

MOCK TRIAL EXERCISES

For grades 7–8



Featuring Winning Cases from the
New Jersey State Bar Foundation's
Law Adventure 2011 Competition

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Preface

In 1995-96 the New Jersey State Bar Foundation launched a unique, law-related education program for middle school students – the Law Adventure Competition.

Students in grades seven and eight and their teachers are invited to create original mock trial cases. Each year the Foundation provides two themes for cases. The cases are judged on the basis of originality and educational value in teaching students about their legal rights and responsibilities. Winners are selected in each grade level. The trials are then conducted before student audiences at special Law Adventure programs in the spring. The seventh- and eighth-grade audiences serve as juries.

Following are the winning cases from the Law Adventure 2011 Competition. Themes for the 2011 contest were as follows: (1) Environmental issues and (2) Diversity issues such as religion, race, gender, age, learning style, disability and socioeconomic status.

The cases may be used as a guide to prepare a submission to the Law Adventure Competition or as a classroom exercise. Please note that some of the cases may contain “laws” created by the students for the purpose of this competition, which may not necessarily be actual laws. Since these mock trials were written by children, the content should not be considered technically accurate.

These exercises were created by children and are intended for school use only. Any resemblances to characters, names, events and circumstances are intended only for the purpose of education, and all characters, names, events and circumstances described herein are fictitious.

This project is made possible by funding from the IOLTA Fund of the Bar of New Jersey.

Law Adventure won the Award of Excellence in the 2002 Associations Advance America Awards program, a national competition sponsored by the American Society of Association Executives in Washington, D.C. This prestigious award recognizes innovative projects that advance American society in education, skills training, community service and citizenship.

If you would like to participate in the Law Adventure Competition, please call 732-937-7519 or e-mail sboro@njsbf.org.

For information about other free, law-related education services available from the New Jersey State Bar Foundation, visit us online at www.njsbf.org.

The Case of the Viral Video

SCHOOL

Glen Rock Middle
Glen Rock
Grade 7, First Place

TEACHER

Mary Morrow

STUDENTS

Simon Bruce, Benedetta Fontana, Liam Geduldig,
Ryan Haggerty, Aaron Halpert Rodis, Colin Jones,
Claudio Liberti

FACTS

Victor Tom is a student at Dave Ersity Middle School. He recently moved to America from Germany. He had adjusted to his new school environment when a project on the Holocaust was assigned in Mr. Ted Nology's social studies class. A few students made a video project that created an offensive stereotype of Germans. The video was shown in the classroom and then went viral on the internet and has become the source of Victor's bullying. Although the school addressed the situation that took place within the classroom according to school policy, the bullying hasn't stopped. The school states that the students posted the video on the internet outside of the school environment and therefore they had no control of the video or its consequences. Victor Tom's parents believe that due this discrimination, Victor can no longer attend his local public school. Since the video originated in the classroom, they want the school to take responsibility and provide reimbursement for tuition to an out-of-district school or for full-time home tutoring.

ISSUE

1. Is the school responsible for the discrimination that resulted from the creation of the video, even though the video was created without regard for the project guidelines set by the classroom teacher?
2. Is the school responsible for discrimination and bullying that took place as a result of technology used outside of the school?

WITNESSES

For the Plaintiff

Mrs. Tom
Victor Tom

For the Defense

Mr. Ted Nology
Mr. Art Thority

WITNESS STATEMENTS

Testimony of Mrs. Tom

I am Victor's mother. Victor has always been a very bright and happy boy. It was difficult for him when we moved here from Germany and he had to start middle school as a new student from a different country. Despite the differences in language and culture, he never complained and seemed to adjust very well. But one day he came home and was depressed and down on himself. He told me about the video some of his classmates made depicting Germans as cruel and evil.

After this video was shown in class, Victor's whole attitude towards school changed completely. The way the video mocked Germans and stereotyped all Germans as Nazis has brought on hatred and discrimination. He no longer wants to come to school. I've had mornings when I couldn't even get him out of bed.

I spoke to Mr. Ted Nology and Mr. Art Thority about the incidents and they assured me that they would address it. However, it's gotten worse. This video seems to be all over the school and the bullying has gotten out of control. How does the school bear no responsibility? The school says they didn't put that video in the hands of the students, but if they had acted more responsibly, or educated more effectively before assigning this project, my child wouldn't be the object of ridicule and subjected to this terrible discrimination. Even students who don't know Vic have joined in the mocking. The blatant stereotyping and mocking of Germans that has taken place is unacceptable. It is offensive to me and it is ruining my child! This school is no longer a healthy or safe environment for him.

Testimony of Victor Tom

When I first came to Dave Ersvity Middle School, I didn't know anyone. It was hard coming and feeling different. Kids do things differently here than back in Germany. However, after a while, the teachers and some of the students got to know me better. I made the soccer team and joined the art club. I made more friends and I didn't feel like the middle schooler visiting from Germany, I just felt like a regular middle schooler.

That changed when this project was assigned. Those kids who made the project were never friends with me, but they never bothered me either. However, when I sat in class and watched the video they made, I felt like they were making fun of me. The video kept saying the word Germans and then showed these Germans acting like Nazi soldiers, beating and saying cruel things to other people. They walked like Nazi soldiers and when they spoke to others, they kept making the Heil Hitler sign. Yes, the Nazis were a part of German history, but they are not a part left in the German people. This video left the classmates laughing and thinking that all Germans are Nazis. It was bad enough that was shown in class, but then I found it on Facebook and YouTube, and it was being sent on cell phones. People I don't even know are passing me in the halls walking like Nazis or giving me the Heil Hitler sign.

Mr. Nology and Mr. Thority did talk to the class, but there are so many students who have seen it now, it can't ever be undone! I can't believe Mr. Nology let them see it in the first place. I can't escape it. I'm no longer a regular Dave Ersvity middle schooler. I'm the Nazi middle schooler! It's so humiliating to me and it makes me so angry. That's not what Germans are like.

Testimony of Mr. Ted Nology

I feel terribly that Vic Tom is being bullied. No one should be the target of abuse just because they are different. The whole point of teaching about the Holocaust is to teach about the need to respect and embrace diversity. Throughout the curriculum I have let the students know that not all Germans were bad. We did discuss how there are still some people today who hold the Nazis beliefs, but we also spoke about how there are people who show hatred towards many different types of diversity.

This is my third year teaching the same curriculum. I've never had a problem before. This year I did let the students choose how they wanted to present their projects but they had specific guidelines. There was also a rubric they needed to follow. Technology is important to these kids and I thought it would motivate them to use it. The students who created this video did not follow the guidelines so they got a bad grade. When we found

out that the project led to bullying, Mr. Thority and I addressed it immediately and handled the students according to school policy. What the students did with the video outside of the classroom and the school is beyond my control. I can only take care of what happens in my classroom.

Testimony of Mr. Art Thority

We have been very welcoming to Victor as we are to all new students. We also have an active anti-bullying policy in place and it is a part of our school culture and curriculum. I understand that this bullying took place and Mrs. Tom feels it was the result of this school project. However, once I became aware of the situation by Mr. Nology and by Mrs. Tom, I addressed it immediately. We took an entire class period to talk to the students about stereotyping. In fact, the curriculum on the Holocaust is very sensitive to the subject and its goal is to teach children about the need to accept and embrace diversity, not to use it as a basis for judging or excluding others. The students who made this project knew they were using poor judgment. They didn't embrace the project with its intended purpose. They received poor grades and were punished according to school regulations. What the students did with this video on their own and outside of the school, and how it is being used outside of the school, is outside the scope of our authority.

INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that the school is liable under the New Jersey Anti-Bullying Bill of Rights, and that the school failed to follow NJ School Administrative Codes.

SUB-ISSUES

1. Does State Board of Education Administrative Code N.J.A.C. 18A: 37-15.1 apply to cyber bullying that takes place with technologies and electronic communications outside of the school campus and school day?
2. Does a school's authority apply to student communication outside of the school environment or is that protected by the right to free speech?

CONCEPTS

1. Preponderance of the evidence.
2. Credibility of the evidence.
3. NJ Law definition of discriminatory practices as "policy, action . . . or failure to act . . . that limits or denies equal access to or benefits from educational activities or programs of a school.

LAWS

1. **A3466/S2392 – The NJ Anti-Bullying Bill of Rights** prohibits bullying in schools and requires schools to take measures to prevent and remediate such bullying behavior.
2. **N.J.S.A. 6A:7-1.4** Each district board of education shall adopt and implement written educational equity policies that:
 1. Recognize and value the diversity of persons and groups within society and promote the acceptance of persons of diverse backgrounds . . .
 2. . . . foster a learning environment that is free from all forms of prejudice, discrimination, and harassment based upon . . . national origin

The Case of Livin-Not-So-Good in Livengoode

SCHOOL

Warren Township Middle
Warren
Grade 7, Second Place

TEACHER

Susan Cooper

STUDENTS

Michelle Gekhtman, Alexandria Hentschel,
Parima Kadikar, Kunwoo Park, Johnny Penek,
Rebecca Sinha, LizAnn Sung, Emily Tang

FACTS

VitaCorp, a vitamin company known for its highly effective Omega3 vitamins, moved its facility to Livengoode, Alaska in 1995 after a request from the Alaskan government. Its main source for Omega3 is the threatened steelhead trout found in the nearby Livengoode River. Threatened species are strictly monitored for use in business production, more specifically in vitamin supplements such as those produced by VitaCorp.

In 2005, the Alaskan Government Division of Water enforced a rule to divert the Livengoode River in order to create a reservoir to provide drinking water to build a new residential development of Livengoode. This oversized reservoir caused the rivers to become shallow and caused the water temperatures to rise. The hot temperatures weren't healthy for the steelhead trout and resulted in their reduction. VitaCorp lost its main source of Omega3, which made it difficult for the company to make vitamins for its customers.

The Alaskan Friends of Fish and Game (AFFG) is suing the Alaskan Division of Water for wiping out the steelhead trout from the rivers. The Alaskan Friends of Fish and Game support the smaller businesses such as VitaCorp, which is losing revenue due to the lack of steelhead trout. Other businesses have been affected by the building of the reservoir as well as several other species of animals that have begun to diminish. While the Alaskan Division of Water feels it acted in the best interest of the citizens of Alaska in creating a

reservoir, it did not offer a different plan to prevent the reduction of this specific species of fish. It made several attempts at altering the amount of water flowing into the reservoir, but this was done too late to help the population of the steelhead trout. On November, 2010, the AFFG filed a lawsuit against the Alaskan Government Division of Water for destroying the steelhead trout and affecting VitaCorp's main source for Omega3 vitamins. The AFFG is seeking damages to help support the affected businesses.



ISSUE

Did the Alaskan Division of Water create a reservoir too large for the needs of the community, therefore causing several environmental problems for small businesses and affecting the populations of certain fish?

WITNESSES

For the Plaintiff

Anita Phish

Vita Minco

For the Defense

Dr. May D. Lake

Dr. Newt R. Shin

WITNESS STATEMENTS

Testimony of Anita Phish

My name is Anita Phish and I have been the head of the AFFG for 14 years. I am an advocate for the protection, management, conservation, and restoration of Alaska's fish and game resources. "We are Fish Fanatics" is our motto. The Division of Water, under the direction of Dr. May D. Lake, approved the reservoir to be larger. This was clearly a ridiculously large sized reservoir, and was too much for residential needs of the area. The Division of Water over planned their project, and the consequences on the environment were serious. Now the steelhead trout are threatened and dying off. In fact, when the rivers run low of water, the fish actually suffer inhumane deaths due to suffocation. I understand that we needed more water because many families were moving in, but we did not need that much water to wipe out an entire species of fish. Not to mention the effect this had on the small businesses in the area like VitaCorp. The consequences of the irresponsible actions of the Division of Water need to be made an example of. I feel the building of the reservoir was poor planning by the Alaskan government. They need to pay for their destruction of so many human and animal lives. This problem is

going to continue to exist and a lawsuit is the only way to make sure those who created this problem are held responsible.

Testimony of Vita Minco

My name is Vita Minco and I have been the president of VitaCorp for 23 years. This is a family owned company in existence since 1940. My father headed this company before me and his father before him. We started our company to help people live healthier lives. In the early 1990's, we learned that Omega3 fish oils helped brain development. In 1995, our company moved to Livengoode, Alaska where the many rivers of this region were filled with steelhead trout, a fish plentiful in Omega3 oils. Our vitamin company was asked by the government to move to Livengoode to make the new Omega3 vitamins, since there was a demand for it. We were told we could farm this fish even though it was a threatened species. We had to carefully monitor the farming so we didn't lower the population of this fish.

VitaCorp become one of the leading producers of Omega3 and steelhead trout continued to support our specialized vitamins. Since the building of the reservoir in Livengoode, our rivers have diminished and our steelhead trout are dying. We can no longer provide Omega3 rich vitamins to our customers. Our business is almost bankrupt, which is forcing our company to move again, and that's just not possible in this economy. We don't have the funds to move this company for the second time. We have considered other fish to get Omega3 oils, such as salmon, but it's not as effective as our steelhead trout vitamins. We don't want to change the quality of our products. We have been cutting all possible corners and yet we still can't make ends meet. Because of the loss of our main source, we have been slowly losing our business. We feel supported by the Alaskan Friends of Fish and Game, who are pursuing this lawsuit.

Testimony of Dr. May D. Lake

My name is Dr. May D. Lake and I have been the Director of the Alaska Division of Water for 15 years. I am 42 years old and I have a Ph.D. in

environmental studies from Dartmouth College. The town of Livengoode's population has been blossoming for the past decade, which resulted in many neighborhoods scheduled to be built. In 2005, hundreds of families were expected to have moved in by 2010. Therefore, the need for drinking water was growing and the priority to serve the citizens outweighed the need to supplement the rivers with an abundance of water. It was imperative that the State of Alaska build a new reservoir in the area to help boom its economy and growth. In building this reservoir, we understood that there would be a minor impact on the environment, but none that would make a species of animal endangered. We made careful decisions as not to disrupt any business, people, plants or animals. In addition, we realized that the size of the reservoir was larger than needed at the time; our statistics showed us that our projected growth required a larger reservoir to be built.

When the United States economy recently crashed, many people could not afford to relocate their families to Alaska so the housing developments were at a standstill. At that time we could not change the size of the reservoir, so we continued with production as planned. It was not financially smart to change the plan for the reservoir. Once the economy resumes its strength, we know that people will begin to move to Alaska and the need for the larger water source will continue.

Although we have made several attempts to slow the amount of water flowing into the reservoir, somehow the population of the steelhead trout is decreasing. Because the steelhead trout were already a threatened species, we feel their reduction from the Livengoode Rivers is not due to less water flow, but the overuse from a vitamin company that over farmed its Omega3 vitamins. The VitaCorp Company used up its fish source because it was greedy. The company won't hold itself responsible for its actions, so now it wants to pin it on the Division of Water. We made sure the water flow from our rivers was monitored carefully. We tried our best to make sure that the water level did not become too shallow for the fish to survive. VitaCorp did not do its part in monitoring its revenue, so now it is using the easiest shortcut by blaming it on the Division of Water.

Testimony of Dr. Newt R. Shin

My name is Newt R. Shin and I am 50 years old. I have been in the field of medicine with a focus on environmental studies for 21 years. I grew up in the State of New Jersey. At 18 years old, I received a scholarship to Harvard. I was educated in one of the top programs at Harvard Medical School. I went to medical school for 8 years and then I traveled the world studying different ecosystems. I received many honorable, prestigious awards for my different studies. I won the Top Nutritionist of the Year Award in 2003 for my use of Omega3 fish oils in my program and I won the 2004 Alaskan Environmentalist of the Year Award. In 2005, I was asked to be an expert on Alaska's Division of Water committee to make sure that the fish in the local rivers were handled properly. Because I am considered an expert in environmental studies, I oversaw the newly built reservoir in Livengoode, Alaska. I reported to the Division of Water that there were times that the water supply to the rivers was lower than average, but not in any way that it would threaten specific species. When the water supply was lower, I felt it was not due to water flow running to the reservoir, but a drought that occurred due to the high temperatures during the summer. These high temperatures could have affected the fish population.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that the Alaskan Division of Water was negligent when it built a large reservoir that reduced the steelhead trout population and ruined small businesses.

SUB-ISSUES

1. Did VitaCorp over farm the steelhead trout causing them to become endangered in the Livengoode Rivers?
2. Are there other areas in Alaska that breed steelhead trout where VitaCorp could obtain its Omega3?
3. Are there other natural sources for Omega3 that VitaCorp can use to make its vitamins?

4. Was the size of the housing development reasonable?
5. Did the economy affect the housing market?
6. Did the Alaskan Division of Water act in the best interest of the citizens of Livengoode, Alaska when it built a large reservoir to suit the growing population?
7. Did the Alaskan Division of Water act reasonably when it monitored the amount of water flowing into the reservoir?
8. Because the steelhead trout were already threatened, should the Division of Water have made a better plan for the reservoir so the fish would not die?
9. When the rivers became bankrupt of water, did the steelhead trout experience inhumane and painful deaths?
10. Did hot temperatures affect the river waters and kill off the fish?
11. Because Dr. Newt R. Shin works for the Division of Water as a special committee member, is his testimony biased?

CONCEPTS

1. Preponderance of the evidence.
2. Burden of proof.
3. Negligence.

LAWS

Fish and Wildlife Conservation Act

This act encourages federal agencies to conserve and promote conservation of nongame fish and wildlife and their habitats to the maximum extent possible within each agency's statutory responsibilities.

National Environmental Policy Act (NEPA) (1970)

NEPA requires that an environmental impact assessment be conducted for certain projects in which there is federal participation. Federal agencies conducting actions that significantly affect the quality of the human environment may

be required to conduct an environmental impact assessment. An environmental impact assessment predicts the degree to which an action may adversely affect an endangered or threatened species or its habitat.

Cruelty to animals (Section 828.12, F.S.)

This section prohibits killing animals in cruel or inhumane ways that cause unjustifiable pain or suffering.

Alaska Endangered and Threatened Species Act of 1977 (Section 379.2291, F.S.)

The Alaska Endangered and Threatened Species Act of 1977 provides for research and management to conserve and protect threatened and endangered species as a natural resource. Responsibility for the research and management of upland, freshwater and marine species is given to the Alaska Fish and Wildlife Conservation Commission (AWC). The act also encourages AWC to develop a public education program dealing with endangered and threatened species.

Local Government Comprehensive Planning and Land Development Regulation Act (Ch. 163, Part II, F.S.; and Rule 9J-5, F.A.C.)

This act requires local governments in Alaska to adopt local government comprehensive plans which provide for the conservation, use, and protection of natural resources, including fisheries and wildlife. Local government land development regulations and development orders must be consistent with the comprehensive plan.

State Comprehensive Plan (Ch. 187, F.S.)

The State Comprehensive Plan includes goals and policies to conserve wildlife habitat and prohibit the destruction of endangered species and their habitats. Local government comprehensive plans must be consistent with these provisions in the State Plan.

Inspectors, Tenants and Mold, Oh My!

SCHOOL

George G. White Middle
Hillsdale
Grade 7, Honorable Mention

TEACHER

Suzanne Pausz

STUDENTS

Kacie Barry, Maggie Deegan, Meghan Doody,
Ejin Hur, Eric Liu, Bianca McLean,
Neekta Pico, Kevin Wang

FACTS

In March 2010, Owen D. Holmes bought a house located in Moldbille, Alabama with the intentions to rent it. The following month he rented it to Al R. Jeas, who signed a two-year lease. Two months after moving in, Al R. Jeas began experiencing itchy eyes, throat irritation, and headaches. Al had mild asthma and, after moving into the house, he began having multiple asthma attacks.

Al R. Jeas then visited his doctor, who asked if there were any irritants in the home. Al asked Owen D. Holmes, his landlord, if he knew of any irritants, including mold, in his home. Owen D. Holmes said that his inspector, Ian Spector, had not found anything in the home.

After Al continued to suffer from heightened allergies, he hired his own inspector, I.C. Mould. His inspector found mold in the finished basement of the home, where Al R. Jeas spent most of his leisure time. Al proceeded to ask Owen D. Holmes to properly dispose of the mold. The landlord refused because he claims it was Al's fault the mold grew. Holmes claims that Al failed to take the precautions given to him or inform him of any leaks.

Al R. Jeas is suing Owen D. Holmes for renting a home that was not in a fit and habitable condition. He wants money for a hotel to stay at while the mold is being cleaned up. He also wants money for any medical bills. He has also asked that Owen pay for legal compensation.

ISSUE

Is Owen D. Holmes responsible for the mold that caused his home to be in an unfit and uninhabitable condition?

WITNESSES

For the Plaintiff

Al R. Jeas

I.C. Mould

For the Defense

Owen D. Holmes

Ian Spector

WITNESS STATEMENTS

Testimony of Al R. Jeas

My name is Al R. Jeas. Ever since I rented this home from Owen D. Holmes, I have been having frequent asthma attacks and heightened allergy symptoms. I have had slight asthma and allergies my entire life, but never before have I had asthma attacks or symptoms this awful. When I went to Doctor Maddie Kole, she asked me about irritants in the home. When I asked Owen D. Holmes about any possible irritants in the home, he said that he had just fairly recently gotten the house inspected by Ian Spector from Mold Killers Inc.

After my symptoms persisted, I hired Mr. Ike Christian Mould from Mould B Gone to inspect the home. Within half an hour, he found mold behind the wall of the finished basement where I spend most of my leisure time. When I confronted Owen D. Holmes about the mold, he refused to clean the mold, or give me money to fix the problem because he said it was my fault.

I have taken many precautions to prevent mold. I have used fans while showering, and I closed windows during rain. It is unfair that I should have to pay for the clean up of the mold when it is clearly the fault of Owen D. Holmes. How dare he accuse me of causing this mold that is damaging my health? I am now suing Mr. Owen D. Holmes for failing to keep his home in a fit and habitable condition. I am demanding monetary compensation for the cost of my stay in a hotel while the mold is being cleaned, and money for my medical bills. Also, it is very expensive to hire a lawyer so I am suing Owen D. Holmes for legal fees. I also want assurance that the mold will be taken care of.

Testimony of Ike Christian (I.C.) Mould

My name is Ike Christian Mould, more commonly known as I. C. Mould. I work for Mould B Gone. I have been working as a household mold inspector for seven years. I was hired by Al R. Jeas to inspect the home he rented. I brought my specialized mold detector to the house. In the past, the mold detector has spotted mold almost every time it was used. Perhaps Owen D. Holmes's inspector was not aware of the mold because of his lack of knowledge of the new mold detecting technology.

When the mold detector was pressed against the basement wall near the windows, it detected the mold immediately. Just to confirm there was mold, I peeled off the layer of wallpaper and found mold growing behind it. I grabbed my camera and took a few photographs for proof. Immediately, I beckoned Mr. Jeas over to see the mold growing behind his wallpaper. He was astounded to see that there was indeed mold growing in his basement. I am glad that I was able to assist Mr. Al R. Jeas in the finding of the mold in his house. Mr. Owen D. Holmes has not been able to provide Mr. Jeas a fit and habitable place to live. I hope Mr. Holmes will provide Mr. Jeas with what he is asking for.

Testimony of Owen D. Holmes

My name is Owen D. Holmes. In March 2010, I bought a house in Moldbile, Alabama. I was planning on renting out the house soon after my purchase. Before I bought the house, I hired Ian Spector, a respectable and professional home inspector. After he finished his inspection, he informed me that nothing out of the ordinary was found in the house, so I bought it. Shortly after purchasing the house, I put it up for rent. A young man came to me looking to rent the house. His name was Al R. Jeas, and he seemed like a decent person, so I allowed Al to rent my home.

Upon renting the house to Al, I spoke of the things he had to keep in mind while occupying the home. I warned him of the humid conditions in Alabama and told him to use the provided dehumidifier and fan to decrease the risk of mold. I also told him to take other special precautions such as making sure all windows are closed, especially in the basement. In addition, I told Al that I would be available at any time if he had any issues with the home.

A couple of months went by and I assumed everything at the house was fine. In May, Al came to me and asked me about any possible irritants in the home, including mold. I told him that there was no possibility of mold. Soon after he came to me and claimed that I had failed to give him a fit and habitable living arrangement, and that I had not disclosed to him that there was mold in his basement. I was confident that there was no mold in the house because I had gotten it thoroughly inspected prior to renting it out to Al R. Jeas. It was for this reason that I decided to see what all the fuss was about, so I asked to see this mold.

When I arrived in the house's basement, I found the dehumidifier in its box, unopened. I further noticed a water stain near the window, which indicated that Al had left it open, probably while it rained. I questioned why Al did not take my precautions into consideration. If I had given him the proper equipment, why did he not use it? There was no mold before he moved in and he should have taken the precautions I gave him, which would have prevented the mold from growing. I refuse to pay for any damages that were not caused by me.

Testimony of Ian Spector

My name is Ian Spector. I have been working for Mold Killers Inc. for twelve years. I was hired by Owen D. Holmes, a landlord, to inspect the house in March before he rented it out. I have a very good reputation for my work, and I'm rarely incorrect about mold being or not being in a house. When I inspected the house of Mr. Holmes, I was confident that there were no signs of mold. However, Alabama is very humid; I informed Mr. Holmes about some ways to prevent mold development, such as fans, dehumidifiers, and making sure that the windows are closed. Mold can easily grow in damp places if the person occupying the house does not follow these instructions.

A few months later, Mr. Holmes informed me that the new renter's inspector found mold growing behind the wall of the basement near the window. I was also notified from him that the dehumidifier was still in the unopened box where it was left, and the window had water stains around it. These signs indicate that the precautions were not taken by the renter. Thus, this situation is not Mr. Holmes's fault; it is the tenant's fault for not following the instructions given by the owner.

INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that Owen D. Holmes rented out a home that was in an unfit and uninhabitable condition before his tenant, Al R. Jeas, moved in.

SUB-ISSUES

1. Did Al R. Jeas fail to follow the precautions given by Owen D. Holmes?
2. Was the mold already growing in the home before Al R. Jeas moved in?
3. Were Al R. Jeas's asthma attacks and allergies caused by mold?
4. Did Ian Spector fail to detect the mold before Al R. Jeas moved in?
5. Could mold have grown within the two-month period that Al R. Jeas occupied the home?

CONCEPTS

1. Credibility of witnesses.
2. Landlord/tenant obligations.
3. Burden of proof: preponderance of the evidence.

LAWS

UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

35-9A-204. Landlord to Maintain Premises.

- (a) A landlord shall:
- (1) Comply with the requirements of applicable building and housing codes materially affecting health and safety;
 - (2) Make all repairs and do whatever is necessary to put and keep the premises in a habitable condition;
 - (3) Keep all common areas of the premises in a clean and safe condition;
 - (4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

35-9A-301. Tenant to Maintain Dwelling Unit.

A tenant shall:

- (1) Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
- (2) Keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises permit;
- (3) Dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;
- (4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clear as their condition permits;
- (5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises.

The Cheerleading Conundrum

SCHOOL

Harrington Park
Harrington Park
Grade 7, Honorable Mention

TEACHER

Joan Dever

STUDENTS

Alexis DiRese, Amy Iafrate, Joseph Jordan,
James Kwon, Lindsay Ngo

FACTS

Taytay Taylor is a 15-year-old African-American high school student. She recently moved from the Bronx, NY, to a town called Whitefield, NJ. Whitefield is an upper middle-class town with a predominantly Caucasian population. In recent years, the demographics of the district have begun to change as there has been a slow but steady increase in the number of African-American students in the school.

Ms. Taylor decided to try out for the cheerleading team at her new school. She is a spirited, athletic basketball player, but she is willing to give up basketball to participate in a sport that was not offered in her old school.

The tryouts went well for Taytay and she was selected to be a member of the cheerleading squad. As a result of Taytay's placement on the team, a senior member who had been cheering for three years was cut. The senior, Josephine Jenkins, was outraged by this decision. Ms. Jenkins believes that the present coach was pressured to diversify the team due to the change in the demographics of the school. She feels that her performance and experience should have carried more weight in the decision-making process and that she was cut from the team for political reasons. She feels that the Board of Education has been pressuring team and club leaders to include minority students. Ms. Jenkins believes that cutting a senior member of the team to include a sophomore with no cheering

or gymnastic experience demonstrates the school's desire to diversify. She feels it was not Ms. Taylor's talent that got her on the team, but her minority status.

Josephine Jenkins has filed a lawsuit against the Board of Education of Whitefield School District claiming that she is the victim of reverse discrimination and is requesting that she be reinstated to the Whitefield High cheerleading team. Ms. Jenkins is also requesting monetary compensation for her pain and suffering.

ISSUE

Did reverse discrimination play a role in deciding the final roster for the cheerleading team at Whitefield High School?

WITNESSES

For the Plaintiff

Josephine Jenkins
Paulina Pyramid

For the Defense

Brittany Bang
Dr. Barry Bannano

WITNESS STATEMENTS

Testimony of Josephine Jenkins

Hello everyone! My name is Josephine and I am a dedicated senior cheerleader at Whitefield High School in Whitefield, New Jersey. In my past years on the cheerleading squad, I've been a hard-working, motivated team member and an extreme asset. Not only am I a quick learner, but also I am skilled and trained in gymnastics. Never have I been late or missed a practice, even in the worst conditions. Being a senior, I set an example for the younger girls on the squad in leadership and participation. My heart was broken when I found out I had been cut from the team. My dreams have been shattered for I had been hoping to continue cheerleading through college. Although I have contributed to make the team what it is today, my coach chose to repay me by cruelly and wrongfully cutting me from the team.

Over the past few years, I have witnessed dedicated members of other athletic teams suffer the same disappointments as I. Competent, hard-working athletes have lost their positions on teams to African-American students who are new to the school. I believe that the cheerleading squad coach was pressured to alter the team dynamic. My coach stopped looking at the student's abilities, and focused on diversifying the team in order to keep her job. The sophomore that replaced me is athletic, but not nearly as qualified as I am. With a lack of knowledge of flips, turns, routines, and stunts, she does not meet the requirements for the team. The only reason she was accepted was for racial diversification. I feel this is a prime example of reverse discrimination. Race should not be a factor in determining placement on any school teams or clubs. I have proven myself for three years and I have earned my place on the cheerleading team. Thank you for your time, I truly hope we can make this right.

Testimony of Paulina Pyramid

Hello, my name is Paulina Pyramid. I want to share with you the terrible events that have taken a toll on a member of the Whitefield cheerleading squad. I coached that squad for years and I stay

connected to that job every year when I go back to help the new coach with tryouts. Tryouts are such a stressful time and Coach Bang has appreciated my input when it came to final selections. Generally, Coach Bang and I saw things eye to eye, but that all changed with this year's tryouts. To my astonishment, it seemed clear that Coach Bang was more concerned with diversifying the team rather than selecting the best cheerleaders.

I have watched Josephine Jenkins perform for the last three years. She is a confident, strong, and capable cheerleader who shows real leadership. I cannot believe that she was cut from the team in her senior year! I am an experienced coach and I am telling you something is just not right here.

I was at every tryout and I know that Taytay Taylor's lack of experience and training did not make her a contender for this team. Although Ms. Taylor has an athletic background, that is certainly not enough to guarantee a spot on this team. This is high school cheerleading, people! We're training these girls for college, for their future. So, as you can see, this is no joke. Having been a cheerleader myself in high school and throughout college, I understand how important this year was to Josephine. Maybe Coach Bang is being pressured by the school board; I can't say for sure. But having seen these two girls work side by side in tryouts, I have to say that the outcome does not make any sense to me. This is an occurrence that seems to have taken place on several varsity teams this year and it is wrong. The best athletes should be selected to represent their school regardless of race, color, or background.

Testimony of Brittany Bang

Hello, my name is Brittany Bang. I am the current cheerleading coach of Whitefield High School. I have been a coach at this school for four years. Tryouts are a very stressful time for students and coaches. The pressure of deciding who makes the team and who doesn't is very challenging. This year's tryouts were especially tough because there were several new students trying out for the squad. Coaches have so many factors to consider. For example, a team cannot be comprised solely of seniors. It is so important to balance the ages of

the team members so that the team remains solid when the seniors graduate. Younger members must be groomed and ready to step up when our seniors leave us.

Cutting Josephine was a very difficult call for me to make. She is a good cheerleader and a solid, reliable member of the team. However, although she has cheered for the past three years, she is far from our best. Thinking of the growth and continuity of our performance put Josephine in direct competition with Taytay. Taytay does not have the experience, but she is younger and has great potential. No senior wants to be cut and no coach wants to cut a senior, but it happens. I understand that Josephine is upset and is looking for this to be someone else's fault. But this is the reality of life and competitive sports. Coaches do what is best for their teams and sometimes that means people get hurt. Taytay has speed, agility and strength. With training, it is my belief that she can be the best member of our squad and, hopefully, be with us for the next three years!

My decision was not based on color or race. I made a difficult choice and picked the girl that was the best fit for the team. That is my job; that is what I am paid to do. I am sorry that Josephine's feelings were hurt. Taytay Taylor is the future of this squad, and I stand by my choice as it was made for the benefit of the whole team.

Testimony of Dr. Bannano

Hello, I am Dr. Barry Bannano, the superintendent at Whitefield High School. It is disappointing that I am addressing a matter involving race and discrimination in our district. Whitefield High School prides itself in treating all students equally, regardless of race, religion, socioeconomic status or gender. We embrace the diversity of our school population, so you can imagine how the issue involving Josephine Jenkins has caused me great concern.

I understand the pain that Ms. Jenkins is undergoing as I too was a high school athlete who was cut from the football team as a senior. While the situation made me very angry and extremely sad for weeks, I did not file a lawsuit against the school. I understood my coach's decision and respected

it. Earning a place on a high school team is not a right of passage. You have to work for your position each and every year. I have complete trust in the actions of Coach Bang and believe that she selected the best candidates to represent our cheerleading squad.

This lawsuit filed by Ms. Jenkins is unfounded. Ms. Taylor is a talented and athletic girl who will make a wonderful addition to the cheerleading team. She did not earn her position because she is African-American; she earned the position because the coach selected the best candidate to keep this team growing and improving over the next few years.

Ms. Jenkins should look forward and concentrate on her future. If her dream is to cheer in college, she should focus her energy on that goal. Whitefield High looks at talent and leadership, not the color of our athlete's skin. We have established guidelines that the coaches follow. Josephine should take charge and work toward her dreams rather than looking back for someone to blame.

INSTRUCTIONS

The plaintiff must demonstrate that reverse discrimination did, in fact, play a key role in determining the final roster of the Whitefield High School's cheerleading squad and therefore violated Josephine Jenkins' right to equal opportunity.

SUB-ISSUES

1. Is Ms. Jenkins exaggerating her talent?
2. Have other athletic teams, as claimed by the plaintiff, dealt with similar issues?
3. Is Paulina Pyramid's assessment of the squad less biased as she is no longer an employee of the district?
4. Does Coach Bang have a personal issue with Ms. Jenkins that affected her decision?
5. Does a student have the right to question the authority of the coach?
6. Is there underlying pressure on the coaches at Whitefield High to diversify athletic teams?

CONCEPTS

1. Burden of proof.
2. Credibility of the witness.
3. Preponderance of the evidence.
4. Equal opportunity for all students in public schools.

LAW

New Jersey Education Code, Section 201

Provides legislative declarations in support of the policy, such as:

- students in public schools are entitled to participate fully in the educational process free from discrimination and harassment,
- public schools are to take affirmative steps to combat racism, sexism, and other forms of bias,
- prevent and respond to acts of hate violence and bias-related incidents in an urgent manner,
- teach and inform students about their rights and that of others in order to increase awareness and understanding in order to promote tolerance and sensitivity.

New Jersey Education Code, Section 220

Prohibits discrimination and/or harassment in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

Sabbath or Sabotage?

SCHOOL

Harrington Park
Harrington Park
Grade 7, Honorable Mention

TEACHER

Joan Dever

STUDENTS

Lucas Casamento, Jason Chabora, Kate Lopresti,
Francesca Mangano, Elisabeth Welch

FACTS

Soppaz is an internet warehouse company that sells handbags and shoes. The warehouse is located in South Jersey and has been experiencing a downturn in business. Recently, the owner of the company made the decision to reduce the number of employees. Soppaz decided to lay off the warehouse workers who were less versatile and could not work all seven days of the week. Although business is down, the president of the company anticipates that the holiday shopping season will bring a brief but sizeable increase in business. With the new reduction in the number of warehouse employees, it is expected that those that still have jobs will be working seven days a week throughout the month of December.

In September of 2009, Soppaz let go fifteen warehouse employees out of the hundred it employed. Ten of the fifteen workers who were let go were members of the Orthodox Jewish community. The Orthodox workers feel that the company's decision to lay off all members of this religious group demonstrates a bias. They feel that Soppaz has complete disregard for diversity in the workplace and has discriminated against them. The company defends its actions by arguing that it isn't laying them off because of their religious affiliation, but because of their lack of flexibility. The president of Soppaz states that he must make decisions for the benefit of his company. The financial difficulty his company faces dictates that he hold on to his most flexible warehouse employees. The Orthodox

workers who are not able to work from sundown on Friday to sundown on Saturday make for scheduling challenges he will not be able to meet during the month of December.

The Orthodox workers who were laid off from the Soppaz warehouse have filed a lawsuit against the president of the company for wrongful termination. The lawsuit states that the firing of all of the Orthodox employees who work in the warehouse demonstrates a religious and cultural bias. The employees who have been terminated seek to be reinstated to their positions and are asking for monetary compensation for loss of wages and pain and suffering.

ISSUE

Did the Soppaz Company violate Equal Opportunity Employment law when they made the decision to lay off all of the Orthodox Jews working in their warehouse?

WITNESSES

For the Plaintiff

Jacob Weisman
Tamika Jones

For the Defense

Roberto Lopez
Denise Lazoritsu

WITNESS STATEMENTS

Testimony of Jacob Weisman

My name is Jacob Weisman and I am forty-eight years old. I speak today for all of the Orthodox Jews that have been laid off from Soppaz. I have been employed at Soppaz for over seven years now while practicing Orthodox Judaism. Some of the other Jews have been working for this company for even longer than I. No one in my community ever had a problem or disagreement with Soppaz about our religion before the layoffs that took place in September of 2009. I thought I would be working here until my days came for retirement. Oh, how I longed for retirement.

When I was informed that Soppaz was cutting its work force by 15%, I was not very concerned. It was presumed that seniority and performance would be the deciding factors in determining who would stay and who would go. In reality, performance played no part in the decision making. The fact that all ten Orthodox Jews working in the warehouse were laid off is too much to process. I am hard-working employee and I have never been late to work with the exception of the death of my mother. I have been told by the floor manager herself that I am a dedicated, committed worker. What is my thanks? They fire me!

I have five children to support, and after my years of dedication to this company, I am let go due to my religious beliefs! How am I to feed my family? I am willing to work around the clock the six other days of the week. How can Soppaz not be able to work around that? I have not been treated fairly. My job has been taken away from me due to my religious practices. In this day and age, in this country, that should not be allowed to happen. I and the other Orthodox workers should be judged by what we do, not what we believe. This wrong must be set right. The observance of Shabbat should not cost a hard-working man his job.

Testimony of Tamika Jones

Hello, my name is Tamika Jones and I was an employee at Soppaz. Due to the new financial issues for this company, I was laid off after only three months of work. I understand that Soppaz had a good reason to lay me off considering I was the last person to be hired. However, I do not feel that I could say the same for all the Orthodox Jewish employees that were laid off. Those workers were employed way longer than me! I don't really think it was fair that each and every one of them was let go.

The president of Soppaz says that the reason they were laid off was because of their inability to work on Friday evening and all day Saturday. These people have never worked during those hours! Having worked in that warehouse and understanding what it takes to get the orders filled, I believe that it is still possible for the warehouse to work around their Sabbath day. Even with a reduced number of employees, they are still going to be working in shifts. Different days, different hours; management could make it work if they were willing to put in the effort. These people are hard-working and dedicated. What has been done to them is wrong. They have been targeted due to their religious affiliation. Lack of availability during one twenty-four hour period would not put the company in jeopardy. The busy season is only a six-week period, and I think the other warehouse workers would be willing to cover the late Friday and all day Saturday shifts for such a short period of time. Letting all of the Orthodox workers go without consideration of seniority or performance violates their rights and is blatant discrimination. It's just messed up! Please, just give these people what they deserve. How could Soppaz do this and not think it has targeted a religious group?

Testimony of Roberto Lopez

Hi, my name is Roberto Lopez. I am the owner and founder of Soppaz. This company is my life. I began with nothing and built a successful business that employs over 150 workers. The numerous decisions that are made to keep a company up and running rest on my shoulders. Having to lay off warehouse workers was the most difficult challenge I have had to face since beginning this company.

My employees are my family. Having to decide who would lose their job kept me up for days. But the reality is that without the layoffs, I would risk losing the whole business. My decision to lay off my Orthodox employees was not based on any kind of bias or discrimination. If that was who I was as a person, why would I have hired them in the first place? The reality is that I have to put the company first along with the remainder of people I employ. The Orthodox workers cannot work on Saturday. This is a small business and that is no small consequence when trying to stay afloat in this tough economy. Their lack of flexibility presents an issue not only for me, but for the other workers. Other employees would have to bear the burden of covering all the Friday night shifts as well as all of the day shifts on Saturdays. These workers have families too that they want to spend time with during the holidays and that burden is not fair to them.

The reality is that I have a right to save my company. Accommodating the religious practices of my Orthodox employees is no longer an option for me. I met those accommodations willingly when my business was more lucrative. I am in survival mode and I have the right to protect what I have built. Lack of flexibility and not being available to work around the clock when necessary is why these employees were let go. I am sorry that this reality conflicts with their religious practices, but the decision was made for the greater good.

Testimony of Denise Lazoritsu

Hi, my name is Denise Lazoritsu and I am the floor manager for Soppaz. Recently, fifteen of our workers were laid off because of financial difficulties. It was a hardship to let the workers go, but we kept those who were most valuable to the operation of the warehouse. The decisions made have caused quite a bit controversy as ten of the fifteen people who were let go were Orthodox Jews.

I would like to point out that when deciding whom to lay off, we reviewed company records to determine who worked the least amount of hours during the busy holiday season. The names of the ten Orthodox workers popped up like red flags. Their inability to work key shifts during our busy holiday season resulted in them clocking the least

amount of hours when the company needed them the most. It's my responsibility to make sure shifts are covered, and if I don't, Soppaz will fall apart and then everybody will lose their job.

I personally knew all of the Orthodox workers who were let go. They were hard workers and kind people, but unfortunately they were our least flexible employees. I have been working for Soppaz for ten years and there has always been a large group of Orthodox Jews working here. We are not discriminating; we are making hard choices in a tough economy. I am truly sorry for this loss but, sadly, this is just business.

INSTRUCTIONS

The plaintiff must show by a preponderance of the evidence that the Soppaz Company's decision to lay off the Orthodox workers in their warehouse was due to religious discrimination.

SUB-ISSUES

1. Is it fair to say that Roberto Lopez is discriminating against Orthodox Jews when he is the one who hired them in the first place?
2. Is it really a hardship for Soppaz to work around the Orthodox Sabbath?
3. Are the other warehouse workers willing to cover the shifts in question?
4. Are there still Orthodox Jews working for Soppaz in other departments?
5. What percentages of the remaining 135 employees require any religious accommodations on the seven day a week holiday schedule?

CONCEPTS

1. Preponderance of the evidence.
2. Burden of proof.
3. Credibility of the witness.
4. Religious discrimination.
5. Reasonable accommodations for religious practices.

LAW

The US Equal Employment Opportunity Law (EEO)

Religious Discrimination

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.

Religious Discrimination & Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Religious Discrimination & Reasonable Accommodation

The law requires an employer or other covered entity to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer's business. This means *an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.*

Examples of some common religious accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.

DEP Dilemma

SCHOOL

Indian Mills Memorial
Shamong
Grade 8, First Place

TEACHER

Karen Clementi

STUDENTS

Devon Borkowski, Morgan Calabria,
Samantha Derkas, Owen Dwyer, Evan Fisher,
Joey Hackney, Grayce Heinemann, Emily Hoffman,
Bryson Jenkins, Emma King, Ryan Lawless,
Addison Lee, Sean McGlone, Kasey Mitchell,
Mark Oddo, Ashley Paetow, Emily Randolph,
Alivia Siedlecki, Aaron Uscinowicz,
Anthony Valenzano, Ryan Vannella, Jen Walker,
Melanie Weaver, Kevin Woytowich

FACTS

An enriched social studies class at the middle school in Indian Acres, Burlington County, New Jersey, decided to research the ancestry of a local family with a very rich history. The students found that the Wilstin family had members who escaped from slavery by way of the Underground Railroad and others who were able to buy their freedom. In the late 1800s, a member of the Wilstin family became the first African-American doctor in the area and another attended Princeton University. And, most interestingly, the students discovered that the Wilstin family has a private cemetery in Indian Acres where many of their ancestors are buried. The class visited the cemetery only to find a lot overgrown with bushes and weeds and littered with construction debris from a new development of houses built next to the cemetery. The small headstones were not even visible. With the permission of the Wilstin family, the class agreed to clean out and restore the cemetery in honor of those buried there.

The social studies class put together a plan to clean out the cemetery over a weekend. One of the students volunteered the use of his father's backhoe and the rest of the students were to bring shovels and rakes. A group of students and parents met at the cemetery on a Saturday morning and began

cleaning out the brush and debris. The next day, when the group returned to continue working, they were met by a state officer from the New Jersey Department of Environmental Protection who had a Temporary Restraining Order from the Court. The Order stated that the cleanup on the lot must stop as an endangered species of corn snake is living in the brush on the lot and the snakes and their habitat cannot be disturbed. Apparently, when the new development of homes was built, the corn snakes took refuge on the cemetery lot next door. A local resident, who knew of the endangered species on the cemetery land, saw the cleanup activity and contacted the state environmental department.

Of course, the students stopped the cleanup and they let the Wilstin family know what had happened. The Wilstin family was very disappointed and let their extended family know on their Facebook page what had occurred in New Jersey. The Wilstin family is a very large clan, and over Facebook, decided to join forces and fund a legal defense to the Restraining Order. It is the Wilstin family's position that they own the land and have a right to restore the cemetery, not only because it is a cemetery and their loved ones are buried there, but because of the historical significance of the family to the local community and to the African-American community in New Jersey.

ISSUE

Does the State's duty to protect the corn snake, an endangered species, override the Wilstin family's desire to restore their family cemetery such that the injunction against the cleanup of the cemetery should remain in effect?

WITNESSES

For the Plaintiff

Kenny Poundstone

Dr. Everett Green

For the Defense

Anthony V. Wilstin

Myra Meadowbrook

WITNESS STATEMENTS

Testimony of Kenny Poundstone

I am a Conservation Officer for the New Jersey Department of Environmental Protection. Specifically, I work for the New Jersey Division of Fish and Wildlife. It is my agency's duty to enforce the laws and regulations that protect wildlife and its habitat in New Jersey. I am a uniformed officer assigned to patrol the lands and waterways of Burlington County. I have worked for the department for the last twenty years. I have a degree in wildlife management and attend educational seminars to keep myself updated.

Recently, I was notified of a complaint that had come into the department through our environmental emergency hotline. A concerned citizen had called about activity on land in Indian Acres, where she thought she had seen snakes nesting. I got to the site late on a Saturday afternoon and did observe a large backhoe parked on the lot and what seemed to be a cleanup effort in progress. A large pile of construction debris and brush and twigs had been cleared. I found evidence of nesting and two snakes in the underbrush.

The corn snake is on the list of endangered species in New Jersey and is protected by the New Jersey Endangered and Nongame Species Conservation Act. I felt the activity on the property was a threat to the corn snakes and their habitat and, as such, a violation of the Act.

There are certain legal remedies the department has when a violation is discovered. In this case, I chose to file a civil action and seek a Temporary Restraining Order to immediately stop the activity on the property. That night, the paperwork was presented to a judge used in emergencies and he signed the Order. The next morning, I went back to Indian Acres and served the Restraining Order on the people working at the site. They stopped working and left the property. It is the department's position that the injunction against the cleanup of the property should remain in effect.

Testimony of Dr. Everett Green

I am an environmental consultant to the New Jersey Department of Environmental Protection. I work with the Endangered and Nongame Species Program. The program is responsible for the protection and management of the seventy-three wildlife species which are currently on the endangered or threatened species list. I advise about animals on the list and those being considered for the list.

I have worked with the Department of Environmental Protection for nineteen years in various consulting positions. I have a bachelor's degree in environmental science and a master's and doctorate in wildlife biology. I have worked on many research projects involving habitats of New Jersey wildlife and have co-authored a book, *Wildlife at the Jersey Shore*.

Corn snakes are docile and are not venomous. They inhabit mature pine forests and like uprooted trees, stumps and rotting logs. While corn snakes are not endangered everywhere, they are in New Jersey. This is mostly due to all the new development in New Jersey and illegal poaching. Harassing, hunting, capturing, or killing corn snakes are considered illegal under the Endangered and Nongame Species Conservation Act.

The disruption that was occurring at the particular property in Indian Acres was a threat and harassment to the corn snakes present and to their habitat. I agree with Officer Poundstone that legal action had to be taken.

Testimony of Anthony V. Wilstin

I am the president of the Wilstin Family Association and I am speaking on behalf of the Association today. The Association is made up of my relatives and was formed to preserve our heritage. We are a large clan with a very amazing history. The first Wilstin to come to New Jersey was Leon Wilstin, a southern slave, who bought his freedom and settled in Indian Acres, New Jersey. His wife, Cynthia, was not able to buy her freedom so she ran away from her master to join her husband in New Jersey. Leon and Cynthia had eighteen children. Two of their sons, Walter and John, became conductors in the Underground Railroad. Walter later wrote a book about his experiences with the Underground Railroad.

John tried to earn a college degree in medicine but was turned away because of his race. He returned to Indian Acres and began a practice as a doctor of herbal remedies. John became known as the “first Black doctor of the Pines.” His son was one of the first African-Americans in the United States to graduate from Princeton University. There are many more stories of the accomplishments of my family.

The Wilstin family cemetery is a piece of land that was a part of Leon Wilstin's original homestead. We know that Leon and Cynthia are buried there. It is believed that Dr. Wilstin's first wife is also buried there along with one of their daughters. There are many other headstones in the cemetery that we are still trying to identify. The cemetery has always been owned by someone in the Wilstin family. When the Wilstin Family Association was formed, title to the land was transferred to the Association.

When the Association was contacted by the students from the Indian Acres middle school, we were very grateful to have someone interested in cleaning up the property. It has been quite a while since anyone from the Association has been to the cemetery. When the homes were being constructed on the land next door, bad feelings arose between

the developers and our family. It was our position that that land should never have been developed.

When the students told us that their cleanup had been stopped by the Department of Environmental Protection, we were in disbelief. No one in the family remembers these snakes being on the land. I wouldn't doubt it if the developers moved the snakes off their land onto ours. That cemetery is privately owned land and, as the owners, we have a right to clean it. The importance of the cemetery to the history of New Jersey and the African-American community is immeasurable. We feel that the preservation of our cemetery is very important and that the snakes can be moved. For these reasons, the Wilstin Family Association is asking that the injunction be lifted and the cleanup be allowed to continue.

Testimony of Myra Meadowbrook

I am founder of the Meadowbrook Wildlife Refuge and Nature Center located in Indian Acres, New Jersey. About twenty years ago, I bought fifteen acres of undeveloped land and began the refuge. Our mission is to take in hurt wild animals, nurse them back to health, and then release them back into their natural habitat. We have helped all kinds of animals native to the area, including corn snakes. I studied biology at Rutgers University and did some graduate work in the area of wildlife native to southern New Jersey. At one time, corn snakes were abundant in southern New Jersey. Development affected the corn snake by decreasing the area of its habitat. The corn snakes did not thrive and their numbers decreased. In a few instances, development did not disrupt the corn snakes as they just moved into an area large enough to allow growth.

The Wilstin family has asked me to comment on the corn snakes on their property. In my opinion, I do not believe that the corn snakes will survive on their property. The lot is too small and cut off from larger sections of habitat by roads and the neighboring development. It does not provide the kind of habitat the snakes like. These snakes prefer a large wooded area with decaying logs they can burrow in. I believe the snakes will have a better chance of survival if they were moved to a larger wooded area within the Pine Barrens.

INSTRUCTIONS

The State must prove by a preponderance of the evidence that the cleanup activity at the Wilstin family cemetery will cause irreparable harm to the corn snakes on the property.

SUB-ISSUES

1. Does the New Jersey Endangered and Nongame Species Conservation Act apply to this case?
2. Does the cleanup activity at the Wilstin cemetery violate the Act?
3. Is a violation of the Act enough to have an injunction issued by the Court?
4. Can the State show an irreparable harm that would be caused by the cleanup?
5. Did the adjacent development contribute to the present condition of the cemetery?
6. Is it possible for the corn snakes to be moved and not be harmed?

CONCEPTS

1. Burden of proof in a civil action, preponderance of the evidence.
2. Establishing an expert witness.
3. Temporary Restraining Orders/Injunctions.
4. Violation of a statute v. rights of individuals.

LAW

1. New Jersey Statutes Annotated 23:2A-1-15, The Endangered and Nongame Species Conservation Act
 - a. N.J.S.A. 23:2A-3e - "Take" means to harass, hunt, capture, kill, or attempt to harass, hunt, capture, or kill wildlife;
 - b. N.J.S.A. 23:2A-6 - ...no person shall take, possess, transport, export, process, sell or offer for sale, or ship, and no common or contract carrier shall knowingly transport or receive for shipment any species or subspecies of wildlife determined to be endangered by the commissioner pursuant to this Act...
 - c. N.J.S.A. 23:2A-10c (1) - The commissioner is hereby authorized and empowered to commence a civil action in Superior Court for appropriate relief from a violation of the provisions of P.L. 1973, c. 309, or any rule or regulation adopted, or any permit or order issued pursuant thereto. This relief may include, singly or in combination: (1) A temporary or permanent injunction; ...
2. New Jersey Court Rules 4:52 Injunctions

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A Purrdicament

SCHOOL

Valley Middle
Oakland
Grade 8, Second Place

TEACHER

Jena Boomhower

STUDENTS

Gabrielle Aversa, Aimee Donovan, Simona Gofman,
Zachary Leesman, Daniel Logatto, Jesse Mangold,
Jayme O'Connor, Matthew Tuohy

FACTS

Onze Lanz is a private landowner who has owned five hundred acres of land in the northwestern part of New Jersey for two years. Aside from a dirt road, his property is undeveloped, forested land. Mr. Lanz decided to create trails on his property for his family and friends to have a safe, private place to ride their All Terrain Vehicles (ATVs).

On April 12, 2010, Bob C.R. Lyffe, a founder of the Kitty Conservation Club, was driving to Midpoint State Park for a hike when he noticed logging trucks leaving Mr. Lanz's property. He stopped the driver and was told that Mr. Lanz was on the property taking down trees for ATV trails. Mr. Lyffe also heard chainsaws when he got out of his car. As a certified wildlife scientist, he believed the area was inhabited with bobcats. When he approached Mr. Lanz to warn him of the destruction of the bobcats' habitat, Mr. Lanz told him to stay off his property and to mind his own business.

Mr. Lyffe and members of the Kitty Conservation Club (KCC) are outraged with Mr. Lanz. The KCC is a nonprofit organization devoted to saving wild, endangered cats, and they are not going to tolerate any disturbance or "taking" of bobcats in New Jersey. "Taking" a species is defined by the Endangered Species Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." Harming an animal includes "the detrimental modification of a species' habitat."

Six weeks prior, I. C. Katz, a nature photographer, had spotted and taken photos of a bobcat in Midpoint State Park and sent them to KCC. Therefore, KCC notified the New Jersey Division of Fish And Wildlife (NJDFW), a division of the New Jersey Department of Environmental Protection (NJDEP), of the situation. According to NJDFW, Mr. Lanz had not filed for a take permit, which possibly would have allowed him to alter the habitat of bobcats and other animals. Had he applied for one of these permits, he would have learned that bobcats, an endangered species in New Jersey, had once lived in the area.



Onze Lanz then hired Justine Urhead, a certified expert in ecology, to survey his property. She spent forty hours over a period of two months exploring the land. She filed a report stating that no signs of bobcats were found, contradicting Bob C.R. Lyffe and I. C. Katz.

Bobcats (*Lynx rufus*) used to thrive throughout the northern part of New Jersey. As a result of poaching and overkill, the bobcat became extinct in northern New Jersey in the early 1970s. Then, between 1978 and 1982, twenty-four bobcats were brought back to the state from Maine. In 1991, they were listed as an endangered species, and it is illegal to kill them or destroy their habitat.

NJDFW has charged Onze Lanz with violating the Endangered Species Act by altering the habitat of the endangered bobcat. Furthermore, NJDFW seeks an order prohibiting Mr. Lanz from removing more trees or utilizing ATVs on his property.

ISSUE

If there are bobcats on the property, will the construction and utilization of the ATV trails interfere with the habitat of the species in violation of the Endangered Species Act?

WITNESSES

For the Plaintiff

Bob C.R. Lyffe

I.C. Katz

For the Defense

Onze Lanz

Justine Urhead

WITNESS STATEMENTS

Testimony of Bob C.R. Lyffe

Hello. My name is Bob C.R. Lyffe. I am a certified wildlife scientist, and I represent the Kitty Conservation Club. I graduated from the University of Colorado with a major in ecology and biology with a specialization in animal psychology. I have many years of experience in the field of wildlife conservation and preservation. For example, I am an original founder of the Kitty Conservation Club. The KCC runs several different research programs and animal sanctuaries and represents and defends endangered species in the area.

On April 12, 2010, on my way to go hiking at Midpoint State Park, I noticed logging trucks exiting Mr. Lanz's property. I pulled over and signaled to the truck driver that I wanted to talk to him. I was instructed to see Mr. Lanz, who shortly after came driving down the dirt road. Onze Lanz rudely dismissed me and did not wish to listen to me. I have informed my fellow KCC members of this disturbance and Mr. Lanz's rudeness. To follow through, we have contacted the New Jersey Division of Fish and Wildlife, and asked that they take action on this case.

The bobcat is an endangered species that lives in the coniferous forests of North America. Due to the extinction of bobcats in the state in 1978-1982, a total of twenty-four bobcats were transported to Sussex County, New Jersey from Maine. These bobcats have dispersed and, thanks to the work of the New Jersey Endangered and Non-Game Species Program (ENSP), have been tracked by radio telemetric devices since 1996. Over the years these devices have unfortunately detached from the animals or have depleted their battery power. Past records from the DEP mapping landscape project of 1997 show that a few bobcats had been on what is now Mr. Lanz's property. These bobcats probably have never left the immediate area where they were released and likely have reproduced to create bobcat kittens. By this time, these bobcat kittens should be fully grown adults that live in solitude. Bobcats only live approximately ten to fourteen years in the wild. Therefore, any bobcats that are found on Onze Lanz's property, or have ever passed through his property, are indigenous to New Jersey.

Bobcats' ears are very sensitive to loud and obnoxious sounds, and the ATVs would definitely scare them away. Furthermore, the bobcats in Midpoint State Park could also be harmed by the noises created by the ATVs on Mr. Lanz's property. It is very possible that the ATV riders could run over and kill the bobcats and bobcat kittens.

Before Mr. Lanz had owned this forested area, I went on many camping and hiking trips nearby, where I viewed many of the bobcat's prey, such as rabbits, rats, squirrels, turkeys, and other ground-nesting birds. Since there are ample amounts of these animals living wild in the forest, it is also likely that these endangered bobcats are living in these grounds. In addition, a bobcat's home ranges from 2,900 to 4,900 acres, and it is very plausible that bobcats haven't been on Mr. Lanz's land in two years because of their wide range. Also, the bobcat may not have been sighted during the day because bobcats are crepuscular and bimodal, meaning they are both diurnal and nocturnal, but mainly nocturnal. However, bobcats are very territorial animals, and they would not leave their domain. Therefore, it is my expert opinion that bobcats are living on Onze Lanz's property even though one might not have been seen within the two-year period he has owned the land.

Testimony of I.C. Katz

Hello, my name is I.C. Katz. I am an environmental photographer and love to photograph animals in their natural habitat. I received my master's degree from Art University. I observe animals in the wild and sell the pictures to environmental magazines and organizations, such as *National Geographic* and Conservation International. I have been in the business for twelve years now, and I am confident in my knowledge of animal identification.

On February 28, 2010, I was taking photographs in Midpoint State Park. This state park borders Onze Lanz's property. I was camping at the park for two weeks and saw a bobcat running in the forest. I took about twenty photographs of the bobcat in the woods bordering the park. I sent them to the Kitty Conservation Club soon after my trip.

Mr. Lyffe had contacted me after he noticed the logging trucks driving near the property. He asked me to be a witness for the NJDFW. I photographed a bobcat in that vicinity, and I am positive that one is living there.

Testimony of Onze Lanz

My name is Onze Lanz. I am forty-three years old, and I am a salesman for ATV Warehouse. I bought a piece of property in Sussex County two years ago. I own five hundred acres of land bordering Midpoint State Park.

I come to this property once or twice a month with my family on the weekends. I use this property for recreational purposes only, and there is no house or building on the land. My family loves the property, and we always have a blast. Riding ATVs is one of our favorite family activities to do together. Therefore, I decided I wanted to create some trails to ride on throughout the property. I soon started planning the trails and marking which trees I would need to cut down. In this area a permit is not needed to remove trees from private property. I began cutting down trees on April 12, 2010. On this day Mr. Bob C.R. Lyffe confronted me about the land I was clearing. He informed me that my land is a bobcat habitat; therefore, I was not allowed to take down trees.

Soon after Mr. Lyffe confronted me, the New Jersey Division of Fish and Wildlife notified me that the KCC was complaining about my building ATV trails. They told me that there were bobcats seen on my land, and they would not allow me to alter the property with the endangered species present. After riding around on my five hundred acres with my family, I have never seen any evidence of a bobcat. On my property there are many deer, an abundance of rabbits, and many other birds and wildlife, but no bobcats.

After hearing from the NJDFW, I hired an ecologist, Justine Urhead, to take a look at my land. Justine reported seeing a variety of wildlife. Yet, she did not find any bobcat tracks, scat, or bobcats themselves. Clearly, there are no bobcats living on my land.

Mr. Lyffe stated that I should have filed for a taking permit. However, because I was not notified of any bobcats living on the property when I bought it, I was not aware that an endangered species could be living on my land. Therefore, I did not file for one. The DEP has not mapped my property as bobcat habitat, so I shouldn't be forced to go to DFW just because some environmental wackos think they saw some bobcats.

After having my land surveyed and exploring it myself, I am confident that there are no bobcats currently living on my property. All I want to do is build some trails so that I am able to spend quality time with my family on my property.

Testimony of Justine Urhead

My name is Justine Urhead. I am a certified ecologist; I study the relationship between living things and their environment and their relationships with each other. I specialize in felines and am very qualified for my job. I have been an ecologist for a little over nine years now, and I have worked for the Triihugr Company my entire career. I attended Nei Chur University, where I earned my bachelor's degree in biology, as well as my master's degree in biodiversity and ecology. Many people have asked for my assistance in finding which species of animals and plants, if any, live on their property, and I have never let them down. I take my job as an ecologist very seriously and I can assure you, I am always careful to check every last piece of evidence I can find.

Mr. Lanz contacted me on April 30, 2010, in order to inspect his property for any endangered wildlife. He owns about five hundred acres of deeply forested land. On Mr. Lanz's property, I found deer, rabbits, birds, squirrels, foxes, chipmunks, and evidence of bears, but no sign whatsoever of bobcats. I looked for any traces of them that I could find but turned up emptyhanded. I could find no bobcat tracks, scat, dens, or actual bobcats themselves. In order to survey the area for bobcats and other species, I visited his property seven times over the course of two months, which added up to a total of about forty hours. I even checked the property overnight twice in order to search for any nocturnal creatures on the property. No matter how

hard I searched, I could not find bobcats or even any evidence of their existence. Clearly, there are no bobcats on Onze Lanz's property.

For the record, bobcats live not only in forested areas such as Mr. Lanz's property, but also in New Jersey's agricultural lands. The farm areas provide ample prey for bobcats. In addition, if the NJDFW was so concerned about the bobcat's safety, why wasn't this property established as a critical habitat? Critical habitats define specific geographic areas where endangered species live, and these areas are protected by the NJDFW. However, there are currently no critical habitats in New Jersey for bobcats.

Although I did not find any evidence of the bobcats' existence on Mr. Lanz's property, I do not believe that the construction and utilization of ATV trails would affect bobcats in any way. These trails would involve only a minimal usage of the five hundred acres that Onze Lanz owns. According to the DEP Landscape Mapping Project, the range of a bobcat is 2.8 kilometers radius. Because Mr. Lanz owns five hundred acres, there would still be plenty of room for him to build the trails.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that building and utilizing the ATV trails on Onze Lanz's property will interfere with the bobcat's habitat. Therefore, the construction would be prohibited under the Endangered Species Act.

SUB-ISSUES

1. Are there any bobcats or bobcat dens on this property?
2. Can I.C. Katz prove his photos were taken on Onze Lanz's property?
3. Did anyone else confirm the sighting?
4. Is there enough direct evidence of the bobcat's presence on the property to support the plaintiff's claim?
5. Which expert witness is more credible?
6. Should Onze Lanz have filed for a take permit?

7. Does Mr. Lanz need to utilize the full five hundred acres for his ATV trails?

may be so entered and transported without restriction in accordance with the terms of any Federal permit or permit issued under the laws or regulations of another state.

CONCEPTS

1. Burden of proof: preponderance of the evidence.
2. Endangered Species Act.
3. Credibility of witnesses.
4. Definition of a “take” within the meaning of the Endangered Species Act.
5. Direct proof vs. circumstantial evidence.
6. Definition of critical habitat.

LAWS

1. N.J.S.A. (New Jersey Statutes Annotated) 23:2A-2b. Species or subspecies of wildlife indigenous to the state, which may be found to be endangered, should be accorded special protection in order to maintain and to the extent possible enhance their numbers.
2. N.J.S.A. 23:2A-3e (Definitions). “Take” means to harass, hunt, capture, kill, or attempt to harass, hunt, capture, or kill, wildlife.
3. N.J.S.A. 23:2A-6. Taking, possession, transportation, sale of endangered species or regulated nongame species.
 1. Except as otherwise provided in this act or regulations adopted thereunder, no person shall take, possess, transport, export, process, sell or offer for sale, or ship, and no common or contract carrier shall knowingly transport or receive for shipment any species or subspecies of wildlife appearing on the following lists: (1) the list of wildlife determined to be endangered by the commissioner pursuant to this act; (2) the list of nongame species regulated pursuant to this act; and (3) any Federal list of endangered species. Any species or subspecies of wildlife appearing on any of the foregoing lists which enters the State from another state or from a point outside the territorial limits of the United States and which is transported across the State destined for a point beyond the State

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Special thanks to our attorney mentor, Francis Battersby.

Ho Ho No!

SCHOOL

Bloomfield Middle
Bloomfield
Grade 8, Honorable Mention

TEACHER

John Shanagher

STUDENTS

Atinuke Akindebe, Mohammed Asif, Megan Barron, Kimberly Bueston, Gayla Bush, Stephanie Dizon, Isabelle Franciosi, William Jefferson Gaspard, Purvi Hirpara, Khyree Johnson, Sharif Koritam, Zhaniya Lewis, Christy Marte, Omar McCullough, Xuxa Mokiem, Leanne Monaco, Isabella Petrossian, Anthony Quimi, Isiah Reyes, Alexandria Ridley, Ulysses Santos, Rendell Senatus, Siheba Stevens

FACTS

Nick Santos has always enjoyed playing Santa Claus. In the past, he has worked professionally in several small malls and stores. On November 19, 2010 he answered an ad in *The New York Times* for the position of Santa Claus at Long Hills Mall. He was interviewed by Jermaine Jefferson, the manager of the mall. The interview went very well and Nick was feeling confident that he would get the job. He was very surprised when Mr. Jefferson called to say that he was offering the job to someone else.

Nick went back to the mall and asked Mr. Jefferson why he had not been chosen. Mr. Jefferson stated that Nick had done an outstanding job during the interview. Nick had been warm and jolly and exhibited Christmas spirit. He told Nick that the mall had a reputation for providing a very traditional Christmas experience for their customers. Mr. Jefferson said that traditionally, Santa Claus is portrayed as a Caucasian. Mr. Santos was outraged and decided to sue the Long Hills Mall for discriminating against him because of his race.

ISSUE

Should Nick Santos' race determine whether or not he is eligible to play Santa Claus?

WITNESSES

For the Plaintiff

Nick Santos
Holly North

For the Defense

Barbara Johnson
Jermaine Jefferson



WITNESS STATEMENTS

Testimony of Nick Santos

My name is Nick Santos, and I'm a kindergarten teacher at Wyckoff Elementary School. I have a great deal of experience working with children. Several years ago, I volunteered to play Santa at a local church. I really enjoyed the experience. Last year, I played Santa at the Shop Rite in my neighborhood and the year before that, at a small strip mall.

One day I saw an ad in *The New York Times*. Long Hills Mall was looking for a Santa Claus. Because of my experience for the past few years, I answered the ad. I got a call from the manager a couple of days later, inviting me to come in for an interview. I was interviewed by a man named Jermaine Jefferson. He seemed to like me and I thought I had done very well. When I left the interview, I really thought I got the job.

However, several days later, I got a phone call from Mr. Jefferson saying I didn't get the job. I was very upset, so I went to the mall and asked Mr. Jefferson why he didn't pick me. I couldn't believe my ears; he actually said that the mall wanted a white Santa Claus. I could understand if there was actually a historic figure named Santa Claus, but since Santa Claus is a fictional character, who says he has to be white? Actually, since many people believe that Santa Claus is based on a Turkish bishop, people who play Santa should be darker skinned anyway. Santa Claus is about giving and caring; race has nothing to do with it. Every child in America should be able to relate to Santa Claus. We are a diverse nation and when children look at Santa Claus they should see joy, not skin color.

Testimony of Holly North

I work as an elf every Christmas. I have seen Santa Clauses who were black, white, Asian, and Hispanic. Most children are too busy being excited about Santa Claus to notice his skin color. Every once in a while I'll hear a child ask his mother why Santa has a different skin color. The parent usually responds that this is one of Santa's helpers. I've never seen a child become upset about being placed on a nonwhite Santa's lap. I saw Nick playing Santa last year at a Shop Rite. The children were

laughing and hugging him. No one seemed to mind his skin color; they were having too much fun. Santa Claus is a fictional character so why should it matter what color the person playing Santa is. Nick Santos does an excellent job playing Santa. As long as the children are happy, what else matters?

Testimony of Jermaine Jefferson

My name is Jermaine Jefferson and I am the manager of the Long Hills Mall. One of my duties each year is to hire a suitable Santa Claus for the mall. Our mall is an upscale mall whose customers tend to be very wealthy and very demanding. They expect nothing but the best and if they receive anything less, they complain to my bosses.

In early November I placed an ad for an experienced Santa Claus in *The New York Times*. On November 19, 2010 Nick Santos came to apply for the job of Santa Claus. It wasn't the best interview I've ever seen but he did an acceptable job. I'm sure Mr. Santos has done a decent job in the other places he has worked. However, here at Long Hills Mall everything is designed to give our customers a perfect and traditional Christmas. There were other applicants who did a good job too. Mr. Santos asked me if his race had anything to do with my decision. I was honest with him and said that Santa Clause is seen as a Caucasian not as an African American. Because our customers place such a high value on tradition, any Santa Claus that I hire has to look traditional. In addition, he has to appear believable to the thousands of children who come to see him. This is not racism. Our mall believes in diversity. For example, in February we have actors who perform famous speeches that were made by African Americans. We would never dream of hiring a Caucasian actress to play the part of Rosa Parks.

Testimony of Barbara Johnson

Jermaine Jefferson is right. I have three children. Each year I bring my children to Long Hills Mall so they can tell Santa Claus what they want for Christmas. We go to Long Hills Mall because they have the most realistic Santa Claus in New Jersey. This has nothing to do with race. We are an African-American family and if we believed that Long Hills

Mall practiced racist policies, we would never shop there. The traditional figure of Santa Claus has always been a Caucasian figure so that is what my children expect to see when they visit Santa Claus. If suddenly Santa was a woman or a member of another race, they would find that confusing. There is so little time for them to believe in the magic of Santa Claus, and I would never want anything to interfere with that special time in their lives. I loved the Santa Claus that Long Hills Mall hired this year and so did my children! I don't think they would have felt that way about Mr. Santos.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that Long Hills Mall violated Nick Santos' civil rights by refusing to hire him based on his race.

SUB-ISSUES

1. If Santa Claus is a fictional character, does his race matter?
2. Should the wishes of the customers at Long Hills Mall matter when it comes to making decisions about what "traditional" means?
3. Does the Civil Rights Act of 1964 apply to this case?

CONCEPTS

1. Credibility of the witnesses.
2. Burden of proof: preponderance of the evidence.
3. Diversity.
4. Discrimination.

LAW

Civil Rights Act of 1964...DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN

Sec.703. (a) It shall be an unlawful employment practice for an employer—

- (1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

Obesity Obstructs Occupation

SCHOOL

Mount Olive Middle
Budd Lake
Grade 8, Honorable Mention

TEACHER

Becky Hull-Clark

STUDENTS

Isabella Amorim, Alex Cherry, Justin Douville,
Scott Fagan, Kelly Mellusi, Julia Nicoletti,
Ian Olson, Nicole Tigeleiro, Tom Wisnewski

FACTS

Logan Johnson applied for the available health education teaching position at Mountain Valley Elementary School. He was scheduled for an interview on April 16, at 4:00 p.m., right after the students were dismissed. The school received a call at about 2:30 p.m. from Mr. Johnson, explaining to the secretary, Mrs. Martin, that he was sick and couldn't make the interview. The secretary offered Mr. Johnson the opportunity to change to a phone interview instead. Mr. Johnson accepted.

At 4:00 p.m. Dr. Rogers, the principal of Mountain Valley Elementary School, and Logan engaged in a two and a half-hour long phone conversation. Dr. Rogers had found Logan's qualifications fit for the job. He even stated, "You sound well tailored for this job, young man. I would like to meet you in person before I decide, though."

Logan agreed to meet Dr. Rogers in person. On April 19, at 5:00 p.m., Mr. Johnson had a meeting with Dr. Rogers. Logan, a 5'11", 304-pound man (BMI of 31) with Type 2 Diabetes was denied the job after the face-to-face meeting. He is now suing Mountain Valley Elementary School for weight and disability discrimination.

ISSUE

Did Dr. Rogers refuse to hire Logan Johnson because of his weight?

WITNESSES

For the Plaintiff

Logan Johnson

Dr. Miller

For the Defense

Dr. Rogers

Mrs. Martin

WITNESS STATEMENTS

Testimony of Logan Johnson

My name is Logan Johnson. I majored in "Fitness and Wellness" at All State University, and graduated with a 3.5 GPA and a teaching certification for the State of New Jersey. I applied for the position as a health teacher at Mountain Valley Elementary School. My interview was scheduled at 4:00 p.m. on April 16. However, because I contracted the flu, I was unable to make the interview. I called the secretary of Mountain Valley Elementary, Mrs. Martin, to inform her that I would not be able to attend, and she instead offered me a phone interview. I accepted, and at 4:00 p.m. that day I participated in a two and a half-hour phone interview with Dr.

Rogers, the school's principal.

He stated that he thought I was very well fit for the job and that he enjoyed talking to me. He also told me he wanted a face-to-face interview with me. I accepted and scheduled an interview for April 19. On the day of the interview, I arrived at the school at promptly 5:00 p.m. When I met with Dr. Rogers, we talked for 30 minutes about the job. I thought the interview went well and I left feeling pretty confident in myself.

However, I received a phone call the following day saying I was denied the job. I did not know exactly why I was rejected, but I thought it could be because I am an overweight man at 304 pounds, 5 feet 11 inches tall.

Testimony of Dr. Miller

My name is Dr. Miller. I am Logan Johnson's doctor. Logan is legally disabled by his obesity, weighing 304 pounds at 5 feet 11 inches tall with a BMI of 31. Adults are classified as obese if their BMI is above 30. When Logan was denied the job of the health teacher after the face-to-face interview, I knew something was up. I believe his rejection had something to do with his obesity. Logan's disability does not interfere with his work, and he would be perfectly capable of fulfilling the requirements of the position of a health teacher. He is able to do the same thing that a normal teacher must do. In my opinion, Logan is fit for the job, and his obesity will not interfere with his work.

Testimony of Dr. Rogers

My name is Dr. Rogers. I am the principal at Mountain Valley Elementary School and have been for 20 years. I have been looking for a health teacher who will inspire students to have healthy habits at a young age. I believe that health class is very important to our children since almost 50% of the U.S. population is overweight. Logan Johnson applied for the job and was scheduled for an interview on April 16 at 4:00 p.m. At promptly 2:30 p.m. Mrs. Martin came to my office informing me that Mr. Johnson was sick and could not make the interview. Mrs. Martin asked if a phone interview was better for us, and we both agreed. After talking

with Mr. Johnson for two and a half hours, I thought he was qualified for the job, but I wanted to meet him in person.

On April 19 at 5:00 p.m., Logan Johnson and I met and talked for about 30 minutes. After talking a little while longer, I felt that there could be a better candidate for the job. I then denied Mr. Johnson the position.

Testimony of Mrs. Martin

My name is Mrs. Martin, and I've been the secretary of Mountain Valley Elementary School for 15 years. I know that our principal, Dr. Rogers, has been searching for a health teacher who will encourage healthy habits in children at a young age. Mr. Logan Johnson, who applied for the job, scheduled an interview for April 16 at 4:00 p.m. That day at promptly 2:30 p.m., Mr. Johnson called me claiming that he was unable to attend the meeting because he was sick with the flu. I offered him the opportunity for a phone interview instead and he accepted.

The phone interview was supposed to start at 4:00 p.m. I saw Dr. Rogers walk into his office and start talking. Two and a half hours later the interview ended. I was just starting to pack up my things when Dr. Rogers came up to me and told me the interview went well but he wanted to meet face-to-face. They were supposed to meet April 19 at 5:00 p.m.

On that day a rather heavysset man, who I assumed was Mr. Johnson, came in, so I showed him to Dr. Rogers' office. He seemed like a nice guy, but he was pretty big, if you know what I mean. About 30 minutes later they came out of the office. After Mr. Johnson left, Dr. Rogers told me that he would not hire him, but didn't say why. At that time, Dr. Rogers indicated that he would continue his search for a health and fitness teacher.

INSTRUCTIONS

The jury must decide by a preponderance of the evidence that the defendant unlawfully discriminated in employment practices.

SUB-ISSUES

1. Is Logan Johnson fit for the job?
2. Was Mr. Johnson's rejection due to factors other than his weight?
3. Are any of the other teachers in the school legally obese?
4. Did anyone else apply for the job?

CONCEPTS

1. Credibility of witness.
2. Burden of proof: preponderance of the evidence.

LAW

The Americans with Disabilities Act of 1990 (ADA) offers protection against discriminating against employees with disabilities, which includes obesity.

Fair or Naughtfair?

SCHOOL

Wanaque Elementary
Wanaque
Grade 8, Honorable Mention

TEACHER

Paula Basedow

STUDENTS

Toni Lyn Brindisi, Antigone Burke, Cassandra Dean, Michael Garitta, Darren Gould, Annie Hnatiw, Charles Huber, Michal Hughes, Dylan Ilioski, Natalie Leto, Joseph Lopez, Matthew Mackin, Ashley Pietrzak, Holly Stoker, Brooke Stone, Tyra Thomason, Brian Vivolo

FACTS

Austin Tistic is an autistic eighth-grader at Naught Fairington Middle School. Austin has been in the drama program since elementary school and wishes to participate in this year's middle school drama production. Ms. Donna Drama recently took charge of the drama program after her predecessor retired. She readily admits to having no experience with autistic students and therefore requested that an aide accompany Austin to each meeting of the club. Since the club meets weekly during the school activity period, Ms. Ivana Helpaustin, Austin's special education teacher, sent one of her classroom aides with Austin. This arrangement was, however, not available when Austin signed up to participate in the after-school drama production, so Ms. Drama requested Austin's parents either attend the rehearsals with their son or provide another adult as an aide.

Austin's parents stated that they were unable to leave work early on a regular basis for rehearsals, but would try to obtain an aide for their son. Ms. Drama continued to allow Austin to participate in the rehearsals until the aide could be arranged despite several outbursts and tantrums that interrupted rehearsals. However, after several weeks of these continued incidents and after no aide materialized, she banned Austin from the drama production. Austin's special education teacher insists that Austin be given a fair chance like everyone else. Austin's parents both work full time to support their son and are unable to attend the practices. Austin's parents

are suing the Naught Fairington School District because the needs of their son are not being met in order for him to participate in the school production.

ISSUE

Did Naught Fairington Middle School violate the rights of autistic student Austin Tistic by preventing him from participating in the school's drama production?

WITNESSES

For the Plaintiff

April Tistic
Ivana Helpaustin

For the Defense

Donna Drama
Prince E. Pal

WITNESS STATEMENTS

Testimony of April Tistic

My name is April Tistic and I am the parent of an eighth-grader at Naught Fairington Middle School. My son Austin has attended schools in the Naught Fairington School District since he was identified for inclusion in their preschool handicapped program at three years old. It was actually Austin's preschool

teacher who provided a great deal of assistance in helping my husband and me seek the proper medical professionals who then diagnosed Austin with autism. I quickly read everything I could on the subject and learned that although there is no cure for autism, through early intervention and treatment, the diverse symptoms can be greatly improved. I became actively involved in my son's treatment in order for him to reach his full potential and become a productive member of society.

To my delight, through my research I found that the Naught Fairington School District had a very good reputation for their autistic program. Until this year my husband and I couldn't have been happier with the progress our son has made due, in large part, to the wonderful education he has been getting in the Naught Fairington School District. My son Austin has been performing with the Naught Fairington School District drama club since elementary school. He has adored acting and singing and I cannot stand by and watch as his childhood dreams are crushed. I know that working with an autistic child is not easy, but my son's rights are being violated when in his eight-grade year he has been denied acceptance into a school drama production that is open to all district students.

I want my child to continue participating in the school drama program because it has helped Austin develop socially and is an activity that he can continue to be involved with throughout high school. The school has asked my husband and me to come after school to serve as an aide for Austin, however, we both work and can't afford to take off the time each week to do this. We send Austin to this school because of their program for autistic children. Isn't this program simply an extension of the services that should be accessible to their entire school population? Accommodations should have been made by the school district in order for my son to participate in the annual drama production. My husband and I know our son's rights according to the Individuals with Disabilities Education Act and are therefore suing the Naught Fairington School District for discriminating against our handicapped child by excluding him from their middle-school drama production.

Testimony of Ivana Helpaustin

My name is Ivana Helpaustin and I am completely flabbergasted by this unjust act of prejudice against my student Austin! I have been a special education teacher for several years and never, in all of my years as an educator, have I ever come across such a vile attempt to exclude this poor special needs boy from an extracurricular activity. I have been working with Austin for roughly four years now, and I am aware of exactly what this young man is capable of. Austin may not be the best actor in our school, but he does show a great deal of potential. With encouragement he could be an outstanding actor and a wonderful addition to the after-school drama program.

Instead of encouragement and support, however, Austin was told he needed to be glued to an aide. This was very embarrassing to Austin who wanted, more than anything, to fit in with his fellow students. In my class Austin has shown exceeding progress in his social skills. Programs such as this should be a positive opportunity for students such as Austin to help further their social skills in a real world setting. In my opinion, insisting that an aide accompany Austin to drama rehearsals was undermining any progress he made in developing those social skills.

I did speak to Ms. Drama about my concerns and suggested she request having an aide to help oversee all the drama students so that Austin wouldn't be made to feel different. I even offered to serve as a temporary aide, but with two young children of my own at home I was regrettably unable to commit to attending all the rehearsals and performances. In all fairness, Ms. Drama did speak with school administration about providing her with an aide, as I suggested, but when our principal, Prince E. Pal, insisted that it was the parents' responsibility, not the school's, she was forced to give Austin's parents two weeks to find an aide. I feel appalled by the fact that when Austin's parents were unable to provide the mandated aide, no other compromise was offered and Austin was excluded from an opportunity afforded every other student at Naught Fairington Middle School. Austin had every right to be in Naught Fairington Middle School's after-school drama program!

Testimony of Donna Drama

My name is Donna Drama. With all due respect, I firmly believe that Austin does not have enough self-control to manage his behavior onstage in order to perform in Naught Fairington Middle School's drama production. I know that Austin has developed enough self-control to participate in the drama club, but I just could not risk the chance of him having one of his outbursts during the show. This play is supposed to be as professional as possible. The last thing we need is Austin ruining the entire production. With him in the play, the future stars of America will be restrained from reaching their full potential. This play involves a substantial amount of singing, advanced dance routines and stunts. Austin poses a huge distraction to the other student actors. He has repeatedly affected our rehearsals with his rambunctious behavior. I truly tried to work with Austin, but I cannot continue to put the needs of one student over the needs of the other students in the production.

Without an aide to control Austin's outbursts, I stand by my decision to remove him from Naught Fairington Middle School's annual production. My students wanted the play to be remembered for its content, not for the outrageous behavior of the one child who couldn't manage himself during the performance. This is not a daycare center we're running here; it's a semi-professional youth theater that faces everyone with challenges. In no way am I implying that Austin isn't a great kid – because he is – but it was obvious after the first two rehearsals that I really just could not continue to admit Austin into my program without a parent or aide to help subdue him, when he apparently could not. I am sorry an aide could not have been provided to allow Austin to continue performing, but I stand by my decision.

Testimony of Prince E. Pal

Hello, I am Prince E. Pal, the principal of Naught Fairington Middle School. The Naught Fairington School District prides itself in the diversity of its student population and our ability to meet the individual needs of this diverse population, however, this is not an issue of intolerance toward a student with a disability. This is a behavioral issue. I agree with Ms. Donna Drama 100%. When it became apparent that the after-school program was too over stimulating for Austin, it was not unreasonable to request that the child's parents provide an aide. This was the only way the drama program could provide the type of supervision Austin required.

Our students' welfare must be our primary concern. It was unfortunate that Austin's parents were unable to obtain an aide in order for their son to continue to participate in the annual drama production. However, it was totally unreasonable for Mr. and Mrs. Tistic to expect that the Naught Fairington School District provide an aide for their son. In this day of funding cuts for education, we are lucky we were able to provide the funding to continue this worthwhile after-school activity. We certainly could not have provided additional funds for a personal aide for Austin.

It is our school policy for all students to be eligible to participate in any after-school clubs and activities; nonetheless, an aide was necessary for Austin in order to ensure the discipline we expect from our students. To expect anything less would be discriminatory toward the rest of our student population. Naught Fairington Board of Education's Discipline Code clearly states that "after taking all necessary steps and following protocol a student may be removed from any and every after-school activity should the district's discipline code be violated." According to Naught Fairington Student Handbook Policy 52b, "Any student that causes disturbances in class or during extracurricular activities will be removed from the aforementioned class or activity." Ms. Donna Drama followed all of the proper procedures and even went out of her way to get an aide for Austin. Neither she nor the Naught Fairington School District violated the rights of Austin Tistic.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that the Naught Fairington School District violated the rights of autistic student Austin Tistic by preventing him from participating in the school's drama production due to his disability and that this action violates the rights guaranteed to disabled people through the Individuals with Disabilities Education Act.

SUB-ISSUES

1. Does the school district have a legal responsibility to supply an aide in order for Austin to participate in the school's drama production?
2. Was it Austin's parents' responsibility to supply an aide in order for Austin to be able to participate in the after-school activity?
3. Does the drama teacher regularly exclude students with disabilities from school productions?

CONCEPTS

1. Burden of proof: preponderance of the evidence.
2. Credibility of witnesses.
3. Prejudice and bias based on disability.
4. Circumstantial evidence versus direct proof.
5. Rights of the community versus the rights of the individual.
6. Reasonableness of actions taken.
7. Emotional damage.

LAWS

- **Individuals with Disabilities Education Act Sec. 12132. Discrimination**

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Sec. 12201. (f) Fundamental alteration

Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

- **Americans with Disabilities Act of 1990**
- **ADA Amendments Act of 2008**
- **Naught Fairington Board of Education's Discipline Code:** After taking all necessary steps and following protocol a student may be removed from any and every after-school activity should the district's discipline code be violated.
- **Naught Fairington Student Handbook Policy 52b:** Any student that causes disturbances in class or during extracurricular activities will be removed from the aforementioned class or activity.

Wheel He Get a Chair?

SCHOOL

Orchard Valley Middle
Sewell
Grade 8, Honorable Mention

TEACHER

Joan Dever

STUDENTS

Gabrielle Bianchi, Kayla Bride, Jillian Calandra,
Rachel Cook, Vanessa Fath, Sarah Oberman,
Meghan O'Neill, Gianna Ricchezza

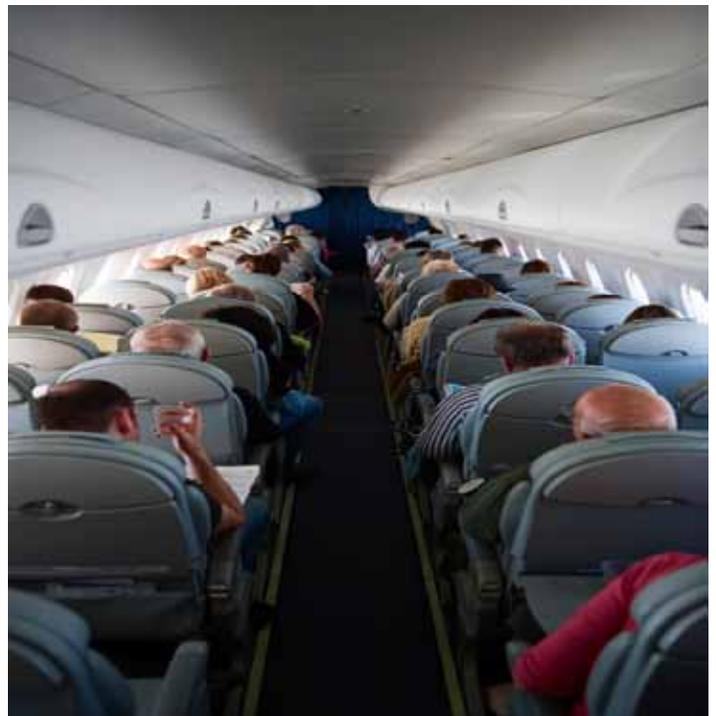
FACTS

Will E. Chair is paralyzed from the neck down and rides in his wheelchair on every airline flight. This disability is a result of an automobile accident. Will travels to Philadelphia, Pennsylvania once every two months for minor operations due to his injury. Every time he travels he flies Cross Country USA airlines. When Will tried to schedule his bimonthly flight to Philadelphia, he came across the fact that there was no available flight to Philadelphia at the time scheduled by his doctors. As a result of this, and his need to get to his next surgery, Will decided to fly Air America. It was critical that he land in Philadelphia in time for his surgery, which could not be rescheduled.

Arriving at Air America for his flight, Will E. Chair checked in, made it through security, and then descended into the waiting area. While waiting for the plane to be cleaned from the previous flight, Will looked around, noticing that there were three other handicapped passengers waiting along with him. Thinking nothing of it, the flight attendants started calling passengers with disabilities first. Will noticed that two of the handicapped passengers were helped into regular seats. As he proceeded to his spot, Will realized that it was already occupied by another man.

Cross Country USA airlines was able to accommodate as many handicaps as needed, therefore Will never had an issue finding a seat with them. On the other hand, Air America, his new airline, stated that there were only more regular

seats available, but Will, physically, cannot be taken out of his wheelchair. The flight attendant never asked the other man if he could be removed from his wheelchair and be placed into a regular seat. Because the man who was already strapped in purchased his ticket first, Will Chair was asked to leave the airplane and was told he would get reimbursement. Will realized that Air America sold Will a wheelchair appropriate ticket when there was not enough seating for all the handicapped passengers. Will E. Chair is suing Air America for lack of accommodations in order to provide a diversity of people, especially the handicapped, the right to fly on a given flight.



ISSUE

Did Air America fail to accommodate Will's disability by not having enough handicapped seating?

WITNESSES

For the Plaintiff

Will E. Chair

Manny Jerr

For the Defense

Nathaniel Cherryblossom

Flo Tendant

WITNESS STATEMENTS

Testimony of Will E. Chair

I am Will E. Chair and I am suing Air America for unfair treatment of the disabled. I am paralyzed and I cannot move anything below my neck at all. I need a lot of help in and out of my wheelchair. I have flown on Cross County USA airlines for over a year now to get various surgeries every two months, and it has been working out great. I was disappointed to learn that Cross Country didn't have a flight to Philadelphia for my surgery so I decided to fly Air America.

About a year ago I was in a devastating car crash where a car rammed right in the side of the car where I was seated. I was rushed to the hospital and was lucky that I was only paralyzed and not dead. I can't even imagine trying to get out of my wheelchair without any help. At home I have to have two strong men lift me out. When this occurs, the pain I feel is exorbitant. This is why I must have my wheelchair locked in on every airline flight, instead of being moved to a regular seat.

As I boarded the plane, the flight attendant said the handicap seat was taken, but there were a few seats that were not taken. It was ridiculous that they couldn't take the seat out and strap in my wheelchair. I missed a very important and expensive surgery just because they couldn't put

my wheelchair in. Cross Country would have taken the seats out for me.

Since Air America didn't get me to my destination, I am looking for compensation. The surgical staff was prepared for surgery and submitted a bill. I feel that because Air America did not get me to my destination because they did not have a seat available, they should be liable for the bill. I also want the refund they promised me as well as contributing to the cost of the new surgery that is now scheduled. If I have any complications due to the delayed surgery, Air America should be held responsible. I now feel that Air America was unfair in not helping to accommodate me.

Testimony of Manny Jerr

My name is Manny Jerr, and I am currently the manager of Cross Country USA Airlines. Our airline competes with Air America. Over the years that I have been manager here, we have had many different people fly with us, including people with disabilities. We have never had a problem with the number of people in wheelchairs on the plane. Unlike Air America, we provide seating for handicapped customers whenever they need it. All of our seats on a plane can be removed and allow for a wheelchair to be locked in place. Air America has limited seating for handicapped passengers, which could bring them problems. We feel very strongly about providing equal seating for all passengers.

Will E. Chair is a frequent flyer on Cross Country USA Airlines because of his scheduled operations once every two months in Philadelphia. When he tried to schedule a flight to Philadelphia with our airline, there weren't any flights available. He had his operation already scheduled and could not change it based on flights, so he chose a different airline (Air America). Will has never run into a problem with seating for himself during the many times he has flown with our airline because we find it essential to accommodate all of our customers.

Testimony of Nathaniel Cherryblossom

I am the manager of Air America, Nathaniel Cherryblossom. In the past, our company has flown many handicapped passengers. Our planes each have the capability of flying one handicapped passenger who cannot be removed from his or her chair. Each flight, this handicapped slot is hardly ever used. To me, it does not make sense to have more handicapped seats if they are rarely used. We already lose money from the unoccupied handicapped spot each flight.

It was unclear that Mr. Will E. Chair was handicapped when he ordered his ticket. When he arrived at the airport, he could not be put on his plane because another man was already occupying the handicapped seat. This was a very rare occurrence. We then had to handle the situation on a first-come, first-served basis. Our airline provides help to handicapped passengers who are able to move to a regular seat. We asked Mr. Will E. Chair if he was able to be helped into a normal seat, but he said he was unable to. Therefore, he was asked to leave the plane. We understand he needed this flight, but as a compromise we offered a reimbursement.

Testimony of Flo Tendant

Hi, my name is Flo Tendant. I have been a flight attendant with Air America for six years. We have never had any issues or problems with handicapped people on our flights. That's why I was very shocked to deal with the situation with Mr. Will E. Chair.

There is one spot on each Air America plane for a wheelchair to be locked into place. The ticket for the spot was sold already to another handicapped man. Somehow there was a miscommunication somewhere and Mr. Chair bought a second ticket for that wheelchair space. So when Mr. Chair boarded the plane and saw he had no space, he became confused and annoyed with the other passenger. There were a few extra empty seats throughout the plane that we offered to Mr. Chair, but then he told us he was paralyzed from the neck down and could not be taken out of his wheelchair. Since Mr. Chair did not give us this information beforehand and he was the second person to purchase a handicapped

space, we had to take him off the plane. There was really nothing I or anyone else could have done.

I understand that Mr. Chair was flying to go get an operation and I do feel sorry about what happened, but as I said, there was really nothing else that could have been done. This whole situation has been a huge disturbance to Air America customers and passengers. I think the problem was blown way out of proportion and is best to be forgotten about.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that Air America has violated the Americans With Disabilities Act of 1990 and the Air Carrier Access Act of 1986 by not having enough seating for Will to go on the plane.

SUB- ISSUES

1. Should Will have mentioned that he was paralyzed from the neck down when purchasing his airline ticket?
2. Could Will have been more clear when asking for a seat on the plane?
3. Could the plane attendant have asked if it was safe to put Will in the non-handicapped seat?
4. Should every airline ask if each handicapped person is capable of sitting in a non-handicapped seat?
5. Should an airline be held responsible to meet the special needs of customers it is not made aware of beforehand?
6. Why is it that Cross Country USA airline can accommodate more of a diversified group of people, specifically the handicapped, than Air America?
7. Should every plane have a certain amount of handicapped seating?
8. Is it possible that Will could have searched for another airline to get to his destination on time?

CONCEPTS

1. Illegal discrimination.
2. Failure to effectively communicate.
3. Burden of proof.
4. Failure to fulfill customer's needs.
5. Failure to treat all people equally.

LAWS

1. Americans With Disabilities Act: Public Services - Cannot deny services to people with disabilities, participation in programs, or activities which are available to people without disabilities.
2. Air Carrier Access Act: This guide is designed to offer travelers with disabilities an authoritative source of information about the Air Carrier Access rules: the accommodations, facilities, and services that are, and are not, required.

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Noseplug Association v. Town of Trashton

SCHOOL

Harrington Park
Harrington Park
Grade 8, Honorable Mention

TEACHER

Joan Dever

STUDENTS

Olivia Budinich, Esther Choi, Luke Fiore,
Timothy Gleason, Lucas Silver

FACTS

Four years ago, in the town of Trashton, NJ, an incinerator was built. The town promised that there would be no impact on the neighborhood. During the planning stages, there was much controversy over the location of the plant as well as environmental issues that could arise. In the end, it was decided that the plant would be built in the southernmost corner of the town border. This part of town was home to mostly blue-collar workers and contained smaller homes, cottages. The location was set away from the business district. Residents of the area were assured that modern processing and quality controls would assure that noise and odor would never be an issue. Additionally, the income that the incinerator would produce would help with property tax relief.

After building the plant, many complaints from the south side of town began to be heard. Most of these complaints revolved around sound pollution and emissions emanating from the factory. Citizens stated that the trucks would arrive in the middle of the night with no regard for those who are sleeping, and in the middle of the day with no consideration to those who are trying to relax. In addition, no relief could be found from the almost imperceptible yet pungent odor. The company responded weakly to these complaints and lacked the reaction that the citizens desired. A local neighborhood association evolved in response to these concerns and the knowledge that the property values on their homes was depreciating.

The Noseplug Association has filed a lawsuit against the town of Trashton requesting that the plant be shut down due to environmental concerns such as noise, traffic and emissions. The citizens also demand compensation for the pain and suffering they have endured as a result of the construction of the incinerator.

ISSUES

Should the Trashton Incinerator be permanently closed for violation of noise and emission regulations and the Town Council provide monetary compensation to the members of the Noseplug Association for the pain and suffering caused by these violations?

WITNESSESS

For the Plaintiff

Giovanni Remack
Jose Goya

For the Defense

Josephine Tocksen
Joe Garbagio

WITNESS STATEMENTS

Testimony of Giovanni Remack

My name is Giovanni Remack I have been working with the people living in the south side of Trashton for 15 years. These houses have never been as highly valued nor have the people ever been as wealthy as the other side of town. However, I have never witnessed such a sudden and preventable drop in property value in all of my years. It has been four years since this horrendous, disgusting incinerator was built. Every day since then, a faint yet repulsive odor has permeated the air, and every few hours, a massive truck drives through the previously quiet neighborhood and disrupts each household with its noise. Loud noises emanate from the incinerator in the middle of the night. It is no wonder that no one wants to live here; I myself certainly wouldn't want to live here and neither do my clients.

I have a client and a close friend who is moving due to a new employment opportunity. He had picked out a new home that would have matched the value of his current home before it was reappraised and now has no hope of being able to afford it. This job is his best hope of keeping food on the table for his wife and two ravenous kids, and it is being put into jeopardy because of the negative impact this incinerator has had on his neighborhood.

The town has not kept its promise. The small compensation in tax relief is not worth the financial stability of these families. Clients looking to purchase homes in this town do not want to look on the south side as the issues of noise and odor are well known throughout this county. We cannot permit profit to take priority over the citizens the council is supposed to serve. Their complaints have been ignored for too long. It is time to shut down the plant and recognize that a mistake was made. An incinerator of this size and scope does not, and never did, belong in a family neighborhood. The environmental impact is too great and it is time to shut it down.

Testimony of Jose Goya

My name is Jose Goya I have been living in the town Trashton since my father set up a restaurant

with our life's saving when I was only five. I grew up in this town, I met my wife in this town, and I raised my kids in this town. I love this town so believe me when I tell you that this monster of an incinerator is making my home unlivable. No one liked the truck noise from the beginning, but I was able to ignore it. The way that I saw it was that it was the sound of someone making an honest living. My wife wouldn't shut up about it, but it wasn't worth it for me to complain. It got worse though. They didn't just come in the middle of the day. The trucks started to come in the middle of the night. It made the kids stay up all night. I tried to tell myself that it would build character, but I started to become really annoyed with them. I thought that it couldn't get any worse than that. I was dead wrong.

Apparently, that was only the construction. Once the plant was finally operational, a horrible smell came. I've never smelt the inside of a week-old horse carcass, but I believe that this incinerator is pretty close. This was the last straw. They tell us that they are meeting the EPA requirements for emissions, but I wonder how that can be true when the smell is so offensive. This part of town has almost become a living hell. I want to be able to live my life without this incinerator getting in my way. I would gladly pay more taxes to be able to get on with my previous incinerator-free life. I think that the council owes us some reparations too.

No one should be allowed to subject people to such environmental torture. The noise, the smell, the emissions, this has to stop. Closing the incinerator is what the residents of the south side of town have been asking for. Our pleas have fallen on deaf ears. This terrible wrong must be righted and we should be fairly compensated for our pain and suffering.

Testimony of Josephine Tocksen

I am Josephine Tocksen and I am the president of the Trashton Town Council. Several years ago, after months and months of zoning meetings, town meetings and EPA meetings, the town of Trashton made the decision to build an incinerator within the town borders. The incinerator has been up and running with great success for four years now.

Recently the Noseplug Association filed a lawsuit against the town demanding that the incinerator be

permanently closed, but I disagree. These people do not understand the benefits that this incinerator brings to this town. The construction of this incinerator has created jobs for many local workers. We have employed truck drivers, managers, shift workers and engineers. The creation of these jobs has had a positive impact on the unemployment rate. Not only have we created jobs, we are creating revenue for the town. Trash that is collected from surrounding towns is driven here to be burned. We charge these towns a sizable fee for this convenience. We are using this income to improve our public facilities like schools, playgrounds and the downtown area. The incinerator has allowed us to make some drastic and much needed improvements that benefit all the citizens who live here.

I was born and raised in this town. I live, work, shop and socialize throughout the community and I have never smelled this “odor” they speak of. The workers themselves have never made any complaints about the smell and they spend eight hours a day within the facility. I’ll tell you what smells and that is landfills. If we had a landfill instead of an incinerator, then there would be something to complain about!

The facility continues to meet and supersede any and all EPA requirements. Our incinerator is highly efficient and is inspected regularly. The incinerator is needed by this town and the council has put careful and detailed regulations in place. The environment has not been compromised in any way. A small group of people are looking for a problem where one does not exist.

Testimony of Joe Garbagio

Hello, my name is Joe Garbagio and I am the manager at Trashton Incinerator. I have been working for incinerator companies for seventeen years and recently started working for this company. Things ran smoothly for the past four years and there were very few complaints from the town folks. Then, all of a sudden about three months ago, they form this association and the complaints start piling in! To me it seems like they planned the whole thing to get some money out of the town.

I walk into this facility everyday and I smell nothing. I spend my day inside my office and I smell nothing. The association is exaggerating. This facility is more modern and has better environmental protections than any other facility that I have worked at. After a long day of work, I make it a top priority to check the incinerator before I go home for the night. I personally make sure that the filters are clean and operating properly. In addition to the checking the filters, I run an emissions evaluation to ensure that the machinery is operating adequately.

When my day is done, I travel to my apartment in this very town where I, my wife and beautiful daughter get a good night’s sleep. After my hard day of work earning an honest living, I peacefully drift off into a good night’s slumber and hear no supposed disturbances from the incinerator plant. This group is seeking financial rewards for a problem that does not exist.

INSTRUCTIONS

The Noseplug Association must prove by a preponderance of the evidence that the Trashton Incinerator has violated the town regulations with regards to noise and emissions and, therefore, must be shut down while additionally compensating the members of the association for pain and suffering.

SUB-ISSUES

1. Is the factory meeting noise and emission regulations?
2. Is there an obvious odor emanating from the facility?
3. Are the noise disturbances occurring during “quiet” hours?
4. Are the people over-exaggerating or is the factory under-exaggerating the presence of an odor?
5. Are the citizens of this town being unreasonable about the noise?
6. Is the facility meeting EPA regulations?

CONCEPTS

1. Credibility of the witness.
2. Preponderance of the evidence.
3. Burden of proof.
4. Environmental Protection Standards.

LAW

Trashton, NJ Noise Ordinance

Chapter 135

NOISE

GENERAL REFERENCES

Peace and good order - See Ch. 143.

§ 135-1. Findings; policy; scope.

- A. Findings.
- 1) Excessive sound and vibration are a serious hazard to the public health and welfare, safety and the quality of life.
 - 2) A substantial body of science and technology exists by which excessive sound and vibration may be substantially abated.
 - 3) The people have a right to and should be ensured an environment free from excessive sound and vibration that may jeopardize their health or welfare or safety or degrade the quality of life.
- B. Policy. It is the policy of the Borough of Trashton to prevent excessive sound and vibration which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life.
- C. Scope. This chapter shall apply to the control of all sound and vibration originating within the limits of the Borough of Trashton.

NOISE - Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

NOISE DISTURBANCE - Any sound which endangers or injures the safety or health of humans or animals, or annoys or disturbs a reasonable person or normal sensitivities, or endangers or injures personal or real property.

Clean Air Act Roles and Responsibilities

The Clean Air Act is a federal law covering the entire country. However, states, tribes and local governments do a lot of the work to meet the Act's requirements. For example, representatives from these agencies work with companies to reduce air pollution. They also review and approve permit applications for industries or chemical processes.

EPA's Role

Under the Clean Air Act, EPA sets limits on certain air pollutants, including setting limits on how much can be in the air anywhere in the United States. This helps to ensure basic health and environmental protection from air pollution for all Americans. The Clean Air Act also gives EPA the authority to limit emissions of air pollutants coming from sources like chemical plants, utilities, and steel mills. Individual states or tribes may have stronger air pollution laws, but they may not have weaker pollution limits than those set by EPA.

EPA must approve state, tribal, and local agency plans for reducing air pollution. If a plan does not meet the necessary requirements, EPA can issue sanctions against the state and, if necessary, take over enforcing the Clean Air Act in that area.

EPA assists state, tribal, and local agencies by providing research, expert studies, engineering designs, and funding to support clean air progress. Since 1970, Congress and the EPA have provided several billion dollars to the states, local agencies, and tribal nations to accomplish this.

State and Local Governments' Role

It makes sense for state and local air pollution agencies to take the lead in carrying out the Clean Air Act. They are able to develop solutions for pollution problems that require special understanding of local industries, geography, housing, and travel patterns, as well as other factors.

State, local, and tribal governments also monitor air quality, inspect facilities under their jurisdictions and enforce Clean Air Act regulations.



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