumor visible.
- Photos not available for dogs #4 and #7.



AC Complaint Form, Attachment 1  
Complaint #8/2-96 Date: 8-23-20/2





**MEDICAL EVALUATION OF NEGLECT/ABUSE**

<b>Medical History:</b> Unavailable	ID#: 1-082312
<b>Identifying Characteristics:</b> Pit bull breed, tan in color	<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female Name: "Mark"

**EXAM**

**Behavior** [Assess strength, activity and interaction with people and animals]

	Less than average		Average		More than average	
<b>Strength</b>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
<b>Activity Level</b>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
<b>Interaction with People</b>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
<b>Interaction with Animals</b>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	

	Normal		Abnormal			Normal		Abnormal	
Hydration	<input type="checkbox"/>		<input checked="" type="checkbox"/>		Abdomen	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Pain	<input type="checkbox"/>		<input checked="" type="checkbox"/>		Mouth	<input type="checkbox"/>		<input checked="" type="checkbox"/>	
Lymph Nodes	<input type="checkbox"/>		<input checked="" type="checkbox"/>		Eyes	<input type="checkbox"/>		<input checked="" type="checkbox"/>	
Ears	<input type="checkbox"/>		<input checked="" type="checkbox"/>		Nose	<input type="checkbox"/>		<input checked="" type="checkbox"/>	
Heart	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Lungs	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
MuscSkel	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Neurol	<input checked="" type="checkbox"/>		<input type="checkbox"/>	

**Body Condition**  
 [IDEAL BODY WEIGHT= IBW]  
 Underweight=Less than 10% IBW  
 Thin=10-15% under IBW  
 Very Underweight; 16-20% under IBW

**Weight:**  
52.3 lbs

Ideal  
 Underweight/Lean  
 Thin  
 Very Underweight  
 Emaciated

**Record Abnormal Findings Below**

General health and appearance was poor upon arrival. "Mark" was suffering from moderate diarrhea and dehydration, likely caused by Pyoderma. Due to dehydration, Mark's gums were tacky and dry with displayed prolonged capillary refill time. Bilateral enophthalmos was evident.

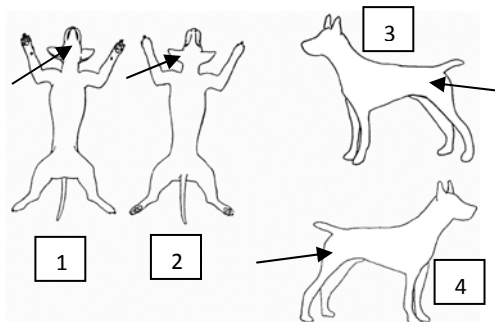
He had moderate Pyoderma, likely resulting from bite wounds around the snout and jaw line. Wounds look to have been contracted in recent weeks, possibly days.

Beginning stages of bordetella bronchiseptica evident.

**Assessment:** Conditions treatable; careful monitoring necessary. Responded well to fluids and antibiotics.

**Plan:** PCV and TPP administered; urinalysis (UA) and fecal administered.

	Administered?		Vaccines Administered?	Administered?	
	Yes	No		Yes	No
CBC/Chem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rabies	<input type="checkbox"/>	<input checked="" type="checkbox"/>
UA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CPV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fecal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CDV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dog-Titer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CAV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Microchip	<input type="checkbox"/>	<input checked="" type="checkbox"/>			



**CONDITION OF HAIRCOAT AND NAILS**

Adequate  
 Lapsed  
 Borderline  
 Poor  
 Terrible

Comments: #1/2 – Moderate Pyoderma present; #3/4 matting present on the dog's backside

**MEDICAL EVALUATION OF NEGLECT/ABUSE**

<b>Medical History:</b> Unavailable		ID#: 2-082312
<b>Identifying Characteristics:</b> Pit bull breed, black in color	<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Name: "Scar"

**EXAM**

**Behavior** [Assess strength, activity and interaction with people and animals]

	Less than average	Average	More than average
<b>Strength</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Activity Level</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Interaction with People</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Interaction with Animals</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Normal	Abnormal		Normal	Abnormal
Hydration	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Abdomen	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Pain	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mouth	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lymph Nodes	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Eyes	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ears	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Nose	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Heart	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lungs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MuscSkel	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Neurol	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Body Condition**  
**[IDEAL BODY WEIGHT= IBW]**  
 Underweight=Less than 10% IBW  
 Thin=10-15% under IBW  
 Very Underweight=16-20% under IBW  
 Emaciated=Greater than 20% under IBW

**Weight:** 61 lbs

Ideal  
 Underweight/Lean  
 Thin  
 Very Underweight  
 Emaciated

**Record Abnormal Findings Below**

General health and appearance was poor upon arrival. "Scar" was suffering from diarrhea and dehydration, likely resulting from Pyoderma. Due to dehydration, Scar's gums were tacky and dry with displayed prolonged capillary refill time. Bilateral enophthalmos was evident. He had aggravated Pyoderma, resulting from various wounds that have not healed properly. Lymphadenitis was also present, likely resulting from Pyoderma. Swollen lymph nodes were felt along submandibular area beneath the jaw and in the popliteal area. Beginning stages of bordetella bronchiseptica evident.

**Assessment:** Conditions treatable; careful monitoring necessary. Responded slowly but positively to fluids and antibiotics.

**Plan:** PCV and TPP administered; urinalysis (UA) and fecal administered.

Administered?	Yes		No		Vaccines Administered?	Yes		No	
CBC/Chem	<input checked="" type="checkbox"/>	<input type="checkbox"/>			Rabies	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
UA	<input checked="" type="checkbox"/>	<input type="checkbox"/>			CPV	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Fecal	<input checked="" type="checkbox"/>	<input type="checkbox"/>			CDV	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Dog-Titer	<input checked="" type="checkbox"/>	<input type="checkbox"/>			CAV	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Microchip	<input type="checkbox"/>	<input checked="" type="checkbox"/>							

**CONDITION OF HAIRCOAT AND NAILS**

Adequate  
 Lapsed  
 Borderline- fecal and urine soiling have caused matting in rear; some clipping necessary  
 Poor  
 Terrible

Comments: #1/2 Pyoderma; #3 Lymphadenitis; #4 matting of hair

**MEDICAL EVALUATION OF NEGLECT/ABUSE**

**Medical History:** Unavailable

ID#: 3-082312

**Identifying Characteristics:** Pit bull-boxer mix breed, tan, white and black in color

Male  Female

Name: "Theo"

**EXAM**

**Behavior** [Assess strength, activity and interaction with people and animals]

	Less than average		Average	More than average	
<b>Strength</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>Activity Level</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>Interaction with People</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Interaction with Animals</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Normal	Abnormal		Normal	Abnormal
Hydration	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Abdomen	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pain	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mouth	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lymph Nodes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Eyes	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ears	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Nose	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heart	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lungs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MuscSkel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Neurol	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Body Condition**

[IDEAL BODY WEIGHT= IBW]

Underweight=Less than 10% IBW

Thin=10-15% under IBW

Very Underweight=16-20% under IBW

Emaciated=Greater than 20% under IBW

**Weight:**  
67 lbs

- Ideal
- Underweight/Lean
- Thin
- Very Underweight
- Emaciated

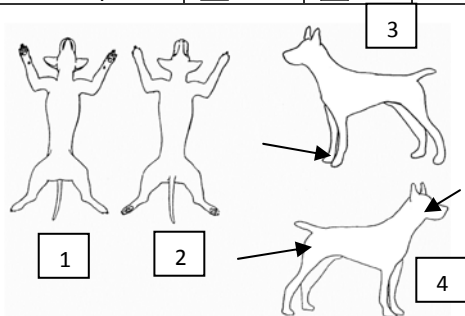
**Record Abnormal Findings Below**

Theo was suffering from mild urinary tract infection and slight dehydration. Theo had a number of old scars from unidentifiable sources; the scars looked to be at least 3-4 months old.

**Assessment:** Conditions treatable; ongoing monitoring necessary.

**Plan:** PCV and TPP administered; urinalysis (UA) and fecal administered.

Administered?	Yes	No	Vaccines Administered?	Yes	No
CBC/Chem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rabies	<input type="checkbox"/>	<input checked="" type="checkbox"/>
UA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CPV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fecal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CDV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dog-Titer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CAV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Microchip	<input type="checkbox"/>	<input checked="" type="checkbox"/>			



**CONDITION OF HAIRCOAT AND NAILS**

- Adequate
- Lapsed- Nails need trimming, altering normal gait
- Borderline
- Poor
- Terrible

Comments: #3/4 –Scars present on chest, snout and neck. Patches of hair missing on snout which are indicative of previous skin infections.

**MEDICAL EVALUATION OF NEGLECT/ABUSE**

<b>Medical History:</b> Unavailable	ID#: 4-082312
<b>Identifying Characteristics:</b> Pit bull-boxer mix breed, tan in color <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Name: "Cole"

**EXAM**

**Behavior** [Assess strength, activity and interaction with people and animals]

	Less than average		Average		More than average	
<b>Strength</b>	<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>	
<b>Activity Level</b>	<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>	
<b>Interaction with People</b>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
<b>Interaction with Animals</b>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	

	Normal		Abnormal			Normal		Abnormal	
Hydration	<input type="checkbox"/>		<input checked="" type="checkbox"/>		Abdomen	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Pain	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Mouth	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Lymph Nodes	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Eyes	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Ears	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Nose	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Heart	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Lungs	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
MuscSkel	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Neurol	<input checked="" type="checkbox"/>		<input type="checkbox"/>	

**Body Condition**  
 [IDEAL BODY WEIGHT= IBW]  
 Underweight=Less than 10% IBW  
 Thin=10-15% under IBW  
 Very Underweight=16-20% under IBW  
 Emaciated=Greater than 20% under IBW

**Weight:**  
59 lbs

Ideal  
 Underweight/Lean  
 Thin  
 Very Underweight  
 Emaciated

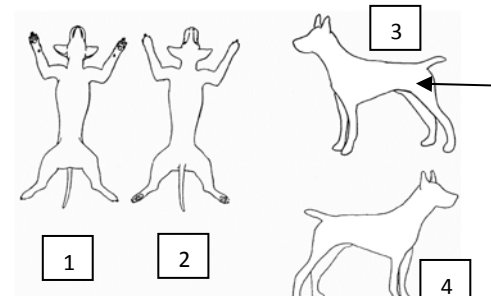
**Record Abnormal Findings Below**

Cole's general appearance was fair on arrival, though suffering from mild dehydration. Cole was markedly aggressive with staff; he was placed in isolation because he was extremely aggressive while in proximity with other dogs. Snarling, growling and excessive barking has been observed consistently with Cole. He was given a mild tranquilizer in preparation for his medical examination, and did not appear to be in pain or malnourished – two common causes of aggression in dogs.

**Assessment:** Conditions treatable; ongoing monitoring necessary.

**Plan:** PCV and TPP administered; urinalysis (UA) and fecal administered.

	Administered?		Vaccines Administered?	Administered?	
	Yes	No		Yes	No
CBC/Chem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rabies CPV CDV CAV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
UA	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fecal	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dog-Titer	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Microchip	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>

	<p><b>CONDITION OF HAIRCOAT AND NAILS</b></p> <input type="checkbox"/> Adequate <input checked="" type="checkbox"/> Lapsed- Nails are beginning to interfere with normal gait <input type="checkbox"/> Borderline <input type="checkbox"/> Poor <input type="checkbox"/> Terrible Comments:
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**MEDICAL EVALUATION OF NEGLECT/ABUSE**

<b>Medical History:</b> Unavailable	ID#: 5-082312
<b>Identifying Characteristics:</b> Pit bull-breed, white and tan	<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female
Name: "Sybil"	

**EXAM**

**Behavior** [Assess strength, activity and interaction with people and animals]

	Less than average		Average		More than average	
<b>Strength</b>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
<b>Activity Level</b>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
<b>Interaction with People</b>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
<b>Interaction with Animals</b>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	

	Normal		Abnormal			Normal		Abnormal	
Hydration	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Abdomen	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Pain	<input type="checkbox"/>		<input checked="" type="checkbox"/>		Mouth	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Lymph Nodes	<input type="checkbox"/>		<input checked="" type="checkbox"/>		Eyes	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Ears	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Nose	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Heart	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Lungs	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
MuscSkel	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Neurol	<input checked="" type="checkbox"/>		<input type="checkbox"/>	

**Body Condition**  
 [IDEAL BODY WEIGHT= IBW]  
 Underweight=Less than 10% IBW  
 Thin=10-15% under IBW  
 Very Underweight=16-20% under IBW  
 Emaciated=Greater than 20% under IBW

**Weight:**  
51 lbs

Ideal  
 Underweight/Lean  
 Thin  
 Very Underweight  
 Emaciated

**Record Abnormal Findings Below**

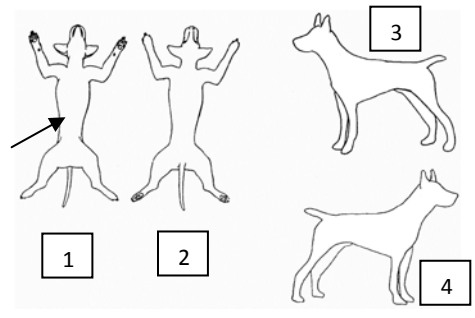
Sybil has a large mammary gland tumor. The pelvic lymph nodes nearest the tumor were swollen, which may indicate that the tumor is malignant, and that the cancer has metastasized. A biopsy of the tumor was taken during Sybil's initial check-up. Tests will likely confirm that tumor is malignant given the size of the growth.

Regardless of whether the tumor is malignant, it will need to be removed. Chemo and/or radiation may follow.

**Assessment:** Conditions treatable; ongoing monitoring necessary.

**Plan:** PCV and TPP administered; urinalysis (UA) and fecal administered.

	<b>Administered?</b>			<b>Vaccines Administered?</b>	
	Yes	No		Yes	No
CBC/Chem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rabies	<input type="checkbox"/>	<input checked="" type="checkbox"/>
UA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CPV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fecal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CDV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dog-Titer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CAV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Microchip	<input type="checkbox"/>	<input checked="" type="checkbox"/>			

	<p><b>CONDITION OF HAIRCOAT AND NAILS</b></p> <input type="checkbox"/> Adequate <input checked="" type="checkbox"/> Lapsed- area around mammary gland tumor is swollen and painful to the touch; some patches of skin exposed where hair has fallen out <input checked="" type="checkbox"/> Borderline – nail length interfering with normal gait <input type="checkbox"/> Poor <input type="checkbox"/> Terrible Comments:
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**MEDICAL EVALUATION OF NEGLECT/ABUSE**

<b>Medical History:</b> Unavailable	ID#: 6-082312
<b>Identifying Characteristics:</b> Pit bull breed, light tan in color	<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female Name: "Sashi"

**EXAM**

<b>Behavior</b> [Assess strength, activity and interaction with people and animals]					
	Less than average	Average	More than average		
<b>Strength</b>	<input type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	
<b>Activity Level</b>	<input type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	
<b>Interaction with People</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
<b>Interaction with Animals</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
	<b>Normal</b>	<b>Abnormal</b>		<b>Normal</b>	<b>Abnormal</b>
Hydration	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Abdomen	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pain	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mouth	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lymph Nodes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Eyes	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ears	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Nose	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heart	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lungs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MuscSkel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Neurol	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Body Condition</b> [IDEAL BODY WEIGHT= IBW] Underweight=Less than 10% IBW Thin=10-15% under IBW Very Underweight=16-20% under IBW Emaciated=Greater than 20% under IBW		<b>Weight:</b> 68 lbs	<input checked="" type="checkbox"/> Ideal <input type="checkbox"/> Underweight/Lean <input type="checkbox"/> Thin <input type="checkbox"/> Very Underweight <input type="checkbox"/> Emaciated		

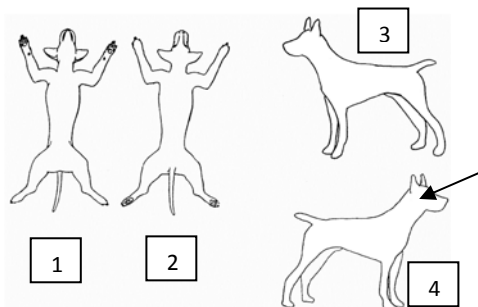
**Record Abnormal Findings Below**

Concerns noted over scabbing and scarring on snout; both appear to be moderately deep bite wounds acquired within approximately 3 weeks. No wounds or scars appear on any other parts of body. No infection detected.

**Assessment:** Will continue to monitor over next 48 hours.

**Plan:** PCV and TPP administered; urinalysis (UA) and fecal administered.

Administered?	Yes	No	Vaccines Administered?	Yes	No
CBC/Chem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rabies	<input type="checkbox"/>	<input checked="" type="checkbox"/>
UA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CPV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fecal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CDV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dog-Titer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CAV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Microchip	<input type="checkbox"/>	<input checked="" type="checkbox"/>			



**CONDITION OF HAIRCOAT AND NAILS**

- Adequate
- Lapsed
- Borderline
- Poor
- Terrible

Comments: Haircoat and nails good with exception of wounds on snout. Does not appear to be infected.

**MEDICAL EVALUATION OF NEGLECT/ABUSE**

<b>Medical History:</b> Unavailable	ID#: 7-082312
<b>Identifying Characteristics:</b> Pit bull breed, grey-brown in color	<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female Name: "Sunny"

**EXAM**

Behavior [Assess strength, activity and interaction with people and animals]					
	Less than average		Average		More than average
<b>Strength</b>	<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>
<b>Activity Level</b>	<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>
<b>Interaction with People</b>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
<b>Interaction with Animals</b>	<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>
	<b>Normal</b>	<b>Abnormal</b>		<b>Normal</b>	<b>Abnormal</b>
Hydration	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Abdomen	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pain	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mouth	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lymph Nodes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Eyes	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ears	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Nose	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heart	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lungs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MuscSkel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Neurol	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Body Condition</b> [IDEAL BODY WEIGHT= IBW] Underweight=Less than 10% IBW Thin=10-15% under IBW Very Underweight=16-20% under IBW Emaciated=Greater than 20% under IBW		<b>Weight:</b> 68 lbs	<input checked="" type="checkbox"/> Ideal <input type="checkbox"/> Underweight/Lean <input type="checkbox"/> Thin <input type="checkbox"/> Very Underweight <input type="checkbox"/> Emaciated		

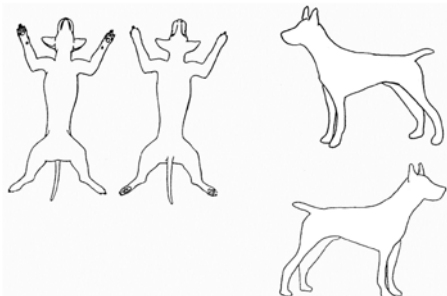
**Record Abnormal Findings Below**

Sunny's general condition and appearance was good on arrival. Sunny was extremely timid with our staff on arrival, but has shown marked improvement.

**Assessment:** Will continue to monitor over next 48 hours.

**Plan:** PCV and TPP administered; urinalysis (UA) and fecal administered.

Administered?	Yes	No	Vaccines Administered?	Yes	No
CBC/Chem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rabies	<input type="checkbox"/>	<input checked="" type="checkbox"/>
UA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CPV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fecal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CDV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dog-Titer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CAV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Microchip	<input type="checkbox"/>	<input checked="" type="checkbox"/>			



**CONDITION OF HAIRCOAT AND NAILS**

- Adequate
- Lapsed
- Borderline
- Poor
- Terrible

Comments:

**MEDICAL EVALUATION OF NEGLECT/ABUSE**

<b>Medical History:</b> Unavailable	ID#: 8-082312
<b>Identifying Characteristics:</b> Doberman pinscher	<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female
Name: "Bella"	

**EXAM**

**Behavior** [Assess strength, activity and interaction with people and animals]

	Less than average		Average		More than average	
<b>Strength</b>	<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>	
<b>Activity Level</b>	<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>	
<b>Interaction with People</b>	<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>	
<b>Interaction with Animals</b>	<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>	

	Normal		Abnormal			Normal		Abnormal	
Hydration	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Abdomen	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Pain	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Mouth	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Lymph Nodes	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Eyes	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Ears	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Nose	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
Heart	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Lungs	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
MuscSkel	<input checked="" type="checkbox"/>		<input type="checkbox"/>		Neurol	<input checked="" type="checkbox"/>		<input type="checkbox"/>	

**Body Condition**  
 [IDEAL BODY WEIGHT= IBW]  
 Underweight=Less than 10% IBW  
 Thin=10-15% under IBW  
 Very Underweight=16-20% under IBW  
 Emaciated=Greater than 20% under IBW

**Weight:**  
80 lbs

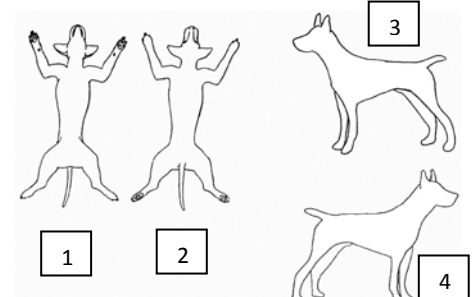
Ideal  
 Underweight/Lean  
 Thin  
 Very Underweight  
 Emaciated

**Record Abnormal Findings Below**  
 General health and appearance was very good.

**Assessment:** Excellent condition.

**Plan:** PCV and TPP administered; urinalysis (UA) and fecal administered.

	Administered?		Vaccines Administered?	Administered?	
	Yes	No		Yes	No
CBC/Chem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rabies CPV CDV CAV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
UA	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fecal	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dog-Titer	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Microchip	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>

	<p><b>CONDITION OF HAIRCOAT AND NAILS</b></p> <input checked="" type="checkbox"/> Adequate <input type="checkbox"/> Lapsed <input type="checkbox"/> Borderline <input type="checkbox"/> Poor <input type="checkbox"/> Terrible Comments:
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## PHYSICAL CARE SCALE—HAIRCOAT AND NAILS

*After Dr. G. Patronek, Tufts Care and Condition Scoring Scales, American Humane Association, 1998.*

- 5    **TERRIBLE**  
Haircoat a single mat that prevents normal movement and interferes with vision. Soiling of hind end and legs with trapped urine and feces. A complete clipdown required.  
Nails extremely overgrown into circles and may be penetrating pads causing pain and infection.  
Nails interfering with normal gait.
  
- 4    **POOR**  
Substantial matting of haircoat. Large sections of hair matted together.  
Occasional foreign material embedded in mats. Much of the hair will need to be clipped.  
Fecal and urine soiling of hind end and legs.  
Long nails that interfere with normal gait.
  
- 3    **BORDERLINE**  
Numerous mats, but animal can still be groomed without a total clip down.  
No significant fecal or urine soiling. Nails are overgrown which may alter gait.
  
- 2    **LAPSED**  
Haircoat may be somewhat dirty or have a few mats present that are easily removed.  
Remainder of coat can be easily brushed or combed.  
Nails need a trim.
  
- 1    **ADEQUATE**  
Dog clean. Hair can be easily brushed or combed. Nails okay.

**Md. CRIMINAL LAW Code**

**§ 10-601. Definitions**

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Animal. -- "Animal" means a living creature except a human being.

This subsection is new language derived without substantive change from former Art. 27, § 62, as it defined "animal".

(c) Cruelty. --

(1) "Cruelty" means the unnecessary or unjustifiable physical pain or suffering caused or allowed by an act, omission, or neglect.

(2) "Cruelty" includes torture and torment.

(d) Humane society. -- "Humane society" means a society or association incorporated in Maryland for the prevention of cruelty to animals.

**§ 10-602. Legislative intent**

It is the intent of the General Assembly that each animal in the State be protected from intentional cruelty, including animals that are:

(1) privately owned;

(2) strays;

(3) domesticated;

(4) feral;

(5) farm animals;

(6) corporately or institutionally owned; or

(7) used in privately, locally, State, or federally funded scientific or medical activities.

**§ 10-603. Application of §§ 10-601 through 10-608**

Sections 10-601 through 10-608 of this subtitle do not apply to:

(1) customary and normal veterinary and agricultural husbandry practices including dehorning, castration, tail docking, and limit feeding;

(2) research conducted in accordance with protocols approved by an animal care and use committee, as required under the federal Animal Welfare Act or the federal Health Research Extension Act;

(3) an activity that may cause unavoidable physical pain to an animal, including food processing, pest elimination, animal training, and hunting, if the person performing the activity uses the most humane method reasonably available; or

(4) normal human activities in which the infliction of pain to an animal is purely incidental and unavoidable.

**§ 10-604. Abuse or neglect of animal**

(a) Prohibited. -- A person may not:

(1) overdrive or overload an animal;

(2) deprive an animal of necessary sustenance;

(3) inflict unnecessary suffering or pain on an animal;

(4) cause, procure, or authorize an act prohibited under item (1), (2), or (3) of this subsection; or

(5) if the person has charge or custody of an animal, as owner or otherwise, unnecessarily fail to provide the animal with nutritious food in sufficient quantity, necessary veterinary care, proper drink, air, space, shelter, or protection from the weather.

(b) Penalty. --

(1) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$1,000 or both.

(2) As a condition of sentencing, the court may order a defendant convicted of violating this section to participate in and pay for psychological counseling.

(3) As a condition of probation, the court may prohibit a defendant from owning, possessing, or residing with an animal.

**§ 10-607. Aggravated cruelty to animals -- Certain activities related to dogfights prohibited**

(a) Prohibited activities. -- A person may not:

(1) use or allow a dog to be used in a dogfight;

(2) arrange or conduct a dogfight;

(3) possess, own, sell, transport, or train a dog with the intent to use the dog in a dogfight; or

(4) knowingly allow premises under the person's ownership, charge, or control to be used to conduct a dogfight.

(b) Penalty. --

(1) A person who violates this section is guilty of the felony of aggravated cruelty to animals and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$ 5,000 or both.

(2) As a condition of sentencing, the court may order a defendant convicted of violating this section to participate in and pay for psychological counseling.

## Tracey v. Solesky

### Maryland

--- A.3d ----, 2012 WL 1432263 (Md.,2012)

Summary: In this Maryland case where a pit bull dog attacked a young boy causing life-threatening injuries, the Court of Appeals establishes a new standard of liability for a landlord who has knowledge of the presence of a pit bull or cross-bred pit bull dog **and** also modifies the common law liability as it relates to the pit bull breed of dogs. In doing so, the Court now holds that because of the "aggressive and vicious nature and its capability to inflict serious and sometimes fatal injuries," pit bull dogs and cross-bred pit bulls are now categorized as "inherently dangerous." Thus, a landlord need not have actual knowledge that the pit bull involved in an attack is in fact dangerous. To support this change in common law, the court noted that it first began to modify common law concerning pit bulls in the 1998 case of *Matthews v. Amberwood Associates Limited Partnership, Inc.*, 351 Md. 544, 719 A.2d 119 (1998). While the instant question of strict liability was not raised in *Matthews*, the court noted in *dicta* the difference between pit bulls and other breeds of dogs, and laid the groundwork for strict liability. Additionally, the court relies on secondary materials that support its view of the inherent viciousness of pit bulls, including reports on injury/mortality in pit bull attacks and cases from outside jurisdictions. In the end, the court holds that upon a plaintiff's sufficient proof that an attacking dog is a pit bull or pit bull mix, a person who knows that the dog is of the pit bull breed, including a landlord, is strictly liable for damages caused to the plaintiff who was attacked. The case was remanded to trial court with this modification to common law.

Judge CATHELL, J. delivered the opinion of the court.

#### Opinion of the Court:

\*1 In Maryland the vicious mauling of young children by pit bulls occurred as early as 1916.FN1 *Bachman v. Clark*, 128 Md. 245, 97 A. 440 (1916). In that case, a ten-year-old boy, John L. Clark, was playing on the north side of a street when a pit bull ("bull terrier") came across the street from its owner's property and attacked him, inflicting serious injuries. The pit bull refused to release the boy until a witness picked up a "scantling" FN2 and struck the dog, killing it. Similar to the testimony in the present case by the boy's mother, in that old case the mother described the aftermath of the attack on her child as follows:

.. [H]e was unconscious, in such a condition that she did not know whether he was living or dead ... Blood all over him. *Id.* at 247, 97 A. 440, 97 A.2d at 440.

Over the last thirteen years, there have been no less than seven instances of serious maulings by pit bulls upon Maryland residents resulting in either serious injuries or death that have reached the appellate courts of this State, including the two boys attacked by the pit bull in the present case.FN3 Five of the pit bull attacks in Maryland have been brought to the attention of this Court, and two have reached the Court of Special Appeals.

The first two attacks to reach this Court were reported in *Shields v. Wagman, et al*, 350 Md. 666, 714 A.2d 881 (1998),FN4 where a pit bull attacked a business invitee at a strip shopping center and later attacked a tenant. Both attacks took place in the parking area of the strip-shopping center owned and maintained by the landlord. The pit bull was kept by its owner, also a tenant who operated an automobile repair business on leased premises.

In the first instance, Ms. Shields took her car to the parking area for repairs, and as she exited her car and approached the leased premises, the pit bull broke through the door and attacked her, inflicting serious injuries. *Id.*, at 670, 714 A.2d at 883.FN5 In the second instance, the pit bull was not restrained and chased another tenant in the shopping center, Mr. Johnson, onto the roof of a car in the parking lot and attacked him, again inflicting serious injuries. As a result, Mr. Johnson had several surgeries to his arm, lost sensation in that arm, and was impaired in his ability to perform certain duties related to his job. *Id.*, at 671, 714 A.2d at 883. This Court held that the landlord in that case had actual knowledge that the pit bull (whose name was Trouble) was dangerous and had the right to cause the removal of the pit bull from the premises but failed to do so, and in not so doing, had negligently allowed the attacks to occur on the parking premises controlled by the landlord. *Id.*, at 690, 714 A.2d 881, 714 A.2d. 892–893.

The third case decided by this Court just two months later, *Matthews v. Amberwood Associates Limited Partnership, Inc.*, 351 Md. 544, 719 A.2d 119 (1998), involved a situation where a pit bull (named Rampage) attacked a child inside a tenant's apartment killing the child. We found that because the landlord's employees had reported Rampage's aggressiveness and viciousness on prior occasions to management personnel, that knowledge was imputed to the landlord even though the attack occurred in the premises leased to the tenant. *Id.*, at 588–59, 719 A.2d 119, 719 A.2d. 125–26. Accordingly, because the landlord had the right not to renew the lease or to remove the pit bull under a "no pets" provision in the lease, he could be held liable. *Ibid.*

\*2 In *Moore v. et al., v. Myers*, 161 Md.App. 349, 868 A.2d 954 (2005), a case originating out of Prince Georges County, the Court of Special Appeals was faced with a factual situation in which an unleashed and unrestrained pit bull chased a twelve year old girl into a street where she was run over by an automobile and suffered two broken arms, a broken leg, and a fractured jaw. FN6 At the time, Prince Georges County had adopted statutes specific to pit bulls that, among other things, required owners of pit bulls to keep the dogs in enclosures or leashed at all times. *Id.*, at 364, 868 A.2d at 962. Based primarily on a violation of those statutes, the Court of Special Appeals and held the owner of the pit bull liable. *Id.*, at 367, 868 A.2d at 964.

In *Ward v. Hartley*, 168 Md.App. 209, 895 A.2d 1111(2006) (in which the relevant party in the lawsuit was the landlord), a taxi driver was dispatched to pick up a passenger for transportation to the Kennedy Krieger Institute. When he knocked on the door to the leased premises, he heard someone tell children not to open the door. He stepped back and at the same time a child opened the door and a pit bull came charging out as he heard someone yell "Get the dog." He hit the pit bull with some rolled-up paper he had in his hand and the pit bull grabbed his foot. He then ran to his cab with the pit bull still holding onto his foot and, with the pit bull still attached, climbed on top of the car. A police car appeared on the scene, and as it did, two boys ran out of the house laughing and pulled the dog off of the cabdriver's foot. The cab driver's foot was severely injured and required surgery. *Id.*, at 213, 895 A.2d at 1113. There was no evidence in the case that the landlord knew that a pit bull was being kept on the premises until he heard about the incident with the cab driver. The Court of Special Appeals, in holding for the landlord, opined: "Keeping a pit bull did not violate any covenant of the lease, nor did it violate any law or ordinance. No provision of the lease gave the landlord control over any portion of the rental premises. Thus, appellees had no duty to inspect the premises." *Id.*, at 217, 895 A.2d at 1115.

The present case involves an attack by a pit bull named Clifford. Notwithstanding his relatively benign name, Clifford possessed the aggressive and vicious characteristics of both Trouble and Rampage. He escaped twice from an obviously inadequate small pen FN7 and attacked at least two boys at different times on the same day.FN8 The second young boy was Dominic Solesky. As a result of his mauling by Clifford, Dominic initially sustained life threatening injuries and underwent five hours of surgery at Johns Hopkins Hospital to address his injuries, including surgery to repair his femoral artery. He spent seventeen days in the hospital, during which time he underwent additional surgeries, and then spent a year in rehabilitation.FN9

\*3 Here, the trial court granted a judgment for the defendant landlord at the close of the Plaintiff's case on the grounds that, according to the trial judge, the evidence was insufficient to permit the issue of common law negligence to be presented to the jury. On the state of the common law relating to dog attacks in existence at that time, the trial court was correct. The plaintiff took an appeal to the Court of Special Appeals and that court reversed the trial court, finding that the evidence had been sufficient to create a valid jury issue as to the extent of the landlord's knowledge as to Clifford's dangerousness in respect to the then common law standards in dog attack negligence cases.

Appellant, the landlord, presented several questions in her brief before this Court.

1. Is the harboring of American Staffordshire Terriers (more commonly known as "pit bulls") by tenants an inherently dangerous activity for which landlords may be held strictly liable?
  2. Does Maryland jurisprudence permit an inference of knowledge of prior vicious propensities of a domestic animal by a landlord based upon the existence of an exculpatory clause in a residential lease concerning bodily injury caused by the tenant's pets?
  3. Does Maryland jurisprudence permit an inference of knowledge of prior vicious propensities of a domestic animal by a landlord whose tenant harbors the animal in leased premises based upon subjective conclusions as to the animal's temperament of neighbors who have limited observations of the animal's behavior which was never conveyed to the landlord?
  4. May a landlord be held liable for injuries caused by a tenant's domestic animal due to the failure to require reasonable confinement of a domestic animal in the leased premises?
  5. Should landlords that allow tenants to harbor dangerous or vicious animals in the leased premises be held liable in tort under any circumstances when the tenant fails to properly control its pet?
  6. Should this Court's prior rulings in *Mathews v. Amberwood Associates Ltd. P'ship, Inc.*, 351 Md. 544, 719 A.2d 119 (1998) and *Shields v. Wagman*, 350 Md. 666, 714 A.2d 881 (1998) be overturned or significantly modified?
- The appellee, cross-petitioner, Solesky, presents six questions in his brief.

- I. After *Shields* and *Matthews*, was the inherently dangerous/vicious nature of pit bulls known to Maryland landlords?
- II. Did *Matthews* impose a duty upon landlords who rent to tenants with pit bulls in a residential neighborhood to act with reasonable care in requiring appropriate housing or storage of the two pit bulls outside the house?
- III. Did the Court of Special Appeals err in upholding the Circuit Court's refusal to sanction a party/defendant who refused to appear for a duly noted deposition and never sought a Protective Order when the knowledge of the defendant is essential to proving the elements of the tort claim against her?
- IV. Did the Court of Special Appeals err in upholding the Circuit Court's refusal to sanction defendant for spoliation of evidence where defendant landlord had taken photographs of the leased premises on the day of reletting the premises to the tenant owner of two pit bulls and later refused to produce those photographs in discovery?

\*4 V. Did the Lower Courts err in refusing to admit forty-nine Baltimore Sun articles regarding pit bull attacks preceding the attack on Dominic?

We granted both the petition and cross petition. *Tracey v. Solesky*, 421 Md. 192, 24 A.3d 1025, (2011).

We answer appellant's first question in the affirmative and establish in this case, and prospectively, a strict liability standard in respect to the owning, harboring or control of pit bulls and cross-bred pit bulls in lieu of the traditional common law liability principles that were previously applicable to attacks by such dogs. We shall direct the Court of Special Appeals to reverse the trial court and send this case back to that court.FN10 Because of our imposition of certain breed-specific strict liability standards in this case, it is unnecessary to

address appellant's other questions. It is also unnecessary to address appellee/cross-petitioner's complaints as to the trial judge's failure to permit him to depose the landlord and to the trial judge's failure to allow him to introduce numerous newspaper articles all related to appellee's attempt to establish knowledge on the part of the landlord as to the aggressiveness and viciousness of Clifford.

We are modifying the Maryland common law of liability as it relates to attacks by pit bull and cross-bred pit bull dogs against humans. With the standard we establish today (which is to be applied in this case on remand), when an owner or a landlord is proven to have knowledge of the presence of a pit bull or cross-bred pit bull (as both the owner and landlord did in this case) or should have had such knowledge, a prima facie case is established. It is not necessary that the landlord (or the pit bull's owner) have actual knowledge that the specific pit bull involved is dangerous. Because of its aggressive and vicious nature and its capability to inflict serious and sometimes fatal injuries, pit bulls and cross-bred pit bulls are inherently dangerous.FN11

#### **The Old Common Law**

In the early Maryland case of *Goode v. Martin*, 57 Md. 606, 609–612 (1882), which involved an attack by a Newfoundland dog and a “small terrier,” FN12 the Court stated certain inferences that could then be made against an owner in a case such as the present case. There the Court first said: “In order to render the owner liable in damages to any one bitten by his dog, it must be proved not only that the dog was fierce, but that the owner had knowledge that he was fierce. To this effect are all the authorities. [citations omitted].” But later in its opinion, the Court stated:

But we think the appellant is right in his contention that the defendant may be presumed to have knowledge that his dogs were fierce and dangerous, from the fact that he was accustomed to keep them tied during the day-time. In *Perry v. Jones*, 1 Espinasse, 452, Lord KENYON held from the fact that the owner kept his dog tied and did not permit him to run at large, it must be presumed that he had knowledge that the dog was vicious, unruly and not safe to be permitted to go abroad.... So, in the case now before us, we think the fact that the appellee kept his dogs tied during the day and let them loose at night, furnishes proof that he knew it would endanger his neighbors to permit them to be unfastened.... The evidence ought to be left to the jury as tending to prove the temper and vicious disposition of the dogs, and the knowledge of the appellees thereto, and it was therefore error in the Judge of the Circuit Court to take the case from the jury, and the judgment appealed from will be reversed and a new trial be awarded.FN13

\*5 *Martin* 57 Md. at 611–12.

In *Bachman v. Clark*, *supra*, we stated the then common law standard in relation to dog attacks:

At common law, the owner of a dog is not liable for injuries caused by it, unless it has a vicious propensity and notice of that fact is brought home to him. But when it is once established that the dog is of a vicious nature, and that the person owning or keeping it has knowledge of that fact, the same responsibility attaches to the owner to keep it from doing mischief as the keeper of an animal naturally ferocious would be subject to, and proof of negligence on the part of the owner is unnecessary. This is the recognized and well settled law of this state [citation omitted].

*Clark*, 128 at 247, 97 A. 440 at 441 (citation omitted).

This standard has been acknowledged and sometimes criticized in treatises, nonetheless, it has generally persisted. See Harper, James and Gray on Torts, Section 14.9, at 291 (3rd ed., 2007)

This rule has been criticized as to actual damage done by animals with known propensities therefore, such as attacks on birds and poultry by cats, but any such change in the law will most likely come from legislative enactment, *although there is no necessary reason to prevent courts from making such modifications without the aid of a statute* [emphasis added].

Harper, further comments that: The common law has for many years made a distinction between animals *ferae naturae* and animals *mansuetae natura*, or between wild animals and domestic animals.

\* \* \*

It thus appears that one keeps dangerous animals at one's peril, that is, at strict liability, but otherwise as to animals ‘not dangerous.’ As to the former class, it is no defense that the keeper employed reasonable care, or even a high degree of diligence to prevent their escape. Liability is independent of any fault on the part of the owner.

\* \* \*

He may keep such animals, if he will, but if he has notice of their danger to human beings ..., he cannot keep them, even carefully, at the risk of others. He has introduced an unusual danger into the community and he does so at his own risk.

*Id.* at Section 14.11.FN14

#### **Modifying the Common Law**

In *Ireland v. State*, 310 Md. 328, 331–332, 529 A.2d 365–366 (1987) we discussed the basic framework of the Court's role in establishing and modifying common law rules:

The determination of the nature of the common law as it existed in England in 1776, and as it then prevailed in Maryland either practically or potentially, and the determination of what part of the common law is consistent with the spirit of Maryland's Constitution and her political institutions, are to be made by this Court.

“Whether particular parts of the common law are applicable to our local circumstances and situation, and our general code of laws and jurisprudence, is a question that comes within the province of the Courts of Justice, and is to be decided by them. The common law, like our Acts of Assembly, are subject to control and modification of the Legislature, and may be abrogated, or changed as the General Assembly may think most conducive to the general welfare; so that no great inconvenience, if any, can result from the power deposited with the judiciary to decide what the common law is, and its applicability to the circumstances of the State, and what has become obsolete from non-user or other cause. *State v. Buchanan*, 5 H. & J. 317, 365–66 (1821).”

\*6 Because of the inherent dynamism of the common law, we have consistently held that it is subject to judicial modification in the light of modern circumstances or increased knowledge....” *Id.* at 331–332, 529 A.2d at 366.

More recently, in *Mayor & City Council of Baltimore, et al. v. Clark*, 404 Md. 13, 944 A.2d 1122 (2008) in a case involving the termination of a police official in Baltimore City we held that, “It is well settled that, where the General Assembly has announced public policy, FN15 the Court will decline to enter the public policy debate, even when it is the common law that is at issue and the Court certainly has the authority to change the common law [italics added].” *Id.* at 38, 944 A.2d at 1135. See also *Price v. State*, 405 Md. 10, 32, 949 A.2d 619, 630 (2008) (“... This Court has also characterized a jury’s verdict of guilty, which is flatly inconsistent with the jury’s verdict of not guilty on another count as ‘illogical’ and ‘contrary to law.’ There is no reasonable basis for reversing the inconsistent verdict of ‘liability’ but not reversing the inconsistent verdict of ‘guilty’); *Bozman v. Bozman*, 376 Md. 461, 830 A.2d 450 (2003)(“...We agree with the Court of Special Appeals, that the interspousal immunity doctrine is an antiquated rule of law which, in our view, runs counter to prevailing societal norms and therefore has lived out its usefulness. According, we shall answer the petitioner’s first question in the affirmative and, so, complete the abrogation of the doctrine from the common law of this State ...”). And see *Bowden v. Caldor, Inc. et al.*, 350 Md. 4, 27, 710 A.2d 267, 277 (1998):

... Consequently, the legal principles discussed below, applicable to judicial review of punitive damage awards for excessiveness, are set forth as principles of Maryland Common Law. Although some of these principles may be the same as requirements by other courts as a matter of constitutional law, we have no reason at this time to consider minimum constitutional requirements in this area. Moreover, some of the principles set forth below have a foundation in prior Maryland case law, whereas others do not. Nonetheless, as often pointed out, this Court has authority under the Maryland Constitution to change the Common law.

We recently spoke to the application of common law modifications in our case of *Polakoff, et al. v. Turner*, 385 Md. 467, 484, 869 A.2d 837, 850 (2005). There we said: “Generally, changes in the common law are applied prospectively, as well as to the case triggering the change in the common law.” See also *Owens–Illinois, Inc. v. William Zenobia, Sr. et al.*, 325 Md. 420, 469–470, 601 A.2d 633, 657–658 (1992). There we said:

We now turn to the matter of the effective date of our holdings with respect to punitive damages.

Until today, under Maryland common law a plaintiff in a tort case was required to establish by a preponderance of the evidence those circumstances which would authorize the allowance of an award for punitive damages. By changing this standard of proof to clear and convincing evidence, we have not overruled any particular Maryland cases on the ground they were wrongly decided at the time. Instead we have exercised our constitutional authority to change the common law. [Citations omitted.]

\*7 Recently, in *Julian v. Christopher*, *supra*, 320 Md. at 10–11, 575 A.2d at 739, we reiterated the principle that “[o]rdinarily decisions which change the common law apply prospectively, as well as to the litigants before the court. Thus in *Boblitz v. Boblitz*, [FN16] we changed the common law by abrogating interspousal immunity in negligence cases and held that the change was applicable to the case then before the Court and to causes of action accruing after the date of our decision.

When, however, a change in the common law does not affect the elements of a cause of action [FN17] but relates to requirements at a trial, we have held that the change applies “to cases where the trials ... commence after the date of our opinion in the present case.”

Therefore, the “clear and convincing” standard of proof for punitive damages in tort cases applies to the instant case, ... and to all trials commencing and trials in progress on or after the date this opinion is filed.

#### **Strict Liability Standards in Pit Bull Attack Cases**

We began our modification of the old common-law rule with respect to dog attack cases with our strong dicta in *Matthews*, *supra*, highlighting the particular characteristics of pit bulls and cross-bred pit bulls. There we explained the difference between pit bulls and other breeds of dogs when we noted:

Thus, the foreseeability of harm in the present case was clear. The extreme dangerousness of this breed, as it has evolved today, is well recognized. ‘Pit bulls as a breed are known to be extremely aggressive and have been bred as attack animals.’ *Giaculli v. Bright*, 584 So.2d 187, 189 (Fla.App.1991). Indeed, it has been judicially noted that pit bull dogs ‘bite to kill without signal’ ( *Starkey v. Township of Chester*, 628 F.Supp. 196, 197 (E.D.Pa.1986)), are selectively bred to have powerful jaws, high insensitivity to pain, extreme aggressiveness, a natural tendency to refuse to terminate an attack, and a greater propensity to bite humans than other breeds. The “Pit Bull’s massive canine jaws can crush a victim with up to two thousand pounds (2,000) of pressure per square inch—three times that of a German Sheppard or Doberman Pinscher.” *State v. Peters*, 534 So.2d 760, 764 (Fla.App.1988) review denied, 542 So.2d 1334 (Fla.1989). See also *Hearn v. City of Overland Park*, 244 Kan. 638, 650, 647, 722 P.2d 758, 768, 765, cert. denied 493 U.S. 976, 110 S.Ct. 500, 107 L.Ed.2d 503 (1989) (‘pit bull dogs represent a unique health hazard ... [possessing] both the capacity for extraordinarily savage behavior ... [a] capacity for uniquely vicious attacks ... coupled with an unpredictable nature’... and that “of the 32 known human deaths in the United States due

to dog attacks ... [in the period between July 1983 and April 1989], 23 were caused by attacks by pit bull dogs.” Pit bull dogs have even been considered as weapons. See *State v. Livingston*, 420 N.W.2d 230 (Minn.App.1998) (for the purpose of first degree murder); *People v. Garraway*, 187 A.D.2d 761, 589 N.Y.S.2d 942 (1992) (upholding conviction of pit bull's owner of criminal weapon in the third degree).

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\*8 .... And the Albuquerque Humane Society reported that no other breed of dog has “ever caused the kinds of injuries or exhibited the aggressive behavior shown by American Pit Bull Terriers ... [and the humane society does not] adopt out pit bull dogs because of their potential for attacks on other animals and people”); [some citations in this paragraph omitted].

*Matthews*, 351 Md. At 562–63 & n.4, 719 A.2d at 127–128 & n. 4 (emphasis added).

However, we also stated in *Matthews* that:

.... Under the present circumstances, however, where a landlord retained control over the matter of animals in the tenant's apartment, coupled with the knowledge of past vicious behavior by the animal, the extremely dangerous nature of pit bull dogs, and the foreseeability of harm to persons and property in the apartment complex, the jury was justified in finding that the landlord had a duty to the plaintiffs and that the duty was breached. The following principle set forth in *Prosser and Keeton on the Law of Torts*, Sec. 4 at 25 (5th ed.1984), is applicable here:

‘The ‘prophylactic’ factor of preventing future harm has been quite important in the field of torts. The courts are concerned not only with the compensation of the victim, but with admonition of the wrongdoer. When the decisions of the courts are known, and defendants realize that they may be held liable, there is of course a strong incentive to prevent the occurrence of the harm. Not infrequently one reason for imposing liability is the deliberate purpose of providing that incentive.’ *Id.* at 570, 719 A.2d at 131–132 (emphasis added).

Because the issue of strict liability was not expressly raised on appeal, we decided *Matthews* on regular common law negligence requirements. However, the language of that case clearly forecasted the direction the Court might take in the proper case. This is that case.

Soon after we decided *Matthews*, a “special report” was published in the *Journal of the American Veterinary Medical Association* noting that: From 1979 through 1996, dog attacks resulted in more than 300 dog-bite related fatalities in the United States. Most victims were children. Studies indicate, ... that pit bull-type dogs were involved in approximately a third of human ... [fatalities] during the 12 year period from 1981 through 1992 ... FN18.

See, 217 *Journal of the American Veterinary Medical Association*, no. 6, September 15, 2000, at 836. The report went on to state: “... the data indicates that Rottweilers and pit bull type dogs accounted for 67% of human DBRF [“dog bite related fatalities”] in the United States between 1979 and 1996”. *Id.*, at 839. “It is extremely unlikely that they accounted for anywhere near 60% of dogs in the United States during that same period and, thus, there appears to be a breed-specific problem with fatalities.” *Ibid.* FN19

An abstract from a recent article published in the *Annals of Surgery*, entitled “Mortality, Mauling, and Maiming by Vicious Dogs” which explored maiming and deaths due to dog attacks noted that:

\*9 Abstract

**OBJECTIVE:** Maiming and death due to dog bites are uncommon but preventable tragedies. We postulated that patients admitted to a level 1 trauma center with dog bites would have severe injuries and that the gravest injuries would be those caused by pit bulls.

**DESIGN:** We reviewed the medical records of patients admitted to our level 1 trauma center with dog bites during a 15–year period. We determined the demographic characteristics of the patients, their outcomes, and the breed and characteristics of the dogs causing the injuries.

**RESULTS:** Our Trauma and Emergency Surgery Services treated 228 patients with dog bite injuries; for 82 of those patients the breed of the dog involved was recorded (29 were injured by pit bulls)[29 out of 82]. Compared with attacks by other breeds of dogs, attacks by pit bulls were associated with a higher median injury Severity Scale score (4 vs. 1; P=0.002), a higher risk of an admission Glasgow Coma Scale score of 8 or lower (17.2% vs. 0%; P=0.006), higher median hospital charges (\$10,500 vs. \$7200/ P=0.0003); and a higher risk of death (10.3% vs. 0%; (P=0.041).

**CONCLUSIONS:** Attacks by pit bulls are associated with higher morbidity rates, higher hospital charges, and a higher risk of death than are attacks by other breeds of dogs. Strict regulation of pit bulls may substantially reduce the U.S. mortality rates related to dog bites.

John K. Bini et al., *Mortality, Mauling, and Maiming by Vicious Dogs*, 253 *Annals of Surgery*, no. 4, May 2011.

The Center for Disease Control, in at least one of its “Morbidity and Mortality” Weekly Reports (MMWR) has noted that: From 1979 through 1994, attacks by dogs resulted in 279 deaths of humans in the United States ... (1, 2) Such attacks have prompted widespread review of existing local and state dangerous-dog laws, including proposals for adoption of breed-specific restrictions to prevent such episodes (3).

The “Editorial Note” following the Weekly Report noted that during 1979–1996, fatal dog attacks occurred in 45 states. In 1986, nonfatal dog bites resulted in an estimated 585,000 injuries that required medical attention or restricted activity; in that year, dog bites ranked



12th among the leading causes of nonfatal injuries in the United States. In 1994, an estimated 4.7 million persons (1.8% of the U.S. population) sustained a dog bite, of these, approximately 800,000 (0.3%) sought medical care for the bite.

46 MMWR Weekly no. 21, Dog–Bite Related Fatalities–United States 1995–1996, May 30, 1997, pp. 463–466.

Although the Center for Disease Control did not recommend breed-specific regulation FN20 it did state: “... laws for regulating dangerous or vicious dogs should be promulgated and enforced vigorously.”

Cases from other jurisdictions that address the inherent viciousness of pit bulls often involve the constitutionality of certain dog control regulations, or criminal cases where dog owners have been charged with using pit bulls as dangerous weapons. For example, in *City of Toledo v. Tellings*, 114 Ohio St.3d 278, 280–283, 871 N.E.2d 1152 (2007), the Ohio Supreme Court, reversing an intermediate appellate court, upheld most of Toledo’s breed-specific regulations involving pit bulls. Tellings had challenged the constitutionality of that section of the statute that included pit bulls in the “vicious dog” category and stated that the “ownership, keeping, or harboring of a vicious dog” violated the regulations. Vicious dogs were defined in the statute to include pit bulls.

\*10 The Ohio court went on to state: The trial court cited the substantial evidence supporting its conclusion that pit bulls, compared to other breeds, cause a disproportionate amount of danger to people. The chief dog warden of Lucas County testified that (1) when pit bulls attack, they are more likely to inflict severe damage to their victim than other breeds of dogs, (2) pit bulls have killed more Ohioans than any other breed of dog, (3) Toledo police officers fire their weapons in the line of duty at pit bulls more often than they fire weapons at people and other breeds of dogs combined, (4) pit bulls are frequently shot during drug raids because pit bulls are encountered more frequently in drug raids than any other dog breed. The trial court also found that pit bulls are ‘found largely in urban settings where there are crowded living conditions and a large number of children present,’ which increases the risk of injury caused by pit bulls.

The evidence presented in the trial court supports the conclusion that pit bulls pose a serious danger to the safety to citizens. The state and the city have a legitimate interest in protecting the citizens from the degree of danger posed by this breed of domestic dog.

Tellings, 871 N.E.2d at 1157 (emphasis added). See also *Bess v. Bracken County Fiscal Court*, 210 S.W.3d 177, 182 (2006 Ky.App.) (“Here, the determination by the Bracken County Fiscal Court that pit bull terriers have “inherently vicious and dangerous propensities” was certainly not unreasonable given the evidence in support of that finding.”).

In *The Florida Bar v. Pape and The Florida Bar v. Chandler*, 918 So.2d 240, at 242 and 245, (2005 Fla..) cases, two Florida attorneys were disciplined for using an image of a pit bull in their advertising because it was misleading, and also portrayed an inappropriate message. Although the disciplinary case itself was unusual, relevant for our purposes here is the following statement by the Supreme Court of Florida: In this case we impose discipline on two attorneys for their use of television advertising devices that violate the Rules of Professional Conduct. These devices, which invoke the breed of dog known as the pit bull, demean all lawyers and thereby harm both the legal profession and the public’s trust and confidence in our system of justice.

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In addition, the image of a pit bull and the on-screen display of the words “PIT BULL”... are not relevant to the selection of an attorney. The referee found that the qualities of a pit bull as depicted by the logo are loyalty, persistence, tenacity, and aggressiveness. We consider this as a charitable set of associations that ignores the darker side of the qualities often also associated with pit bulls: malevolence, viciousness, and unpredictability. Further, although some may associate pit bulls with loyalty to their owners ...

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Even the perception of loyalty may be unwarranted. In June, a twelve-year old boy was mauled to death in San Francisco by his family’s two pit bulls.... That same month a Bay Area woman suffered severe injuries in an attack by her nine-year old pit bull.... A St. Louis man was killed in May by his two pit bulls that had “no apparent history of aggression and [were] described as well kept [source citations in paragraph omitted.]

\*11 Pit bulls have a reputation for vicious behavior that is borne of experience. *Id.*, at 241, 245 & n. 4.

Although the District of Columbia Court of Appeals found for the landlord on the basis that he had no right to terminate the lease in the case of *Campbell v. Noble*, 962 A.2d 264, 264–265 (2008 D.C.App.), the Court described the magnitude of the injuries suffered by a boy hired to clean up dog waste from pit bulls:

....The dogs then began to attack Elijah, biting him in the face and body. ....Elijah was raced to the hospital, where he underwent nine hours of surgery. Since the attack, Elijah has had physical and psychological difficulties. He had to relearn how to balance and walk, and has had terrible nightmares about the attack; he also no longer has a right ear. His left ear was surgically reattached.

*McNeely v. United States*, 874 A.2d 371. (2005 D.C.App.), arose out of a vicious attack by two pit bulls. McNeely, the owner of the dogs, was criminally charged and convicted of two counts of violating the “Pit Bull and Rottweiler Dangerous Dog Designation Emergency Act of 1996 (the “Pit Bull Act”) that imposed certain requirements on a breed-specific basis relating to pit-bulls. McNeely challenged the statute on several grounds including “... that the Act constitutes an impermissible strict liability statute.” McNeely, *supra*, at 375.

The facts of the attack are described as follows: At approximately 1:00 a.m. on May 13, 1996, Helen Avery carried a bag of spoiled food to the trash can behind her home. As she replaced the can lid, Avery saw two dogs appear from under the steps of her back porch. The dogs charged towards her, forcing Avery to seek an escape by scaling a fence to her neighbor’s yard. Unfortunately, she did not evade the dogs

quickly enough: one of them seized Avery by the back of her leg and pulled her off the fence, while the other dog jumped on top of her as she fell backwards. During the ensuing attack, skin, muscle, and nerve tissues were bitten off from various parts of her body, including her leg and both arms; one of her toes was nearly bitten off, and she lost a large amount of blood. The attack finally ended when Avery's son, Jerrel Bryant, and two other men successfully chased the dogs off by beating them with an ax and baseball bat.

In arguing that a denial of a motion to dismiss be upheld, the government stated that all that was required to be proven under the statute was that the owner knew the dog was a pit bull. The District of Columbia Court of Appeals agreed and upheld the conviction, and noted further, as related to the basic scienter requirement under the statute, that all that was required to be shown was that the pit bulls had attacked without provocation and the owner knew "that the dogs he owned were pit bulls." *Id.*

Multiple constitutional issues and other arguments were raised by pit bull advocates FN21 in a challenge to a pit bull strict liability statute in the case of *The Colorado Dog Fanciers, Inc. et al. v. The City and County of Denver*, 820 P.2d 644 (Colo.1991). The Supreme Court of Colorado in upholding the statute at issue, opined, in relevant part:

\*12 Since section 8–55 allows the determination that a dog is a pit bull based on nonscientific evidence, the dog owners assert that they are denied substantive due process. The city, however, is not required to meet its burden of proof with mathematical certainty of scientific evidence. Therefore, even though section 8–55 permits a finding of pit bull status to be based on expert opinion or on nonscientific evidence, such a procedure does not violate the dog owner's due process rights.

The dog owners also assert that the city ordinance treats all pit bulls and substantially similar dogs as inherently dangerous and is, therefore, unconstitutionally overbroad. This contention is without merit.

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The dog owners argue that the ordinance violates the Equal Protection Clause by creating an irrational distinction between one who owns a dog with the physical characteristics of a pit bull and one who owns a dog lacking those characteristics.

\* \* \*

.... The trial court found that pit bull attacks, unlike attacks by other dogs, occur more often, are more severe, and are more likely to result in fatalities. The trial court also found that pit bulls tend to be stronger than other dogs, often give no warning signals before attacking, and are less willing than other dogs to retreat from an attack, even when they are in considerable pain. Since ample evidence exists to establish a rational relationship between the city's classification of certain dogs as pit bulls, and since there is a legitimate governmental purpose in protecting the health and safety of the city's residents and dogs, the trial court correctly concluded that the ordinance did not violate the dog owner's right to equal protection of the laws.

*Id.*, at 649–652 (internal citations and footnotes omitted).

Harper, *supra*, notes that at least the following states have some form of state-strict liability statute in which the finding of dangerousness of the particular attacking dog is not necessary to establish the elements of negligence: Arizona, Florida, Illinois, Iowa, New Jersey, Nebraska, Oklahoma, Connecticut, Wisconsin and Ohio. There are also indications in the literature that California, South Carolina and the District of Columbia also have some form of strict liability statute relating to dogs. Additionally, some of the cases and other authority we have examined concern local animal control laws, some of which are breed-specific.

The sources and discussions above, coupled with our extensive dicta in *Matthews, supra*, and the numerous instances of serious and often fatal attacks by pit bulls throughout the country, and especially in Maryland, persuades us that the common law needs to be changed in order that a strict liability standard be established in relation to attacks by pit bull and cross-bred pit bull mixes.FN22

## CONCLUSION

We hold that upon a plaintiff's sufficient proof that a dog involved in an attack is a pit bull or a pit bull mix, and that the owner, or other person(s) who has the right to control the pit bull's presence on the subject premises (including a landlord who has the right and/or opportunity to prohibit such dogs on leased premises as in this case) knows, or has reason to know, that the dog is a pit bull or cross-bred pit bull mix, that person is strictly liable for the damages caused to a plaintiff who is attacked by the dog on or from the owner's or lessor's premises.FN23 This holding is prospective and applies to this case and causes of action accruing after the date of the filing of this opinion. Upon remand to the trial court, it shall apply in this case the modifications to the common law herein created.FN24

\*13 JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED FOR THE REASONS HEREIN STATED; THAT COURT IS DIRECTED TO REMAND THE CASE TO THE TRIAL COURT FOR A RETRIAL CONSISTENT WITH THE NEW COMMON LAW PRINCIPLES HEREIN ADOPTED; COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY THE APPELLANT.

HARRELL, GREENE, and BARBERA, JJ., dissent.

Dissenting Opinion by GREENE, J., which HARRELL and BARBERA, JJ., join.

\*13 I respectfully dissent:

Today, the majority holds that a pit bull or any dog with a trace of pit bull ancestry (determined by what means the majority opinion leaves us entirely in the dark) FN1 shall be deemed hence forth vicious and inherently dangerous as a matter of law. Thus, an owner, keeper, or landlord with control over a tenant's premises can be held strictly liable for harm a pit bull or mixed-breed pit bull FN2 causes to third parties. According to the majority:

[W]e are modifying one of the elements that must be proven in cases involving pit bull attacks from knowledge that a particular dog is dangerous to knowledge that the particular dog involved is a pit bull. If it is a pit bull the danger is inherent in that particular breed of dog and the knowledge element of scienter is met by knowledge that the dog is of that breed.

Maj. slip op. at 15 n.17.

Now, it appears, the issue of whether a dog is harmless, or the owner or landlord has any reason to know that the dog is dangerous, is irrelevant to the standard of strict liability. In the words of the majority, the owner or landlord will be held strictly liable for any harm the dog causes if the owner or landlord had “knowledge of the presence of a pit bull or cross-bred pit bull ... or [the owner or landlord] should have had such knowledge[.]” Maj. slip op. at 9. By virtue of this new rule, grounded ultimately upon perceptions of a majority of this Court about a particular breed of dog, rather than upon adjudicated facts showing that the responsible party possessed the requisite knowledge of the animal's inclination to do harm, the majority transforms a clear factual question into a legal one in an effort to create liability. If the majority believes that it has not transformed the relevant inquiry from a factual determination into a legal one, in the present case, then I pose this question: What expert testimony or factual predicate is contained within this record to support a factual finding that pit bulls and mixed-breed pit bulls are inherently dangerous? I have considered the record and found no such factual predicate. Further, if the majority believes it is taking judicial notice of such facts—why, pray tell, is an appellate court willing to take judicial notice of facts about the breed of particular dogs, and characteristics allegedly associated with that breed, when the trial judge was not willing to do so? Moreover, and more problematically, why should appellate courts even consider taking judicial notice of facts relating to dog bite statistics that are clearly in dispute?

\*14 Indeed, the injuries to the plaintiff are unfortunate and warrant someone taking responsibility for the harm caused to him. In the absence of sufficient facts FN3 to establish a prima facie case of liability, however, the majority only compounds the problem created, driven by its apparent desire to reach a particular result in this case. Succumbing to the allure of bad facts leads inevitably to the development of bad law. On this record, clearly, there is evidence of injury to the plaintiff. There is also sufficient evidence that the owner knew or should have known of Clifford's vicious propensities. There is insufficient evidence, however, to establish liability on behalf of the landlord. The majority even acknowledges that, in the present case, the trial judge was correct in granting judgment for the landlord on the grounds that “the evidence was insufficient to permit the issue of common law negligence to be presented to the jury.” Maj. slip op. at 6. Furthermore, evaluating the facts under the common law as it existed prior to this opinion, there is no evidence in the record that the landlord knew that the dog in question had vicious propensities or that the landlord should have known that this dog would likely attack people in the manner the plaintiff was attacked. Thus, taking into account the common law as it existed at the time of trial, there is no basis for finding the landlord liable under a theory of strict liability.

One author has described the common law standard of strict liability in dog bite cases in the following way:

For centuries, dogs have been known as a companion to man[kind]. As such, they were considered harmless; and if they did, in fact, possess dangerous characteristics, it was considered abnormal. Consequently, the owner of a dog was not strictly liable for a dog bite, unless he had reason to know the dog was abnormally dangerous. Being abnormally dangerous was often characterized as having a tendency to attack human beings, whether the attack was in anger or in play. The owner's liability was in keeping a dog after gaining knowledge of its propensity for abnormally vicious behavior. Thus, the requirement of scienter was a hurdle plaintiffs needed to overcome in order to proceed with a lawsuit. (Footnotes omitted.)

Lynn A. Epstein, *There Are No Bad Dogs, Only Bad Owners: Replacing Strict Liability with a Negligence Standard in Dog Bite Cases*, 13 *Animal L.* 129, 132 (2006). Believing that the traditional common law principles of strict liability applicable to dog bite cases are inadequate, the majority modifies the common law. In the present case, the Court of Special Appeals reversed the trial court and remanded the case for a new trial, and the majority affirms that judgment, but for a different reason than that given by our brethren on the intermediate appellate court. According to the majority, if on remand the plaintiff can prove that the owner or landlord had knowledge of Clifford's presence on the leased premises and that Clifford is a “pit bull or cross-bred pit bull,” or if the plaintiff can prove that the owner or landlord should have had such knowledge, the plaintiff will have established a prima facie case of strict liability for any harm caused. See Maj. slip op. at 9.

\*15 Until today, the common law in Maryland was that the owner or keeper of a dog or other domestic animal would be held strictly liable for injuries caused by that animal, provided the plaintiff could show that the owner or keeper “had knowledge of [the animal's] disposition to commit such injury [.]” *Twigg v. Ryland*, 62 Md. 380, 385 (1884) (noting that “[t]he gist of the [strict liability] action is the keeping [of] the animal after knowledge of its mischievous propensities”). Likewise, until today, a landlord would be held liable to a third party for an attack by a tenant's animal where the landlord had knowledge of the animal's presence on the leased premises and knowledge of its vicious propensities, and the landlord maintained control over the leased premises. *Matthews v. Amberwood Assocs. Ltd. P'ship, Inc.*, 351 Md. 544, 570, 719 A.2d 119, 131–32 (1998); see *Shields v. Wagman*, 350 Md. 666, 690, 714 A.2d 881, 892–93 (1998). Scienter, or knowledge, is defined as “[a] degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission; the fact of an act's having been done knowingly, esp. as a ground for civil damages or criminal punishment.” *Black's Law Dictionary* 1373 (8th ed.2004). Under Maryland law, “the owner's [strict] liability arises from exposing the community to a known dangerous beast rather than any negligence in keeping or controlling his animal.” *Slack v. Villari*, 59 Md.App. 462, 473, 476 A.2d 227, 232 (1984) (citing *William L. Prosser, Handbook of the Law of Torts* § 76, at 499 (4th ed.1971)). The burden is on the plaintiff to establish “that the owner [or keeper of the animal] knew, or by the exercise of ordinary and reasonable care should have known, of the inclination or propensity of the animal to do the particular mischief that was the cause of the harm.” *Herbert v. Ziegler*, 216 Md. 212, 216, 139 A.2d

699, 702 (1958) (citations omitted). If the plaintiff fails to show the owner or keeper's scienter, or knowledge, of the animal's propensity to cause the very harm inflicted, recovery for the harm caused by the animal will be denied. See *Twigg*, 62 Md. at 386.

With regard to this theory of strict liability, the mere fact that a dog is kept in an enclosure or is otherwise restrained is not sufficient to show the owner or keeper's knowledge of the animal's vicious propensities or inclination to bite people. *McDonald v. Burgess*, 254 Md. 452, 458, 255 A.2d 299, 302 (1969); see *Ward v. Hartley*, 168 Md.App. 209, 218, 895 A.2d 1111, 1116 (2006), cert. denied, 394 Md. 310, 905 A.2d 844 (2006). Furthermore, in accordance with the well-settled common law standard of strict liability, the breed of the dog, standing alone, has never been considered a sufficient substitute for proof that a particular dog was dangerous or had a violent nature. See *McDonald*, 254 Md. at 460, 255 A.2d at 303; *Slack*, 59 Md.App. at 476, 476 A.2d at 234. Specifically, in *McDonald*, we held that the mere fact that the dog in question belonged to a specific breed, which “can and often does behave in a very vicious manner,” was insufficient to hold the owner legally responsible for his German shepherd attacking another person. *McDonald*, 254 Md. at 460–61, 255 A.2d at 303. In that case, “[t]here [wa]s nothing in the record to demonstrate that the particular dog alleged to have caused the injury ... was of a violent or oppressive nature” and that the defendant had the requisite scienter. *Id.* Thus, in order to hold the owner or keeper of a dog strictly liable, there must be a showing that the particular dog, in that case a German shepherd, was of a violent nature and that the owner or keeper of the dog knew, or by the exercise of ordinary care should have known, of the dog's inclination or propensity to do the particular mischief that was the cause of the harm. *McDonald*, 254 Md. at 456–60, 255 A.2d at 301–03.

\*16 Furthermore, until today, this Court has never announced a theory of strict liability predicated upon the alleged knowledge of the owner, keeper, or landlord of the premises, based upon assumptions about a particular breed of an animal, where a dog of that breed caused an injury to another human being. Ordinarily, the owner, keeper, or landlord of the premises, would be strictly liable in a dog bite case where the responsible party was in a position to anticipate the harm; primarily, because he or she had sufficient knowledge of the dog's vicious propensities or inclination and would thereby be in a position to take corrective action. See *Bachman v. Clark*, 128 Md. 245, 248, 97 A. 440, 441 (1916). Under the new rule announced today, however, the only corrective action an owner, keeper, or landlord could possibly take to avoid liability for the harm caused to another by a pit bull or mixed-breed pit bull is not to possess or allow possession of this specific breed of dog on the premises. Conversely, any other breed of dog in the possession of the owner or on premises controlled by the landlord, no matter how violent, apparently, would be judged by a different standard. As a result of the majority opinion, it is unclear as to what standard should be applied prospectively to owners and landlords for the liability of other breeds of dogs kept on the premises.

Although this Court has authority to alter the common law, we have been reluctant to do so because of the principle of stare decisis, which we have confirmed “promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *DRD Pool Serv., Inc. v. Freed*, 416 Md. 46, 63, 5 A.3d 45, 55 (2010) (quoting *Livesay v. Balt. Cnty.*, 384 Md. 1, 14, 862 A.2d 33, 40–41 (2004)). We have changed or modified the common law when the prior decision was “clearly wrong and contrary to established principles[.]” *State v. Adams*, 406 Md. 240, 259, 958 A.2d 295, 307 (2008) (quotation omitted), cert. denied, 556 U.S. 1133, 129 S.Ct. 1624, 173 L.Ed.2d 1005 (2009), or when precedent has been superseded by significant changes in the law or facts. *Harrison v. Montgomery Cnty. Bd. of Educ.*, 295 Md. 442, 459, 456 A.2d 894, 903 (1983) (allowing departure from stare decisis when there are “changed conditions or increased knowledge, [such] that the rule has become unsound in the circumstances of modern life, a vestige of the past, no longer suitable to our people”).

Consistent with our precedent, there is no good reason to modify the common law in this case. Modern circumstances and knowledge gleaned from the literature regarding “pit bulls” have not substantially changed since 1998 when we decided *Matthews and Shields*. The majority relies upon a Report issued after our decisions in *Matthews and Shields* that is published in the *Journal of the American Veterinary Medical Association* and indicates that “pit bull-type dogs were involved in approximately a third of human ... [fatalities] reported during the [twelve]-year period from 1981 through 1992[.]” See Jeffrey J. Sacks et al., *Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 and 1998*, 217 *J. Am. Veterinary Med. Ass'n* 836, 836 (2000) [hereinafter *Veterinary Medical Association Report*]. This information was certainly available prior to publication of the *Veterinary Medical Association Report*. The Report does not recommend strict liability as a potential solution to the problem of attacks by pit bull dogs. See *Veterinary Medical Association Report*, supra, at 839–40. In fact, the Report questions the success of breed-specific liability requirements and urges the consideration of factors completely unrelated to the breed or appearance of dogs, including their socialization, training, size, sex, and reproductive status. See *id.* The *Veterinary Medical Association Report* warns that dog bite data can be misleading. See *Veterinary Medical Association Report*, supra, at 838. Moreover, other reports question the use of dog bite statistics and emphasize that such statistics do not provide an accurate portrayal of dogs that bite. See Stephen Collier, *Breed-Specific Legislation and the Pit Bull Terrier: Are the Laws Justified?*, 1 *J. Veterinary Behavior* 17, 18 (2006); Bonnie V. Beaver et al., *A Community Approach to Dog Bite Prevention*, 218 *J. Am. Veterinary Med. Ass'n* 1732, 1733 (2001).

\*17 Public knowledge and the hysteria regarding pit bulls is no more prevalent now than it was in 1998 when *Matthews and Shields* were decided. See Collier, supra, at 17–18 (discussing a trend in several countries, including the United States, of the media portraying the pit bull breed with “lurid and sensational accounts of its background, capabilities, and character” and the lasting effects of that depiction). A 2011 Report entitled *Mortality, Mauling, and Maiming by Vicious Dogs*, cited by the majority, notes that “[s]trict regulation of pit bulls may substantially reduce the U.S. mortality rates related to dog bites.” John K. Bini et al., *Mortality, Mauling, and Maiming by Vicious Dogs*, 253 *Annals Surg.* 791, 791 (2011). The author recommends regulation, however; he does not specifically suggest imposing strict liability in tort. Bini et al., supra, at 796. Furthermore, strict regulation does not equate to strict liability in tort. In the field of regulation, for example, the direct focus is on the owner's behavior, sterilization, socialization, supervision, breeding practices, educational outreach

to potential dog owners, and screening of potential owners. See Jamey Medlin, Pit Bull Bans and the Human Factors Affecting Canine Behavior, Comment, 56 DePaul L.Rev. 1285, 1304–1318 (2007) (suggesting laws designed to target human behavior related to treatment of dogs, including sterilization, breeder licensing programs, screening programs, and community outreach). With regard to dog bite statistical information, some experts express doubt that it is even possible to calculate dog bite rates for a particular breed of dog or to compare rates between breeds because many dogs are unregistered or unlicensed. See Safia Gray Hussain, Attacking the Dog Bite Epidemic: Why Breed-Specific Legislation Won't Solve the Dangerous-Dog Dilemma, Note, 74 Fordham L.Rev. 2847, 2870–71 (2006) (referencing Beaver et al., supra, at 1733).

According to some experts, there are more than twenty-five breeds of dogs commonly mistaken for pit bulls. Hussain, supra, at 2870. Notwithstanding this empirical evidence, the majority relies upon the assumption that all pit bulls are inherently dangerous. In this record, there is no evidence from expert witnesses to support the proposition that pit bulls or pit bull mixed-breeds are inherently dangerous. It appears that the media has demonized pit bulls as gruesome fighting dogs and has not revealed the long history of pit bulls as family dogs with passive behaviors. See Medlin, supra, at 1288–1290 (discussing the role of pit bulls as family pets in the early twentieth century in contrast to public perception today); Lynn Ready, Pit-Bull Terrier Therapy Dogs Provide Great Service to Their Community, Best Friends Animal Society Pit Bull Terrier Initiatives (Apr. 28, 2011), <http://network.bestfriends.org/initiatives/pitbulls/17100/news.aspx>.

The majority also assumes that breed-specific rules, as opposed to behavior modification rules, are a better approach to controlling the problem of dog bites caused by pit bulls and mixed-breed pit bulls that attack humans. Again, the empirical evidence is in dispute. Some experts conclude that breed-specific liability rules provide a superficial sense of security because many factors completely unrelated to the breed or appearance of dogs affect their tendency toward aggression, including early experience, socialization, training, size, sex, and reproductive status. See Sacks et al., supra, at 839–40.

\*18 In those states referenced by the majority as examples of jurisdictions where the strict liability standard has been applied in the manner the majority announces today, it was clearly the legislatures of those states that enacted specific legislation to address the problem of harm caused by pit bulls and mixed-breed pit bulls. For example, the majority relies upon *City of Toledo v. Tellings*, in which the Supreme Court of Ohio upheld Toledo's breed-specific legislation with regard to "pit bulls." *Tellings*, 114 Ohio St.3d 278, 871 N.E.2d 1152, 1159 (Ohio 2007) (holding that "the state of Ohio and the city of Toledo have a legitimate interest in protecting citizens from the dangers associated with pit bulls, and that R.C. 955.11(A)(4)(a)(iii) and 955.22 and Toledo Municipal Code 505.14 are rationally related to that interest and are constitutional"). Likewise, in Colorado, the District of Columbia, Florida, and Kentucky, strict liability statutes addressing liability for injuries caused by dogs were enacted by the respective state legislatures. Rebecca F. Wisch, Quick Overview of Dog Bite Strict Liability Statutes, Michigan State University College of Law Animal Legal & Historical Center (May 2006, updated 2010), <http://www.animallaw.info/articles/qvusdogbiteslstatutes.htm>. In each of those jurisdictions, the courts have followed the lead of state legislatures rather than legislating from the bench. See, e.g., *Colo. Dog Fanciers, Inc. v. City & Cnty. of Denver*, 820 P.2d 644, 646 (Colo.1991) (evaluating the constitutionality of the "Pit Bulls Prohibited" ordinance"); *McNeely v. United States*, 874 A.2d 371, 380 (D.C.2005) (concluding that "the Pit Bull Act is sufficiently definite to comport with the demands of the Constitution's Due Process Clause and that the Council [of the District of Columbia] created through the Act a constitutional strict liability felony, without requiring a culpable state of mind, so long as it is proved that the defendant knew he or she owned a pit bull"); *State v. Peters*, 534 So.2d 760, 761–62 (Fla.Dist.Ct.App.1988) (upholding a local ordinance regulating the ownership of pit bulls); *Bess v. Bracken Cnty. Fiscal Ct.*, 210 S.W.3d 177, 179–80 (Ky.Ct.App.2006) (recognizing the "right of state legislatures to exercise their police power to regulate dog ownership" and upholding a local county ordinance banning possession of pit bull terriers).

Given the nature of the extensive social problem of regulating pit bulls and mixed-breed pit bulls, the majority elects to focus on the breed of the dog involved, rather than on the behavior of the dog, the owner, and the landlord. The issues raised involving breed-specific regulation are not appropriate for judicial resolution; rather, those issues are best resolved by the Maryland General Assembly, as that branch of government is better equipped to address the various issues associated with regulation of pit bulls and mixed-breed pit bulls. For example, some experts indicate that the term "pit bull" does not describe any one particular breed of dog; instead, it is a generic category encompassing the American Staffordshire Terrier, the Staffordshire Bull Terrier, and the American Pit Bull Terrier. See Hussain, supra, at 2851–52. Neither the American Kennel Club nor the United Kennel Club recognizes all three breeds, and the breed descriptions and standards provided by the two organizations differ. *Id.* It is difficult for courts, therefore, both to determine whether a particular dog should be categorized as a pit bull and to differentiate between pit bulls and other breeds. Hussain, supra, at 2852; Karyn Grey, Breed-Specific Legislation Revisited: Canine Racism or the Answer to Florida's Dog Control Problems?, Comment, 27 Nova L.Rev. 415, 432 (2003) (positing that "the evidentiary method for determining when a dog is a pit bull or pit bull mix can be confusing and difficult"). In addition, the connection between a dog's appearance and the actual breed is tenuous, according to some experts. See Victoria L. Voith, Shelter Medicine: A Comparison of Visual and DNA Identification of Breeds of Dogs, Proceedings of Annual AVMA Convention (July 11–14, 2009), <http://www.nathanwinograd.com/linked/misbreed.pdf> (finding that there is discrepancy between breed determination based on physical attributes and scientific determinations). Taking into consideration the lack of evidence in the record of this case with regard to the landlord's knowledge of the vicious propensities of the dog, the conflicting studies about how best to control the dog bite "epidemic" mentioned herein, and the problems inherent in defining what constitutes a "mixed-breed" pit bull, the matter of creating a new standard of liability is fraught with problems and is beyond the sphere of resolution by any appellate court.

Judges HARRELL and BARBERA have authorized me to state that they join in the views expressed in this dissenting opinion.

FN1. While there were prior dog bite cases, we believe that this case was the first instance where the attacking dog is described as a bull terrier.

FN2. A small piece of timber such as a 2" by 4" or similar piece of framing, etc.

FN3. In addition to the maulings in Maryland, there have been at least two instances of serious maulings by pit bulls that have reached the appellate courts of the District of Columbia, *infra*, since 2005. Accordingly, within a hundred mile radius there have been nine serious mauling appellate cases involving pit bulls within the last thirteen years.

FN4. Two cases were consolidated for trial below.

FN5. In the hospital she underwent emergency surgery and was hospitalized for a week. She later had to return to the hospital for further surgeries. She lost four months of work.

FN6. Apparently, the son of the owner 'sicked' the pit bull on three girls, one of whom was the victim.

FN7. The pen was described as being 4 feet high with no overhanging ledge and an open area at the top. Clifford jumped out of the top of the pen—at least twice on the day of the attacks. In *Matthews v. Amberwood*, *supra*, at 563, 719 A.2d 119, we quoted language from the New Mexico case of *Garcia v. Village of Tijeras*, 108 N.M. 116, at 119–121, 767 P.2d 355 (1988) that "... extraordinary measures are required for confining American Pit Bull Terriers, such as a six [emphasis added] foot chainlink fence with an overhanging ledge to keep the dogs from jumping out, ..."

FN8. After he attacked the first boy, the pit bull's owner apparently restrained the dog and put him back in the pen he had just jumped out of, whereupon, in a short period of time the pit bull jumped out of the pen again and attacked the second boy, Dominic.

FN9. The first boy attacked, Scotty Mason, was described after the attack on him as he appeared before his mother (an assistant States Attorney for Baltimore City) as: He was hysterical. He was bloody from about the chest area up. His face was covered in blood. He was crying. He didn't look like Scotty. I thought he had been hit by a baseball bat....

\* \* \*

Well, he was unable to talk. He was so hysterical, but the two older boys told me he had been attacked by a dog, and I was frankly shocked ...

FN10. The Court of Special Appeals reversed the trial court on regular negligence grounds and has directed that the case be retried. We do not agree that the evidence below supported that finding, but, with our holding that certain strict liability standards now apply, reversal is also required, albeit for a different reason.

FN11. We are, of course, aware that such dogs can, and sometimes do, become well mannered pets in respect to their own human families as pointed out in some of the briefs. The question, however, is not whether they are maiming or killing their owners or members of the owners' families (although sometimes they do), it is the degree to which they are attacking others, and the seriousness of the injuries caused, in comparison with the rate of dog attacks (and types of injuries) in respect to all breeds of dogs.

FN12. The type of terrier is not mentioned. We do note that next to a Newfoundland, terriers, including many pit bull terriers, would appear small by comparison.

FN13. It is questionable whether this early modification to the old common law rule would have been applied by that Court had that era been subject to the population, traffic and congestion of modern-urban life and to the numerous statutes forbidding the running loose of dogs and the requirements that they be leashed or under control, such as is generally prevalent to some degree in many jurisdictions at the present time. We have previously noted that "The fact that the dogs here were kept in an enclosure in a suburban area in a day when legal restrictions frequently forbid a dog's running at large cannot have the same significance that the matter of enclosure had in 1916 and 1882." *Mcdonald v. Burgess*, 254 Md. 452, 258, 255 A.2d 299, 302 (1969)

FN14. Harper, *supra*, Section 14–11, pg. 310, fn. 26 briefly discusses England's attempt to address the issue of breed-specific dangerous dogs: "In England under the Animals Act 1971, section 2(2)(b) the dangerous propensities that must be known must be such as "are not normally found in animals of the same species." It has been held, on the basis of the statutory definition of "species" as including subspecies that "the relevant comparison was with other dogs of the same breed and not with other dogs generally." At about the same time, public reaction in England to injuries caused by dogs led to demands for the "banning of dangerous breeds such as pit bull terriers and Rottweilers." The Home Secretary announced plans to ban the "owning and breeding [of] pit bull terriers, Japanese tosas and other dogs bred for fighting" (but not Rottweilers), but the RSPCA and many veterinarians stated that they would refuse to participate in the mass slaughter of such dogs...."

The Home Secretary then compromised by requiring the "muzzling, neutering, and registering of 'fighting dogs,' said to include pit bull terriers, tosas, and bandogs (bandogs are dogs that are kept tied up as watchdogs or tied up because they are ferocious).

FN15. The parties have not directed our attention to any Maryland State statute addressing the matter of the dangerousness of pit bulls or to any action by the General Assembly declining to create different standards to be applied in respect to tort actions involving attacks by pit bulls. We know of none.

FN16. 296 Md. 242, 275, 462 A.2d 506, 522 (1983).

FN17. In this case, we are modifying one of the elements that must be proven in cases involving pit bull attacks from knowledge that a particular dog is dangerous to knowledge that the particular dog involved is a pit bull. If it is a pit bull the danger is inherent in that particular breed of dog and the knowledge element of scienter is met by knowledge that the dog is of that breed.

FN18. The figures also indicated that during a 12 year period ending in 1992, almost half of fatalities were caused by Rottweilers. More recent data indicates that currently more fatalities are caused by pit bulls than by Rottweilers. This may reflect the increasing popularity of pit bulls, i.e. more pit bulls—more attacks. Other issues such as training, use by persons in the illegal drug trade, etc., may also be causative factors.

FN19. The on-line publication Animal People, [www.animalpeoplenews.org](http://www.animalpeoplenews.org), estimates that pit bulls make up approximately 5% of the total dog population in the United States partly based upon surveys of for sale advertisements. The breed breakdowns at 62 animal shelters holding 5,236 dogs indicated that 23% of the dogs so held were pit bulls. These figures, if accurate, support an inference that pit bulls end up in animal shelters at a much larger ratio than their overall ratio within the total dog population.

FN20. The Center did attach a chart of the breed-specific dog-attack fatalities it had recorded between 1979 and 1996. That chart showed that of the 279 fatal attacks in this country in that period, 79 were by pit bulls or pit bull crosses. Rottweilers accounted for 29 deaths.

FN21. Some are similar to the arguments made in the appellant or amicus' briefs filed in the present case by supporters of pit bulls. In light of Maryland's situation, we find those particular arguments unpersuasive. We have fully reviewed and considered all the briefs.

We recognize the problems that exist when breed specific legislation is proposed—which is opposed by pit bull breeders, owners and fanciers. Such opposition has been present for many years. Our opinion in the present case does not ban pit bulls, but puts a greater responsibility for vicious dogs where pit bull advocates have long argued it should be—with the owners and others who have the power of control over such dogs. Our opinion imposes greater duties by reducing the standards necessary to hold owners and others liable for the attacks of their pit bulls.

FN22. Issues relating to the dangerousness of Rottweilers are not present in this case.

FN23. The appellee attempted to make the argument that the landlord had sufficient control over the alley behind the house such as to make the alley part of the landlord's and lessee's premises. He is incorrect. The language he asserts affords that right of control is the same as, or similar to, language contained in most deeds of conveyance in this state. It merely gives to the grantee whatever rights the grantor had in the alley. In the case of alleys improved, maintained or accepted by public entities, the primary right that language gives to an adjacent landowner is to be able to make a claim to the center of the roadway if the public body ever closes the alley or sufficiently abandons it. Until that time, adjacent landowners have ingress and egress rights along with the general public. Generally, they do not have the right to control the public way. As we are holding that liability follows a pit bull when it leaves its abode to launch an attack, control of the alley is not an issue. In this case, it is clear that the pit bull twice left its enclosure on the lessee's/landlord's property to attack two boys. Accordingly, the pit bull attacked the two boys from the subject property.

If the owner had taken the pit bull to the supermarket or on a day trip to the beach in Ocean City, and while there, the pit bull attacked someone, the attack would not have been on or ' from ' the leased premises. While the owner's responsibility remains clear, liability, if any, on the part of the landlord in such a situation seems much more remote.

FN24. The trial court correctly applied the principles of the common law at the time the case was first tried below.

FN1. The majority opinion delivers an unenlightening and unworkable rule regarding mixed-breed dogs. How much "pit bull" must there be in a dog to bring it within the strict liability edict? How will that be determined? What rationale exists for any particular percentage of the genetic code to trigger strict liability?

FN2. Mixed-breed pit bulls are dogs "with heritages including any percentage of recognized pit-bull breeds[.]" Kristen E. Swann, Note, Irrationality Unleashed: The Pitfalls of Breed-Specific Legislation, 78 UMKC L.Rev. 839, 853 (2010). To the extent that the majority discusses "cross-bred" pit bulls, we note that, for purposes of the issues considered herein, the term "cross-bred" will be treated the same as "mixed-breed" in the context of this discussion.

FN3. In their cross-petition for writ of certiorari, Respondents challenge the decision made by the trial court concerning a discovery dispute. According to Respondents, they were precluded from discovering facts necessary to establish the elements of their case against the landlord. Mrs. Dorothy M. Tracey, the 89-year-old landlord, did not appear for her scheduled pretrial deposition. According to a letter from her family physician, Mrs. Tracey could not attend the deposition or participate in court proceedings due to her poor health, which included cardiac problems associated with undue stress. Pursuant to Maryland Rule 2-433(a), and notwithstanding the doctor's note, the hearing judge exercised his discretion in issuing a ruling that precluded Respondents from taking her deposition and also precluded Mrs. Tracey from testifying at trial on her own behalf. There were a variety of alternative means of discovery open to Respondents that they failed to utilize, including, inter alia, written interrogatories, depositions upon written request, and requests for admissions of fact. In addition, Respondents failed to establish that the hearing judge abused his discretion. Thus, there is no good reason for this Court to reverse the trial judge's ruling on the discovery issue or his refusal to enter a default judgment against the landlord. Md.,2012.

## Animal Cruelty Facts & Statistics

### Most Common Victims

In media-reported animal cruelty cases, dogs – and pit bull-type dogs, in particular – are the most common victims of animal cruelty. Of 1,880 cruelty cases reported in the media in 2007:

- 64.5% involved dogs
- 18% involved cats
- 25% involved other animals
- Reported abuse against pit bull-type dogs appears to be on the rise. In 2000-2001, pit bull- type dogs were involved in 13% of reported dog-abuse cases. In 2007, they were involved in 25% of reported dog-abuse cases. Each year, 10,000 bull dogs die in bullfighting.
- Three to 4 million cats and dogs are euthanized every year in shelters.

### Domestic Violence

Government data scholarly studies of the prevalence of animal cruelty in domestic violence cases reveals a staggering number of animals are victimized by abusive partners each year. The HSUS estimates that nearly 1 million animals a year are abused or killed in connection with domestic violence.

- About 2,168,000 women and men are physically assaulted by an intimate partner in the US every year
- 63% of US households own a pet
- 71% of domestic violence victims report that their abuser also targeted their animal

### Legislative Trends

- 47 states currently have felony provisions for animal cruelty (those without are Idaho, North and South Dakota) – this number up from just four states prior to 1986.
- In the last decade, at least 6 states have enacted second- or third- offense felony animal cruelty laws, only to readdress and upgrade them to first-offense laws within a few years.

### Passive Cruelty (Acts of Omission) vs. Active Cruelty (Acts of Commission)

Passive cruelty is typified by cases of neglect, where the crime is a lack of action rather than the action itself - however do not let the terminology fool you. Severe animal neglect can cause incredible pain and suffering to an animal.

Examples of neglect are starvation, dehydration, parasite infestations, allowing a collar to grow into an animal's skin, inadequate shelter in extreme weather conditions, and failure to seek veterinary care when an animal needs medical attention.

Active cruelty implies malicious intent, where a person has deliberately and intentionally caused harm to an animal.

### Correlation of Animal Cruelty with Other Crimes

Merz-Perez (2001) found that violent offenders in a maximum security prison were significantly more likely than non violent offenders to have a history of prior acts of animal cruelty.

MSPCA study found that men who were prosecuted for animal cruelty were 5 times more likely to have been arrested for acts of violence against humans, and 4 times more likely to have committed property crimes.

The FBI considers animal cruelty to be one of the predictors of violence and considers past animal abuse when profiling serial killers.

Information excerpted from:

[www.pet-abuse.com](http://www.pet-abuse.com); [www.americanhumane.org](http://www.americanhumane.org); [www.asPCA.org/fight-animal-cruelty](http://www.asPCA.org/fight-animal-cruelty); [www.fbi.gov](http://www.fbi.gov)



## Appendix A: Guidelines for Attorney Advisors

Please also refer to Appendix B: Helpful Hints for Competition Judges.

### I. Approaches to Student Coaching

#### A. Initial Sessions

The first session with a student team should be devoted to the following tasks:

- Answering questions that students may have concerning general trial practices;
- Discussing court etiquette
- Explaining the reasons for the sequence of events/procedures found in a trial;
- Listening to the students' approach to the assigned case; and
- Discussing general strategies as well as raising key questions regarding the enactment.

#### B. Subsequent Sessions

Subsequent sessions should center on the development of proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here, an attorney can best serve as a constructive observer and critical teacher—listening, suggesting, and demonstrating techniques to the team.

Students develop a better understanding of the case and learn more from the experience if attorney coaches **guide rather than instruct, or script, the students**. In law school, you learned from Socratic dialogue – try the same method with your team!

If the competition is to realize its full potential, it is crucial that you help discourage a “win-at-all-costs” attitude among team members. Please coach your team on proper decorum when a case, or decisions throughout the case, are not decided in their favor.

**It is extremely important that students understand the “human” element of judging, and how that fits into the nature of our judicial process. Part of your focus should rest upon the fact that law is not black and white, and that individuals will interpret the law differently. Similarly, as in the real world, court proceedings will vary in relation to the presiding judge; accordingly, scores, interpretations, and outcomes will vary. What is permitted in one courtroom may not be permitted in another; what is successful in one trial may not be successful in another.**

After nearly thirty successful years, it has been shown time and time again that the best teams are those that view defeats as opportunities to learn. Debriefing with team members after wins and losses helps everyone improve their skills and increase their understanding of the law.

### II. Time Commitment

There is no pre-determined amount of time that attorney coaches are expected to spend coaching their teams. Some attorneys are available for one to two sessions per month, and others are available on a daily or weekly basis. Attorneys who have caseloads which do not permit them to coach in the afternoons have worked with teams on weekday evenings or weekends.

While most teams work with one attorney coach throughout the competition season, there are a handful of teams which have opted for a “team” of attorney coaches, so that the time commitment of each attorney is decreased.

## Appendix B: Helpful Hints for Competition Judges

### I. Procedures for Scoring Competitions

Rankings are determined by both wins and points. Therefore, it is essential that the presiding judge carefully rate each team on all elements listed on the Performance Rating Sheet.

#### A. Special Point

Always award the Special Point immediately after the close of the trial, and before adding the scores. This point will be used only in the event of a tie.

#### B. Decorum

Please be sure to score each team's overall performance in decorum in the space provided on the rating sheet.

#### C. Announcing Your Decision

1. After awarding, tallying and double-checking the rest of the scores, your first announcement to the teams should focus on the general student performance, decorum, and legal understanding that you just witnessed.
2. Your second announcement should be which team prevailed, based on the merits of the case.
3. Your last announcement should declare who prevailed based on student performance (the score).

### II. Time Limitations

Students have been asked to limit their presentations to the timeframes listed below. It is particularly helpful for teams to know in advance how you will handle the time guidelines. Some judges prefer to give a warning, for instance, when there is one minute left; others expect students to be mindful of the time on their own. Still others prefer not to watch the time at all, though this has, at times, led to lengthy competitions. Students should not base an objection on the time. This is left to your discretion as the presiding judge. Competitions should last approximately 1 ½ to 2 hours.

Opening/Closing Statements	5 minutes each
Direct Examination	7 minutes/witness
Cross-Examination	5 minutes/witness
Voir Dire, as part of cross-examination	2 minutes per expert witness (in addition to the 5 minutes permitted for the cross-examination)
Re-Direct and Re-Cross Examination	3 minutes or a maximum of 3 questions

### III. Mock Trial Simplified Rules of Evidence

The rules of evidence governing trial practice have been modified and simplified for the purposes of mock trial competitions. They are to govern proceedings. Other more complex rules are NOT to be raised during the trial enactment.

Attorneys and witnesses may neither contradict the Statement of Facts or Affidavits, nor introduce any evidence that is not included in this packet of materials. As with any perceived violation of a rule of evidence, students should object or request a bench conference.

### IV. Trial Procedures

#### A. Motions to Dismiss

The purpose of the competition is to hear both sides; therefore, motions to dismiss, etcetera, are not allowed. There shall be no sequestration of witnesses at any time during the trial. If such a motion is made, the motion MUST be denied.

#### B. Opening/ Closing Arguments

Competition procedures permit only one opening statement and one closing argument for each team. In Mock Trial Competition, the Defense Team will always make the first closing argument, followed by the Prosecution/Plaintiff. There is no rebuttal in Mock Trial.

#### C. Direct and Cross Examinations

Each attorney (three for each side) must engage in the direct examination of one witness and the cross-examination of another.

### Mock Trial Performance Score Sheet

Schools: \_\_\_\_\_ vs. \_\_\_\_\_  
Plaintiff/Prosecution Defense

**1=Fair      2=Satisfactory      3=Good      4=Very Good      5=Excellent**

Please note that you are asked to give each attorney a composite score for their overall presentation: direct and re-direct or cross and re-cross. If re-direct or re-cross is NOT used, the attorney should NOT be penalized for not using this technique if there was nothing to be gained by using re-direct or re-cross.

**\*\*Please do not use fractions in scoring.\*\***

		Prosecution/ Plaintiff	Defense
<b>Opening Statements</b>			
<u>PLAINTIFF/PROSECUTION</u> First Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>PLAINTIFF/PROSECUTION</u> Second Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>PLAINTIFF/PROSECUTION</u> Third Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>DEFENSE</u> First Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>DEFENSE</u> Second Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>DEFENSE</u> Third Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<b>Closing Arguments</b>			
<b>Decorum/ Use of Objections:</b> Students were courteous, observed courtroom etiquette, spoke clearly, demonstrated professionalism, and <b>utilized objections appropriately.</b>			
<b>TOTAL</b>			
<b>Tie Point</b> (Before totaling score sheet, please award one point to the team you think gave the best overall performance. <u>This point will be used ONLY in a tie.</u> )			
<b>TOTAL WITH TIE POINT (provide this score only in a tie)</b>			

*I have checked the scores and tallies, and by my signature, certify they are correct:*

Presiding Judge: \_\_\_\_\_ Date: \_\_\_\_\_

Teacher Coach, Defense: \_\_\_\_\_ Teacher Coach, Plaintiff: \_\_\_\_\_