

American Bar Association
Law Student Division

2017-2018 Intra-School Client Counseling
Competition Profiles

**American Bar Association
Law Student Division
2017-18 Client Counseling Competition
Intentional Torts
Intra-School Profile 1**

MEMORANDUM

To: Attorneys
From: Secretary
Re: Shane O'Neal

Shane O'Neal has made this appointment to figure out what he can do about his ruined sports career. He seemed pretty angry on the phone.

**CONFIDENTIAL INFORMATION FOR CLIENTS AND JUDGES
(Not to be shown to Attorneys)**

THIS PROBLEM REQUIRES A MALE CLIENT

You are Shane O’Neal, and you play on the local university’s basketball’s team (you can choose a university local to you). You are a rising junior. You are on a full scholarship, which is now in jeopardy because of an injury you sustained and you want someone to have to pay. With your stats, you figured you were a strong candidate during the NBA draft, but now you’ve had to sit out the season and you don’t know what is going to happen.

Over the summer, you were in Tallahassee, Florida, for an intensive six weeks of basketball training. While you were there, you met a girl, Kayla Jones, at a bowling alley, and y’all went out several times in the evenings when you were free. You didn’t have a lot of free time but by the fourth week you were spending any time you had with Kayla. When you left Tallahassee, you agreed to keep in touch and, when time permitted, you would go see her. Kayla is a rising sophomore at one of the universities in Florida.

You and Kayla decided that you would come visit over Thanksgiving break, and you arrived in Tallahassee on Wednesday afternoon. You were staying in Kayla’s apartment with her since her roommates were gone. On Thursday, Kayla went out to pick up Thanksgiving dinner at a local restaurant and while she was gone, someone rang the doorbell. When you answered it, it was another guy asking for Kayla. You indicated that she was out but you were happy to take a message. He seemed surprised at your presence and stammered out a response about letting Kayla know that Jared had stopped by and that she “had some explaining to do.”

When Kayla returned with two Thanksgiving meals for y’all to enjoy, you relayed the message to her and she said that Jared was some “loser dweeb” who was in a couple of her classes during her first year of school and who was always asking her out. She said she had never gone out with him and never would but he couldn’t seem to get that through his thick head. You didn’t think anything else about it.

On Saturday night, before your departure to return home on Sunday, you took Kayla to the Party Pot, a local fondue restaurant to celebrate your last night together. During dinner, Jared showed up at the restaurant and started making a scene. He called Kayla a “two timing witch” who “doesn’t deserve” to have a man in her life if it couldn’t be Jared. The host came over to defuse the tension and escort Jared out of the restaurant. When the host approached Jared, Jared took a swing at him, which the host was able to avoid by ducking. Unfortunately, Jared’s punch, although weak, landed on your eye, which caused your retina to detach. As if that wasn’t enough, when the host ducked, he lost his balance

and toppled the table with hot oil on it. The hot oil spilled across your left leg and caused third-degree burns in several places. The police were called and Jared was arrested for a simple assault.

Due to your detached retina, you had to sit out the season, and the burns on your leg required several skin grafts to remedy. You still hope to return to the court and play enough ball to capture the attention of some recruiters but you are not hopeful. In addition to all the physical ramifications, you are totally depressed. Kayla was super sympathetic at first, but she has been able to go on with her life whereas you are stuck with the lingering effects of her crazy stalker. You think the relationship is doomed.

It turns out that Jared is the son of a well-known music producer in Florida, and there is every reason to believe the criminal charges will be dismissed entirely or significantly reduced given the legal team his father has bought. This is so unfair. You have half a mind to return to Tallahassee and deal with Jared yourself. It won't bring your opportunities back but it will make you feel a little better. Meanwhile, you want to know whether you can sue Jared and/or the Party Pot for your injuries—both physical and emotional. Someone has to pay for your lost career!

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**American Bar Association
Law Student Division
2017-18 Client Counseling Competition
Intentional Torts
Intra-School Profile 2**

MEMORANDUM

To: Attorneys
From: Secretary
Re: Kevin/Kathy Ford

Kevin/Kathy Ford has an appointment with you to discuss his/her concern that he/she may be the subject of a lawsuit because of an incident at work. He/she works for APEX, Inc.

**CONFIDENTIAL INFORMATION FOR CLIENTS AND JUDGES
(Not to be shown to Attorneys)**

Your name is Kevin/Kathy Ford. You have every reason to believe that you are going to be sued, and for something that seems so insignificant. That is why you scheduled an appointment with these attorneys.

The problem arose on the job. You work in the warehouse for APEX, Inc., a large regional department store. You work the third shift, from 11:00 p.m. to 7:00 a.m. Approximately thirty people work on the night shift, although on any given night, only five or six work in the electronics section of the warehouse where you work. You've been at the job for about five years. You and the other employees on the nightshift in your department refer to yourselves as "Owls," short for night owls. You have worked together for years. You know each other well and enjoy working together. It is a loose bunch of guys and gals who know how to get the work done but also know how to make it as enjoyable as possible. Consequently, there is a good deal of horseplay and practical joking that occurs in the warehouse. It's all in good fun, and no one takes any of the joking and pranking seriously. Indeed, your boss, Rick Lam, has occasionally joined in on a prank or two.

The problem that brought you here arose with John Meyer. Meyer bounces back and forth between working second shift, from 4:00 p.m. to 11:00 p.m., and working the third shift. In other words, he is a "sometimes owl." Nonetheless, you all consider Meyer to be one of the gang, and sometimes he's participated in pranks or practical jokes as well, generally harmless, such as spiking someone's soda with red pepper or dressing up onions to look like a candy apples, which was discovered only after the Owls bit into them. Several weeks ago, John was working the third shift when he fell asleep in the break room. Wes Porter, another employee thought it would be funny to prank Meyer by staging a picture to look like he and Meyer were involved in homosexual sex. So, Wes indeed made it look like he was zipping up after engaging in sex with John. Another Owl, Scott Ortiz, took the picture with his camera phone. Wes's face is not visible in the picture, but John's is. John must have sensed something was up because he woke up shortly after the picture was snapped. When he asked what was going on, as you understand it from Wes's retelling, Wes laughed and said, "We've got to stop meeting like this." Scott and Wes showed the picture to John, who laughed it off and threatened, "Oh, I'm going to get both of you back." According to Wes, John did not seem angry or bent out of shape about the picture.

Scott began showing the picture around to others in the warehouse, and it was kind of funny because everyone knows that neither Wes nor John are gay. Wes has been happily married to the same woman for years. As for John, until he got married a year or two ago, his weekend adventures and exploits with women were nearly legendary. Indeed, John had a reputation for being a ladies' man,

although he has cooled his heels since settling down with his wife. Your understanding was that John was not offended by the picture, so you thought nothing of asking Scott to send you a copy of the picture, which he promptly did. In fact, at least five or six other people asked Scott to send copies of the picture to them as word of the prank spread from the Owls to others.

As it turns out, if John was ever okay with the picture, by the following week, his feelings had changed. He was now downright angry about the whole incident. The teasing about the picture had been relentless, and it's been coming from lots of different people, not just the Owls or the other employees that work the night shift. Apparently, the folks who Scott shared the picture with then shared the picture with a bunch of other people. You believe that most people who've seen it—at least those with whom you've spoken—know that it was just a joke, but that is the problem: John has taken offense at being the butt of a joke. When you spoke with him, he said he can barely stand to show his face at the warehouse or other places where Acme employees frequent. He demanded to know from you with whom you had shared the picture. You told him, honestly, that you hadn't sent the picture to anyone, but you admitted that you showed the picture to Taylor Smith, who works at the warehouse on the second shift, as well as to your spouse and several acquaintances that you have in common with John.

John quit a week ago. Rumor has it that he's going to sue everyone who had the picture or showed the picture to anyone. You haven't received any documents yet, but you know you're likely to be one of the people sued. You want these attorneys to explain how you might be liable and what you can do to avoid that liability. After all, you didn't take the picture and you didn't forward the picture. Why should you be liable for anything just because a guy couldn't take a joke that everyone knows was a joke?

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**American Bar Association
Law Student Division
2017-18 Client Counseling Competition
Intentional Torts
Intra-School Profile 3**

MEMORANDUM

To: Attorneys
From: Secretary
Re: Terry Enright

Terry Enright wants to meet with you to discuss an issue with a neighbor.

**CONFIDENTIAL INFORMATION FOR CLIENTS AND JUDGES
(Not to be shown to Attorneys)**

You are Terry Enright and you, your spouse, and your fourteen-year-old daughter Emily live in a nearby town. You have lived in suburban neighborhood that borders on a wooded area, for five years. An older woman, Irene Peabody, age 76, lives a few houses down the street from you. She is widowed and lives alone, and she has been lived in her house for over 40 years. You don't know her well, but you all have been friendly enough since you moved in to the neighborhood. You heard that she has family in another state but you haven't met any of them.

Soon after you moved in, you realized there were some stray cats that live in the nearby woods. The cats would come and go, and a lot of neighbors—including you and Irene—would occasionally feed them. A few years ago, the neighborhood residents had a meeting to discuss the issue of the growing cat population. You all ended up organizing a catch/spay and neuter/release project, and everyone split the cost. After that, the cat population stabilized and even decreased. There was one cat in particular who was friendly and seemed to come to your back yard a lot. You suspected she had been owned by people who owned the house before you moved in, as she was more social than the other strays. Although this cat would come and go and “visit” others, you and Emily got attached to this cat, and started to call her Mocha, due to her gray/tan coloring.

A year ago, after your old indoor pet cat Thumper died, Emily asked why your family couldn't adopt Mocha. You were able to catch her and take her to the veterinarian to get a health check-up. The vet estimated she was five or six years old, had been spayed in the neighborhood spay project, and just needed rabies, distemper, and feline leukemia shots. You paid for her to have her shots and a grooming. You did not, however, get her a collar or a nametag.

You then allowed Mocha to come into your house. Although she seemed content to be inside the house for some stretches of time, she would also get restless and insist on going outside. You would see her wander the neighborhood and continue to visit others. You knew she would go visit at Irene's in particular because that was the only other house where she was also allowed inside. Mocha would not necessarily come back to your house every night, and you didn't always know where she was, but she was at your house at night about an average of five nights a week. She would sleep with Emily if she was home. You thought it was cute that sometimes Mocha would scratch at Emily's window to be let in or out. You had no worries about the situation at all.

About a month ago, Mocha came back one day with a serious cut on her ear from a fight; you took her to the vet and paid a few hundred dollars for her treatment. You and Emily managed to keep the cat inside your house for a week, to make sure she got all her prescribed antibiotics to prevent

infection. At the end of the week, the pills were gone and her ear had healed fairly well, and so you and Emily let the cat out. After that, you didn't see Mocha for more than two weeks.

For the first day or so, you did not even notice the cat's absence. Then Emily began to worry and walked around the neighborhood calling her and leaving food out. Emily went door to door, including to Irene's home, but no one said they had seen Mocha. There were reports of coyotes in nearby towns and stories of disappearing pets, and after a week, Emily began to really worry that Mocha was a victim of a predator. She put up fliers on the telephone poles in the neighborhood, but no one called.

Last week, you were taking a walk and you thought you saw Mocha sitting in the window at Irene's house. It was definitely a cat and looked like Mocha. You went up to Irene's house and knocked. Irene came to the door, but she did not open the screen door. You thought this was strange, as she was usually eager to invite any and all neighbors in to have a chat over a cup of tea or coffee. You asked her if she had seen Mocha. She asked, "Who is Mocha?" This surprised you, but you said, "The gray and tan friendly cat that has been visiting you and staying with us for the last year. It is Emily's cat now. I thought I just saw her in your window." Irene paused and then said, "I do have a cat in the house, but her name is Speedy. She has a cut on her ear and I have been keeping her inside for the last two weeks to make sure she didn't get injured again. I am going to adopt her now."

At first, you were not sure how to handle it. You asked Irene if you could come in and talk and see the cat. She said, "Yes," but to be careful that Speedy didn't escape. She was not going to let Speedy go out anymore. You came in and the two of you sat down to cups of coffee. In a little bit, sure enough, Mocha sauntered into the kitchen. You said, "There is Mocha," at the same time that Irene said "See, it is Speedy."

You explained to Irene that you and your family had taken in the cat a year ago, and had already paid for three vet visits, including treatment for the cut ear. You told her that you thought everyone knew that Mocha was now "adopted" by your family (informally, as there is no cat licensing in your town), and that Emily was now very attached to her. You also asked if Mocha had been at Irene's when Emily had gone door to door. Irene explained that Speedy was at her house then, not Mocha. You asked Irene if she realized that you were talking about the same cat, but just were using different names. You were startled again by her response: "Speedy told me she wants to live inside with me all the time now, and that she likes the name, Speedy. I know she does because she comes when I call her that name." She then called "Speedy, come here," and the cat walked over to her and rubbed her shin. Irene smiled, and said "See?" You couldn't help yourself, and you called, "Here, Mocha," at which point, Mocha walked over to you for a head scratch. You smiled, and said "See?"

Irene snatched the cat up into her arms and told you to please leave. You didn't want to start an argument, so you left. When Emily came home that afternoon, you told her that Mocha was alive and well, but there was a little problem. You told her about Irene. You asked Emily if she would be willing to let Mocha live with Irene, and you would get Emily a new cat at the shelter or something. Emily started to cry and said that she loved Mocha and wanted to keep her, and had already lost Thumper not that long ago. She asked why Irene couldn't just get a new cat.

The next day you and Emily walked over to visit Irene with fresh baked cookies to talk about the cat. Irene let you both in and let Emily pet "Speedy." Mocha settled on Emily's lap and purred loudly.

Irene enjoyed the cookies, but when you asked if she wanted a kitten instead, she said no, she would keep Speedy, and that Emily could come visit them anytime. You asked her point blank if she was going to return Mocha to your family, or at least let Mocha go outside and let the cat come and go as she pleased, just like before the ear injury. Irene smiled as she picked up the cat and walked you and Emily to the door. She said, “My cat, Speedy, and I are glad you visited!” She shut the door firmly in your faces.

If Emily were not so upset, you would let the situation go, send Irene a copy of the vet records, and just go get another cat. But Emily spent the next day lying on her bed, staring at the empty window. You know Irene is lonely and may be getting confused—but that cat had slept with your daughter five nights a week for more than a year. You are determined to get the cat back and Irene can just get a new cat—or maybe someone should call her son and tell him his mother needs help. Either way, doesn’t your family own that cat now, and can’t you get it back? If you cannot get Mocha back, can you get Irene to contribute to the past vet bills you covered? You have spent at least \$500 on that cat!

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**American Bar Association
Law Student Division
2017-18 Client Counseling Competition
Intentional Torts
Intra-School Profile 4**

MEMORANDUM

To: Attorneys
From: Secretary
Re: Jesse Washington

Jesse Washington has made an appointment to see you. Washington collects classic cars and wants to talk about a problem with one of the automobiles.

**CONFIDENTIAL INFORMATION FOR CLIENTS AND JUDGES
(Not to be shown to Attorneys)**

You are Jesse Washington. You love cars, and you collect a variety of classic cars. (See the links below to read about this hobby.)

<https://www.justcollecting.com/miscellania/collecting-classic-cars-tips-for-the-beginner>

<http://www.popularmechanics.com/cars/a1765/4218200/>

You really do not know a lot about cars other than you like the way they look and the way their engines sound. A few years ago, you inherited quite a bit of money from your uncle, and you decided to buy a few classic cars. You bought two cars, took them to a local shop to have them worked on, and then sold them for a profit. You used the profit to purchase more cars, and since then, you have continued to buy and sell cars.

You have probably bought and sold twenty cars over the past five years. Now you have seven or eight cars at any one time that you are having fixed up and selling for a profit. You do not actually do any of the mechanic or bodywork yourself, but you really enjoy buying and selling these cars over the internet car websites. Your favorite part is driving the cars to their new owners. You also like going to classic car shows and walking around looking at other cars. This is really just a hobby for you. You know it will never become a full-time career.

Last month you decided to put one of your cars into one of the state's classic car shows. On the application form, you have to list everything about the automobile, including the vehicle identification number (VIN) that is unique to each car. The VIN is stamped on a metal plate and affixed to every car, usually at the corner of the dashboard. Some cars also have the VIN stamped on major engine parts.

The car you submitted for the car show is one that you are especially proud of. It is a 1972 Ford Mustang that you bought from a man who had been storing it in a barn for decades. The car was missing several of the original engine parts, and the interior was badly damaged. It looked like animals of all kinds had been living inside of it and the seats were completely destroyed. Although the paint had long ago worn off, the frame of the car was in surprisingly good condition. The VIN was clearly visible on the dash, and your mechanic told you the same VIN was stamped on the engine block. You bought the car for \$500. Your people at the shop have been working on it for over two years, and now it is in mint condition. You had them replace all the missing parts with Ford parts made for that particular model. They painted the car bright red. It is a beautiful car, and you are sure it will be worth many times what you paid for it. One estimate puts the value at \$25,000 which would be a great profit since it only cost you \$10,000 to restore it to mint condition.

The host of the car show called you a few days ago and told you there was a problem with your car. He said the VIN you submitted is the same as the VIN on a car that is being sold at an auction in California. (If you are in California, use Texas as the site of the other auction) You checked the VIN on your car and told him you had submitted the correct number. He suggested you contact the police and an attorney.

You called the police who told you this sounded like a civil matter, not a criminal case. They said you could come back with more evidence, but they were not going to investigate the issue for you. You looked at the website for the California (or Texas) car auction, and found the Mustang that was being sold with the same VIN as your car.

You tried to contact the owner of the other car, and found out the man had recently passed away and his wife was trying to sell his car collection. You told her about the VIN on her car being a fake, and she hung up on you.

You have read that people locate old VINs from cars that have been out of circulation for several years, and put fake VIN plates on “chop shop” cars to be able to pass them off as the original car and sell them for a large profit. Apparently, these chop shops buy blank metal VIN plates and stamp real VINs onto them using VINs from cars no longer in circulation. You suspect that is what has happened here. You contacted the auction house that was handling the California (or Texas) auction, and they told you they have had similar complaints about cars from this same owner, but they refused your request to stop selling the other car.

What recourse do you have against the wife of the owner of the car with the fake VIN or against the auction house that is selling the other car, and refusing to help investigate?

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**American Bar Association
Law Student Division
2017-18 Client Counseling Competition
Intentional Torts
Intra-School Profile 5**

MEMORANDUM

To: Attorneys
From: Secretary
Re: Taylor Humphries

Taylor Humphries wants to talk to you about suing the police for arresting him/her a year ago.

**CONFIDENTIAL INFORMATION FOR CLIENTS AND JUDGES
(Not to be shown to Attorneys)**

You are Taylor Humphries and you are a divorced parent. You are here to talk to a civil lawyer about something that happened to you a little over a year ago, when you were arrested for threatening the police, reckless endangerment, and possession of a stolen weapon. You hired a criminal defense lawyer at the time, Angela Cortone, and recently, she was successful in getting the charges dropped after they hung over your head for over a year, wreaking havoc with your life. You don't think you did anything wrong, and now that you know you are not facing any criminal charges, you are getting angrier and angrier about the whole incident. You want to know if you can be compensated—for your legal fees, lost wages, your anxiety, and the impact on your life.

This is all the fault of the police: they were looking for someone else and admitted they weren't originally even looking for you—but they arrested you anyway. You want to sue the police for false arrest and maybe even excessive force. You have had much stress and almost lost your job because you had to miss time (and pay) for court appearances. You spent a night in jail and paid \$5,000 to Cortone. You also had a lot of trouble with your ex-spouse Alex, who gave you a very hard time with your ten-year-old daughter, Maddy, after this arrest. At first, Alex did not believe that you didn't do anything wrong; so you didn't see Maddy at all for several weeks. And then, your time with Maddy was severely limited until just recently. You had to go back to family court several times (which meant even more lost time from work and lost wages). You represented yourself because you had spent all your money on the defense lawyer. Just last week, your original joint custody parenting plan (of 50/50 time) was finally restored, and you will see Maddy regularly again.

You work at a WeMoveIt4U moving company, mostly doing office and financial administrative and light warehouse work. You make about \$50,000 per year. You had never been arrested before. The only time you had been to court was for your divorce.

Here is what happened 13 months ago:

It was 8:00 p.m., on a Wednesday night, right after you and Maddy had finished dinner. It was just the two of you sitting on the couch watching TV before her 8:30 bedtime. You had rented and moved into this house about two weeks earlier, at 487 Elm Street, in your town.

There was a knock on door. You said, "Who is it?"

A male voice said, "Police. We are looking for Pat Johnson." You said, "That's not me. You got the wrong place and the wrong person." The voice replied, "Open the door so you can identify yourself."

You realized the peephole was very cloudy; you couldn't see more than shadows through it. You looked out your window, but you couldn't see the people at the door due to the bushes, and you didn't see a police car on the street. You had heard stories about people pretending to be cops in order to break in. You were not sure what to do. You said "No. I am not Pat Johnson. Go away."

Another voice said, "You have to open up and show us your ID. We have a warrant for Pat Johnson at 487 Elm Street."

At this point you became very scared. Maddy was right there on the couch behind you. You had been having some problems with guys at work whom you think were stealing things from customers. Or it could have been a robbery; you just were not sure. It did not occur to you to call the police station to check, and you still could not see anyone through the door peep hole, but you decided you had to open the door. But just in case you had to protect yourself and Maddy, you got your pistol from your desk first. You opened the door and peeked around the door with the gun visibly in your hand. You don't remember whether you actually pointed it at the people, but they say you did.

Immediately you see that there were two men in uniform holding out badges, and your brain was starting to function. You realized that they were actually the real police and that you should probably put the gun down. But before you could do anything, one cop pushed the other aside and yelled, "GUN!" In what felt like a slow motion scene from a movie, he drew his gun and pointed it at you. He yelled, "DROP it! Drop it NOW!" You dropped the pistol.

The second cop jumped on you and pushed you down on your back on the floor. Your head snapped back and you banged your head hard on the floor. He then roughly flipped you over on your stomach, and you hit your face on the floor. He yanked your arms behind you and cuffed your hands behind your back before you even realized it. You heard the first cop say, "Geez. I didn't dare shoot because the girl is right there on the couch." You could hear Maddy yelling for you from the couch, sounding terrified.

Later you learned the names of the police officers. Officer Donald Dixon is the one who cuffed you. Sergeant Richard Michaels is the one who drew his gun.

Dixon was sitting on you, and you could hardly breathe. Michaels had holstered his gun and went over to Maddy to calm her down and reassure her that no one was going to get hurt. She calmed down a little and whimpered every once in a while, but she had watched the whole thing! Dixon asked again, "Are you Pat Johnson?" You said, "No." Dixon asked where your ID was and started to pat you down and check your pockets. You told them your wallet was on your desk. Michaels saw that your license said "Taylor Humphries," and then he asked if you knew a Pat Johnson and if you could prove you were not also known as Pat Johnson. He said again they have a warrant for Pat Johnson at your address.

You asked if you can get up. One of them said, "You can get up only if we know for sure you are not Pat Johnson." You told them that you only moved into this house two weeks earlier, and you do not know who lived there before. You remembered your lease was in the drawer of the desk. You told them

this fact. Michaels found the lease dated two weeks earlier, in your name. He then called your landlord and confirmed that Pat Johnson had lived in this house and moved out about a month earlier. It was only then that Dixon let you stand up.

You assumed they would take off the cuffs, apologize, let you sit with Maddy, and then leave. You were shocked when they told you they were placing you under arrest for reckless endangerment! They called your ex to come get Maddy, called for back-up officers, and took you to the police station. You had told them you were only defending yourself and Maddy. Then you decided not to speak to them anymore after they arrested you. At the station, they checked on your gun, found out it was stolen, and added the charge of possession of a stolen weapon. You made bail the next day and hired Angela Cortone as your lawyer.

After about a year of investigation and negotiation, the prosecutor decided not to pursue the case anymore. Even though you did not have a permit for the gun, you had never stepped out of your house. You also did not get into trouble again for the 13 months the case was pending, so you now have a clean record. But you are furious you had to go through all this. You're not sure if Maddy will ever feel safe in your house, and you think some of your co-workers still think you had to have done something wrong.

If pressed, here is the rest of the story: after you got divorced, you bought the gun from someone at work, Tom Lewis. It turns out it has been stolen from a customer by someone at work who did the moving work—probably Lewis. You should have just gone to a store and bought a gun legally with a background check—but you foolishly bought it even though you were uneasy about Lewis. Attorney Cortone told you that you were lucky you did not have to plead guilty to possession of a stolen weapon. The gun was returned to its original owner, and you did ultimately cooperate and give a statement to the police investigating the theft of the weapons at your place of work, which is why all charges were dropped.

Regardless of the mistake you may have made in buying the gun, you did not know it was stolen when you bought it. You do not think you were wrong to use it to protect you and Maddy that night at your house. After all, the police made the first mistake in coming to your house looking for someone who didn't live there anymore, and you did obey and drop the gun immediately when you realized they were the real police. Dixon was also too rough on you in knocking you down when you were no longer armed. None of this would have happened if they hadn't made the first mistake. The last year of your life has been such a terrible year. You want justice! You want to be compensated for the impact on your reputation and your stress, and you want to be paid back for all the lost wages (about \$1,000) and the cost of hiring Cortone (\$5,000).

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**American Bar Association
Law Student Division
2017-18 Client Counseling Competition
Intentional Torts
Intra-School Profile 6**

TO: Attorneys
FROM: Secretary
RE: Chelsea/Chase Lincoln

Chelsea/Chase Lincoln is an investigative reporter who has made this appointment to talk to you about recent contact he/she had from an attorney.

**CONFIDENTIAL INFORMATION FOR CLIENTS AND JUDGES
(Not to be shown to Attorneys)**

You are Chelsea/Chase Lincoln. For the last three years, you have been working an article for EnviroDefend, an environmental advocacy group focusing on institutional pollution. There are several branches of EnviroDefend: there is an educational group that does community education on the dangers of institutional pollution; a legislative group that focuses on lobbying for environmental protections; and a social media group that writes blogs and op-ed pieces for the paper and other marketing materials. You work in the social media area and write a lot of content for the organization's blog "Environmental Defenders."

Maybe these lawyers have heard of an undercover piece you and your colleagues produced exposing TriSaline, Inc., a local pharmaceutical company? In that piece, your colleague, Jane Heller, was hired as a lab technician in TriSaline's lab, where she was able to prove what had largely been believed by the community: that TriSaline had been improperly disposing of chemical waste. She was able to get a copy of an interoffice memorandum that you published in your piece on Environmental Defenders. The EPA subsequently investigated and fined TriSaline. This is the kind of work you live for and now, more than ever, someone has to be willing to hold corporations liable for their damage to the environment.

The TriSaline exposé was 18 months ago, and you haven't found the material to write something as amazing as that work since. Well, not until now. About four months ago, you were contacted by a couple of small farmers in the neighboring county. They were concerned about a large pig farmer in their county: Whole Hog Industries, Inc. They complained that Whole Hog was spreading manure from their manure containment lagoon onto neighboring fields as fertilizer in violation of the state's manure irrigation regulations. After conducting some initial research, you discovered that hog farmers are permitted to dispose of treated hog waste/manure onto their own fields or the fields of others with permission using an irrigation system similar to a typical water irrigation system. Even on permitted irrigation days, the noxious odor forces people inside and prevents them from engaging in regular outdoor activities on their own property: grilling, car washing, hanging clothes on the line to dry, etc. Almost everyone keeps their children indoor on irrigation days. And the manure can produce a fine mist that settles on anything outdoors. The regulations require that the manure include urine and feces only; the waste be treated against disease that might be harmful to humans (for instance, e. coli); and that 72-hours' notice be given to anyone within 100-mile radius of the irrigation locations. The regulations

further provide for the maximum amount of manure that can be applied so as not to exceed the soil's absorption limit.

After your initial research, you and another investigator decided to investigate Whole Hog. You collected plenty of data on days when they irrigated in compliance with the regulations. You knew there was something else to be found, so you kept digging. On a scheduled irrigation day, you put collection containers (large buckets) in the spray zone and had the contents tested. As expected, the contents consisted of hog feces and urine but, in a surprising result, it also contained fetal hog tissue. To get more evidence, you and your partner gained access (illegally) to Whole Hog at night. There were still people working there, but it was third shift and they have fewer personnel in the processing plant at night. While there, you mounted small motion-triggered video cameras (using super glue) to the hog retention warehouses where the hogs are kept. The floors of the warehouses are slatted steel so that the waste from the hogs falls directly into a retention "pond" below. You also managed to get video cameras on the retention ponds before you left. The video feed you collected revealed two things:

1. The retention pond not only collects the hog waste, but when the hogs miscarry (which is not a rare occurrence given the density of the hogs), the miscarried fetuses often fall through the floor slats and get included in the retention pond and, subsequently, the manure irrigated back onto the fields.
2. On several occasions, Whole Hog scheduled irrigation sprays under cover of night in violation of the regulations and without proper notice to the community. This usually happened during periods of heavy rain when the soil absorption rate is compromised. The regulations require that Whole Hog identify a retention overflow pool because the retention ponds can flood during heavy rains, and when floods happen, it causes widespread environmental damage and costly cleanup. When Whole Hog failed to adequately manage the retention ponds of waste in rainy weather, they choose to irrigate illegally rather than risk the flooding and ensuing public outcry and state environmental investigation.

So, armed with this information and video, you wrote a telling three-part series on the Environmental Defenders blog. You didn't post the video or pictures from your video cameras, but you have the media stored in a safe location if someone questions the truth of what is contained in your blog posts. You decided not to go back to remove the video cameras but you know the feed stopped coming in about three days after your first blog post went live.

You have been contacted by the counsel for Whole Hogs (Erika Channing) who has demanded that you take down the blog posts immediately. She also threatened to sue you for trespassing and defamation, but everything you alleged in your blog posts is absolutely true and you can prove it.

EnviroDefend is a non-profit agency, and they don't have a lot of money for attorney's fees but you need to know if you or the organization is at risk. They can't sue you for something that is true, right? And it isn't like they can prove that you are the one that put the cameras in their facility. It could have been anyone (you are sure that your fingerprints are not on the cameras). You guess that there could be security cameras at Whole Hog that caught you and your associate when you snuck onto the property to mount the cameras, but their lawyer hasn't suggested that they have caught you on film. You are not

entirely sure what to think or whether you might be in trouble. You need these lawyers to reassure you that you can't get into trouble for what you did or wrote.

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MEMORANDUM

To: Attorneys
From: Secretary
Re: Emily/Evan Falco

Emily/Evan Falco has scheduled an appointment to talk about a lawsuit that has been filed against him/her for doing her job.

**CONFIDENTIAL INFORMATION FOR CLIENTS AND JUDGES
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You are Emily/Evan Falco, and you are a personal trainer. You run Booty Back Boot Camp. You have been served with a bunch of papers from one of the participants in your extreme boot camp sessions. You didn't bring the papers with you but you can get a copy for the lawyers. Sheila Murphy, the one who is suing you, claims that you assaulted her and hurt her feelings during the session and that, as a result, she can't sleep, feels badly about herself, and is afraid to enter another gym or join another program for her weight loss and fitness needs. You need these lawyers to do whatever it is they do to make this ridiculous lawsuit go away. Sheila is being overly sensitive, and she knew when she joined the program that it was physically and emotionally rigorous, and that it involved not just a lot of exercise but military-style, "in your face," motivation.

In addition, Booty Back Boot Camp films its series and sells them to TV networks for reality programming as well as for a lucrative video-download business in the fitness world. Sheila knew exactly what she was getting into and signed a bunch of releases¹ when she joined the program. If a participant in a program session is chosen for syndication, you return the participant's program fee, which is \$20,000 for a four-week session. Sheila received a return of her \$20,000 fee when her program was sold to several distributors.

Sheila was one of four participants in the Extreme Booty Back session in November 2015. As a part of the session, participants had "before" and "after" physicals, with body weight and measurements taken. The before and after measurements, as well as before and after pictures, were included in the filmed portions of the session. A rigorous exercise and diet plan regiment was specially created for each of the four participants. Portions of the daily workouts and meals were recorded for possible inclusion in the video. As the fitness trainer, you were primarily involved in the two-hour workout sessions with each participant.

Sheila was a 35-year old female who was about 5'4" and weighed 260 lbs. Although Sheila had been an athlete in her youth, she'd gained a lot of weight and stopped almost all physical activity after college. Her stated goal was to lose 30 pounds in 4 weeks. Her training sessions included 45 minutes of cardio and 75 minutes of weight and endurance training each

¹ You don't have the releases with you if the attorneys ask for them. You created them yourself from templates you found on the Internet.

day. You worked hard to mix it up so she would stay motivated. It is true that as part of the training you yell—a lot. Sometimes as a coach, sometimes as a cheerleader, sometimes in anger, and other times in support. You are not really any different from a coach on the sidelines yelling at his/her players on the field.

Sometimes you also have to “speak truth” to the participants in order to get them over the bumpy parts—and this can be hard to hear. An example of some of the things you might say if necessary include “Let’s get that booty moving” or “That effort is not going to get those scale numbers down” or “Fat and failure are not options—Pick it up!” Sheila was particularly hard to motivate and you may have gone a little overboard in your verbal instruction. She alleges that you said things like, “No one is going to love a fatso like you” and “Get that fat a\$\$ in gear” and “You [Sheila] are disgusting—GET MOVING!” You’d like to deny this but you don’t exactly remember everything you say—it could be true. You are very goal oriented and her thirty-pound weight loss was ambitious. You were just trying to help her reach the goal she’d set for herself.

It is also true that, in the course of the training, you have to touch your clients during their workouts. They know this is part of the deal; you are sure it is disclosed in all the paperwork they sign before they join the program. In addition to measuring their waist, hips, chest, upper arms and thighs at various parts of the program (before and after the program, and at the end of each week), you also provide hands-on instruction when the participants are on a machine or lifting weights or performing a certain exercise. You might touch the muscle they should be activating during an exercise or, contrarily, a body area that they should relax during an exercise. You don’t think anything of it—it is TOTALLY not sexual in nature and you derive no particular pleasure from it. You are like a doctor in that way; it is just part of your job. Sheila says that you grabbed her butt cheeks and said she needed to “engage her booty,” and there is every possibility that you did this. Honestly, if she had been bringing her “A” game, such intrusive techniques wouldn’t have been necessary.

So, yes, it is intense, but the “Sheilas” of the world can’t ask you to help them change their body shape overnight and not be able to take the heat. They know how hardcore it is and, if they aren’t sure, there are plenty of videos of your sessions for purchase or on SeeTube for folks to review before signing up. Sheila seemed happy enough with the results at the time although, based on some Internet stalking of her social media accounts, it looks like she’s gained all the weight back since the 2015 session—and then some.

How can these lawyers kick Sheila’s booty back to where it belongs before she ruins your reputation? Sheila didn’t express any dissatisfaction during the actual sessions beyond the usual grumblings and complaining of the participants. She probably thought it was fine until the videos started making the rounds and she saw herself as she truly is and then she got upset and started “crying foul.” She didn’t complain about getting her \$20,000 back when the session was

picked up for syndication and distribution—that is for sure! She did ask you to remove the video from circulation but it is one of your best sellers so there is no way you're doing that!

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