for grades 7–8

MOCK TRIAL EXERCISES

Featuring Winning Cases from the
New Jersey State Bar Foundation's
Law Adventure 2010 Competition

Contents

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 2010 Competition. Themes for the 2010 contest were as follows: (1) Animal Law Issues (2) Fourth Amendment Rights.

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 "Dangerous" Dog

SCHOOL
Glen Rock Middle
Glen Rock
Grade 7, First Place

TEACHER
Mary Morrow

STUDENTS
Madeline Basirico, Ann Burke, Kyra Gilbreath, Tyler Hirschfeld, Piotr Lukaszek, David Mendelsohn, David Panger, Madeleine Seibold, Alexa Strauss

FACTS

Beth Lou is a student at Igetsued School in the town of Perilville. The school's motto is "Every Child Counts." This small town has only one elementary school. Within the school, common areas are used by all classes such as the lunchroom, music room, library, gymnasium, and auditorium. Beth Lou is an elementary student who is highly allergic to the service dog of a fellow student, Bobby Mitchell.

Bobby is paralyzed from the waist down as a result of a serious accident. He has been a student at Igetsued School since kindergarten and returned to his home school after recovering from his accident. He has a service dog named Oscar who has been trained to perform tasks for the benefit of Bobby. Oscar helps him do simple tasks such as opening doors, picking up school supplies and carrying his backpack.

Beth's mother, Sue Lou, is suing the Perilville School district for letting Bobby's dog come to school, risking the health of her child. Beth Lou is not just allergic, but highly allergic. If not on medication in the presence of the dog, she could have severe allergic reactions. Although Beth Lou's mother recognizes the needs of Bobby, she believes that her daughter's health needs should not be considered less important than the needs of another student. Therefore, she is filing a civil suit against the Perilville School District for allowing the service dog in the school.

ISSUE

Can a service dog whose presence in the school adversely affects the health of another child in the school be considered a "Potentially Dangerous Dog" that "poses a serious threat of bodily injury"? Bodily injury means ". . . physical pain, illness, or any impairment of physical condition," according to the New Jersey Dog Law Liability Statute.

WITNESSES

For the Plaintiff

Sue Lou

Dr. Allie Ergy

For the Defense

Tyler Mitchell

Dr. Simon Charge

WITNESS STATEMENTS

Testimony of Sue Lou

Every day that this dog comes into this school Beth suffers from allergic reactions. Her eyes swell, she develops a rash, and her breathing becomes wheezy. This exacerbates her asthma and therefore she risks having an asthma attack, which could stop her breathing. She is now taking daily medication to prevent this from happening, but the medication makes her drowsy. I have watched my daughter change due to the side effects. She has been suffering in school and her grades are slipping drastically. It kills me to see her grades fall when she really doesn't have any control over it.

Although I am compassionate to Bobby's needs, I believe there are other options for providing him with assistance within the school. This pet should not be allowed in school. This dog is a threat to my daughter's health. It is causing my daughter an illness and an impairment of a healthy physical condition. Therefore, this dog should be considered a Potentially Dangerous Dog, according to NJ Dog Laws, and not be allowed in the presence of my daughter.

Testimony of Dr. Allie Ergy

I am Dr. Allie Ergy. I am a pediatric allergist with a medical degree from Stanford University School of Medicine. Beth has one of the worst cases of allergies I have ever seen. She also has asthma, which makes her reactions to allergens worse. From my medical viewpoint, I do not think it is safe for Beth to be going to school with a dog in her presence. It is unsafe for her to be taking such heavy medication every morning. Continual use of antihistamines can cause side effects including drowsiness, dizziness, excitability, headaches, nausea, irritability, poor coordination, and restlessness. These side effects obviously affect her performance both in school and everyday life.

In addition, these medications are expensive and the ongoing costs of the prescriptions are not completely covered by insurance. It is my professional opinion that Beth would be better off if she were not in daily presence of a potentially dangerous allergen.

Testimony of Tyler Mitchell

A year ago my son Bobby and I were in a terrible accident. Since then Bobby has been in a wheelchair, paralyzed from his waist down. Bobby wants to be back in his school with his friends. He wants to have some part of the life he had before the accident. Bobby has trouble with simple things other children in school can do like reaching for the doorknob, picking up school supplies, and pushing buttons on the service elevator in school. Bobby now has Oscar, his service dog, who assists him with these simple but important tasks.

Oscar is with Bobby to serve a need. He is a service animal, not a pet. His presence helps lessen the impact of this horrible accident. This gives Bobby the independence and confidence he needs to go back to the school he knows so well. We realize that Oscar is a Golden Retriever, which is a breed many people are allergic to. However, only certain breeds of dogs can be service dogs. The fact that someone wants to deprive our son of his rights is inhumane and violates the Americans with Disabilities Act.

Testimony of Dr. Simon Charge

Bobby's service dog, Oscar, is trained to provide assistance to Bobby. Therefore, Oscar meets the definition of a service dog. As a public school, we must follow the Americans with Disabilities Act, which states that we must allow people with disabilities to bring their service animals into our building. In addition, we must follow the Individuals with Disability Education Act, which requires us to provide Bobby, and all children with disabilities, an education in the "least restrictive environment." Bobby's parents feel strongly that Bobby should be educated in this school. His friends are here, as well as the teachers who have known him since he started kindergarten here. Since Bobby is a very capable student academically, this school provides him with the least restrictive environment.

Although we can see that Ms. Lou's daughter has some adverse reactions to the presence of the dog, this can be controlled by her use of medication. We cannot go against the federal law.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that Bobby's service dog Oscar is a dangerous or threatening dog, causing bodily harm to Beth Lou.

SUB-ISSUES

1. Is this dog considered "dangerous" or "threatening" as defined by NJ Dog Laws?
2. Is a medically controlled allergy considered an impairment of a physical condition?
3. Is a public elementary school a public entity?
4. Does a federal law out rule a state law?

CONCEPTS

1. Preponderance of the evidence.
2. Credibility of the evidence.
3. The definition by law of a "dangerous" or "threatening" dog.

LAWS

1. NJ Dog Law Liability Statute PL 1989 C307 C 4:19-23: A potentially dangerous dog is one that poses a serious threat of bodily injury to a person. Bodily injury means physical pain, illness or impairment of a physical condition.
2. Americans with Disabilities Act: Public entities must allow people with disabilities to bring their service animals into all areas of the facility. A person with a disability cannot be asked to remove their dog from the premises unless the animal is out of control and the owner does not take effective control, or, the animal poses a threat to the health or safety of others.
3. Individuals with Disabilities Education Act (IDEA) requires public schools to make available to all eligible children with disabilities a free appropriate public education in the least restrictive environment appropriate to their individual needs.

The Marijuana Mishap

SCHOOL
Harrington Park
Harrington Park
Grade 7, Second Place

STUDENTS
Esther Choi, Francesca Goerg, Riley Iafrate, Alexander Koniuta, Jinee Lee, Kathryn Mandalakis

TEACHER
Joan Dever

FACTS

In the early summer of 2009, a young couple, Mr. and Mrs. Kanabiz, had just moved into a new house. After spending several weeks settling into their new home, the couple decided to go away for a few days. Due to the long, hot days of summer weather, the couple was concerned about maintaining their new garden. Mr. and Mrs. Kanabiz were quite excited to have a yard of their own and had spent many hours caring for the garden the previous owner had planted. Not knowing many of their neighbors, the couple went to the elderly woman who lived next door and asked if she wouldn't mind watering their plants and flowers while they were away.

Mrs. Maryanne Jane was willing to help out the couple and agreed to water once a day to help keep the plants healthy. While watering the garden, Mrs. Jane found some plants that she suspected to be marijuana. Mrs. Jane immediately called the police.

When Officer Matthew Spie arrived, Mrs. Jane wanted to escort him into the Kanabiz's yard and show him the plant she thought was marijuana. Officer Spie told Mrs. Jane that as she was not the property owner, he could not enter the backyard without probable cause. Mrs. Jane then offered to the officer that her second-story window could be used to view the couple's backyard. She also lent the policeman a pair of binoculars.

Officer Spie concurred that there was a plant growing in the yard that looked like marijuana. The policeman then obtained a warrant to legally search the couple's backyard, which led to the seizure of marijuana plants. When the couple returned from their vacation, they were arrested on charges of illegal drug possession.

The Kanabizs have filed a lawsuit against the town police for violation of their Fourth Amendment Rights. The couple state that their expectation of a reasonable degree of privacy was violated. The police officer's visual search of the couple's yard was not usual or widespread. "Spying" from a neighbor's window is not a policy that is practiced by the police on other residents in the town and should, therefore, not have been done to them. The couple seeks to have any and all charges against them dropped due to illegal search and seizure procedures.

ISSUE

Were the Kanabiz family's Fourth Amendment rights violated when the police searched and seized property from their backyard?

WITNESSES

For the Plaintiff

Mari Kanabiz

Sivel Wright

For the Defense

Maryanne Jane

Officer Matthew Spie

WITNESS STATEMENTS

Testimony of Mari Kanabiz

Hello, my name is Mari Kanabiz. I am 26 years old. I live with my husband Juan. We recently got married a year ago. We moved in to our new house on June 2, 2009. We worked on our house for a long time and put a lot effort into it. After we were done, we wanted to go on a well-deserved vacation. We didn't want our precious garden left by the previous owner to die in the blazing summer heat, so we asked the woman that lives next door to come and water our garden. She commented that we had a beautiful garden and she asked us what kind of plants we were growing. We told her the truth—that we knew very little about the garden because all the design and planting we had inherited from the previous owners. We knew that there were squash, tomato, rhubarb and several types of herbs, but we did not know all the plant names.

We went on our vacation and returned on July 30 as planned. As the cab from the airport pulled up to our house, we saw a police car parked in our driveway. We panicked and jumped out of the cab and asked, "What's wrong?" The officer responded that we were being charged with the illegal possession of marijuana. We were confused, as we had no idea what he was talking about. He came behind us and grabbed our hands and clasped them with handcuffs. He shoved us in the patrol car and drove us to the police station. We were informed of our rights as the police officer explained that we were facing criminal charges for producing and possessing marijuana.

There should be no criminal charges of any kind as the search of our property was in violation of our Fourth Amendment Rights. The reasonable expectation of privacy was violated. Mrs. Jane was being a nosy busybody and the officer who crept to her window and used binoculars to "spy" on us is no better! Our rights, as provided for in the Constitution, were not upheld.

Testimony of Sivel Wright

I live across the street from Mr. and Mrs. Kanabiz. I feel it is important to share with you that I am an active member of the ACLU (American Civil Liberties Union).

As I was looking out my window on July 30, I noticed a police cruiser in front of the couple's new house. I kept watching and saw a policeman get out of the car. Maryanne Jane, the Kanabiz's neighbor, then walked out to greet the officer. The officer and Maryanne Jane conversed for several minutes. After, they walked together into Maryanne's house. About five minutes later, I witnessed the officer leaning out of a second-story window that overlooks the couple's backyard. He had a pair of binoculars in his hand. The officer came out of Ms. Jane's house and made a quick departure.

Later that day, the patrol car pulled into the Kanabiz's driveway for a second time. This time, though, there was a second officer accompanying the first. Both officers proceeded to enter the Kanabiz's backyard via the side gate. By now, I had become intrigued by what was going on across from me. The two police officers came to a stop in a part of the garden. I knew that they were doing this without the couple knowing and this made me both suspicious and angry. As a concerned citizen, and a member of the ACLU, I take strong opposition to the overstepping of authorities. The officers were in the yard for quite some time and when they finally emerged, they placed several large plastic bags in the patrol car. I knew right then and there that this was all very questionable behavior on the part of the police.

The couple's rights have been violated. The average American must fight to protect this abuse of power. The police had no legal right to search the yard the way they did. This is not a communist country; the police don't "spy" on its citizens. Justice for our personal freedoms must prevail.

Testimony of Maryanne Jane

My name is Maryanne Jane and I'm 78 years old. I've lived in this neighborhood for about 40 years now and was happy to have a new, young couple move in next door to me. Several weeks after the couple moved in, they approached me and told me they were going away for a few days. They had asked me if I could water their garden once a day while they were gone, and I, being a good neighbor and caring person, happily agreed. It was such a lovely garden and it would have been a shame for it to wither in the hot, summer sun.

On the third day of watering, I noticed a familiar-looking plant that I couldn't quite put a name to at the time. I went my copy of *Fauna and Flora* and searched to try and put a name to this mysterious plant. My search turned out to confirm what I suspected, it was marijuana!

I immediately contacted the local police and an officer arrived a short while later. I gave him the rundown of the situation, and then offered to lead him into the backyard. He refused and said something about not having the authority to enter the Kanabiz's yard. Not wanting to let the problem go undetected, I allowed him to look out my bedroom window, which had a direct view of the backyard garden. I realized that it was probably hard to distinguish the marijuana from the other plants, so I gave him a pair of binoculars, which I conveniently happened to have on my nightstand.

After confirming my suspicions that it was indeed marijuana, he rushed out of my house and into his patrol car. When I asked him why he was in such a hurry, he told me he was on his way to the courthouse. Upon returning a little while later with a second policeman, they began to search the entire yard completely. It seems that my speculations were correct and, yes, the couple was illegally growing marijuana.

Testimony of Officer Matthew Spie

I am Officer Mathew Spie. I am 35 years old and have lived in this town all my life. I have also been a policeman in this town for 11 years. On July 30, I responded to a call from an elderly woman who reported what she thought was an illegal substance in her neighbor's backyard. When I arrived at the home of Ms. Maryanne Jane, she attempted to lead me into the yard of the home next door. I informed Mrs. Jane that I was bound by the law and couldn't go into the backyard. Upon hearing this information, the lady then volunteered that her second-story window had a perfect view of the garden. She gave me permission to enter her house and lent me a pair of binoculars. I went up the stairs. I viewed the yard and zeroed in on what I believed was the alleged marijuana. The plant growing in the Kanabiz's yard was indeed marijuana. I took photographs of the evidence and departed from Mrs. Jane's home.

I went back to the police station and secured a warrant. I returned to the property with another officer and thoroughly searched the grounds. I took a large sample of the marijuana plant and bagged the evidence according to proper procedure.

When the couple came home, I was waiting for them. I informed them of their rights and what charges were being brought against them. They began to protest and resist, so I had to cuff them. I brought them down to the station and the couple was processed and held over.

This arrest was by the book. There was nothing illegal in the way in which I handled the search or the seizure of property. I obtained a warrant and entered the property. I followed correct protocol in pursuing this investigation. The Kanabiz's rights were not violated. They've been caught red-handed and they are just trying to find a loophole in the justice system.

INSTRUCTIONS

The plaintiff must prove by preponderance of the evidence that Officer Matthew Spie had violated the Kanabiz couple's Fourth Amendment rights by conducting an illegal search and seizure of their property.

SUB-ISSUES

1. Did the Kanabiz family have a legitimate expectation of privacy?
2. Did Maryanne Jane have a right to let the officer use her window to spy?
3. Did Mr. and Mrs. Kanabiz grow the marijuana illegally in their backyard or was it planted by the previous owners?
4. Was the scope of the search the standard by which other residents of the town would be regularly subject to?
5. Should the police have waited for the Kanabizs to return from their trip before entering their property?

CONCEPTS

1. Homeowners right to privacy.
2. Credibility of the witnesses.
3. Authority of actions taken by the police officers.
4. Homeowners entitlement to be made aware of a search.
5. Burden of proof: preponderance of the evidence.

LAW

The Fourth Amendment of the Constitution of the United States of America: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Homer Un's Home Run

SCHOOL
East Brook Middle
Paramus
Grade 7, Honorable Mention

STUDENTS
Mike Lesko, Laura Schweizer, Prachi Trivedi, George Viccaro

TEACHER
Kathy Murray

FACTS

It was a sunny afternoon, and Homer Un, a 10-year-old boy, was playing kickball with his friends in his backyard. He was up to kick. He was well known for kicking home runs. With a powerful kick, the ball went soaring over the trees that separated Homer's property from his neighbor's property.

Before Neigh Borstein had gotten his new dog, whenever this happened, and it happened often, Homer would just go over and retrieve his ball. Homer's parents were friendly with the neighbor, Neigh Borstein, who knew all about Homer's previous visits to his backyard and was fine with that. Homer knew the neighbor's dog, Chomps, the German Shepherd, from seeing him and petting him on his daily walks, so even though he had not been to their yard since they had gotten Chomps, Homer thought that it would be no problem to go over and get his ball.

Homer went into Neigh Borstein's yard, which had an invisible fence around its border. He noticed the dog lying in the doghouse. Homer reached for the ball, and Chomps ran from his doghouse to protect his "toy." He grabbed onto Homer's right hand without letting go. Homer tried to pull his hand away, causing even worse injuries. As Neigh Borstein ran outside, Chomps let go. Homer was in a lot of pain. Before Neigh Borstein got to him, Chomps lunged at Homer again and scratched his neck and face, causing deep cuts.

In the end, Homer's clothes were covered with blood and as he ran back to his house, he felt faint. Homer's friends had seen the whole accident and had run inside to fetch his parents. In the emergency room, Homer got an x-ray and the doctor discovered that he had broken many bones. In addition, he had to get stitches and later developed an infection. At the doctor's office, Dr. Fixit had told Homer and his family that bites to the hand were very difficult to treat and hard to sanitize. Homer would need numerous surgeries and would have to attend physical therapy. Homer's parents are suing Chomps' owner to pay for the cost of Homer's treatments.

ISSUE

Are the neighbors liable for Homer's injuries even though he trespassed onto their property?

WITNESSES

For the Plaintiff

Homer Un

Dr. Fixit

For the Defense

Neigh Borstein

Doug B. Reeder

WITNESS STATEMENTS

Testimony of Homer Un

It was a sunny Saturday afternoon. I was playing kickball with all my friends. It was my turn to kick. As usual I hit a home run. It went flying over the trees and the ball kerplunked into Neigh Borstein's yard. I slid under the trees and into my neighbor's yard. I sprinted towards the ball and dove on top of the ball before my friends could get it. That's when I heard it coming. I got up and saw the neighbor's new dog, Chomps, staring at me. He leaped at my hand and bit down. I tried to pull my hand away, but it was no use. Chomps just bit down harder. Finally, my hand was free, and I was getting ready to run. Before I could, Chomps jumped up and with his paw he scratched my face badly. I was eventually able to push him off and run home.

Testimony of Dr. Fixit

When Homer was rushed to the emergency that afternoon, it was obvious this wasn't just a simple dog bite. His hand was filled with blood, the skin peeled severely. I knew right away the costs of his surgeries were not going to be cheap.

As a plastic surgeon for 22 years, I have treated many serious dog bites similar to Homer Un's and there is only one way to cure them. Homer will have to go through many surgeries, tests, and physical therapy. His treatment could take over six months, depending on how successful the surgeries' outcomes are.

In the emergency room, I did my best to sanitize the hand. I then took a few x-rays and saw a few bones had been broken. To heal the bones, a cast will not be all that is needed. Some bones had snapped out of place. Homer will need surgery to put these bones back. Afterwards, a cast will be used to give his hand a chance to heal.

A few days later, I asked Homer to return to the hospital for me to take a second look at his hand. I discovered an infection had developed. This infection is called pasteurella. It is a very common infection from dog or cat bites. Because of this infection, I will not be able to treat the bones right away. When an infection is present in the body, that part of the body cannot be closed. It must be left open for the infection to drain out. There are a few different types of antibiotics that will slightly decrease the amount of time the infection is in the body.

The few deep cuts and scratches in Homer's face are not as serious as his other injuries, but will still need to be taken care of. There are marks on his cheeks and forehead, and a few of these needed some stitches.

After the treatment is finished, Homer should regain full use of his hand, but it is not certain. The bites in his hand were deep, and there is a possibility he will only gain some use of his hand back. For example, if the surgery is not completely successful, he may not have use of a few of his fingers. His face will have scars from the stitches, but very small and hard to see.

I suggested the Un family get started with the treatment as soon as possible. If his treatments are put on hold, the infection could spread and become more serious.

Testimony of Neigh Borstein

It was a typical Saturday afternoon; I was lounging in my den when I heard a terrible scream. It was coming from my backyard. I got up from my reclining chair and ran to the yard. I saw my precious dog, Chomps, chewing on Homer's hand. This was unusual because Chomps is friendly with everyone while on walks, including Homer Un. I always take Chomps on a walk in the morning, and we usually see Homer walking to school. Homer occasionally gives him a quick pet and a cracker from his house.

I yelled, "CHOMPY! LET GO!" He let go and I went to grab Chomps and get him inside, but before I could reach him, Chomps pounced at Homer and scratched his face. I grabbed the German Shepherd by the collar and threw him in the house. Before I could apologize and help Homer home, he had run away.

I don't believe I am guilty for this incident because it is not my fault. Homer went on my property without my permission; I was never told that he was coming. I have no idea why Homer

thought that I would allow him to enter my property while Chomps was out in the yard. Chomps is trained to stay within the invisible fenced area, but since he is very territorial, I'd feel safer if he were in the house when a child was around. He is very friendly, but I always like to make sure.

Testimony of Doug B. Reeder

My name is Doug B. Reeder, and I am a successful dog breeder. I have trained many different dogs with all types of behaviors. In the past, I had trained Chomps, who now belongs to Mr. Borstein. Out of all the German Shepherds I've ever trained, Chomps was the best-behaved. German Shepherds are known to be nippy, but I never saw that. I know for a fact that Chomps would never harm anyone, especially a little kid like Homer because German Shepherds are kid-friendly and happy, fun-loving dogs. They love human companionship. As I have done to all my dogs, I had trained Chomps to be an obedient dog and not to bite. Neigh Borstein had informed me, several months after I had given Chomps to him, that he had also trained Chomps to stay inside the dog's invisible fence and was strict about leaving their property.

On the other hand, although German Shepherds are kind and friendly, they are known to protect themselves, their belongings, and their property. In the past, German Shepherds have been used to herd sheep, so they sometimes have to scare off invaders that threaten their property. Knowing this, I think that it is typical of Chomps to have gone after Homer, because he was probably just trying to protect the kickball that he rolled into his fenced-in property. However, he would not have bitten Homer as severely as he had, unless Homer had done something to provoke his bad behavior.

I think that Homer should also not have trespassed without asking Mr. Neigh Borstein, and with Chomps out in the yard. I don't think that it's a good idea to go into someone else's property when there's a big dog outside. I think that Homer should have known better and maybe asked Neigh Borstein to get the ball from Chomps *for* him because you never know with dogs, and you never know what might happen to cause a sudden change in their behavior. Homer should have known that Chomps could become protective and asked for permission first. I think I have trained Chomps as a well-rounded dog and he is not at fault in this case.

INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that Neigh Borstein is liable for Homer's injuries because his dog acted in a vicious manner and was not properly controlled.

SUB-ISSUES

1. Did Homer trespass?
2. Would it have made a difference if Neigh Borstein was outside?
3. Does the fact that Homer was on Neigh Borstein's property make a difference?
4. Has Chomps ever shown signs of aggression/ bitten anyone before?

CONCEPTS

1. Implied invitation.
2. Trespassing.
3. Ownership liability.
4. Parental consent/responsibility.

LAWS

New Jersey Statute 4:19-16. Liability of owner regardless of viciousness of dog:

1. The owner of any dog which shall bite a person while such person is on or in a public place, or lawfully on or in a private place, including the property of the owner of the dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.
2. For the purpose of this section, a person is lawfully upon the private property of such owner when he is on the property in the performance of any duty imposed upon him by the laws of this state or the laws or postal regulations of the United States, or when he is on such property upon the invitation, express or implied, of the owner thereof.

Ophidiophobia

SCHOOL
Great Meadows Middle
Great Meadows
Grade 7, Honorable Mention

TEACHER
Bill Nutt

STUDENTS
Alexander Baker, Daniel Bennett, Brett Black, Thomas Castner, Nicholas DeFuria, Matthew Engels, Justice Forte, Bryan Haines, Thomas Hansen, Kaitlyn Keiser, Eric Kendra, Kasey Lane, Katherine Matuszek, Ahsan Mirza, Emily Mowatt, Kristen O'Connor, Brooke Pennington, Rachel Pietrewicz, Robert Post, Megan Raible, Valerie Reitmeyer, Shelby Scholl, Laura Sickels, Ally Wilson, Ty Wolters

FACTS

Mark Hansen was making his wife dinner for their 15th anniversary when he realized that he had run out of the flour that he needed for homemade bread. He didn't have time to go to the supermarket, so he went next door to the house of Eddie Norton and his mother Helga. Mark didn't know the Nortons too well, but his 13-year-old daughter, Isabel, was on friendly terms with Helga Norton. Isabel wanted to come with Mark to see Helga, so Mark went to the Nortons' house with Isabel and his son Garret, age 5.

As Mark was in the kitchen with Eddie, Isabel began a conversation with Helga. Garret then asked if he could use the bathroom. Helga, who suffers from arthritis and has difficulty with stairs, directed Garret toward the bathroom. She told him to go up the stairs, turn right and go to the first door on the right. However, Garret turned left at the top of the stairs and opened another door. He stepped into the room. He realized it wasn't a bathroom but was curious when he heard a sound. Once in the room, he found himself facing Eddie Norton's pet boa constrictor, Garrosh. The 11-foot-long snake slithered between Garret and the door.

Cornered, Garret began screaming and crying. Eddie, Mark and Isabel raced upstairs. Eddie carefully picked up his snake and placed it in another room. Mark ushered Isabel and Garret, who was still traumatized, downstairs and back to their home.

Since the incident, Garret has continued to be upset. He has nightmares about the snake; even seeing a reptile on TV causes him to cry uncontrollably.

Mark Hansen is suing Eddie Norton for not securing a potentially dangerous pet. Eddie argues that the pet is normally kept in a secure cage in his basement; however, at the time the Hansens arrived, he was cleaning the cage and had placed Garrosh in his study with the door closed.

ISSUE

Was Eddie Norton negligent in securing his pet, and was that negligence directly responsible for Garret's trauma?

WITNESSES

For the Plaintiff

Mark Hansen

Isabel Hansen

For the Defense

Eddie Norton

Helga Norton

WITNESS STATEMENTS

Testimony of Mark Hansen

I was preparing dinner for my wife on our 15th anniversary. She loves homemade bread, and I was preparing to bake it; however, I found we were out of flour. My daughter Isabel suggested we go next door to the Nortons to ask to borrow flour. I don't know them very well, but Isabel has seen Mrs. Norton around the neighborhood and is friendly with her. I went to the Nortons' house with Isabel and my five-year-old son, Garret.

Eddie Norton said he thought he had some flour, and we went into his kitchen. Isabel and Garret stayed to talk with Mrs. Norton. Eddie had a couple of different types of flour, and we were deciding which one I needed when I heard Garret give a bloodcurdling scream, louder than I've ever heard him scream. We ran upstairs. He was in a study with a huge snake. He was cowering in the corner, crying. Eddie was able to remove the snake. I grabbed Garret, took Isabel's hand, and hurried back home.

Since that day, Garret hasn't been the same. Every other night, he wakes up crying from nightmares. He's unable to look at a picture of a snake; even the mention of the word "snake" makes him scared. He has since started therapy.

I'm suing Mr. Norton for the cost of the therapy. If he had taken better care securing that snake of his, this wouldn't have happened. Also, he had no business allowing young people into his home without warning them that he keeps such a dangerous pet.

Testimony of Isabel Hansen

I really like talking with Mrs. Norton. I've seen her sitting on her porch, and I come over to chat. She talks out her life, and I tell her about the things we study in school. I don't really know her son that well. She never once mentioned that there was a pet snake in her house.

One day, Dad was going to make homemade bread for Mom, to surprise her on their anniversary. He was upset when he found out we didn't have enough flour. I suggested we go next door, because I knew that Mrs. Norton likes to cook. He and my brother Garret and I went to the Nortons' house. Dad and Mr. Norton went to the kitchen. I was talking with Mrs. Norton about the social studies project I was writing when Garret interrupted us and asked to go to the bathroom. Mrs. Norton told him to use the upstairs bathroom. I almost said something about the fact that he sometimes mixes up his right and his left, but decided it wouldn't be a big deal.

He went upstairs, and in a few minutes he was yelling his head off. I ran upstairs, and Dad and Mr. Norton were right behind me. There was a door open, and we looked in. Garret was in a corner of the room, shrieking and crying. I didn't blame him because I saw one of the biggest snakes I had ever seen in my life in the room. I screamed, too. Dad stepped in and picked up Garret. Meanwhile, Mr. Norton was able to grab the snake. Dad rushed Garret and me back to our house.

Ever since, Garret has been a mess. He freaks out when he sees a snake on TV, even one of those cartoon snakes. Almost every week, he has one or two nightmares where he wakes up screaming.

I feel bad about this because I like Mrs. Norton. But she or her son should have told us that there was a snake in the house.

Testimony of Eddie Norton

I've had Garrosh for four years. I've always been interested in snakes, and boa constrictors are fascinating to watch and study. I'm aware of how to deal with snakes, and I'm very cautious about letting him get near other people, because I know not everyone is as tolerant of snakes as I am. Even my mom, who's lived with me for the past two years, doesn't like them.

For the most part, Garrosh stays in a cage in the basement. The only times he's not there are when my mom isn't home or when I'm cleaning his cage. When I do clean Garrosh's cage, I put him in a container with a lid in my study on the second floor. Mom never goes upstairs, and I keep that door closed.

One day, I was cleaning Garrosh's cage. I hadn't told Mom because she doesn't even like to be reminded that there's a snake in the house. Garrosh was in my study, as usual. I heard the doorbell; it was my neighbor, Mark Hansen, and his two kids. I didn't know them that well, but I know Mom is friendly with the girl, so I invited them in. Mark said he was hoping to borrow flour for bread. I told him I thought we had a couple of types of flour, so we went into the kitchen. I left the kids with Mom. I didn't think we'd be more than a few minutes, so I didn't say anything about Garrosh.

As Mark and I were deciding which was the correct flour for the bread he wanted to make, I heard the boy crying. I realized he must have wandered into the study. We hurried up the stairs and found the little boy in the room with Garrosh. I guess I hadn't secured the lid to his container, because Garrosh was in the room. The boy wasn't in any danger, but Garrosh was blocking him from the door. I scooped up Garrosh and put him in another room. Before I had a chance to say anything, Mark had gathered his two children and gone back to his house. My mother then explained to me the confusion over the boy opening the wrong door while he was looking for the bathroom.

I feel badly for the boy, but I don't think what happened was my fault. I didn't tell them about Garrosh because I didn't think anyone would be wandering upstairs. Plus, the boy shouldn't have been in the study. If he wasn't sure where the bathroom was, he should have called down for help, and I would have shown him. This is a case of misunderstanding.

Testimony of Helga Norton

I've lived with my son Eddie for two years. Because I have difficulty walking, my bedroom and bathroom are on the ground floor of his house. I never go to the basement or upstairs. I'm not very fond of snakes, but Eddie didn't want to give up his boa constrictor. Eddie is very careful with the snake. It stays in a cage in the basement, and the only times Eddie takes him out is if I'm not in the house or if he's cleaning its cage. When Eddie does clean the cage, he puts the snake in his study upstairs.

Because of my limited mobility, I don't get outside too much, although I do like to sit on the front porch. I've seen Isabel Hansen, the young girl who lives next door, several times. She's a very sweet, polite girl, and I've enjoyed talking with her.

On the day in question, I heard a knock on the door. It was Isabel with her father and her young brother Garret. Mr. Hansen was looking for flour and he asked to borrow some. He and Eddie went into the kitchen, and Isabel and the young boy stayed with me. After a few minutes, Garret asked to go to the bathroom. I didn't want him to have to go through my bedroom, so I directed him to use the upstairs bathroom. I gave very clear directions: Go up the stairs, turn right and go to the first door on the right. I asked him if he knew his right from his left, and he said he did.

After a few minutes, we heard the most horrible scream. Eddie, Isabel and Mrs. Hansen raced upstairs. It turned out that Garret turned left when he should have turned right, and he walked into the study, where Eddie had put the snake.

I'm very sorry that the boy was frightened, but I don't think that we did anything wrong. I was clear with my instructions, and if the boy didn't know his right from left, he should have told me. Also, if I had known the snake was in the study, I never would have sent the boy upstairs alone.

INSTRUCTIONS

The plaintiff must set out a convincing case so that the jury believes by a preponderance of evidence that Eddie Norton was negligent in securing the boa constrictor, and this negligence led to the trauma suffered by Garret Hansen.

SUB-ISSUES

1. Did the snake come near Garret or cause him any bodily harm?
2. Should Eddie or Helga have warned the children that there was a snake in the house?
3. Should Eddie have told Helga that he was cleaning the snake's cage and that the snake was in the upstairs study?
4. Should Helga have taken Garret directly to the upstairs bathroom?
5. Should Isabel have said something about her brother mixing up right and left?
6. Should Isabel have accompanied Garret to the bathroom?
7. Should the snake have been in a more secure container?
8. Is it reasonable to expect a child not to wander into a room in an unfamiliar house?

CONCEPTS

1. Credibility of witnesses.
2. Burden of proof: preponderance of evidence.

LAW

A pet owner must take all reasonable precautions when securing a potentially dangerous animal, either inside or outside the home. Any pet owner shall be held strictly liable for any injury suffered by another due to neglect by the owner. (Injury includes any harm that results in medical treatment.). A pet owner found guilty of negligence that results in injury to another person must pay a fine of $1,000 plus any medical expenses incurred by the plaintiff. In addition, the animal must be taken away from the owner; depending on the type of animal, the pet should be given to a shelter or a zoo, or destroyed.

Curiosity Poisoned the Cat

SCHOOL
South River Middle
South River
Grade 7, Honorable Mention

TEACHER
Renée S. Ernish

STUDENTS
Bart Bancewicz, Paola DeCarvalho,
Euclides Faccin, Alexandria Kulik, Olga Latosh,
Stephan Lukianov, Morgan Rutar

FACTS

On August 24, 2009 the owner of Garden Fe'Leone, Rita Pest, had posted signs in her restaurant and sent notices to people in the neighborhood. The notices stated that they would be laying rat poison in the back of the restaurant so as to avoid getting a rodent problem. On September 13, 2009, Lovey Feelines' cat, Sir Lixxallott, began vomiting and showing signs of illness. Ten days later, Sir Lixxallott is diagnosed as having been poisoned. Since Lovey Feelines lives in the apartment directly above the restaurant and shares the same walkways, it is suspected that the poison came from the restaurant. Miss Feelines is charging that Rita Pest was reckless in the placement and management of the rat poison, thereby putting neighborhood pets/animals in danger. She feels Rita Pest knowingly endangered the welfare of the animals and therefore is suing the restaurant for the medical bills, her attorney's fee, and for her pain and suffering in the amount of $25,000.

ISSUE

Did Rita Pest knowingly endanger the welfare of animals when she placed rat poison near and around her restaurant?

WITNESSES

For the Plaintiff

Lovey Feelines

Sawyer Poysen

For the Defense

Rita Pest

Kitty Hader

WITNESS STATEMENTS

Testimony of Lovey Feelines

My name is Lovey Feelines and I have owned my cat, Sir Lixxallott, for four years. I have lived in the apartment above Garden Fe'Leone for almost a year now and I haven't had a problem until September of 2009.

On August 24, 2009, I received a notice from Rita Pest stating that she was going to be laying rat poison in the back of her restaurant. Knowing that the poison would hurt my little Sir Lixxallott, I made sure that he went nowhere near the back of the restaurant. So, when I would take Sir Lixxallott out for fresh air, we stayed in the front, near the entrance of Garden Fe'Leone.

My poor cat started to vomit and act strange on September 13. I was very worried because Sir Lixxallott had never acted this way before. So, as a result of this, I brought him to the veterinarian. His

doctor gave me some antibiotics and said that if his welfare did not improve, to bring him back for some blood tests.

After I saw no improvement, I did exactly as the veterinarian instructed and brought him back for a follow-up. He decided to take some blood tests to see if he couldn't figure out what was ailing my poor cat. On September 23, I received a call from the doctor and he diagnosed Sir Lixxallott as having been poisoned.

I thought for a minute because I was confused by the results. However, I then remembered the notice I had gotten from Rita Pest. I knew that the poison must have come from her restaurant. I was outraged that she was unable to successfully manage the poison responsibly. I'm not capable of having children, so Sir Lixxallott is like my child. I was very upset Rita Pest put his life in danger. So, I went to Rita and discussed the situation. I explained in an orderly manner that my cat had been poisoned and I believed it was her fault that he had gotten sick. I'm sure my cat went nowhere near the back of the restaurant, so the poison must have been tracked through it and out onto the front walkways. I proceeded to tell her that I would greatly appreciate it if she took the responsibility for what she did and pay for the medical bills. She responded by saying there was no way the poison could have gotten to the front of the restaurant, and therefore she was not responsible for Sir Lixxallott's treatment.

Rita Pest implied that I was irresponsible in caring for Sir Lixxallott or he was poisoned while I was at work. I can assure everyone in this court that I take the best precautionary measures in caring for my cat; like I said, he is like a child to me. Additionally, when not under my care, I make sure he is cared for by someone who loves him as much as I do. My good friend and fellow cat lover, Sawyer Poysen, comes over and kitty sits him when his shifts at Garden Fe'Leone are over. As you can see, there is no other way my cat could have gotten poisoned due to negligence on our part. I am therefore suing Rita Pest for attorney fees, medical bills, and my pain and suffering.

Testimony of Sawyer Poysen

Hey, I'm Sawyer Poysen. I've been working at Garden Fe'Leone for five years now. My boss, Rita Pest, received the news that there was a rodent problem in the city. She was scared that our restaurant would get infested and business would decrease. To prevent this, she was going to put rat poison in the back of the restaurant. I informed her that the people that lived above us had pets. I also added that I believed it was a risky idea since the employees enter/exit from the back. She immediately scowled and said she would do whatever it took to keep her five-star restaurant rat free. With that said, Rita sent out notices to the residents of the neighborhood.

When Lovey Feelines got the news, she didn't waste time and called me. We had become friends when she moved into her apartment. Lovey wanted to know if I was able to watch Sir Lixxallott, her cat, while she was out to work. I replied to her question by saying I could in fact baby-sit him, but only when my shifts were over. I knew that she didn't want to put her precious cat in danger.

When I was looking after Sir Lixxallott, I made sure he didn't wander out of the house. I also made sure that I took off my shoes before entering the apartment, because I exit from the back of the restaurant and could have gotten some poison on them. Whenever I was there, Sir Lixxallott was always within my sight. That way, I knew he was never in any danger. Before Lovey left the house, she always put Sir Lixxallott in his crate. This way, if I had to work late, we knew he would be safe until I got there.

The only time we left home was when I took Sir Lixxallott out for a walk. As we strolled around the neighborhood, we passed the restaurant. I saw a lot of dogs there so I went to Rita Pest to ask her if she was certain that the poison was only in the back. I noticed she was hesitant as she nodded yes, she was certain. There is no other place where Sir Lixxallott could have gotten poisoned. I heard Kitty Hader saying her dog wasn't sick and he played in the front of the restaurant as well. Let me remind you that cats and dogs are very different animals. The poison would not have the same effect on a 100-pound Lab as it would on an eight-pound

Persian cat.

I thought that Rita would be more responsible in the placement of the poison, but obviously she wasn't. The poison somehow got to the front of the restaurant where Sir Lixxallott sometimes played with other animals. Rita Pest has to be held responsible for the poisoning of the poor cat.

Testimony of Rita Pest

My name is Rita Pest and I have been the owner of Garden Fe'Leone for sixteen years. For quite some time now, the other restaurants in the city have been having rodent problems. To make sure my five-star restaurant maintained its reputation, I decided to put rat poison down as a precaution. To make sure everybody was aware of this, I sent out notices to all the residents in the neighborhood, including Lovey Feelines, stating we were going to put rat poison in the back of the restaurant to avoid a rodent problem. Naturally, I assumed most people would be relieved since a rodent problem for the restaurant also meant a rodent problem for the neighborhood. Ms. Feelines should be thanking me, not suing me!

On September 23, Lovey Feelines came into my restaurant and demanded to talk to me. When I came out of my office, she told me that she's suing me because it was my fault entirely that Sir Lixxallott became ill. I told her that Sir Lixxallott might have gotten poisoned when she was at work or while she was sleeping. She made a big scene over it, which my customers overheard. Ever since Lovey confronted me, I've been losing my customers, therefore losing valuable business. Lovey Feelines said her cat was diagnosed as being poisoned, but doesn't say specifically what type, so he may have gotten poisoned elsewhere. Even if it was my restaurant, Sir Lixxallott must have gotten it from the back because I made absolute certain that the rat poison didn't get into or around the front of the restaurant.

For quite some time now, Sawyer Poysen, the waiter at my restaurant, has been kitty-sitting Sir Lixxallott. Sawyer is also responsible for taking out the garbage, so he could have tracked the poison into Ms. Feelines' house. As a result, Sir Lixxallott could have gotten poisoned from Sawyer. Furthermore, cats are very curious creatures. Sir Lixxallott may have snuck out and gone near the back of the restaurant where he could have easily ingested the poison. No matter how Sir Lixxallott got poisoned, I am sure it wasn't my fault.

Testimony of Kitty Hader

My name is Kitty Hader and I have been living in the apartment across from Lovey Feelines for eleven years. I have a Chocolate Lab named Moco-Coco-Crisp. Like Lovey Feelines, I also got the notice from Rita Pest stating that Garden Fe'Leone would be laying rat poison in the back of the restaurant. I also made sure my pet, Moco-Coco-Crisp, didn't go near the poison. He was constantly near the front of the restaurant playing with other neighborhood dogs, and he hasn't gotten sick. To the best of my knowledge, no other neighborhood dogs have gotten sick either. This just proves that Lovey Feelines was negligent in watching where her cat went.

From previous encounters, I know that Sawyer Poysen is young, reckless, and irresponsible. It couldn't have been Rita's fault that Sir Lixxallott got poisoned because then Moco-Coco-Crisp would've gotten sick too. My child is also constantly in front of the restaurant and she's very curious. I remember that one day my daughter, who is three, was walking around and saw something on the ground. Before I got the chance to stop her, she put it in her mouth and swallowed it. I was concerned that she was going to get sick but the next day she was feeling fine. If it was in fact rat poison in the front of the restaurant, she would have gotten poisoned too.

The only way that Sir Lixxallott could've gotten poisoned was from negligence on Lovey Feelines part, if in fact, it was rat poison. Another way that Sir Lixxallott could have gotten poisoned was from eating rats. When rats encounter rat poison, they don't die right away. The rat could have walked away and crossed paths with the cat. Since all cats love eating mice and rats, he probably ate the infected rat and gotten poisoned from it. No matter how Sir Lixxallott got poisoned, it wasn't Rita's fault.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that Rita was negligent in the placement of the rat poison and thereby knowingly endangered the welfare of animals.

SUB-ISSUES

1. Did Sir Lixxallott get sick specifically from rat poison?
2. Was the poison only in the back of the restaurant?
3. Did other restaurants use rat poison to get rid of a potential rat problem?
4. Is it possible Sawyer forgot to take off his shoes when he entered the apartment? Was he responsible when watching the cat?
5. Is it possible Sir Lixxallott could have gotten to the back of the restaurant without Lovey Feelines knowing?
6. Is it possible the poison on the object Kitty Hader's daughter ate wasn't concentrated enough to make a three-year-old sick? Is it possible that the same object could have made a small cat sick?
7. Is it possible Kitty Hader is only defending Rita Pest because of her personal preference for dogs?
8. Is it possible Rita Pest would do anything to keep her restaurant's rating up, including endangering the welfare of animals?

CONCEPTS

1. Preponderance of evidence.
2. Credibility of witnesses.
3. Definition of animal cruelty.

LAWS

"Cruelty to animals is defined as "knowingly inflicts severe physical pain or prolonged suffering on an animal; with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal; or kills an animal by the use of a decompression chamber." It is a Class A Misdemeanor, with sentencing provisions including a fine of up to $5,000, imprisonment up to 1 year, community service and restitution. Exceptions are made for farming, activities incidental to lawful hunting and trapping, research governed by accepted standards, conforming to professional training and discipline, and accepted veterinary care and methods of husbandry."

BIBLIOGRAPHY

http://www.straypetadvocacy.org/html/cruelty_law_al-mt.html#Alaska

The Case of the Overworked Reindeer

SCHOOL
Readington Middle
Whitehouse Station
Grade 7, Honorable Mention

TEACHER
Emily Bengels

STUDENTS
Hiba Alzouby, Allie Degen, Christiana Duprey, Nicholas Farr, Elvin Kong, Lexie Livesey, Emily Moore, William Taylor

FACTS

Joseph Kringle is the producer and director of a new low-budget movie, *The Night Christmas Was Delayed*. On September 7, 1995, Kringle was filming a scene with nine specially trained reindeer and a Santa actor using an overloaded sleigh. Mr. Robert Smith, an animal rights activist and the new actor playing Santa, noticed that several of the reindeer were panting heavily and were quite breathless while they were working. He also observed that one reindeer had a red, irritated, puffy nose.

Mr. Smith mentioned these concerns to Mr. Kringle, but the producer disregarded his comment. Mr. Kringle explained that he felt the reindeer were quite content and that they were handling the work just fine. Animal health inspector Dr. Billy Joe was called in by Mr. Smith to ensure the health of the reindeer and confirmed that they were all in fine condition, except the red-nosed reindeer. After the health inspector left, they continued filming and suddenly a reindeer collapsed from probable hunger. Trainer Emma Jones suspected that all the reindeer were malnourished. She called a local veterinarian, who then informed the police of potential animal abuse. The owner of the reindeer, Lucas Tanase, was also informed of the unfortunate mishap and was exceedingly displeased by what had occurred.

ISSUE

Did Mr. Joseph Kringle cause serious mental or physical trauma to the reindeer that he rented for his low-budget film, *The Night Christmas Was Delayed?*

WITNESSSES

For the Prosecution

Robert Smith

Emma Jones

For the Defense

Joseph Kringle

Dr. Billy Joe

WITNESS STATEMENTS

Testimony of Robert Smith

I have been an actor for about eight years now. I have worked for many companies in this time, but my most recent production was with a man named Joseph Kringle. It was a low- budget movie and he wasn't paying me much. I mainly chose the role because of the opportunity to work with animals. I believe that animals have the same rights as humans, possibly more. Anyway, the only animals used in this film, since it was a Christmas movie, were reindeer.

Everything went smoothly for the first month or so, except for a few incidents that caught my attention. One problem occurred when the ventilation turned off in the middle of the day in August. This only happened once, but when it did, everyone suffered. That day was especially bad because it was the hottest day recorded that month. The reindeer experienced the worst of this sudden heat wave because of their thick coats. That night, the animal trainer Emma Jones let the reindeer sleep in the cool field that belonged to the company instead of their muddy stalls. Another occasion was more recent. At the beginning of allergy season, I noticed that one of the reindeer had a very red and irritated nose. I brought this issue up with Kringle, but he simply disregarded it and continued to film. He had said, "I don't care if some glorified caribou has allergy problems. As long as it isn't missing a leg, it can still be used in production. Besides, the rest of them look happy."

Later that day, we were filming a flying scene when I noticed the reindeer were overly exhausted. When Mr. Kringle disregarded my concerns, I called health inspector Billy Joe. However, he claimed that they were perfectly healthy. When he left, we continued filming. When I mounted the sleigh and they started pulling, suddenly one fell to the ground. Trainer Emma Jones quickly rushed to call the vet. When the vet came in, she checked on the reindeer and gave a call to the police concerning possible animal abuse. Of course, Kringle denied it, but an investigation soon followed.

Even though the bags were filled with light material, the sleigh itself was not easy to pull, not to mention when others sat on it. I know everyone was tired, but I would think that the reindeer would be even more worn out since we started very early in the morning and they had to carry a very heavy sleigh all day. I know for a fact that is heavy because once I tested out whether or not the sleigh was powerful enough. When I tried to push it, it barely moved at all! I was also pushing fairly hard, so no wonder the reindeer were exhausted!

Testimony of Emma Jones

I am Emma Jones. I have been an animal trainer at the Trial and Error animal facility for seven years. I was hired to take care of the reindeer in a new low-budget movie. My boss, Joseph Kringle, paid me minimum wage and the only reason I stayed was to take care of the poor reindeer. I tried to feed them whenever Mr. Kringle allowed it, which wasn't very often. He was treating them with a heartless sense of abuse and greed, as demonstrated by the food shortage. He would work them all day, and give them a minute meal after a long day's brutal work. One day the reindeer were being especially overworked, with one reindeer pulling most of the weight of the sleigh in front. After hours of intense labor, he passed out. His breathing was shallow, and he was covered with sweat. His mouth was parched. Many other things were horrifying, but what really set me off was his stomach. His ribs were clearly showing. As he came back to consciousness, I gave him food, and he was ecstatic. He was obviously malnourished. He had collapsed from exhaustion; he had no energy left from his near starvation. I tried to help him survive the treatment from Kringle, that awful person.

Testimony of Joseph Kringle

I have worked as a director- assistant for two years, until I made the decision to take it a step up and become the producer of my own film, *The Night Christmas Was Delayed*. Since I could not find anybody skilled enough to be a director, I decided to take the job myself. It was really a low-budget movie, but I had my hopes up for the Golden Globes. Well, I gathered some actors and rented nine reindeer from a man by the name of Lucas Tanase. Emma Jones offered to take the job of training the reindeer, and was quite content with her job. The role of Santa Claus was taken by Mr. Robert Smith. I wish I hadn't hired him, but nobody else would take the job. Ever since then he's been complaining about how low his salary is and how he has five mouths to feed. He should have known that his salary was the best that I could do. It's not like I was any more fortunate than he was. Anyway, the reindeer were given enough food to get them through the day. I received special instructions from the owner and had loyally been abiding by them, I swear! They weren't being overworked, because the bags they were pulling on the sleigh were in truth

filled with pillows and cotton to make them appear as if they were filled up with toys. We were a little anxious to get done with the filming, because it was already August and we weren't even halfway done.

Well, one day as I was instructing actors and others around for the next scene, Mr. Smith came up to me and kept informing me that the reindeer were sickly and weak and could not make it through the scene today. I told him that this was rubbish, because the reindeer looked the same as they always had. Perhaps they looked a little fatigued, but we all were! We had been working diligently for the past few weeks and were all a little stressed out, but the reindeer had been coddled every step of the way to avoid just such a circumstance. Before we knew it, a health inspector, Billy Joe, was at the filming area requesting to check on the reindeer. I have to admit I was a little mad because we were in the middle of a scene and Mr. Smith never told me he was calling a health inspector. He checked them and said they were perfectly fine!

After he left, we resumed filming the scene, when suddenly, one of the reindeer pulling the sleigh fell down. The reindeer must have tripped on a rock and fell when the other reindeer in the back accidently hit him. Besides, Smith was totally overreacting due to the fact that he was originally an animal rights activist, and probably found working animals in any way was abuse. As I was saying, trainer Emma Jones dashed to the phone and called the veterinarian. When the vet came over and looked at the reindeer, she called the police and reported animal abuse!

I know I never overworked nor abused any of the reindeer to the point where they would collapse from malnourishment! As I have said, they were given enough food and the bags they pulled were air light. I'm not sure why the reindeer collapsed, but as I've said, he may have tripped. I mean, everybody stumbles! I never knew I would be falsely charged for something that had started out as an innocent, low-budget movie.

Testimony of Dr. Billy Joe

Hi, my name is Billy Joe. I'm an animal health inspector, and have been one for nearly twenty years. I have been called for many jobs including many with animals of all sorts. My job is to check to make sure all the animals are in good health and are not abused in any way. Stage animals should be healthy, and so should their environment. If they are forced to work while unhealthy, I would report abuse to the police, and sometimes to the ASPCA.

On September 7, 1995, I was called to the set of Kringle's latest movie, *The Night Christmas was Delayed*, to inspect the animals. Mr. Smith, an actor on set, called me in to take a look at the reindeer, claiming they were sick, overworked, and abused. I rushed over, and inspected all of the nine reindeer. All of them looked perfectly fine and healthy to me. These specially trained animals looked pretty jolly and awake. Having experience, I know what a sick or abused animal looks like. They sure didn't look tired, mistreated, or overworked. Sure, one of them had a routine case of hay fever, resulting in an especially red nose for which I prescribed Zyrtec-Deer Formula. I then talked to Mr. Kringle and he said that he was taking good care of the reindeer he rented because he needed them for the movie.

They were not his, and he wouldn't hurt a fly. Since the reindeer looked very healthy, and Mr. Kringle seemed to be a very nice and kind man, I left without having to report anything unusual.

INSTRUCTIONS

The prosecution must set out such a convincing case against the defendant that the jury believes "beyond a reasonable doubt" that the defendant is guilty.

SUB-ISSUES

1. Should Mr. Kringle have provided the reindeer with medical care?
2. Was the animal health inspector, Billy Joe, telling the truth when he checked the animals?
3. Was Mr. Kringle providing the animals with basic needs and caring for them?
4. Which witnesses should be considered reliable and trusted?

CONCEPTS

1. Animal neglect.
2. Animal abuse and cruelty.

LAW

Whoever abuses an animal causing serious mental or physical trauma will be found guilty and accountable of a felony and sentenced to imprisonment for one to three years for each count, depending on the severity of the offense.

A Boreal Bother

SCHOOL
Marlboro Middle
Marlboro
Grade 8, First Place

TEACHER
Barbara Gallo

STUDENTS
Joseph Cheng, Kevin Driscoll, Sanjita Ekhelikar, Matthew Gilbert, Joanna Han, Grace Huang, Elaine Liu, Gokul Mukunda, Karen Nguyen, Jesse Persily, Asavari Phanse, Alex Raman, Michelle Zhao

FACTS

A major safety issue exists in an area of Colorado where mountainous and rocky terrain makes constructing large buildings a difficult task. The closest hospital to the town of Mountainville is an hour-long drive when conditions are good, but often the drive is extremely hazardous due to snow, ice, and heavy rains. Patients have died on the drive to the hospital because the ambulance could not reach the hospital fast enough, and because the access to medical procedures in the town is not sufficient compared to treatment in the hospital. In order to ensure the safety of all of the residents of the local towns, a new hospital must be built. Goodwill Hospitals, Inc. has gathered the support and financial backing of many townspeople. A new hospital will reduce the average transport time for residents of the surrounding towns dramatically.

There exists only one plot of open land in the area large enough on which to build the hospital. However, this land is one of the only remaining locations in the United States where Boreal toads still live. Animal rights activists claim that building the hospital will destroy 30% of the Boreal toad ten-acre habitat in the area, resulting in a possible significant change in the total population of the Boreal toad. This would violate the Endangered Species Act of 1973 (ESA) section 9 because the Boreal toad, which lives in the mountains of Colorado and some other states including New Mexico and Wyoming, has been designated an endangered species. Goodwill Hospitals, Inc. sent its required paperwork and information for the hospital construction, including the Habitat Conservation Plan, to the Secretary of the Interior for review. This was done in the hope that the Secretary would approve a modification to the Endangered Species Act since lives of human beings would be in less danger if the hospital was built. However, the Secretary of Interior declined to give the permit. He felt that the proceedings could negatively impact the habitat of the endangered toad, and therefore stated that based on the probable population reduction of the toads, the construction of the hospital should be prohibited.

Goodwill Hospitals, Inc. is suing the Secretary of the Interior, claiming that the proposed hospital would only incidentally harm the toad, and thus should be an exception to the Endangered Species Act of 1973, according to section 10 of ESA, while the Secretary disagrees and feels that this species' rights would be violated.

ISSUE

Should building the proposed hospital that is home to the Boreal toad be granted an exception to the ban on habitat modification of an endangered species?

WITNESSES

For the Plaintiff

Daniel Townson

Richard Grant

For the Defense

Jack Ecostein

John Jones

WITNESS STATEMENTS

Testimony of Daniel Townson

I am Mr. Daniel Townson, the Mountainville Town Council president, and I am here to represent the people living in Mountainville. I strongly believe that building the hospital on the Boreal toad's habitat is necessary in order to ensure the welfare of the people living in and around Mountainville. The trip from Mountainville to the nearest hospital takes approximately one hour. The weather conditions in Mountainville can be extremely harsh, making driving difficult. For example, the frequently low temperatures cause dangerous icy conditions on roads, and avalanches often occur due to heavy snowstorms, temperature changes, wind speed, and the steep inclines. These conditions, which are common in this location, increase the risk to people's lives. In addition, there have been recent cases reported where people have died on the trip to that hospital, mainly because the ambulance could not get there fast enough, and the medical supplies in the ambulance, though helpful, were not sufficient compared to treatment in a hospital.

There has also been an increase in human population within the area, which makes it even more urgent to build another hospital for the benefit of the people. After all, as more and more people inhabit the region due to population expansion, then more and more people will need medical care. The hospital will only take up 30% of the Boreal toad's habitat in this area. The town had already submitted the required Habitat Conservation Plan (HCP), which included proposed mitigation measures. Furthermore, the hospital's waste and pollutants will not be directly affecting the toad's habitat. The Endangered Species Act of 1973 (ESA) states, "Permits may be issued only after the landowner submits a 'habitat conservation plan,' including proposed mitigation measures and an explanation of why alternatives were rejected." Therefore, taking the safety of the residents of this town into consideration, the building of a hospital would be the best choice for the benefit and health of the people.

Testimony of Richard Grant

I am Mr. Richard Grant, the CEO of the Goodwill Hospitals, Inc. Our company is in charge of the existing hospital and will also be the builder of the proposed new hospital in Mountainville. Mountainville urgently needs a new hospital. The old hospital has reached its maximum capacity, and thus the lack of a new hospital is adversely affecting the old hospital's performance. We often are forced to put patients in the emergency room hall because the patient rooms have reached their capacity. There is not enough room to serve all the people in the best and most efficient way possible. According to the Endangered Species Act of 1973, "The Secretary may issue a permit for an 'incidental take' of listed species that are incidental to and not for the purpose of a proposed activity (ESA § 10)." Our intention is to build a hospital, not to harm the toads.

A surveyor has recently evaluated the land and reported that the flat surface and large open area make this the only plot of land suitable for building the hospital. The hospital architect reported that the cost of expanding the old hospital or building the hospital in other areas where the land is rockier would not be economically feasible. In other words, it would be cheaper and more logical to build a new hospital rather than renovating the old one. Because of all these reports, I firmly believe that the new hospital is completely necessary to ensure the safety of the people. Therefore, the permit should be issued to enable the building of this new hospital.

Testimony of Jack Ecostein

My name is Jack Ecostein and I have a master's degree in environmental biology. I strongly defend the secretary's action of not approving the permit to build the hospital on the land inhabited by the Boreal toad. Foremost, the Boreal toad is an endangered species. In 1995 the species was listed as threatened, but its population has continued to decline, which has caused it to be currently listed as endangered; there is a chance that the Boreal

toad may become extinct. Furthermore, pollution and droughts have made lakes and marshes unable to sustain the Boreal toad's life. This has limited, and continues to limit, the amount of places where the Boreal toad can survive. The toads reside in the higher areas of Colorado, which provides a cooler climate that is more suitable to their living standards. The global warming crisis has caused the temperatures to rise, causing the toads to move to even higher elevations to be able to live in the same, cool environment; this has limited their habitat even more.

According to the Endangered Species Act (ESA) of 1973, "Harm in the definition of 'take' in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impacting essential behavioral patterns, including breeding, feeding, or sheltering." In my opinion, by building this hospital and taking the land away from the toads, the ESA will be violated and the situation of finding a proper habitat for the toads is only going to worsen.

Additionally, the Boreal toads are also very beneficial to humans. They eat insects, spiders, moths, and small mice. These pests, especially small mice, often carry diseases. An increase of disease-carrying animals is not what we humans want. Also, Boreal toads, as well as other amphibians, are very important because of their ability to detect a change in the environment that humans cannot detect by ourselves, and we should not ignore this helpful ability of theirs.

Not to mention, the animals that prey on Boreal toads will also be affected, resulting in a change in the food system and the ecosystem. Other animals that would be impacted would be the red hawk, which controls the population of some small mammal species as well as providing habitats for small bird species; ravens which consume carrions and therefore help nutrient cycling; and garter snakes which are very important in gardens because of their diet of earthworms, frogs, and mice, among other things. These, as well as many other animals in nature, will lose a valuable food source and this will disrupt the ecosystem.

In conclusion, I do not believe the hospital construction should go forth and I agree with the secretary's decision, as it could negatively impact the Boreal toad's habitat, one of the few remaining places this species can call "home."

Testimony of John Jones

I am the United States Secretary of Interior. Mountainville's proposal to build a hospital and thus destroy 30% of the endangered Boreal toad's habitat is clearly unreasonable.

According to section 9 of The Endangered Species Act of 1973, it is illegal to "take" a listed animal. "The term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Take" also includes significantly modifying the animal's habitat, which is clearly being done in this situation. The outright destruction of over a quarter of the Boreal toad's habitat will most certainly affect the survival of the toad's species in this region, and goes against Section 9 of the ESA. Because of these overwhelming numbers, I had no choice but to turn down the request for the building of the hospital. The effects on the Boreal toad would be too great, and there is already one hospital serving the region that has been successfully treating patients for many years. Though the town did submit a Habitation Conservation Plan, it is not properly developed and I do not approve of it. The construction of the hospital still shows a great potential sign of harming and negatively impacting the Boreal toad and its habitat.

INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that an exception must be made to the Endangered Species Act, as is permitted by law, and revoke the Secretary of Interior's ruling.

SUB-ISSUES

1. Is saving human lives more valuable than saving the lives of animals?
2. Is the hospital necessary for the well-being of the local residents?
3. Will changes to the local Boreal toad population cause significant harm to the species as a whole?
4. To what degree will the hospital modify the habitat?
5. Is building the hospital habitat "modification" or habitat "destruction"?
6. Will building the hospital violate the Endangered Species Act, which states that the habitat of an endangered species cannot be modified?
7. Are the animals being incidentally or purposefully harmed?
8. What measures have been made in the Habitat Conservation Plan?

CONCEPTS

1. Credibility of witnesses.
2. Burden of proof: preponderance of evidence.
3. Ability to appeal decisions.
4. Interpret the law with changing circumstances.

LAW

Endangered Species Act of 1973, Sections 9, 10 and 11 which refers to the "incidental take" of endangered species.

ESA § 9 prohibits everyone, private person and federal agency alike, from "taking" endangered wildlife. The regulations extend this to threatened animals (see e.g., 50 C.F.R. §§ 17.31, 17.21). "Take" includes "harming" a listed species, [12] and "harm" is defined by Fish and Wildlife Service (FWS) regulation to include habitat alteration:

Harm in the definition of "take" in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impacting essential behavioral patterns, including breeding, feeding, or sheltering.

Section 11(b) of the ESA makes it a crime knowingly to "take" an endangered species without a permit or violate a regulation implementing the ESA.

The Secretary may issue a permit for an "incidental take" of listed species that are incidental to and not for the purpose of a proposed activity (ESA § 10). Permits may be issued only after the landowner submits a "habitat conservation plan" (HCP), including proposed mitigation measures and an explanation of why alternatives were rejected. If FWS finds that the "take" will be incidental, will be satisfactorily mitigated, and will not appreciably reduce the species' chances for survival or recovery, it must issue the permit. There has been a move afoot recently to incorporate a "recovery" standard into HCPs, which would mean that HCPs would have to contribute affirmatively to the recovery of affected species, whereas under present law an HCP can be approved so long as it does not degrade the species further.

"(a) Permits -

(1) The Secretary may permit, under such terms and conditions as he shall prescribe –

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant subsections (j) or (B) any taking otherwise prohibited by the section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity."

B.L.A.D.E. v. Blades

SCHOOL
Marlboro Middle
Marlboro
Grade 8, Second Place

TEACHER
Barbara Gallo

STUDENTS
Colin Budka, Daniel Houng, Kelly King, Bethany Mo, Kevin Ni, Ajay Prabhat, Haley Woloshen

FACTS

The Fundamental Power Company plans to construct wind turbines to generate electricity in its region. It plans to build these turbines along the eastern coast of Monmouth County, New Jersey. Using these wind turbines will decrease the use of the coal burning power plant that is currently being used and will supply 20% of electricity that is generated for use by the local area.

However, these wind turbines pose a threat to endangered birds flying in the Atlantic Flyway, which is a major migration route for birds. Such endangered birds include the Cooper's Hawk, the Cliff Swallow, and the Northern Harrier. Wind turbine blades have been known to cause significant bird deaths.

The Fundamental Power Company says that a radar-detection system will be installed to detect large flocks of birds near the wind turbines so that they will automatically shut off to protect the migrating birds.

Animal activists from the group Bird Loving Americans Defending Environments (B.L.A.D.E.) claim that the building of these turbines violates the Endangered Species Act of 1973 because the construction is modifying the habitat of migrating birds. B.L.A.D.E activists also question the efficiency of this newly introduced radar technology and are concerned about its limitations and the continued loss of avian life.

ISSUE

Is the use of wind turbines considered a modification of the habitat of migrating birds, which is protected under the Endangered Species Act of 1973?

WITNESSES

For the Plaintiff

Annie Mal

Norm L. Pearson

For the Defense

Terry Bines

Mannie Powers

WITNESS STATEMENTS

Testimony of Annie Mal

I am Annie Mal, from the Fish and Wildlife Service of the United States Department of the Interior. The Endangered Species Act of 1973 makes it illegal to modify any endangered species' habitat, a prohibition reinforced and defined in the case *Babbit* v. *Sweet Home Chapter of Communities For A Great Oregon et al*. The Cooper's Hawk, the Cliff Swallow, and the Northern Harrier, which migrate between September and November, are on the list of endangered species and are protected from modification of their habitat.

The wind turbines proposed by Fundamental Power Company will threaten the population of the protected migratory birds by modifying the birds' habitation by providing an obstruction and hazard to them. This clear modification to the birds' habitat is prohibited in the Endangered Species Act of 1973, and it is clear that this construction plan must not be approved.

Testimony of Norm L. Pearson

I am a representative from Bird Loving Americans Defending the Environment (B.L.A.D.E). As citizens residing in this area, we are concerned with the construction of the wind turbines. New Jersey is famous for its beaches. During the building of these turbines, the construction site will be hazardous and the beach will not be accessible to local residents as well as to vacationers who contribute to the local economy. Additionally, the construction of the wind turbines will obstruct the beach and spoil its famous ocean vista.

The Fundamental Company claims that radar will be implemented to detect migrating birds. This idea of having radar to protect migrating birds is new technology that was first proposed in 2009 and we are skeptical about this "easy fix" for such a major dilemma. The Fundamental Power Company further claims that the wind turbines will supply twenty percent of the electricity being generated for this area. However, during certain periods of the year, the wind turbines will be stopping over a period of months due to the ongoing migration of birds. The fall migration alone is from September to November, let alone the migration for coming back in the spring. Consequently, we are doubtful that these wind turbines will be able to supply twenty percent of the electricity in this area if these wind turbines must be shut down this often.

Testimony of Terry Bines

I am a wind turbine engineer and verify that wind turbines are an efficient means of generating electricity in a truly "green" way. This coast region, that is located along the Atlantic Flyway, is the ideal place to set up a wind farm that will provide an optimal output of electricity. The wind gusts are powerful in this area, and we are determined to harvest at least 5,600 MWh of clean energy a year, which is 20% of our needs.

At the same time, this will be a safe procedure. I am aware of the birds that travel through this flyway, and we have a solution in the form of a new radar system that will detect groups of incoming birds. If the radar detects a large flock of birds, the wind turbines will automatically shut off. Therefore, the endangered species of birds that fly past the wind turbines will be able to pass without being harmed by the wind turbines.

Due to the strong winds of the Atlantic Flyway and the new radar technology, birds and humans can simultaneously use this flyway harmoniously.

Testimony of Mannie Powers

I am the CEO of Fundamental Power Company. Our company wants to implement the use of wind turbines to generate electricity since wind energy is efficient and green. Coal burning plants release pollutants into the air such as carbon dioxide and sulfur dioxide, which contributes to global warming and acid rain. As a result, wind energy is a healthier way of producing electricity. Wind energy should be part of our future energy generation.

Also, the demand for electricity is increasing because of the increasing population in the area. Our dilemma is to increase the production of energy through increased use of the polluting coal burning plant or to switch to greener methods of electricity generation. Wind energy will be safer for the environment and will benefit the community.

INSTRUCTIONS

The plaintiff must set out a convincing case that the wind turbines will modify or change the migrating bird habitat, which is prohibited under the Endangered Species Act, by a preponderance of evidence.

SUB-ISSUES

1. Human v. animal rights.
2. Is a flyway considered a habitat for the migrating birds?
3. Will the radar be an effective means of protecting the endangered migrating birds?
4. Are the wind turbines a necessary power generating project?
5. How much more pollution will occur from increased use of the coal burning generating plant?
6. If the turbines are shut down on a regular basis during the migration season, will the wind turbines be able to generate the proposed 20% of electricity that is needed for the area?

CONCEPTS

1. Credibility of witnesses.
2. Burden of proof: preponderance of evidence.
3. Interpretation of words/phrases in the law.

LAWS

The Endangered Species Act of 1973

Sec. 3. For the purposes of this Act –

(1) The term "alternative courses of action" means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: Provided, however, that it does not include exhibitions of commodities by museums or similar cultural or historical organizations.

(3) The terms "conserve," "conserving," and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(5)(A) The term "critical habitat" for a threatened or endangered species means-

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act,on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(8) The term "fish or wildlife" means any member of the animal kingdom, including without

limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(11) The term "permit or license applicant" means, when used with respect to an action of federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action.

(12) "The term person means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States."

(15) The term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature.

(16) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(17) The term "State agency" means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(18) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(19) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(20) The term "United States," when used in a geographical context, includes all States.

BABBITT, SECRETARY OF INTERIOR, et al. v. SWEET HOME CHAPTER OF COMMUNITIES FOR A GREAT OREGON et al.

In this case, the Secretary of the Interior defines "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife. The Secretary defined "harm" to include habitat modification as well as harass, harm, pursue, wound, or kill, and the Supreme Court agreed to include habitat modification as "harm" to endangered species.

Coyote Conundrum

SCHOOL
Mount Olive Middle
Budd Lake
Grade 8, Honorable Mention

TEACHER
Becky Hull-Clark

STUDENTS
Danielle Anton, Reuben Foley, Brandon Haggerty, Prarthna Johri, Daniel Lacey, Nicole Mallett, Michael Masotti, Sarah Muller, Jacob Puzio, Sarah Sullivan, Kaitlyn Timblin, David Tulin

FACTS

On July 15, 2009, at approximately 8:50 p.m. on Skyway Avenue, Brandon, New Jersey, Doug T. Rainer was walking his newest security dog, Shadow. Doug was training Shadow for his private security company, Rainer Security. Around ten minutes later, the dog spotted a cat, became tense, and bolted down the street. When the dog bolted, Doug was jerked forward and he twisted his ankle, causing him to lose control.

At about 9:00 p.m., as the dog chased the cat down the street, Noah Z. Naybore spotted the dog and called Bob F. Armor, the owner of Snowhawk Farm, which is an unfenced plot of land. Noah informed Bob that he had seen what appeared to be a coyote heading towards his farm. Bob had previous problems with coyotes killing his chickens and eating their eggs. These incidents threatened his livelihood, as he makes profits off of his chickens.

Upon hearing this news, Bob F. Armor grabbed his gun and ran outside onto his front porch, forgetting his hearing aids in the rush to save his animals. It was approximately 9:10 p.m.

In a tree overlooking Bob's farm, Ike N. Hidewell was playing a game of manhunt. Ike saw a blurry figure pass his hiding spot. He looked out from behind the leaves in the tree to get a closer look, and recognized the shape to be a dog. At the same time, Bob stepped outside onto his front porch, and took aim at the dog as it stood still by the chicken coop. Ike yelled, "Don't shoot! It's a dog!" but to no avail; Bob had forgotten his hearing aids.

Bob fired the gun, and the dog tumbled to the ground. Ike climbed down the tree and ran in search of help. He found Doug sitting on the sidewalk, holding his twisted ankle. Ike helped Doug home, and while walking, he informed Doug of the dog he had seen Bob shoot. He then described the dog as a medium-sized German Shepherd with black and brown fur and pointy ears.

Meanwhile, Bob went outside to inspect the still figure. Instead of the expected dead coyote, Bob found a medium-sized German Shepherd dog. Bob went back inside and called Noah at approximately 9:15 p.m., upset with him for falsely informing him of the said "coyote."

Doug is now seeking compensation for the cost of the dog, its training, its care, and the loss of business revenue.

ISSUE

Did Farmer Bob have a right to shoot Doug T. Rainer's dog on his farm?

WITNESSES

For the Plaintiff

Doug T. Rainer

Ike N. Hidewell

For the Defense

Bob F. Armor

Noah Z. Naybore

WITNESS STATEMENTS

Testimony of Doug T. Rainer

I am Doug T. Rainer, and I live in Brandon, New Jersey. Recently, I was training my new dog, Shadow, to work at my private security company, Rainer Security. It was all going well until the night of July 15, 2009. At about 8:50 p.m., I took Shadow on a walk around the neighborhood. About ten minutes later, while walking on Skyway Avenue, Shadow saw a cat and became tense. A few seconds later, Shadow bolted, yanking the leash, causing me to fall and twist my ankle. I let go of the leash, and Shadow sprinted off.

About fifteen minutes later, a young boy named Ike N. Hidewell found me. I asked if he had seen my dog. He then told me he had seen Bob F. Armor shoot a dog just minutes ago. He described it as a medium-sized, pointy-eared, black and brown German Shepherd. When Ike described the dog, and Shadow hadn't returned, I knew that my dog had been killed. I am now suing Bob F. Armor for the cost of my dog, its training, its care, and loss of business revenue.

Testimony of Ike N. Hidewell

Hello, my name is Ike N. Hidewell. I am 13 years old, and a neighbor of Bob F. Armor. On the night of July 15, 2009, at dusk, I was playing manhunt outside with some of my friends on Skyway Avenue. In my attempts to stay hidden, I climbed into a tree overlooking the property of Bob F. Armor. At about 9:10 p.m., I saw a dark figure sprint onto the farmer's property. After the silhouette stopped running, I knew it was a dog. Right then, I saw Bob F. Armor step onto his front porch, gun in hand and ready to shoot. As he took aim at the still dog near the chicken coop, I screamed at the top of my lungs, "Don't shoot! It's a dog!" Without taking notice of me or my shout, the farmer took the shot, leaving the dog lying dead in the grass.

After what I had just seen, I knew I needed to get assistance. I climbed down from the tree and started running down the street to find someone to help. I stumbled upon a man who I found lying on the sidewalk holding his ankle. I helped him up. He immediately asked me if I had seen his German Shepherd running around. I told him what I had seen and described the dog, realizing it must be his.

Testimony of Bob F. Armor

My name is Bob F. Armor, the owner of Snowhawk Farm in Brandon, NJ. Lately, I have been having problems with coyotes. They have gotten into my chicken coop, killed my chickens and eaten their eggs. This has been hurting my income, and I don't know if I can support the farm much longer at this rate. They've also dug holes beneath the fence around my chicken coop.

At dusk, on July 15, around 9:00 p.m., my neighbor, Noah Z. Naybore, called to inform me that a coyote was in the area and was heading towards my farm. Worried for my animals, I quickly got my gun and rushed out, forgetting my hearing aids. Standing on the front porch, I spotted a running animal. The coyote stopped at the fence of my chicken coop, and stared in. Afraid that the coyote would begin to dig and get to my chickens, I raised my gun, aimed, and fired.

I went to examine the dead animal by the chicken coop, and found it to be a medium-sized German Shepherd dog with big, pointy ears and black and brown fur. I went back inside and called Noah, upset that he had led me to believe it was a coyote. But, I do believe that I have a right to shoot anything that comes onto my property that endangers my animals and threatens my livelihood.

Testimony of Noah Z. Naybore

My name is Noah Z. Naybore, and I live next to Bob F. Armor, the owner of Snowhawk Farm. At dusk, on July 15, 2009, I saw a dark coyote shaped figure run towards Bob F. Armor's unfenced property. In the past, I have heard Bob complain about having problems with coyotes. They have been killing his chickens and eating the eggs. He has progressively been losing profit, and if too many more chickens

are lost, he said he could lose his farm. I called him at 9:10 p.m., and warned him that I thought I saw a coyote running towards his property. He thanked me for the warning and told me he would be on alert. A few minutes later, I heard a gunshot. Shortly after the gunshot, Bob called me back. He told me it was a German Shepherd, not a coyote. At the time of my call, I felt I was helping Bob F. Armor with his problems, and was doing the right thing. I was only trying to protect my neighbor from losing more chickens, and in turn, losing his farm.

INSTRUCTIONS

The plaintiff must prove by preponderance of evidence that Farmer Bob had unjustly shot Doug T. Rainer's dog, Shadow.

SUB-ISSUES

1. Did the farmer's poor hearing prevent him from hearing the boy's call?
2. Should the walker have been able to keep control of the dog?
3. Is the neighbor to blame for falsely reporting a coyote sighting?
4. Should the farmer have had a fence to dissuade the dog from entering his property?
5. Did the time of day influence the farmer's belief that it was a coyote?
6. Was the farmer too close to a building to shoot?
7. Is the walker to blame for the dog's action?
8. Was it necessary for the farmer to use such force in protecting his property?

CONCEPTS

1. Credibility of witnesses.
2. Preponderance of evidence: burden of proof.
3. Reasonableness of action taken.
4. Protection of property.
5. Position from which the shot was fired.
6. Town of Brandon Leash Law.

LAW

Brandon Municipal Law: §46-7866. Dogs roaming at large. Intentional or reckless subsequent violation.

No owner or keeper of any dog shall allow such dog to roam at large upon the land of another and not under control of the owner or keeper or the agent of the owner or keeper, nor allow such dog to roam at large on any portion of any public highway and not attended or under control of such owner or keeper or his agent, provided nothing in this subsection shall be constructed to limit or prohibit the use of hunting dogs during the open hunting or training season. The unauthorized presence of any dog on the land of any person other than the owner or keeper of such dog or on any portion or a public highway when such dog is not attended by or under the control of such owner or keeper, shall be prima facie evidence of a violation of the provisions of this subsection. Violation of any provision of this subsection shall be an infraction.

DEFENSE OF PREMISES (N.J.S.A. 2C:3-6a. and b.) A section of our criminal law provides that …the use of force upon or toward the person of another is justifiable when the actor is in possession or control of premises or is licensed or privileged to be thereon and he reasonably believes such force necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of a criminal trespass by such other person in or upon such premises.

Can You Hear Me Now?

SCHOOL
Indian Mills Memorial
Shamong
Grade 8, Honorable Mention

TEACHER
Karen Clementi

STUDENTS
Emily Barnes, Chandler Dwyer, Emily Randolph, Shawn Tuman, Kyle Walker

FACTS

Slim Chance is a senior at Eastwood High School, a public school in New Jersey. He is a good student and well liked by his teachers and classmates. Slim has been contacted by a few colleges who are interested in him and has even been offered a scholarship. Lately, though, Slim has been hanging out with the wrong crowd of kids. As a result, his grades have dropped and his attitude seems to be changing. Slim's parents have become concerned and contacted the school. They met with the principal of Eastwood High to discuss their son.

The next week, on December 5, 2009, there was a large school assembly. Despite the school rules prohibiting cell phone use while at school, some students are seen texting at the assembly. A nearby teacher tells the students to put their phones away. Slim Chance is at the assembly and decides to use his cell phone. Principal Forcer sees him using his phone and walks over to Slim and confiscates his phone. The principal resumes watching the assembly from the back of the room next to one of the gym teachers.

As Principal Forcer is standing watching the assembly, he is holding Slim Chance's cell phone in his hand. The phone vibrates and the principal automatically looks down at the phone. He sees that the phone's screen is lit up and it has an icon of a bloody knife on it. The name "Knife in Ur Face" pops up on the screen. Alarmed, the principal shows the phone screen to the gym teacher, Mrs. Sweat. Mrs. Sweat tells the principal that she overheard some students talking about a fight to take place after the assembly.

Principal Forcer and Mrs. Sweat decide to go back to the principal's office and read through all the saved text messages on the phone as well as listen to saved voice mail. They also review the list of contacts in the phone. Based on the information he finds, Principal Forcer suspends Slim Chance from school and turns the information over to the county prosecutor.

Slim Chance's parents are outraged over their son's suspension from school and worried about what this does to his school record and his chances of getting a college scholarship. They decide to sue the school to have their son reinstated and his record cleared. The Chances claim there was no basis to suspend their son as the search of his phone was a violation of his Fourth Amendment rights.

ISSUE

Did Principal Forcer violate Slim Chance's Fourth Amendment rights in making a search of the information contained in his cell phone?

WITNESSES

For the Plaintiff

Slim Chance

Nance Chance

For the Defense

Dr. E. N. Forcer

Mrs. Sweat

WITNESS STATEMENTS

Testimony of Slim Chance

My name is Slim Chance and I am a senior at Eastwood High School. I am a good student and I have never been in any trouble before this. I do not know why this is happening to me.

On December 5, 2009, I was at an assembly at school. It was last period and I had to call my mom and ask her to pick me up after school. I know that it is against the rules to use your phone in school, but I saw a lot of other kids using their phones at that assembly. The next thing I knew, Dr. Forcer took my phone from me. As far as I know, they did not take anyone else's phone that day.

I heard later from my friends about a massive text that went to a lot of kids about a knife fight that was going to happen after school that day. I had nothing to do with the text or any fight. I just got a text like a lot of other kids. For the principal to take my phone and read it is unfair. That phone had a lot of personal information in it. Shouldn't Dr. Forcer have gotten a search warrant or something to read my phone? I know the principal has a problem with the kids I am hanging around with and is trying to create problems for us. Now my school record is ruined and I will probably lose my scholarship.

Testimony of Nance Chance

I am Slim Chance's mother and I am very upset about his being suspended from school. I believe my son when he says he had nothing to do with the text or a fight. Although my husband and I had talked with Principal Forcer about our son, we never gave him permission to search our son. We just let him know we were concerned about some of Slim's new friends at school. At that meeting, the principal made it clear that these kids were his problem students and he was going to do something about the problem. Now I feel my son was singled out by the principal as an easy mark. I feel the search of our son's cell phone is a violation of his rights. The information from that search should not be used to suspend our son from school. I am very concerned about what Slim's school record looks like now, and how this will affect his ability to get into a good college.

Testimony of Dr. E. N. Forcer

I am Dr. E. N. Forcer, principal of Eastwood High School. I have held this position for four years. My awareness of issues with one of our students, Slim Chance, began with a meeting initiated by his parents. The Chances were worried about their son's changing attitude towards school and by some of his new friends at school who are known to be troublemakers. I believe the Chances were right to be concerned about their son.

On December 5, 2009, I saw Slim using his cell phone during a school assembly in violation of the school's Code of Student Conduct. I confiscated the phone, which I had a right to do. While I was holding the phone, I felt it vibrate. I merely glanced down at the phone and saw the screen lit up with an icon of a bloody knife. A caller I.D. appeared. It read, "Knife in Ur Face."

Alarmed, I showed the screen to Mrs. Sweat, one of our gym teachers who was standing next to me. Mrs. Sweat told me she had overheard some students talking about a fight after school. Feeling that trouble was imminent and students were in danger, I made the decision to open the phone. Mrs. Sweat and I went back to my office and searched through the information in the phone. Based on what I found, I felt there was an absolute need to suspend Slim from attending school at that time and to turn the information over to the county prosecutor to investigate other names and events found in the phone's information bank.

Testimony of Mrs. Sweat

I am Mrs. Sweat and I have been a teacher at Eastwood High School for 15 years. On December 5, 2009, the school had an assembly last period. During the prior period, I overheard a group of students talking about what sounded like a fight to take place after school. At that time, I did not know that knives would be involved. I went to the school assembly knowing that Principal Forcer would be there. I wanted to tell him about what I had overheard.

As I approached the principal, I saw him look down at a phone in his hand. He showed me the screen on the outside of the phone. It was a nasty picture of a bloody knife. It read, "Knife in Ur Face." I was shocked. I told Principal Forcer about what I had overheard. I felt that something very dangerous was about to happen at the school and it was our responsibility to try and stop it. We immediately went to the principal's office to open the phone and read the message. A fight did not occur at the school that day, so I guess we did the right thing.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that the search of his phone by the principal of his school was not reasonable and, therefore, information from that search cannot be used to suspend him from school.

SUB-ISSUES

1. Did the plaintiff/student have a reasonable expectation of privacy when it came to his cell phone?
2. Does the school act as a government body?
3. Was the phone screen in plain view?
4. Did the principal have cause to open the plaintiff's phone and search its contents?
5. Was the principal dealing with emergent circumstances?
6. Should the principal have gotten a warrant to search the plaintiff's phone?
7. Did the school act with the safety of all students in mind?

CONCEPTS

1. In loco parentis
2. Plain view
3. Warrantless search
4. Reasonableness of searches
5. Emergent circumstances
6. Right of privacy
7. Due process
8. Burden of proof

LAW

1. Fourth Amendment of the U. S. Constitution
   The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
2. Fourteenth Amendment of the Constitution
   All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws…
3. *New Jersey* v. *T.L.O.*, 469 U.S. 325(1985)
   Held that the Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. School officials are not exempt from the Fourth Amendment because of the special nature of their authority over schoolchildren. Schoolchildren have legitimate expectations of privacy which must be balanced against the school's need to maintain a learning environment. The legality of a search of a student should simply depend on the reasonableness, under all circumstances, of the search. Determining reasonableness of searches involves a determination of whether the search was justified at its inception.
4. Eastwood High School Student Code of Conduct, Section A.4. Use of Electronic Devices, including cell phones, iPods, etc.:
   Use of electronic devices without teacher permission during the school day is strictly prohibited. This includes calling or text messaging family members during the school day. This includes walking to and from the school bus.

No More Horsing Around

SCHOOL
Harrington Park
Harrington Park
Grade 8, Honorable Mention

TEACHER
Joan Dever

STUDENTS
Krista Budinich, Adam Doros, Justin Hwang, Lee Meluban, Brian Oakes, Sammi Rochford, Jacob Rosen, Lauren Wright

FACTS

During the busy holiday season of 2009, in the congested city of New Jersey City, Mr. and Mrs. Hertz, a young couple from out of town, came to explore the sights and sounds of a big city. They planned to spend their time taking part in all the traditional activities that the city offers, including skating at Rockaway Center, going to see the big Christmas tree, and shopping on Ninth Avenue.

They were most excited about taking a carriage ride through the streets of New Jersey City. On December 23, the couple was enjoying their romantic ride through the city when the horse pulling their carriage became skittish, reared up and began to gallop. It seemed that the sudden honking of a horn startled the horse. The horse began to gallop through the streets and eventually crashed into an idle police car. Mr. and Mrs. Hertz endured many injuries as they were thrown from the carriage. The police officer in the patrol car was also treated for mild injuries. The horse sustained major injuries to his leg and was euthanized at the scene.

This incident appeared in several of the cities' newspapers and was also reported on the local news channels. The Humane Society for the Protection of Animals was made aware of the incident through the media coverage and has now filed a claim against New Jersey City and the carriage company owners. The claim states that carriage rides are both cruel and dangerous and violate the NJ Anti-Cruelty statutes. The Humane Society of the Protection of Animals is seeking that the city revoke the license belonging to the Carney Carriage Company and requests the right to put the animals into protective care.

ISSUE

Should the city of New Jersey City rescind the license of the Carney Carriage Company, which currently allows the company to provide horse and carriage rides throughout the city?

WITNESSES

For the Plaintiff

Ann T. Abuze

Officer Sympatico

For the Defense

Mayor Trey Dijon

Arthur Hannsum

WITNESS STATEMENTS

Testimony of Ann T. Abuze

Hello, my name is Ann T. Abuze. I am a representative of the Humane Society for Protection of Animals (HSPA). Currently, I am fifty years of age and have been part of HSPA for more than twenty years. This society is not just in existence to protect the horses in New Jersey City, but to aid and assist all the animals that are abused and mistreated. Animals cannot speak for themselves; when they need a voice, the HSPA steps in.

I am here to let the public of this city know that the horses owned by the Carney Carriage Company are mistreated. These beautiful, magnificent animals are walking on the hard, harsh pavements of this busy city, which results in leg and foot injuries. The city streets are congested and noisy; therefore, the horses can get startled and become skittish in this environment. These animals should be free to graze and roam on open fields. Instead, they work all day in the hustle and bustle of the city streets and spend their nights confined to the small quarters of a city stable. Many are malnourished and suffer from gastrointestinal issues due to a lack of roughage. The poor conditions in which the horses live take an obvious toll, as the average work span of horses in servitude to carriage companies is only four years. Compare this to the mounted police horses that can work as many as fifteen years.

We need to stop this cruel practice. Many large and great cities such as London, Paris, Toronto and Beijing have acknowledged the horrors of this tradition and banned the use of horse-drawn carriage rides. The city of New Jersey City needs to step up and put an end to this outdated tradition. We ask that the city protect the rights of these unique animals. Stop this cruel practice, rescind the permits of the Carney Carriage Company and allow the HSPA to take these abused horses into protective custody so that we can help restore their health and send them to the open fields they were meant to roam. Let this horrible accident be the last. Not one more horse should suffer and die in the name of tourism.

Testimony of Officer Sympatico

My name is Officer Sympatico, and on December 23, 2009, I witnessed a very tragic incident. As I was driving back to the station after my daily Dunkin' Donuts run, I got a call notifying me that there had been a collision between a horse-drawn carriage and a fellow officer's patrol car. I hurried to the scene on 6th Avenue, only to see the horse involved in the collision being put down right in the middle of the road. The witnesses surrounding the scene were quite shaken when they realized what was happening behind the barricades. The couple that was in the carriage was sent to a nearby hospital and the officer from the patrol car was being treated at the scene for minor injuries. It was frightening to all of us and being a police officer, it was not the first time that I witnessed this type of accident. I have seen many similar incidents involving these horses being maimed or killed, and I feel that if this business is allowed to continue, I will have to witness more of these unfortunate events.

For this reason, I feel that Carney Carriage Company, or any other horse and carriage industry, should be denied the right to continue doing business in New Jersey City. If the city allows this to continue, they will be contributors to a cruel and outdated tradition. I have been witness to too many of these tragedies. What will it take for the city to recognize that these busy streets are no place for these beautiful animals? It is only a matter of time before another call goes out over the radio announcing another horse-drawn carriage accident.

As someone who has seen firsthand the horror of the aftermath, I implore the city to ban this industry. Its time has passed. Allow these horses to live out the rest of their days in green pastures. They have paid their dues to this city and tourists who visit.

Testimony of Mayor Trey Dijon

Hello, my name is Trey Dijon and I am the mayor of New Jersey City. I have been mayor for three years now and I must say that accident involving the Carney Carriage Company has caused me much distress. I have always supported the business of carriage rides. My job is to promote all kinds of business and tourism for this city.

Carriage rides through the city streets have been a tradition in this town since 1862. These rides are fun for all ages and create long-lasting memories. I remember when I was but a young lad; my family would take me on Sunday mornings for these wonderful rides through the park. We looked forward to these special occasions and knew that we were fortunate to have such a service available to us. The drivers of the carriages made me feel welcome every single time we rode. Currently, in my old age, I take my grandchildren on these same rides through the park. The Carney Carriage Company has provided employment to the same families for several generations. What would these families do if the company was shut down? Where would they work? How would they feed and care for their families?

Another benefit to horse-drawn carriages is that they are eco-friendly. Horses do not pollute the atmosphere as cars and buses do. The permits, licensing, fees and taxes provide for a sizeable income to this city. In such tough financial times, this city can't afford to lose a single penny!

Hansom cabs are a tradition for the people who live and work in New Jersey City. Yes, there was a terrible accident and we are all saddened by what it happened. But, there are bus accidents and car accidents in this city all the time. Are we going to get rid of the buses? These animals are well cared for and the Carney Carriage Company is a reputable and established business in this great city. This incident has been a tragedy, but it was also isolated. These rides operated all day everyday. Let's not rush to judgment and lose a business and tradition that is so vital to this city.

Testimony of Arthur Hannsum

My name is Arthur Hannsum. I've been in charge of the Carney Carriage Company from the time when my father, Jeff Hannsum, passed away and left me with his beloved company. I am as devoted to horses as I am to the company. The Carney Carriage Company has always followed strict rules in order to maintain a high level of safety for these beautiful animals. The horses are not allowed to give rides in areas where heavy traffic is common until dusk. We have established guidelines when it is too cold or too hot for the animals to work. The animals are well fed and cared for. Regular visits from a veterinarian are also scheduled. I personally inspect the stables to make sure they are clean and the horses are comfortable. It is wrong to accuse me of mistreating my own horses.

An accident has occurred, and I regret that as much as anyone, but it does not warrant shutting down a business that this city needs. Times are tough everywhere and this company has supplied the city of New Jersey City with a consistent flow of income. We pay taxes on our income as well as paying substantial fees for permits and licenses. This city benefits from our business. Tourists come here because of the carriage rides and this is not the time for the city to be cutting off a profitable business. One accident cannot be used against us. My horses are well treated and my employees need their jobs.

INSTRUCTIONS

The Human Society for the Protection of Animals must demonstrate, by a preponderance of the evidence, that the permits allowing the Carney Carriage Company to provide horse-drawn carriage services to the city results in cruel and inhumane treatment of the horses and such permits should be rescinded.

SUB-ISSUES

1. Should the Carney Carriage Company be forced to give up the horses that they rightfully own?
2. Can the carriage company be held responsible for the spooking and subsequent injuries to the horses?
3. Should the city put a complete ban on carriage rides?
4. Is the treatment of the horses closely monitored by any city agency?
5. Are accurate veterinarian records being kept by the Carney Carriage Company?

CONCEPTS

1. Burden of proof: preponderance of evidence.
2. Animal rights vs. entrepreneurial rights.
3. Responsibility of the carriage company.
4. Credibility of the witnesses.

LAW

Carney Carriage Company Regulations

All carriage rides are subject to New Jersey State rules and regulations and ordinances:

1. Summer restrictions - No carriage may operate above 89 degrees. (We suggest you watch the weather reports during the summer months. Often the authorities will send the carriages home at 87 degrees.)
2. Winter restrictions - No carriage may operate below 19 degrees or during blizzards. ASPCA has on occasion sent horses home on short notice when it snows.
3. Police blockades or visits from important political figures visiting New Jersey City may cause streets to be closed down. If the carriage is unable to gain access to your pick-up point, Carney Carriage Company cannot take responsibility.
4. Four (4) adults per carriage, or: 3 adults & 2 kids under the age of 12, or: 1 adult & 4 kids under the age of 12.
5. Monday-Friday rides start at 10 a.m., Sat./Sun. start at 9 a.m.
6. Night rides run until at least 1 a.m.

New Jersey

Anti-Cruelty Statutes

NEW JERSEY STATUTES

TITLE 4. AGRICULTURE AND DOMESTIC ANIMALS

CHAPTER 22. PREVENTION OF CRUELTY TO ANIMALS

ARTICLE 2. PREVENTION OF CRUELTY

B. MISDEMEANORS AND FINES

4:22-17. Cruelty in general; disorderly persons offense

A person who shall:

a. **Overdrive, overload**, drive when overloaded, **overwork**, torture, torment, **deprive of necessary sustenance**, unnecessarily or cruelly beat or otherwise abuse, or needlessly mutilate or kill, a living animal or creature;

b. Cause or procure any of such acts to be done; or

c. Inflict unnecessary cruelty upon a living animal or creature of which he has charge either as owner or otherwise, or unnecessarily fail to provide it with proper food, drink, shelter or protection from the weather--

Shall be guilty of a disorderly persons offense.

Bottles, Backpacks and Backyards… Oh My!

SCHOOL
Harrington Park
Harrington Park
Grade 8, Honorable Mention

TEACHER
Joan Dever

STUDENTS
Kelly Budge, Grace Fuselier, Bryan Goldstein, Ashley Kim, Hannah Pinto, David Ryu, Genevieve Tarino

FACTS

Brianna Oakes, a junior at the Z. Rowe Tollerence High School, has been a top lacrosse athlete since her freshman year. Due to recent events, she has been suspended from school for a week and will be banned for 30 percent of the lacrosse season for possession and use of a controlled substance.

The incident occurred on April 1, 2009, when a substitute, Ms. Newbee, noticed while passing Brianna's locker that Brianna was drinking from a water bottle. As she was passing by, Ms. Newbee also noticed the unmistakable smell of alcohol. Unsure of what to do, the new substitute reported her findings to the vice principal, Mr. Alfred Pry.

Surprised by the actions of this well-rounded student, he left his office and went in search of Brianna. He spotted Brianna exiting the school and crossing the faculty parking lot, which was adjacent to her own backyard. Mr. Pry called to Brianna to stop and come back to the building. When Brianna did not stop, Mr. Pry rushed across the parking lot to catch up to her. He reached Brianna just as she was entering her own backyard and confronted her. Vice Principal Pry told Brianna that she was suspected of violating school policy with possession and use of alcohol.

Mr. Pry then took Brianna's backpack from her and searched it. The search confirmed what Ms. Newbee had suspected, a water bottle filled with vodka. Mr. Pry asked Brianna to return to his office where she was informed that the school policy for violation of this code would be enforced.

Mr. Oakes, Brianna's father, has filed a lawsuit against Z. Rowe Tollerence High School. Mr. Oakes states that the search of his daughter's backpack off of school grounds was in violation of her Fourth Amendment rights. He wants the school-imposed punishment rescinded and his daughter to have full player status on the lacrosse team. The school board argues that there was reasonable suspicion to assume that the bottle of vodka was still in her backpack, and, therefore, the search was valid and necessary.

ISSUES

Did Vice Principal Alfred Pry violate Brianna Oakes's Fourth Amendment rights when he searched the contents of her backpack in her own backyard?

WITNESSESS

For the Plaintiff

Brianna Oakes

Zebulon Oakes

For the Defense

Alfred Pry

Ms. Newbee

WITNESS STATEMENTS

Testimony of Brianna Oakes

My name is Brianna Oakes, and I am a junior at Z. Rowe Tollerence High School. At the end of the school day, on April 1, 2009, I was standing at my locker packing my books. I had been a little late to my locker because I was talking to my lacrosse coach about the game we had the next day. I locked my locker and walked out of the school building, across the teachers' parking lot to the fence surrounding my backyard. My house is adjacent to the school, so my parents had a gate installed to make getting to school in the morning easier.

However, as I was entering the yard, I heard a voice asking me to stop. I opened my gate and went into my yard. Vice Principal Pry was right behind me and he put his hands on my backpack and pulled it off my shoulder. I turned and saw Mr. Pry emptying the contents of my backpack onto the picnic table in my own backyard! I screamed for my father and he rushed out of the back door, coming to ask what was going on, trying to calm me down. I continued to scream, explaining to my dad that the vice principal was taking my stuff without permission.

Vice Principal Pry asked that my father and I return to his office. We were then informed that I was going to be suspended from school for a week and that the school would also be imposing the school athletic suspension due to violation of the school code. I was shocked by the fact that I had to miss 30 percent of the season, even though I was searched unfairly! It just doesn't make sense how school authorities can come to my parents' private property and search my belongings without my consent. When Mr. Pry took my backpack from me, I was not at school and, therefore, not subject to school codes.

Testimony of Zelubon Oakes

My name is Zebulon Oakes, the father of Brianna Oakes. It was April 1, 2009, and I was at home on my day off from work. I am in the management department of Whole Foods. I was feeling a tad sick that day and was resting at home when I heard my daughter's voice calling for me from outside. It was a little after three o'clock – the time when the students at the high school are dismissed for the day. I put on my jacket and ran outside to the backyard, only to see my daughter screaming and the vice principal, Mr. Pry, emptying the contents of a backpack onto our picnic table.

I approached him, asking what he was doing to my daughter and her backpack. He explained that a teacher had witnessed something to make her believe that my daughter had violated a school code. Enraged, I tried to take the bag back, but Mr. Pry put the contents back into the bag and asked us to come back to the school. I took my daughter's hand and we walked across the lot and into the vice principal's office. He then had us sit down as we listened to the consequences of violating the code. Brianna was on the verge of tears when she heard she had to miss a week of school as well as 30 percent of the lacrosse season, which led me to become extremely upset.

For the moment, I simply locked my jaw and nodded, and we were allowed to leave. However, all the while I was thinking to myself, they can't do this! They cannot follow a student off school grounds and search her. It would be a different story if Brianna was searched by her locker, but that is not the case here. Brianna's Fourth Amendment Rights have been violated. Vice Principal Pry conducted an illegal search.

Testimony of Vice Principal Alfred Pry

Hello, my name is Alfred Pry and I have been vice principal of Z. Rowe Tollerence High School for 12 years. First off, I would like to say that my initial intentions were to protect the student body. The safety of our children and staff is my priority. Having this girl in possession of an alcoholic beverage is dangerous, inappropriate, and against state and school regulations. My purpose as vice principal of this school is to insure a stable and appropriate environment for learning. Any accusations towards me – stating that I violated Brianna Oakes's Fourth Amendment rights – are unjust and unreasonable.

When substitute teacher Ms. Newbee notified me that she had witnessed Brianna Oakes drink directly from the bottle filled with suspicious liquid, I questioned her immediately. She told me that

when she walked past Brianna at her locker, she detected a strong aroma of alcohol. As soon as I heard this, I rushed over to Brianna's locker but she was no longer present at the scene. I exited the door closest to her locker and found her walking across the school parking lot to her nearby home. I followed with vigilant eyes to the point where she was entering the gate leading into her backyard. Aware of school policy that clearly states that no one is permitted to have alcohol within 1000 feet of the school, I allowed myself into her backyard and began to search her backpack. I then found a regular Poland Spring water bottle that contained vodka. I am positive of this fact because of the strong odor coming from this liquid in the bottle.

The Oakes' accusation against me is that I made an illegal search of her personal belongings and that I violated her Fourth Amendment rights. In reality, I was following school policy and state guidelines by protecting the perimeter of this school. The rights of a student are limited when it comes to the protection of the greater student population.

Reasonable suspicion existed and that was all the rights I needed. Brianna exited a school door, crossed a school parking lot and barely stepped off school grounds with the possession of an illegal substance in her backpack. Her rights were not violated, it is she who was in violation.

Testimony of Ms. Newbee

I, Ms. Newbee, have been a substitute for Z. Rowe Tollerence High School since this past January. On April 1, 2009, I was substituting for a sophomore Spanish II class. When I was about to leave the school after the final bell, I passed a section of lockers and I sensed a strong odor of alcohol. I noticed that a junior named Brianna Oakes was standing by her locker, drinking from a Poland Spring water bottle. I recognized this student as I had her in a calculus class the day before. As a substitute teacher, I was unsure of what to do in this situation. I immediately brought my findings to Vice Principal Pry's attention. He seemed surprised at what I reported and commented that Brianna was a well-respected student and athlete. I assured him that I was convinced of what I had seen and smelled. Since the situation of Brianna and the smell of alcohol were now in the authority of Mr. Pry, I then left the building.

It seems to me there is no question of legal or illegal search. The girl was found with alcohol in her backpack! She walked from her locker, out a school door, across a parking lot and right into her yard. The illegal substance was in her possession the whole time. VP Pry had the authority to search Brianna's bag as she was still on the perimeter of school grounds and following up on what an employee of the school witnessed. Reasonable suspicion existed; that is all he needed. A violation is a violation, Brianna should just accept her punishment.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that Brianna Oakes's Fourth Amendment rights were violated when Vice Principal Pry searched her personal belongings.

SUB-ISSUES

1. Did the vice principal have enough supplied evidence to search Brianna's backpack?
2. By being on her own property, does Brianna have the security of her possessions?
3. Since the property of Brianna's house is adjacent to the school parking lot, can the vice principal legally search Brianna's belongings?
4. Was the school code imposed as it was written?
5. Was the substitute a reliable witness to present information to the vice principal to follow through on?
6. Was the punishment too severe for her actions?
7. Due to the fact that the substitute had suspected the alcohol use on school grounds, does that give the school enough rights to search Brianna?
8. Do the private property rights of the Oakes' override the Drug Free Zone?

CONCEPTS

1. Legality of the vice principal's actions.
2. Credibility of the substitute teacher.
3. Burden of proof: preponderance of the evidence.
4. Rights of students vs. Fourth Amendment rights.
5. Property rights of residents who live within the Drug Free Zone.

LAWS

The Fourth Amendment of the Constitution of the United States of America

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Z. Rowe Tollerence High School Student Code of Conduct:

Section 14, Sub-Section 3, Article 4, Parts A & B.

4. Consequences of Students' Possession of Illegal Substances
   - A. First Offense
     Students will be suspended for a full school week as well as varying periods of suspension for extracurricular activities. If the student is involved in a school sports team, he or she will be suspended for 30 percent of the season, effective immediately.
   - B. Second Offense
     If the student is caught again with an illegal substance, he or she will be suspended for two full school weeks as well as a more extensive suspension from extracurricular activities. If the student is involved in a school sports team, he or she will be removed from the team and will be denied the privilege of being on Honor Roll.

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