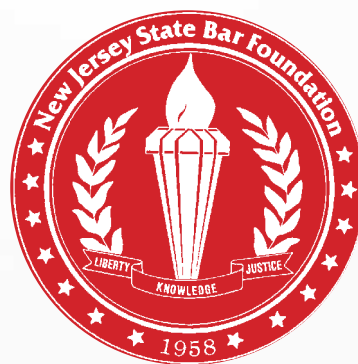


For grades 7–8

MOCK TRIAL EXERCISES



Featuring Winning Cases from
the New Jersey State Bar Foundation's
Law Adventure 2014 Competition

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Preface

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

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

Following are the winning cases from the Law Adventure 2014 Competition. Themes for the 2014 contest were as follows: (1) Animal Law Issues and (2) Student 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 has won recognition in the Associations Advance America Awards program, a national competition sponsored by the American Society of Association Executives in Washington, D.C. This prestigious award recognized 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 Mocketal Multi-Tool Trial: O'Toole v. Mocketal High

SCHOOL

George G. White Middle
Hillsdale
Grade 7, First Place

TEACHER

Suzanne Pausz

STUDENTS

Steffani Aisenman, Luke Barden, Jefferson Chen,
Kyle Chiu, Elise DeBiasio, Kevin Liu, David Oh,
Karoline Petkovich, Shyam Thyagarajan

FACTS

On March 7, 2012, Matt O'Toole was eating lunch in the cafeteria at Mocketal High located in Tattletown, New Jersey. He was discussing what they had to finish at their robotics meeting after school with his friends. Matt took out his multi-tool to show his friend Rob Otix. Matt brought in his own tool in replacement of the old, rusty, worn-out multi-tools the robotics club had. Sam D. Spise, a fellow student, saw Matt taking out what looked like a knife in front of his friends at lunch time. He immediately went to the principal, Blade B. Sharpe, and reported what he saw.

After lunch, Mr. Sharpe called Matt to his office. He searched his backpack and found the multi-tool. Matt explained that the tool was for the robotics club which was meeting after school that day. Mr. Sharpe asked why he thought he had permission to bring this in. He told Mr. Sharpe that the knife was less than five and a half inches and he believed that it was not considered a weapon. He was also given permission by the robotics club adviser.

Mr. Sharpe still considered it a weapon based on school policy and suspended Matt for 10 days. The school policy said that anything that can injure anyone is considered a weapon. Matt O'Toole did not know he had to ask for a copy of the school policy since Matt was absent on the first day of school. Matt claims that not only was he unaware of the policy, but he was not given a chance to defend himself at an informal hearing. Matt O'Toole's family is suing the school for violating Matt's right to due process and for legal fees.

ISSUE

Did Principal Blade B. Sharpe violate Matt O'Toole's right to due process by not giving him an informal hearing before suspending him?

WITNESSES

For the Plaintiff

Matt O'Toole
Rob Otix

For the Defense

Sam D. Spise
Blade B. Sharpe

WITNESS STATEMENTS

Testimony of Matt O'Toole

I am a senior at Mocketal High located in Tattletown, New Jersey. Ever since I started attending this high school, I have been a member of the robotics club. In this club, the materials provided, such as multi-tools, screwdrivers, and pliers, are worn out and rusty. Because of this nuisance, I brought my own multi-tool to school so the robotics projects are finished faster. A multi-tool consists of scissors, pliers, screw drivers, and a few small knives.

On March 7, 2012, I was eating lunch with my friends in the school cafeteria and I took the multi-tool out of my backpack and showed it to my friend, Rob Otix. I was really eager to show my friends on the robotics club the tool because I knew they would have been happy that they could finish their projects faster. I had already asked my robotics adviser for permission to bring in the tool. During lunch, when I put the multi-tool back in my backpack, I saw my fellow student, Sam D. Spise, looking at me. Sam and I have not been on good terms for many years so I thought he might report me. He has always tried to get me in trouble by exaggerating what really happened.

As I predicted, immediately after lunch, Mr. Sharpe called me down to his office. The moment I arrived, Mr. Sharpe snatched my backpack out of my hands and opened it. After a minute, he took out my multi-tool and started to lecture me about having a weapon in school. When I finally got the chance, I told him that the blade was only three inches long and that I was not intending to hurt anyone. Finally, I told him that the school wasn't providing legitimate tools for robotics so I brought my own in. The moment I stopped talking, he still said that the multi-tool was considered a weapon and suspended me for 10 days.

Mr. Sharpe told me that on the first day of school, all of the students were given a copy of the student handbook. Since I was absent on the first day of school, I did not know that I had to ask for a copy of the school policy. I was shocked for I was applying to M.I.T. and a suspension on my record could damage my chances of getting in. I was not even given a chance to defend myself in an informal hearing. My parents and I are suing Mochtreal for unreasonable suspension, violation of my right to due process, and for legal fees.

Testimony of Rob Otix

I am a senior at Mochtreal High located in Tattletown, New Jersey. I have always been in the after-school robotics club, and I am a friend of Matt O'Toole. On March 7, 2012, I was eating lunch with my friends in the school cafeteria. We were discussing how terrible the tools are in the club. Most of us hate using those rusty old tools. That was

when Matt showed us his brand new multi-tool. It consisted of a screwdriver, a scissor, and a few small knives. He talked about it for two minutes, and then he put it away. Not one of my friends felt threatened and I was looking forward to trying out the multi-tool after school.

Then I learned that Mr. Sharpe had taken away Matt's tool. In robotics yesterday, I heard Matt ask the teacher if he could bring in his own multi-tool for the next day. She said, "Why not?" It was just like the multi-tools in robotics but it wasn't as rusty as the other tools. It was purely to help us complete our projects faster in robotics.

Testimony of Sam D. Spise

I am a senior at Mochtreal High in Tattletown, New Jersey. I am in all honors classes, have straight A's, am captain of the school basketball team, and am the president of the Chess Club. On March 7, 2012, I was eating lunch in the cafeteria. My friends and I saw Matt take a knife out of his pocket and point it towards his friends. Word started spreading that Matt was threatening students with his knife.

A few days ago, I learned that a couple of people got hurt at a school so I started to feel nervous about what he was going to do with the weapon. So I went to the principal to tell him that Matt had a knife out at lunch. I finally felt safe when Mr. Sharpe told me that he would call Matt down to his office and confiscate his knife.

Testimony of Blade B. Sharpe

I am the principal of Mochtreal High in Tattletown, New Jersey. On March 7, 2012, one of our school's best students, Sam D. Spise, came to me to report that Matt O'Toole pulled a knife out in the cafeteria. Sam is a trustworthy student so there was no doubt that he was telling the truth. Immediately I had Matt called down to the office for him to explain himself.

As soon as Matt had arrived, I confiscated his backpack. Inside, I found the multi-tool. It consisted of a few knives and some other sharp tools. Based on the school policy, this was considered a weapon, as it could be used to harm others. Although he had gotten special permission to bring it for robotics,

he was told to drop it off at the beginning of the day. The two of us discussed for a little while about why Matt had the multi-tool. I considered this an informal hearing which is required for a 10-day suspension. Based on Sam's explanation, he was taking out the knives and showing people.

Very soon, word got out that Matt had a knife and many students were scared that someone might get hurt. Therefore, this became a danger and it disrupted the school. Because he was disrupting school with a weapon, he met the standards to be immediately suspended. Matt's 10-day suspension was fair, as he could have easily harmed someone.

I will not tolerate weapons in this school. Matt is a smart student, so he should have known not to take out a knife in this school. Although he did not receive the school rules at the beginning of the year because he was absent, he should have asked for one. He deserves to be suspended, for the safety of the students and faculty of our school, and for the protection of property.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that Principal Sharpe violated Matt O'Toole's right to due process by not giving him an informal hearing before suspending him.

SUB-ISSUES

1. Was Matt intending to hurt anybody with his multi-tool?
2. Was it Matt's responsibility to ask for a copy of the student handbook even though he was absent the first day of school?
3. Does it matter that Matt was given permission from the robotics adviser to bring his multi-tool to school?
4. Is the multi-tool considered a weapon or a tool?
5. When Matt was called to the office by Principal Sharpe, was it an informal hearing?
6. Was a 10-day suspension for Matt unreasonable?

CONCEPTS

1. Burden of proof: preponderance of the evidence.
2. Credibility of witnesses.
3. Students' rights.

LAWS

Students' Rights Handbook: A Guide for Public School Students in New Jersey, pages 32 and 33, © 2011 New Jersey State Bar Foundation and American Civil Liberties Union of New Jersey:

"The Constitution's due process clause entitles a student facing suspension of up to 10 days to receive 'notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his version.'¹⁹⁶ New Jersey regulations require an 'informal hearing' prior to suspension but guarantees few procedural protections beyond those required by the Constitution.¹⁹⁷ A student does not have the right to be accompanied by parents or represented by counsel at the informal hearing, and is not entitled to call or cross-examine any witnesses."

"A student may be immediately removed from school without this informal hearing only if the student's presence poses a continuing danger to persons or property or threatens to disrupt the academic process.¹⁹⁸ Immediate removal is justified only for certain serious offenses, such as assault with a weapon,¹⁹⁹ or when the school can demonstrate that it was impossible or unreasonably difficult to provide a hearing before suspension.²⁰⁰ When a student is immediately moved from school, he or she must receive notice and a hearing as soon as possible, generally no later than the next day."

The Case of the Damaged Dog: McGill v. Ford

School

Glen Rock Middle
Glen Rock
Grade 7, Second Place

Teacher

Mary Morrow

Students

Jack Bloomfield, Andrew Bober, Anand Chari,
Sabrina Fried, Sumana Gadiraju, Caroline
Geoghegan, Michael Giardino, Samantha
Greene, Katherine Hikin, Dylan Needleman

FACTS

On the foggy evening of November 11, Mr. McGill, an Iraq war veteran, was driving along Prospect Street when Mr. Clyde Ford pulled out of the Jalapeño's Mexican restaurant parking lot. Due to the fog, Mr. Ford didn't see Mr. McGill's car coming, even though Mr. McGill had his headlights on. Mr. Ford hit Mr. McGill's Prius on the front passenger side.

In the car with Mr. McGill at that time was his service dog Lucky, who was trained to support Mr. McGill with his symptoms of post-traumatic stress disorder (PTSD). Lucky was sitting in the front passenger side of Mr. McGill's Prius. The impact of the collision caused Lucky to be thrown forward against the front dashboard of Mr. McGill's car, resulting in a break to his left front leg. The injury required surgery.

During the surgery and recovery time, Lucky was unable to perform his service duties. Mr. McGill did not leave his house or attend work during that time, fearing that his PTSD symptoms would recur and he would not have assistance to cope in the absence of Lucky.

Mr. McGill is suing Mr. Ford for the veterinarian expenses for Lucky's injuries. In addition, he is seeking reimbursement for lost wages and compensation for the emotional distress he suffered during the time his service dog was unable to perform his duties.

Mr. Ford admits that his vehicle hit Mr. McGill's car, causing the accident, and that this was because of the poor visibility due to the fog. He has agreed to reimburse Mr. Ford for the veterinarian expenses not covered by his insurance. However, he does not believe that he is responsible for any other expenses or damages. Mr. Ford claims that the dog would not have been injured if he had been properly restrained in the car as required by the NJ Pet Restraint Law. He believes that this negligence on Mr. McGill's part contributed to Lucky's injuries and therefore to the resulting disruptions to Mr. McGill's daily routines.

ISSUE

When a dog is injured in a car accident, is the driver of the car in which the dog was riding considered negligent if the dog was not restrained or harnessed within the vehicle?

WITNESSES

For the Plaintiff

Mr. Bob McGill
Mr. Shepard Mentor

For the Defense

Mr. Clyde Ford
Dr. Molly Mongrel

WITNESS STATEMENTS

Testimony of Bob McGill

On November 11, I was driving along Prospect Street, when Mr. Clyde Ford's car collided with my car. I was obeying the speed limit and I had my headlights on. I didn't know that Mr. Ford was pulling out of the parking lot until it was too late. His car seemed to come out of nowhere, and unexpectedly slammed into my car. My car's right front passenger side was damaged, and even worse, my service dog Lucky was badly injured.

I am an Iraq war veteran. My dog Lucky is more than just a loved pet. This dog helps me cope with post-traumatic stress symptoms that I suffer as a result of being in combat. I can't work or even leave my home without Lucky. When Lucky was recovering from his injury and the necessary surgery, I couldn't leave my home to go about my day-to-day routines. The stress of having a flashback or memory of the war kept me from being able to go to work. I lost many days of wages.

With PTSD it is difficult to leave my home. I think that someone is trying to hurt me, especially if I am in an environment that has the same sounds, smells or sights as the battlefield. Loud noises, flashes of light or unexpected movements may trigger a flashback. If I have a flashback, then I can become violent not just to myself, but to others as well. Lucky senses when I am having a flashback. He barks and nudges me and brings me out of it. In addition, he keeps strangers from getting too close to me. I know if I enter an unfamiliar place with Lucky that he will let me know if he senses danger.

The suggestion that Lucky be kept restrained in the car shows a lack of understanding of PTSD. To do his job, Lucky needs to be next to me, able to reach me so he can monitor and respond to any negative reactions I may have. For example, once I was driving in my car and I had a flashback to when I was driving in the army. I started to believe that someone was chasing me. I started to swerve into the median when Lucky woke me up by jumping to my side and barking to jolt me from this memory. I could have died if he hadn't responded.

Lucky is not just being transported in the car. He is performing a duty and cannot do it if restrained

to a crate or a harness. Lucky is invaluable to me. He isn't a regular dog. He is the key to my freedom. I appreciate that Mr. Ford is helping with the vet bills and he should. It is his fault that Lucky was injured. And that is why it is his responsibility to fully compensate me for all that I lost as a result of Lucky's injuries.

Testimony of Shepard Mentor

My name is Shepard Mentor and I am a service dog trainer at the Friends for Fighters Foundation. Our organization trains dogs to provide service to war veterans who suffer from post-traumatic stress disorder. I paired Mr. McGill with his dog Lucky and provided assistance with their training. Mr. McGill has had Lucky by his side for the last six years.

Many veterans who return from war suffer from PTSD. They experience symptoms such as flashbacks, nightmares, and the feeling that someone is going to surprise them with an attack. This impacts their daily life by making it difficult to leave the safety of their home because they think that someone will attack. Service dogs such as Lucky are trained to wake a veteran from a nightmare or flashback, give a sense of security, and create a buffer in a large crowd or public places.

Because he suffers from PTSD, Mr. McGill may feel threatened every time he leaves his house. However, when Lucky is at his side, he can go out and meet new people and see new things. Lucky will help part crowds and give him a sense of security. Research has shown that when owners bond with their service dogs, it raises their hormone oxytocin levels. This hormone helps improve trust and overcome paranoia, countering the effects of PTSD.

When Lucky was injured in the accident and recovering from his surgery, he was unable to accompany Mr. McGill to public places. Based upon the dependent relationship between a PTSD patient and his service dog, it is understandable that Mr. McGill felt uncomfortable going to work or even leaving his house. At any moment the symptoms of PTSD could have come and he would have no one to help. The wounds of PTSD may be invisible, but they are always present to a veteran.

Testimony of Clyde Ford

The evening of the accident was a very foggy evening. The visibility was low due to the fog. I remember looking down the road before I left the parking lot. It appeared clear to me but, as I turned, I could hear and feel our cars collide. It took me a few seconds to realize what had happened. Even then, it was hard to see Mr. McGill's dark car through the fog. I do remember hearing a dog barking. I got out of my car and went to the passenger window of Mr. McGill's car. His dog was barking loudly and trying to climb up on the passenger's seat. He was having difficulty.

Mr. McGill was clutching tightly to the steering wheel with both hands and staring ahead. I kept asking him if he was okay but he didn't respond. Then I saw his dog reach his head over to the driver's side and nudge Mr. McGill's leg. That was when Mr. McGill looked to the side and saw Lucky was injured. He was very distraught.

Lucky had to be lifted from the floor space in front of the passenger seat. It was difficult because it was such a small tight space and it was obvious he was injured and in pain. Lucky must have ended up in that space after the collision. It was too small a space for a large German Shepherd like Lucky to sit in comfortably, and the dog seemed anxious to get back on the seat.

I love dogs and have two of my own. I hate to see any injured. They are like children to me. That is why I keep my dogs restrained in the car. I wouldn't let kids climb around free in a moving car. It's too dangerous. Why would anybody let their beloved dog do that? If someone doesn't have a crate for his or her dog in the car, he or she can get a pet restraint. I have some. They're so easy to use. You just put the seatbelt through the dog's harness. If Mr. McGill had done this, Lucky wouldn't have ended up like he did. Mr. McGill kept telling me how expensive his service dog is and how he can't function without him. Shouldn't he then have done what he could to protect this valuable property? If he had, Lucky might not have ended up with the injury he did.

Testimony of Dr. Molly Mongrel

I am Dr. Molly Mongrel. I have a veterinarian practice that treats small animals. I treated Mr. McGill's dog following the car accident on November 11. Lucky had broken his right femur. This break was caused by the force of impact when the cars collided. Lucky was thrown from the front passenger seat where he was sitting and he hit the interior dashboard. The break required surgery. At six years old, Mr. McGill's dog is still considered a young dog and, although the break was severe enough to require surgery, the recovery has been going well. Lucky will continue to walk with a limp, and his gait may be slower, however, I do not believe that the surgery has impacted the skills needed for Lucky to continue to provide service to Mr. McGill.

Unfortunately, I have treated many animals that are injured from car accidents. If not properly restrained, they become airborne with the impact of the crash. We know the damage that does to humans; you can just imagine the impact being thrown inside a car can have on an animal. I am a strong advocate for the use of pet safety restraints in vehicles. Too often I see the cruel consequences of animals' lives being endangered due to these kinds of accidents. According to the American Automobile Association (AAA), a 35 MPH accident can turn a 60-pound pet into a 2,700-pound projectile. Just as seatbelt restraints have prevented countless cases of catastrophic injury to humans due to car accidents, pet safety restraints or pet containers in the car can prevent the same in animals. In my opinion, Lucky would have not suffered this injury if he had been properly restrained.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that the defendant is solely responsible for the injuries to the dog and for the losses incurred due to the lack of services provided by the dog during his time of recovery.

SUB-ISSUES

1. Has the owner of the dog committed cruelty to his pet for not properly restraining him in a moving vehicle?
2. Is the owner of a service dog exempt from requirements to restrain a dog in a vehicle?

CONCEPTS

1. Preponderance of the evidence.
2. Contributory negligence.

LAW

Citation 2012 A.3221 (This case was written on the premise that this bill was passed into law.)

The driver of a passenger automobile shall secure or cause to be secured in an appropriately sized, properly adjusted, and fastened seat belt restraint system, any non-crated dog or cat that is being transported in the vehicle.

4:22-18. Carrying animal in cruel, inhumane manner; disorderly persons offense

A person who shall carry, or cause to be carried, a living animal or creature in or upon a vehicle or otherwise, in a cruel or inhumane manner, shall be guilty of a disorderly persons offense and punished as provided in subsection a. of R.S.4:22-17.

Americans with Disabilities Act “. . . service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal’s work or the individual’s disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.”

Bully Banter Abuzz!

Clara Knett v. Tiger Town School District

SCHOOL

Richard M. Teitelman Middle
Cape May
Grade 7, Honorable Mention

TEACHER

Mary Frances Batten

STUDENTS

Savannah Bruno, Avery Bryson, Dominique Chiocchi, Haley Christopher, Kaitlyn Dougherty, Aurora Douglass, Taylor Knecht, Maura Olivero, Gillian Paluch, Kayleigh Schultz, Katya Simonsen, Charlotte Thompson, Kyle Verycken

FACTS

Tiger Town School District's tenacious Student Government seizes the bullying issues in their school. On November 11, 2013, after a moving Veteran's Day Memorial Service via Tiger Town T.V., Student Government discussed the fact that no progress was being made alleviating bullying in their school as promised by their administration. A proposal to "Take Back Control" through positive peer pressure was presented and approved by the principal and subsequently put into effect. A "Wall of Shame" was created in the central hallway – a hallway every student, faculty, and employee of the district must pass. The wall was interactive in that it displayed the recent and most repeated instances of bullying with a comment board for all to offer suggestions on the better decision to be made by all involved. No names were associated with the instances of bullying, merely the instance itself and the setting in which it occurred. The wall developed a voice unto itself; many members of the student body, faculty, and staff left their comments and the school was abuzz.

Administration, PTA members, and Student Government commented that this pressure from within was having a positive impact. The instances of reported bullying declined drastically, so much so that it made local news and *NJ Live*, the local broadcast, showed interest in the story and requested interviews with members of the Student Government and administration.



On January 16, 2013 the parents of Clara Knett requested a conference with the principal and the school board in which the parents voiced their complaint that this so-called Wall of Shame was causing their daughter, a prodigy recognized throughout the community and beyond for her incredible musical talent, to now be uncomfortable in this school. They also voiced their concern that Clara did not feel safe in open areas like the bus, hallways, bathrooms, and gym classes. Clara felt threatened by these anti-bullying conversations. Even though her name was not included, the school population knew by rumor who was involved. "Bullies were given detentions for their indiscretions and that should be punishment enough," stated the parents of Clara. The request was made to the board to tear down the Wall of Shame immediately or suffer the consequences. Months of indecision by the board culminated in Clara's parents filing suit for discrimination and defamation, asserting damages for private education tuition to the local academy, and injunction to stop this anonymous publication of bullying.

ISSUE

Has the content of the information communicated through the Tiger Town School Wall of Shame defamed Clara Knett? If so, what remedy/remedies may the jury properly consider and impose? Against whom (Tiger Town Board of Education, contributing students, teachers, administrators)?

WITNESSES

For the Plaintiff

Clara Knett
Cliff Treble

For the Defense

Hugh Maine
Yvonne Stevens

WITNESS STATEMENTS

Testimony of Clara Knett

Hello, my name is Mrs. Clara Knett. I am the proud parent of Clara Knett, a ninth-grade student here at Tiger Town High School. She is a bit of a perfectionist and extremely self driven. Clara is referred to by many as a musical prodigy, earning many local and state awards. Just last summer Clara received a scholarship to participate in and study abroad with the New Jersey State Band in which Clara earned herself a solo. Clara is quite the local rising star reaping accolades of achievement with her wherever she performs. My daughter should be held in the highest regard for all the positive press she has brought to this district.

During her time here in Tiger Town School District, she encountered a few issues with her fellow band members, resulting in some students leaving the band and disappointed parents looking for a scapegoat to blame for their child's unpopular decision to quit. Clara is a perfectionist and wants only what is best. Every student in the band will enjoy the fruits of her labor as they too will be using their awards as entrée to the universities of their choice.

Clara recently had three run-ins that cost her two 4:00 p.m. detentions and a 5:30 p.m. Enough should be enough. But jealousy reared its ugly head and the Wall of Shame was erected. Although anonymity is provided, no one with half a brain would deny that kids always know who is involved in what. The straw that broke her back and ours was the accusation that my daughter poured epoxy glue into the clarinets of the second and third chair. Yes, we did purchase the glue for her "Mythology Mask" and yes, the teacher found the receipt in the bag with the other items purchased for decoration, but anyone in her classes could have taken the glue and destroyed those instruments.

Since the day Clara's alleged indiscretion was posted, she has made one excuse after another not to come to school. Anonymous, what a crock! There is no need for a name when kids are involved. They love the drama and the excuse to run their mouth. Clara tells us tales of her fear in being in open spaces, such as hallways and bathrooms. Clara

absolutely refuses to take the bus; my daughter no longer feels safe in this school. This wall is discriminatory in its essence and is defaming my daughter's name and reputation; the wall needs to come down.

The school board refused to act in a timely manner and my husband and I cannot sit by and watch our daughter suffer and lose opportunities in her educational process. We will not tolerate this kind of behavior towards our child. If Tiger Town High School is against bullying, then it is a shame that they cannot comprehend that this is an act of bullying in and of itself. We are here today filing suit for defamation of character, discrimination and full tuition to the local academy in which my husband and I will be enrolling our daughter Clara Knett come September.

Testimony of Cliff Treble

I am Cliff Treble. I have been the band teacher for Tiger Town School District for the past 12 years. It has been a privilege to work with many a talent, but Clara is truly the most hard-working, dedicated, determined young prodigy to play within these hallowed halls. She is a great leader and I feel that as a choice district, we should be fighting to keep her. Clara has brought such positive exposure to herself, others privileged to accompany her, and our school district at large. Many music enthusiasts are showing a keen interest in transferring to be part of such a great band. This can only be good for the district.

Clara is a very demanding person and may at times feel the need to set a fire under others, but when Clara has been difficult, it has only been for the right reasons – to push others to their potential. Yes, we have suffered the loss of instruments destroyed or lost in our past, and yes, members have left the band, but that is for a variety of reasons. Many students throughout middle school and early high school are trying new things; band just might not be the right fit for some kids. Some also are challenged by the rigor of the curriculum and face challenges in keeping academics and extracurricular activity in balance.

Some have left the band and may use Clara's perfectionist attitude as their excuse, but that is

all it is, an excuse. Clara was held responsible for her indiscretions and served detentions, and this should be sufficient punishment. I believe the wall should be taken down. This wall should not be an opportunity for some to execute upon personal grudges.

Testimony of Hugh Maine

My name is Hugh Maine and I am the current president of the school board for the Tiger Town School District. I have been a member of the school board for nine years and president for the last three. I am extremely proud of all our students' initiatives and talents, including both students here today. I am also very appreciative, as is the entire board and administration, for the positive public recognition their cumulative and individual accomplishments have earned in our school community as well as in our community at large. School spirit is at an all-time high and instances of bullying have been greatly reduced. Prior to the erection of the Wall of Shame initiated by our president of Student Government, Yvonne Stevens, the focus of control was imposed from without. Now, the student body is empowered and the locus of control has shifted within the individual students in our learning community.

The wall has truly developed a voice for the entire school and has transformed former bystanders into active advocates of justice. Everyone in the district is now afforded a voice anonymously. Bullying is at an all time low, the school community, as well as our community without, is thrilled with the positive accolades. This feedback has gained statewide recognition as a potential prototype to be adopted by school districts throughout the New Jersey. Our interview on *NJ Live* is scheduled for next month.

I do not believe the wall should come down, nor do I believe we, as a school board representing our district, are responsible for the accusations made by Mrs. Clara Knett including financial responsibility for their potential change in education. There is no argument here that Clara Knett is accomplished, renowned, and very much respected for her musical talent. However, the anonymity of the wall protects all students including Clara.

Testimony of Yvonne Stevens

Hello, my name is Yvonne Stevens. I am currently the student body president of Tiger Town High and a former band member. I quit the school band in the middle of my eighth-grade year and have spent my energy pursuing a solution to the problematic bullying situation in our district. As president, with the support of our government members, I devised the concept of the Wall of Shame. This is an anonymous opportunity for students to voice positive ways of dealing with negative situations. With the approval of our principal, the wall was erected and major improvement made in reducing the instances of bullying and thus providing a safer environment for all. This Wall of Shame is an interactive board that provides everyone with an anonymous voice. Students are now empowered, bystanders are now advocates for justice, and all is accomplished anonymously.

The “Band Room Bust” was posted, I do not think by me, but even if it were me, the truth is a perfect defense, and I might add no names were attached. Clara showed up in class with a half-filled container of glue to complete the mask in our mythology study. Our teacher found the receipt on the floor in a bag with Clara’s other supplies. Clara’s name was never posted on the wall, only the incident and the responses of others. We are now facing the possibility of losing this voice because some bullies allegedly feel uncomfortable, how ironic! This wall represents hope and security; taking it down will mean a return to problems with no solutions. Would you sacrifice the integrity of the entire school district for the sake of proven bullies with records of some form of abuse? The wall is anonymous. It certainly rings true that a “Guilty conscience needs no accuser;” this should not be our burden to bear, but rather the burden of those who have brought harm to others.

INSTRUCTIONS

Plaintiff Clara Knett, mother of Clara, on Clara’s behalf, must prove by a preponderance of the credible, competent evidence that the Defendant Tiger Town School Board of Education and/or named/unnamed students and/or teachers and/or administrators contributing to the Wall of Shame, defamed the character of Clara.

SUB-ISSUES

1. Was Clara Knett a public figure?
2. Was/is eradication of bullying in public schools a public health and/or safety issue?
3. Is bullying a matter of legitimate public concern?
4. Can bullying be a form of domestic violence as defined by the New Jersey Prevention of Domestic Violence Act, N.J.S.A 2C: 25-19a(2)(assault), (3) (terroristic threats), (5) (criminal restraint), (10) (criminal mischief), (12) (stalking), (13) (harassment), and/or (14) (stalking)?
5. If the answer to any one or more of 2, 3 or 4 is “yes,” has Clara, through her mother, proven “actual malice” on the part of one or more defendant(s) in contribution to the Wall of Shame?
6. If the answer to 2, 3 and 4 is “no,” has Clara, through her mother, proven negligence on the part of one or more defendants in contribution to the Wall of Shame?
7. If the answer to either/both 5 and 6 is “yes,” has Clara, through her mother, proven by a preponderance that each such defendant contributing false statement(s) to the wall either negligently or with actual malice caused harm (exposed her to hatred, ridicule, contempt or caused injury to reputation/occupation)?
8. Do any of the defenses to a claim of defamation (truth; privilege; innocent dissemination; consent) apply?

9. If the answer to 7 is “yes” as to any defendant(s), has Clara, through her mother, proven by a preponderance of evidence that Clara has suffered damages (compensatory, general or special; nominal; punitive)?

CONCEPTS

1. Free speech.
2. Defamation of character (libel; slander).
3. Burden of proof.
4. Negligence.
5. Actual malice (*NY Times v. Sullivan*).
6. Defense of absolute truth.
7. Damages (compensatory; nominal; punitive).

LAWS

1. First Amendment to the Constitution of the United States of America.
2. *New York Times v. Sullivan*, 376 U.S. 254 (1954).
3. *Lynch v. N.J. Education Association*, 161 N.J. 152, 164-65 (1999).
4. Prevention of Domestic Violence Act, N.J.S.A. 2C: 25-19.
5. New Jersey Punitive Damages Act, N.J.S.A. 2A: 15-5.9 – 5.17.

The Canine Calamity: Nipp v. Nyne

SCHOOL

Harrington Park
Harrington Park
Grade 7, Honorable Mention

TEACHER

Joan Dever

STUDENTS

David Han, Allison Hargrove, Rosa Kim, Cara Schettino, Lauren Szeto, Marc Terranova, Emily Walker, Hayley Wilcox

FACTS

During the summer of 2012, the Nyne Family planned a vacation that would take them out of town for 10 days. They contacted their usual dog sitter and were disappointed to find out that their sitter was booked and did not have space for their Black Labrador, Spunky. Their usual caretaker recommended the Kennel Family as an alternate dog sitter. The Kennel and the Nyne Families met and came to an agreement for Spunky to stay with the Kennel Family from July 15 until July 24, 2012.

On July 18, while Mrs. Karla Kennel was walking Spunky, he slipped out of his collar and ran loose. She tried to catch him, but he was too fast. She went inside to have her family help, and when she came outside again, she heard a woman screaming. Karla and her family ran down the street to find Spunky attacking a morning walker. The Kennel Family wrestled with the dog and managed to remove him from Ms. Catherine Nipp, but damage had been done. Ms. Nipp had been scratched and bitten by Spunky and was disoriented from the trauma.

After Spunky was returned to their home, Mrs. Kennel took Ms. Nipp to the hospital to have her injuries assessed and to make an official report of the attack. Ms. Nipp's wounds were cleaned and she was put on antibiotics to prevent infection. She was told that rabies would not be an issue as Spunky's vaccinations were up to date.

The Nyne Family were contacted by the police and told about the incident. Spunky was quarantined until they returned. The Nyne Family was in

complete disbelief as their beloved Spunky was known in the neighborhood as a loving and gentle dog.

The victim, Ms. Nipp, now is seeking compensation for medical expenses, emotional damage and for the therapy sessions to help her deal with her fear of going outside. Ms. Nipp is also requesting that Spunky be confined to the Nyne property so that there will be no chance of him ever attacking a pedestrian again.

ISSUE

Is the Nyne Family, as owners of Spunky, fully responsible for the pain and suffering endured by Ms. Nipp due to Spunky's attack?

WITNESSES

For the Plaintiff

Catherine Nipp
Karla Kennel

For the Defense

Kaye Nyne
Ima Barker

WITNESS STATEMENTS

Testimony of Catherine Nipp

My name is Catherine Nipp. I am 57 years old and, up to this point, have led a busy and active life. I used to get out every morning and walk to get some fresh air. I had a usual route which would take me by the front of the Nyne home. I have encountered Spunky before on my walks and I will admit that he has been a calm dog that had never shown any aggression. I was never really a “dog person” as I have never owned a dog of my own. I don’t hate dogs, but I don’t love them either.

On the morning of July 18, I was about halfway through my usual walk when I heard barking not too far ahead of me. Next thing I knew Spunky was hurtling towards me at a great speed. A woman and several children were chasing after him. I had seen this family around the neighborhood, but I never really had a formal introduction. All that I can recall from that point on is that Spunky jumped on my shoulders and took me to the ground. He was growling and nipping at me. He bit me in the arm and broke the skin.

The dog sitter, whose name I later learned was Karla Kennel, managed to pull Spunky off of me and her children returned him to their home. Ms. Kennel informed me that she had not known that this dog was vicious and would attack innocent walkers like me. She was very kind to me and apologized many times. Ms. Kennel offered to take me to the hospital where I received stitches and medication for my injuries.

As a result of this vicious attack, I am fearful of leaving my home. I now despise dogs and have nightmares of being attacked again. I am a nurse at the local hospital and have had to miss work due to my injuries. My income has been affected and I have had trouble completing everyday tasks. I am suing the Nyne Family for the cost of my medical expenses and I am also seeking compensation for the emotional damage I have suffered and for not being able to carry on with my daily routine.

Testimony of Karla Kennel

My name is Karla Kennel, and I am the dog sitter who was taking care of the Nyne Family’s dog. I run a business taking care of pets. I love animals and throughout my career, I have never had a problem with a dog. Spunky had shown no aggression towards my three children in the days leading to the event. My children played with Spunky for hours, tossing a ball and playing fetch. We followed the owner’s instructions and were taking good care of Spunky.

On the day of the incident, while I was taking him on a walk, Spunky somehow managed to squirm out of his collar. He started running down the street so I ran back to my house to go get my family to help me chase him. We finally caught up to Spunky and we saw him attacking a woman. She was on the ground and had been scratched and bitten by Spunky. I rushed over to her to try to help her and slipped the collar back on Spunky. I helped the woman up and offered to take her to the hospital. The dog was returned to the house and put in a cage while I drove Ms. Nipp for medical attention.

On the way to the hospital, we discussed what a terrible trauma she suffered and I told her that I was not the owner of the dog. She told me that she recognized me from the neighborhood, but knew who owned the dog. When we arrived at the hospital, she received medication for possible infection and received stitches for the bite. The doctors at the hospital said that they were obligated to file a report notifying the authorities of the attack.

When I returned home, I called Kaye Nyne and told her everything that had happened. She told me that the police had already contacted her. Kaye told me that the police told her that Ms. Nipp was very distraught and emotional over the incident. Kaye said that I was the one to blame, and that I should be held responsible. She argued that the dog had never shown any violent tendencies until he stayed with my family. I told her that as the owner of the dog, this tragedy was all on her.

Testimony of Kaye Nyne

Hello, my name is Kaye Nyne, Spunky's owner. My husband and I were going on vacation for 10 days, and we left Spunky with the Kennel Family because our usual dog sitter was not available. We told the Kennel Family that Spunky was not used to little kids, because I knew that Ms. Kennel had three young children. Spunky is usually a calm and quiet dog, and has never shown aggression towards anyone.

Four days into our vacation, we got a call from the town police department saying that a woman was attacked by our dog. I was shocked because Spunky would never hurt a fly. Shortly thereafter, I was contacted by Karla Kennel, who told me all about that day's incident. I told her that I already got a call from the police, and that I was coming home earlier than planned. She proceeded to tell me that Ms. Nipp was planning on taking me to court. I then argued that Karla should take responsibility for Spunky's attack. He was in her care when the incident happened. Although I still can't believe my calm and loving dog would attack someone, she was the person holding the leash when he broke free. We ended the phone call and I booked the soonest flight home.

When my husband and I got home, we picked up Spunky from the Kennels' house. We asked for Ms. Nipp's contact information. I called Ms. Nipp and she explained that since Spunky was my dog, I should be responsible for reimbursing her. I tried to explain that Spunky was left in the care of professional dog sitters and they were to blame, but she still insisted that I was the one to blame. I became frustrated and hung up the phone before things got out of hand.

I cannot take full responsibility for this incident; Ms. Kennel was negligent and allowed Spunky to break loose. Therefore, she should be taking full responsibility for Spunky's attack.

Testimony of Ima Barker

My name is Ima Barker. I have been the Nyne's dog sitter for the past four years. This is the first time I have missed an opportunity to take care of Spunky. The day that Kaye Nyne called me to dog sit for

Spunky, I had already accepted another offer and could not take care of another dog. While we were on the phone, I recommended the Kennel Family as pet sitters. Although I did not know Karla Kennel personally, I had heard she was a capable sitter.

From my experience I can tell you that Spunky was use to a quiet, subdued environment. The Nynes did not have any children and their home was a restful and peaceful place. The Kennel household, on the other hand, has three relatively young children who play with the dogs they care for. I have seen the children in the yard riling up dogs and playing rough. If this behavior took place with Spunky, I believe they could have confused the dog and taught him to "attack." As a Black Labrador, this particular breed is not known to be aggressive. Therefore, I do not believe that this unfortunate encounter was at all Spunky's fault.

As a professional dog sitter, you must be overly attentive to the animals you care for. You should anticipate that the dog's behavior may be altered by a new environment. Most of all, you should be highly alert when you take an animal off your property to a public place.

After the attack, Kaye Nyne reached out to me and asked me to go check on Spunky. When I knocked on the Kennel's door, Karla Kennel answered. From my peripheral vision, I could see Spunky locked in a cage as required by the police. I introduced myself to Ms. Kennel, and she seemed irritated. Spunky was whining in his cage, she was harsh and snapped at him. I had not told her that I was the previous dog sitter, but instead I just said that I was a neighbor and I had heard about the incident. I talked to her for about 10 minutes and when I left, Spunky was still locked up in his cage and one of the children was poking a stick through the grates.

I have watched Spunky many times over the past years. He has never shown any sign of aggression or violence. He is a very compassionate dog and is very good-natured and friendly with all people. If he had been taken care of properly, this would never have happened. I believe the Kennel Family should be held responsible for not providing Spunky with a nurturing and loving home in the Nynes' absence. They were negligent in letting him get loose.

INSTRUCTIONS

The plaintiff, Catherine Nipp, must prove by a preponderance of the evidence that the Nyne Family is responsible for the pain and suffering sustained by Spunky's attack.

SUB-ISSUES

1. Is it true that Spunky has never attacked anyone before, or is the Nyne Family just saying that to defend themselves?
2. Were the Kennel children teaching Spunky aggressive behavior?
3. Had Catherine Nipp done anything to provoke Spunky when he was approaching her?
4. Was Karla Kennel mistreating Spunky in any way that would cause altered or aggressive behavior?
5. Why was Spunky able to get out of his collar?
6. Does the Kennel Family hold some responsibility in the incident?

CONCEPTS

1. Burden of proof: by a preponderance of the evidence.
2. Credibility of witnesses.
3. Comparative negligence.

LAWS

N.J.S.A 4:19-16 Provides:

“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.”

“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.”

“There are generally two types of dog bite claims in which the defendant may appear liable without having to pay the victim at all, or without the responsibility of paying all of the victim's losses. The first involves a victim who was trespassing....

“The second is a claim based upon an accident that was caused by more than one person. For example, the victim's conduct might have been wrongful and therefore negligent, or the dog might have been in the process of being walked by a professional dog walker who was inattentive and therefore negligent. In such cases, the dog owner's liability is not truly “strict,” but “almost strict,” in that the plaintiff cannot recover if his responsibility for the accident is greater than the responsibility of whoever else may be held responsible, and furthermore, he can recover from each defendant only the amount that corresponds to that person's fault . . . Another example would involve the dog walker: if the jury believed that the victim was not negligent, the jury might attribute 50% of the loss to the dog walker and 50% to the dog owner. This results from the operation of the Comparative Negligence Act, N.J.S.A. 2A:15-5.1.”

Phillips, Kenneth M. “New Jersey Dog Bite Law: Overview” From Dog Bite Law. Internet. <http://dogbitelaw.com/statutory-strict-liability-state/new-jersey-dog-bite-law.html>. Sponsor: Kenneth M. Phillips. Accessed on 17 September 2014.

Cathy Smith v. Bailey's Brilliant Dog Treats

SCHOOL

Eric S. Smith Middle
Ramsey
Grade 7, Honorable Mention

TEACHER

Stephanie Costa

STUDENTS

Nicole Braun, Nakul Chadha, Carolyn Coletti,
Michael Cseh, Alexis Evangel, Jake Fiordelisi,
Kyle Freitag, Abigail Greenburg, Dennis Han,
Ryan Henry, Irene Hwang, Christopher Hurley,
Grace Kim, Kate Morrissey, Morgan Morrissey,
Bionda Rizvani, Christian Williams

FACTS

In the afternoon on June 13, 2013, Cathy Smith fed her dog Bo, a six-year-old mutt, a Bailey's Brilliant chicken jerky dog treat. Shortly after eating this treat, her dog began acting unusual. Bo began to vomit, foam at the mouth and his owner believed that his heartbeat stopped for a minute. Cathy immediately rushed Bo to Animals Allowed animal hospital and the veterinarian, Idyling Doolityl, reported Bo had experienced a seizure. After several hours of Bo vomiting at the animal hospital, Dr. Doolityl informed Cathy that Bo had passed away.

Dr. Doolityl asked Mrs. Smith a series of questions, including whether or not Bo had any allergies and could have potentially been allergic to this treat. Mrs. Smith had stated how Bo was adopted from a shelter, hence why she was unaware of any allergies. Dr. Doolityl confirmed that the symptoms the dog had reflected salmonella contamination. Mrs. Smith believes that Bailey's Brilliant Dog Treats was the leading cause of Bo's death.

In response to this event, Mrs. Smith wrote an email to Bradley Bailey, CEO of Bailey's Brilliant Dog Treats, explaining what had happened and her frustration at the situation. In her email, she described what happened to Bo after eating a chicken jerky dog treat and that the vet, Idyling Doolityl, attributed Bo's death to salmonella contamination. Mrs. Smith also included the cost of the vet bill as well as her personal devastation

in the email. She also pointed out that there was no label for the name and place of business of the manufacturer or distributor on the jerky treats.

Bradley Bailey immediately responded to Mrs. Smith's email about the occurrence. Mr. Bailey said that he would file an official report of this incident and check with his staff, including that he was sorry for her loss.

Mr. Bailey discussed this issue with his head treat inspector, Harold Broke, who confirmed through a phone call that no treats with the expiration date on Cathy's bag contained any traces of salmonella. However, this contradicted Dr. Doolityl's blood test, which confirmed traces of salmonella were found throughout Bo's blood.

Bailey's Brilliant Dog Treats is claiming this find is a result of another product or allergy. Shortly after Bo's death, Mrs. Smith received an email from Mr. Bailey suggesting that the reaction could have been a result of another treat or product as the treat Bo received was not the cause of her dog's reaction.

Cathy Smith is suing Bailey's Brilliant Dog Treats for \$5,000 compensatory damages in total; \$1,800 in medical damages, \$2,200 for product misrepresentation and \$1,000 in emotional damages. Bailey's Brilliant Dog Treats claims they are not responsible and Bo's death was a result of a different product coupled with some type of allergic reaction to the chicken jerky treat that Cathy Smith was not aware of.

ISSUE

Was the Bailey's Brilliant chicken jerky dog treat contaminated with salmonella that caused Bo's death?

WITNESSES

For the Plaintiff

Cathy Smith

Dr. Idyling Doolityl

For the Defense

Harold Broke

Bradley Bailey

WITNESS STATEMENTS

Testimony of Cathy Smith

My name is Cathy Smith and I am 42 years old. On a seemingly normal afternoon, I gave Bo, my six-year-old mutt who I rescued from Pet Rescue New York, a Bailey's Brilliant Dog Treats chicken jerky strip for the first time. My family has trusted Bailey's Brilliant Dog Treats for numerous years and we had been giving Bo their beef treats. We decided to try Bailey's Brilliant Dog Treats jerky strips because our budget had recently tightened and the chicken strips were a lot cheaper than the beef treats. A few minutes after I gave Bo the chicken strips, he began to foam at the mouth. I started to panic as I did not know what to do. I immediately called Animals Allowed animal hospital, Bo's local vet, but wanted to speak to a representative from Bailey's Brilliant Dog Treats in this emergency situation. There was no label that was listed to call in case of an emergency or of the distributor's contact from this product.

At this point in time, Bo had only gotten worse. Bo stiffened and shook wildly. I think his heart even stopped for a second. I grabbed hold of him and sprinted outside to my car grasping his shaking body. I rushed him to the animal hospital, Animals Allowed.

As the staff noticed Bo's state, they looked concerned and began helping Bo right away. They

rushed Bo into the emergency wing. The doctor, Idyling Doolityl, asked what he had eaten prior to the fiasco. I recalled the chicken treats that I had fed Bo only a couple minutes before Bo started to foam at the mouth.

Not long after, Dr. Doolityl explained to me that Bo had passed away. I then asked the vet what had happened to him. Dr. Idyling Doolityl explained that after several hours of vomiting and shaking, Bo's body had given up. The doctor had a few more questions to ask me after this traumatic incident. One of the questions he asked was if Bo had any allergies. I replied that I was unaware of any allergies due to the fact that I rescued Bo from a shelter and did not adopt him from a breeder. Dr. Doolityl explained to me that blood samples were taken from Bo and tested for anything out of the ordinary. The blood test came back and showed high traces of salmonella. From this information Dr. Doolityl concluded all of Bo's symptoms could be connected to salmonella contamination from the Bailey's chicken jerky treat.

Soon after Bo's passing I received a bill of \$1,800 from the animal hospital; a bill that I could not very well afford. I then wrote an email on my computer about Bo's situation and that his blood contained traces of salmonella and sent it to the CEO of Bailey's Brilliant Dog Treats. I received an immediate reply from the CEO of the company, Bradley Bailey, apologizing for the incident, stating that he would check with the treat inspector about the salmonella. In a second email Bradley explained that there were no traces of salmonella and that he was again sorry for my loss. I responded that there were other cases of this incident as mentioned by Dr. Doolityl and in an email afterward, Mr. Bailey said the reaction could have been from another treat or product.

It is due to the high-cost vet bills and the emotional distress my family and I have been put through due to Bailey's Brilliant Dog Treats that we have decided to sue Bailey's Brilliant Dog Treats. We also do not want any other family to have to experience what we went through. Bailey's Brilliant Dog Treats needs to recall this treat and the company should have a label with their number/contact and another emergency contact number. I am suing them for \$5,000 in compensatory

damages. I am suing them for \$1,800 in medical damages, \$2,200 for product misrepresentation and \$1,000 in emotional damages. I also hope this never happens again to another family.

Testimony of Idyling Doolitty

I am Dr. Idyling Doolitty and I am 59 years old. On June 13, 2013, a troubled dog owner, Cathy Smith, rushed her dog that was six years old to my office. His mouth was foaming, and his body got stiff and was shaking. His heart even stopped for a second. I realized that Bo, the dog, showed signs of a seizure. I asked Mrs. Smith what she had fed the dog in the past two hours, and she informed me that it was Bailey's Brilliant chicken jerky treat. My staff and I had previous visits from dogs that were recently fed this treat, and all had almost the same symptoms as Bo did. I had a talk with our staff, and they confirmed that the dog's reaction showed signs of salmonella contamination similar to the reactions of other dogs they had treated. On previous blood tests from dogs who had these reactions to the treats, but weren't as severe, my staff and I confirmed it was salmonella. I personally tested samples of Bo's blood and there were high levels of salmonella.

In my professional judgment, it was clear that Bailey's Brilliant chicken jerky treat contained salmonella, which is what caused Bo's seizure and death. Though it's possible Bo could have had an additional allergy to this treat, since it was the first time he's eaten the chicken jerky, this would not provide the same symptoms. For this horrific situation, Mrs. Smith was billed \$1,800 in total for medical services. Animals Allowed is very sorry for Mrs. Smith's loss and would like to make sure Bailey's Brilliant Dog Treats never puts someone's pet in this situation again.

Testimony of Harold Broke

My name is Harold Broke. I have been working for Bailey's Brilliant Dog Treats for four years. My job is a treat inspector, which means I check the treats before they are packaged and sealed. I chemically test all Bailey's Brilliant Treats before they are distributed. Our company had not

experienced anything this severe in the time that I have been working here. I had checked the treats with the same expiration date that Mrs. Smith's dog had eaten for any contaminants in this product on May 1 as they are shipped out to our pet stores within a month of being checked. After being contacted by Bradley Bailey regarding this issue on July 1, 2013, I rechecked chicken jerky treats with the same expiration date as the one that Bo had eaten. There were no traces of salmonella. All that was in the batch of treats Mrs. Smith's dog ate was chicken and natural ingredients.

Mrs. Smith wrote to us that the dog had signs of salmonella from the chicken jerky. We do not believe that could have been caused by our product. I had checked it very thoroughly and there was no trace of salmonella contamination in the batch her dog had eaten. It is possible that Bo could have received salmonella from some other product. Another possibility is that the salmonella could have grown on it while shipping. Therefore, we are not responsible for this issue.

The dog might have had an allergic reaction to the product of which Mrs. Smith did not have any knowledge. Our label clearly says on our pet treats that pets may have an allergic reaction depending on the breed or diet. This possible allergic reaction, coupled with possible salmonella from the other product, was most likely the cause for Mrs. Smith's dog's death. We are very sorry for her loss and wish her the best.

This was not the fault of our company.

Testimony of Bradley Bailey

I am Bradley Bailey, but most people know me as the CEO and owner of the successful, marvelous, fabulous Bailey's Brilliant Dog Treats. I have worked for this company for 14 years and I have been CEO for four of those years. After an incident on June 13, 2013, I was informed that the owner, Mrs. Smith, thought my treats were responsible for her dog's death. She claimed that her dog had salmonella and that he got it from the chicken in the company's treats. The main ingredients of the jerky Bo ate are chicken, and our famous barbeque sauce, whole wheat flour, rolled oats, wheat germ, and unsweetened applesauce. Our barbeque

sauce is very simple, and includes olive oil, tomato paste, and chicken broth. All of the ingredients in our treats are natural, and would not cause such a reaction in an animal unless the animal has severe allergies.

Mrs. Smith emailed me and informed me Bo had signs of salmonella contamination and also complained about our packaging label. I replied and said that I would make a report on it as our company takes these claims very seriously and that our label lists all ingredients and we have a specific warning on dog allergies. It also says all treats are checked before they are distributed.

On July 1 I called our treat inspector, Harold Broke, to have him recheck the batch of treats Mrs. Smith's dog ate to see if there were any traces of salmonella in the factory, in the ingredients, or in the final product. And we always check to make sure our treats are safe for all animals before we put them on the market. He checked the same treats with the exact expiration of the treats that Mrs. Smith's dog ate and replied that all tests taken for salmonella came back negative; there was no trace of salmonella in any of the dog treats or in the factories where they were produced. Since our treats showed no sign of contamination, this leads us to believe that Bo, Mrs. Smith's dog, had an allergy or received the salmonella from another product. Bo, a mutt rescued from Pet Rescue New York, was never tested for any allergies, so Cathy Smith would have been unaware of any possible allergies her dog may have had when buying our treats.

After receiving this news, I emailed Mrs. Smith, and informed her that there were no traces of salmonella. Mrs. Smith replied and said that there had been other cases of salmonella contamination reported at the animal hospital, Animals Allowed, because of our treats. I promptly emailed her back and told her that the salmonella poisoning could have been because of another treat, food, or something that Bo had eaten. We receive allergic reaction reports all the time and have received no other contacts/reported incidents regarding salmonella in our dog treats. Bo could have easily gotten the contamination from something else.

For whatever reason Bo died, we are very sorry. Mrs. Smith thinks this is our fault; however, our

company checks all dog treats thoroughly and takes these reports seriously. In this case of Bo's death, our company is not liable.

INSTRUCTIONS

The plaintiff must prove by preponderance of the evidence that Bailey's Brilliant Dog Treats chicken jerky treat did cause the death of her dog Bo.

SUB-ISSUES

1. Were there other factors that contributed to Bo's death?
2. Did Bo have an allergic reaction to the ingredients in the dog treat?
3. Could Bo have gotten salmonella from another product or something he ate?
4. Did Bailey's Brilliant Dog Treats thoroughly check the treats to ensure there were no contaminants?
5. Is the animal hospital liable for Bo's death?
6. Is the plaintiff liable for the death of Bo?

CONCEPTS

1. Pet product liability.
2. Product misrepresentation.
3. Product labeling and distribution.
4. Pet owner responsibility.

LAWS

1. **The Federal Food, Drug, and Cosmetic Act (FFDCA):**
 - Requires that all animal foods, like human foods, be safe to eat, produced under sanitary conditions, contain no harmful substances, and be truthfully labeled.
2. **FDA Regulation of Pet Food:**
 - Requires that the ingredients used in pet food are safe and have an appropriate

function in the pet food. Many ingredients such as meat, poultry and grains are considered safe and do not require pre-market approval. Other substances such as sources of minerals, vitamins or other nutrients, flavorings, preservatives, or processing aids may be generally recognized as safe (GRAS) for an intended use (21 CFR 582 and 584) or must have approval as food additives (21 CFR 570, 571 and 573). Colorings must have approvals for that use as specified in 21 CFR 70 and be listed in Parts 73, 74, or 81.

3. FDA Pet Food Labelling:

- Requires proper identification of the product, net quantity statement, name and place of business of the manufacturer or distributor, and proper listing of all the ingredients in the product in order from most to least, based on weight.

4. Food Safety Modernization Act and Animal Feed:

- Requires that inspection is an important means of holding industry accountable for its responsibility to produce safe food; thus, the law specifies how often FDA should inspect food producers.
- FDA will have mandatory recall authority for all food products.

Spaniel v. Starr

SCHOOL

Clinton Township Middle
Clinton Township
Grade 7, Honorable Mention

TEACHER

Diane Cormican

STUDENTS

Ella Fasciano, Michelle Gladdis, Julia Malok,
Michael Pierce, Christiana Thatcher

FACTS

On October 30, 2013, also known as Mischief Night, at approximately 7:30 p.m., Brittany Spaniel was walking her 107-pound German Shepherd, Hermes. Mrs. Spaniel was walking her regular route, which was approximately three square blocks around her Muskegon neighborhood, with Hermes on a retractable leash that stretches to a maximum of 10 feet.

On the evening in question, two teenage brothers, Frank (15) and Billy (16) Starr, were in their Halloween costumes hiding behind a row of bushes in their front yard. Frank, who was dressed as a zombie pirate, had a sword made out of a hard polymer plastic, 25 inches long. He was also wearing a rubber zombie mask. Billy wore a rubber mask and had a metal baseball bat, which was 33 inches long.

As Mrs. Spaniel walked her dog down the sidewalk where the bushes were located, Frank and Billy jumped out in front of Hermes. The boys were allegedly groaning, screaming and flailing their arms. Mrs. Spaniel screamed. Hermes barked and lunged forward, knocking Frank over, and bit his mask, puncturing the skin on Frank's left cheek. Billy hit the dog on his lower hindquarters using his metal baseball bat. Hermes yelped, then jumped at Billy and bit his leg. Frank struck the dog with his sword, hitting him on the right eye.



Mrs. Spaniel yanked the leash and called the dog off the boys with a short command. The boys ran away, and Hermes came back to Mrs. Spaniel whimpering. She took him home, where she treated his wounds. At approximately 8:00 p.m., she brought Hermes to the veterinary hospital. Hermes had surgery on both his eye and his back leg. The dog lost his vision in his right eye and had a fractured hip bone. Mrs. Spaniel also missed five days of work due to staying with Hermes in the animal hospital and helping him at home when he was released. He also needed pain medications and three weeks of physical therapy to regain the use of his left hip.

Meanwhile, Mrs. Starr brought her two sons, Billy and Frank, to the hospital, where they were treated and released. Billy had 13 stitches and Frank had his cuts treated and bandaged. As required by law, the hospital filed a dog bite report with the local health department. No charges were filed.

Mrs. Spaniel is suing the boys for animal cruelty and damages for her expenses and missed work, totaling \$14,000.

ISSUE

This case is being brought before the court because the beating of the dog is allegedly animal cruelty and the boys should be held liable.

WITNESSES

For the Plaintiff

Brittany Spaniel

Dr. Christina Smith

For the Defense

Billy Starr

Dan Amalie

WITNESS STATEMENTS

Testimony of Brittany Spaniel

My name is Brittany Spaniel and I am 56 years old. I live at 17 Atlantis Avenue in Muskegon, New Jersey. I have lived here all my life and know most of the people in the neighborhood. I work at the bank on the highway, and every day after work I walk my dog Hermes. I have lived alone since my husband died in 2005 and I felt like I needed some protection, especially when there was a string of robberies in the town a few years back.

I got Hermes four years ago, when he was only two years old. He was a rescue and I got him at the local SPCA, the Society for the Prevention of Cruelty to Animals. They knew very little about his life before I adopted him. However, he was a healthy dog and had been neutered when they found him.

When I first got Hermes, I brought him to the vet and signed up for an eight-week training and socialization course. I don't know what happened to him before I adopted him, but he has never shown any signs of aggression. He is a very good guard dog, and barks whenever strangers come to the door, but is so calm and easygoing when we are out. Those boys jumped out of the bushes and really startled us both. The boys were making scary noises like grunting and moaning and flailing about.

It all happened so fast. I pulled on Hermes' leash, but the lock on the retractable leash was not engaged. He jumped up and the boy fell over. He bit the boy's mask, but the bite did not even require stitches. The other boy started to hit Hermes with his baseball bat. I screamed in horror, and pulled on the leash, but there was still too much slack. Then, the other boy stabbed Hermes with a sword. I screamed frantically at the boys but quickly got back to my senses and called Hermes off. They ran away.

When I hugged Hermes to comfort him, I saw that he had a bad cut on his eye and was in a lot of pain. We were only three blocks from home, but he barely made it. Once home, I was cleaning up his eye and noticed that it was a pretty deep cut and might require stitches. I had to help him up into the car. He weighs over 100 pounds. We went to the vet and he whined the whole way there. Dr. Smith was the doctor on duty, and she helped me get him out

of the car. She took one look at Hermes and called to prepare him for surgery. He was in the operating room for four hours, and had to spend three days in the animal hospital.

I was a mess. My Hermes would never be able to walk normally again, and would have a lifetime of pain in his leg. The doctor predicted that he would most likely lose sight in his right eye due to the stab wound, which is exactly what happened. I missed almost a week of work and ended up with a \$10,000 bill from the animal hospital.

Why did those boys do that to my beautiful dog? It was NOT funny, and I do believe that they should stop scaring people and abusing animals.

Testimony of Dr. Christina Smith

I'm Christina Smith. I have been a vet for 14 years and I'm 40 years old. I received my undergrad degree in biology from Rutgers and went on to Ohio State's Veterinary School. I have a practice with two partners in Muskegon, New Jersey. In addition, I have had six dogs and two of them were German Shepherds.

Mrs. Spaniel first brought in her dog Hermes when she adopted him from the SPCA. I determined that he was about two years old and in good health. You never know what you are going to get when rescuing a pet, but I could tell he had not been abused and had been well cared for by his previous owner. I made sure that he was current on all his shots and gave her some advice for enrolling in our training classes, which she did. She has been back to the office for checkups every six months and twice for intestinal issues, which I treated with antibiotics. The dog was always very calm and friendly, even when I had to examine him.

German Shepherds are very protective of their owners, and he seemed a perfect pet for a widowed woman, providing both companionship and protection. It is normal for a dog to get frightened by someone if he or she is coming towards his/her owner or seems threatening. German Shepherds are also very alert to their surroundings and react fast. Hermes is a very loyal dog, so I think he was only protecting Mrs. Spaniel.

Mrs. Spaniel came in with Hermes on the night of October 30 at 8:00 p.m. I was getting ready to leave the office, and my partner was on call, but I decided to stay to treat Hermes. The dog was in the back seat of her car and I had to coax him out. Mrs. Spaniel was very upset and crying, so our receptionist sat with her in the waiting room. I brought Hermes into the examination room, and could tell that he had been badly beaten. It was apparent that his back leg was fractured, as he could not put any weight on it. His right eye was bleeding, and I cleaned it up and prepared to stitch it up, but discovered that the cornea was ruptured. I gave Hermes a sedative to help calm him down as we prepared for our next action.

I knew that Hermes could be saved and would require surgery. Mrs. Spaniel didn't want to put Hermes down, but it would be costly. He would need surgery and physical therapy. She agreed to proceed with surgery, and told me to do whatever it would take to make him better.

I phoned my partner to come in for the surgery and prepped the operating room. I did an x-ray of both his eye and his right leg. It was even worse than I thought. The eye socket had been fractured and there was a small fragment of bone that had to be removed. His hip bone was shattered, hit with a great deal of force by a blunt object.

This beating was more than self-defense. I have seen many beaten dogs, and these injuries were maliciously caused by a very strong person. In my professional opinion, I would certainly categorize this beating as animal cruelty.

Testimony of Billy Starr

My name Billy Starr. I am 16 years old and I live at 123 Waters Street. On Mischief Night, my brother Frank and I got dressed up in our Halloween costumes to play pranks on some people in our neighborhood. I was dressed up as a zombie baseball player and I was carrying a metal baseball bat. Frankie was a zombie pirate.

When the lady and her dog came down, we hid behind the bushes. We have seen her for years and she has a really big German Shepherd. Frankie and

I jumped out to scare them, and it was all in good fun. We had already scared a few other people.

It seemed like everything was happening in slow motion and I was really scared. The dog was barking like crazy and jumped up on my brother, knocked him down and bit him in the face. It was lucky that he was wearing that mask or he would have chewed his face off. Frankie was screaming and crying from the pain and fear. I had to help him...you know, he is my little brother! I swung my bat at that dog with all my might and hit him on the butt. I was so frightened and acted in self-defense, but as soon as I did that, the dog turned on me. His fangs were huge, and there was an angry look in his eyes. I remember trying to kick him, but he chomped down on my calf and the pain was excruciating. I screamed. My brother came to my rescue. He had blood on his face and anger in his eyes, and I saw that he had his plastic pirate sword. I remember thinking that it would not be much help, but he lunged forward and hit the dog right in the eye.

The lady then called the dog off, and that was our chance to get out of there. She screamed at us as she knelt beside her dog on the ground. We both ran into the house as fast as we could. My mom took one look at my leg, gave me a bandana to wrap around it, and said "Get in the car". We rushed to the emergency room, where I had to get a shot and 13 stitches on my calf. I am on the soccer team, and was benched for the rest of the season. Frankie had a huge cut on his face, and you can still see the scar.

I am sorry that we hurt the dog, but we were both scared to death, and we acted in self-defense. I have heard about people who have been mauled by dogs and I don't trust them. If that dog tried to attack me, I would use whatever I could use as a weapon to defend myself or my brother.

Testimony of Dan Amalie

My name is Dan Amalie and I work for the Muskegon Township Animal Control Office. I have worked there for 12 years. I investigate claims of animal abuse and neglect.

I got a call at on the morning of October 31 from the Health Department about this case. By law, all dog bites that are treated by a medical care facility in New Jersey must be reported to the Health Department. The Health Department often notifies me of a situation when it looks like there might be some trouble. According to the doctor on duty in the emergency room, the boys claimed that the bite was by a large and ferocious dog. Of course, I had to investigate this.

Over the years I have seen terrible attacks by dogs that have caused permanent damage to the victims. Physical and emotional pain suffered after a mauling by any animal can be very intense. Dog owners are responsible to keep their animals under control, and that includes situations like this one. It sounded to me like Hermes was not controlled. The dog, Hermes, had been taken to the animal hospital, as the boys had to beat him off during the attack.

I phoned Mrs. Starr right away to inquire about the injuries sustained by her boys. She told me about the bites and the visit to the ER. I paid a visit to the Starr home and interviewed the boys. They told me what a traumatic experience they had, and Frankie claimed to be having nightmares about the attack.

The Health Department officials notified me after the 10-day period that there were no signs of rabies. Hermes was all up to date with all his shots. I called Mrs. Spaniel and asked if I could examine the dog. Although he was recovering from surgery and laying down, I saw that he was a very large dog. His charts put him at 105 pounds, and I could see how the boys may have felt threatened when he attacked them. These boys did nothing but play a little teenage prank and they did not deserve to be mauled. If Mrs. Spaniel had better control of her dog, they wouldn't have had any reason to hit him.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that the beating of her dog by the boys was animal cruelty.

SUB-ISSUES

1. Did the dog have any history of aggression and/or biting?
2. Did the boys provoke the dog, who was protecting his owner?
3. Was the bill from the animal hospital reasonable?
4. Did either of the boys have a history with animal bites and/or abuse?
5. What really prompted the Health Department official to call the Animal Control Officer?
6. What is the relationship between the Starr Family and the Animal Control Officer?
7. Have the Starr Family and the dog owner ever met before this?

CONCEPTS

1. Reliability of witnesses.
2. Hearsay.
3. Intent.
4. Self-defense.
5. Animal cruelty.

LAW

NJSA 4:22-26. Acts constituting cruelty in general; penalty

A person who shall . . . Torment, torture, maim, hang, poison, unnecessarily or cruelly beat or needlessly mutilate a living animal or creature; or cause or procure any such acts to be done...shall forfeit and pay a sum . . . to be sued for and recovered, with costs, in a civil action by any person in the name of the New Jersey Society for the Prevention of Cruelty to Animals . . .

From the website <http://www.njspca.org/awareness-animal-laws-regulations.htm>

Board of Education Finds Yankee Doodle to Be Not So Dandy

SCHOOL

Bloomfield Middle
Bloomfield
Grade 8, First Place

TEACHER

John Shanagher

STUDENTS

Nyree Arthur, Ian Baloloy, Liam Bejasa, Elijah Brick, Siandry Chacon, Justin Chalet, Keyon Chism, Craig Dittrich, Nicole Esposito, Jacqueline Giunta, Benjamin Halligan, Andrea Hunter, Tchemy Joseph, Alina Makhortova, Liam McCloskey, Kate Mendez, Nicole Pietroiaco, Noah Rico, Anjolee Spence, Christian Tumandao, Kristen Wehbe, Jacob Ziliotto

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.

FACTS

Anna Clubb, a student at James Madison High School, was always interested in politics. She and her friends enjoy discussing their political opinions. Anna and her friends favor the idea of a government which sticks to the ideas of the U.S. Constitution. The students became interested in the Yankee Doodle Party, a political group which runs candidates for public office who believe in following the Constitution as it was originally written. Anna and her friends talked to her English teacher about creating a club called The Young Doodlers. The teacher agreed to serve as an adviser to the club.

The students asked the Adamstown Board of Education for permission to create the club. The board members voted 8-1 to deny the students' request. The board believes that political parties could cause disruption throughout the school. The students argue that the board is being biased because they are predominantly Dandy Party members. While the student handbook clearly states that the Board of Education will approve the creation of clubs which are able to attain a faculty adviser,

it also says that the board will deny requests which may result in a disruption of the orderly operation of the school.

The students are suing the president of the Board of Education for violating their right to create a club as outlined in the student handbook.

ISSUE

Did Alex Hamilton violate the James Madison High School rules as outlined in their handbook when he refused the students' request to create The Young Doodlers Club?

WITNESSES

For the Plaintiff

Anna Clubb
Libby Tarian

For the Defense

Tom Jefferson
Alex Hamilton

WITNESS STATEMENTS

Testimony of Anna Clubb

My name is Anna Clubb and I attend James Madison High School. My friends and I are very politically active. We like to debate political issues. Having studied the U.S. Constitution in our history classes, we believe that our leaders have gotten away from what the founding fathers wanted when they were designing the government. After a lot of research, we became interested in the Yankee Doodle Party because their views follow those of the original authors of the Constitution. We were very excited to find out that the Yankee Doodle Party has a student group called The Young Doodlers. We decided to ask for permission to form a JMHS branch of The Young Doodlers. According to the student handbook, we could form that club, as long as we were able to find a teacher who would agree to be the club's adviser. We were shocked when the principal and the Board of Education denied our request.

They actually said that they didn't like what some members of the Yankee Doodle Party had said in the media. I believe that the board used inaccurate quotes from Yankee Doodle Party leaders as an excuse to keep us from forming our club. Even if they actually said what they are accused of saying, doesn't freedom of speech give them the right to express their views? Most kids couldn't care less about politics. Do they really think students are going to riot because of a club? We want a place where we can share common ideas and listen to a variety of speakers. The handbook says that we can create this club, so the board should not have voted against our application.

Testimony of Libby Tarian

My name is Libby Tarian and I'm a member of the Adamstown Board of Education. When Anna Clubb and the members of her group explained their reasoning for creating The Young Doodlers Club, I was the only board member to vote in their favor. The other members of the board said that they felt that politics have no place in the schools.

However, since the board is politically driven by the Dandy Party and so many decisions have been made based on politics, I was flabbergasted. Anytime students from one of our schools ask for permission to create a club which involves higher level thinking and community involvement, they should be encouraged. The Young Doodlers Club complies with the rules as listed in the handbook. These are bright students who are passionate about their beliefs and are a danger to no one. In my opinion, the board violated the rules as listed in the handbook. The Young Doodlers Club should be permitted.

Testimony of Tom Jefferson

My name is Tom Jefferson. I have been the principal at James Madison High School since 2007. Recently, a group of students requested permission to form a club called The Young Doodlers. This club would be closely linked to the Yankee Doodle Party. I believe that politics do not belong in public schools. I am concerned that forming a club which is political in nature may cause problems for JMHS. These students plan to have representatives from the Yankee Doodle Party as guest speakers. Several leaders of the Yankee Doodle Party have expressed views in the media which would be offensive to members of our school community. While I believe that students have the right to express their political views, this can be done outside of the school.

Testimony of Alex Hamilton

My name is Alex Hamilton. I am currently the president of the Adamstown Board of Education. On September 17, 2013 a group of students requested permission to create a political club at James Madison High School. The club was to be called The Young Doodlers Club and would be affiliated with the Yankee Doodle Party. The board was very impressed with the intelligence and dedication of these students. However, there was a strong concern that the students were being used by the Yankee Doodle Party. Members of the board felt that no single political party had the right to push their political agenda on our students. I can guarantee

you that we would have denied a request to form a club from any political party trying to form a branch in our schools.

We were also concerned with some of the views expressed by the Yankee Doodle Party. Leaders of the Yankee Doodle Party have ridiculed single parent households, families on welfare, and those who use food stamps. Roughly 32 percent of the students at JMHS receive these services. They and their families would be deeply offended by programs at the school which feature these speakers. Students have an absolute right to believe in any political party they choose. But the school system cannot be seen to endorse any single political party.

INSTRUCTIONS

The plaintiff must prove by preponderance of the evidence that Alex Hamilton and the Adamstown Board of Education violated the rights of Anna Clubb and her friends as outlined by the James Madison High School handbook by refusing them permission to form The Young Doodlers Club.

SUB-ISSUES

1. Should it matter what the leaders of the Yankee Doodle Party said in the papers?
2. Did the fact that the majority of the board belonged to the Dandy Party influence their decision?
3. Would the creation of this club really disrupt the atmosphere of the school?
4. What does Mr. Hamilton mean by "...the students are being used... "?
5. What are Mr. Jefferson's political views?
6. Should the comments made by the Yankee Doodle Party's leaders, which are protected by the First Amendment, be used as a reason to deny the creation of the club?

CONCEPTS

1. Credibility of the witnesses.
2. Burden of proof: preponderance of the evidence.
3. Freedom of speech.

LAW

James Madison High School Handbook 2013

STUDENT ACTIVITIES

Creation of Clubs and Organizations:

"Students shall be permitted to form clubs and service organizations which do not inhibit the orderly operation of the school. All such clubs and organizations must work with a faculty adviser."

The First Amendment to the Constitution of the United States

Monkey Business: O’Loof v. Viper Zoo

SCHOOL

Alexandria Middle
Pittstown
Grade 8, Second Place

TEACHER

Patrick O’Donnell

STUDENTS

Sarah Babcock, Emily Braddock, Stephanie Febles,
Robert Giuliano, Jenna Hann, Maggie Kelly, Kyle
LaChance, Brigid McGovern, Grace Miller, Rachel
Orrico, Scott Spota, Christina Tufaro

FACTS

On a Saturday morning at the Viper Zoo in Nevada, a mother and her two children visited the Reptile House. The younger sibling (a three-year-old girl named Polly) was very interested in the poison dart frogs. The boy (Noah Z., age eight) was very anxious to see the snakes and, seeing his impatience, Mrs. O’Loof asked Polly to follow her and Noah into the next section of the Reptile House. Polly was being uncooperative with her mother because she wanted to stay with the frogs. After being scolded by Mrs. O’Loof, Polly threw a tantrum in the middle of the Reptile House. Stunned by her daughter’s extremely loud behavior, she tried to calm her down, momentarily forgetting about her son.

Meanwhile, Noah became impatient with the delay of seeing the snakes, so he wandered the hall to find them. Noah could not locate the snake room, so he started opening doors to find it. He opened an “employees-only” room door and, from the doorway, noticed many kinds of animals inside but to his disappointment, no snakes. The raccoon was enough to satisfy his interest, however, so he wandered in, completely unaware of the “click” as the door shut behind him.

Noah spent a good amount of time looking at the different animals in the cages. Among them were a raccoon, an albino rabbit, a skunk, and a monkey. Additionally, there was an empty cage between the rabbit and the monkey. The label read “WARNING! SNAKE!” Yet, much to the boy’s dismay, he could not



see any snake in the cage. He crossed to the other side of the huge room after becoming bored of the animals he already saw, and satisfied his curiosity by looking at the parrots, two bear cubs, and even a tiger! The boy was fascinated by the tiger, which was behind two sets of steel bars for safety issues, and he admired the animal for longer than he intended to.

At the same time Noah was discovering the animals in the “employees-only” room, his mother had calmed Polly down and, after noticing Noah was missing, frantically searched for her son. He was, however, nowhere to be found. She contacted security and reported a missing child, and after giving them Noah’s information, she and Polly kept looking for him. It was a good hour and a half search by the time security discovered the room that Noah was in. As they opened the door, they found the boy unconscious on the floor, with a snake, the one that the empty cage advertised, hiding underneath a table close by.

Mrs. O’Loof called an ambulance, which quickly took Noah to a nearby hospital. The boy’s medical condition consisted of two permanently paralyzed legs (due to the venom), as well as an open wound from the snakebite on the lower back. The distraught mother is now suing the Viper Zoo for medical expenses and emotional damage in the amount of \$5 million.

ISSUE

Is Viper Zoo at fault for the paralysis of Noah Z. O’Loof by not keeping the “employees-only” room locked?

WITNESSES

For the Plaintiff

Noah Z. O’Loof

Mrs. O’Loof

For the Defense

Milo Monké

Sid Serious

WITNESS STATEMENTS

Testimony of Noah Z. O’Loof

A while ago, Mommy took Polly and me to the zoo that we go to every summer. She said that there would be a surprise for us if we went that day, so we agreed! After the three of us got in through the main entrance, we went to go see the monkey place, where I learned that monkeys are very sneaky animals! After that Polly wanted to go see the parrots so Mom took us there. Well, all morning the only thing I really wanted to see was a snake, so like a good boy I asked “Mommy, will you *please* take us to see the snakes?” Lately Mom has been saying that if I don’t ask politely, I won’t get what I want. She gave me a kiss (yuck!) on the cheek and thanked me for asking politely, and led Polly and me to the snake house. I was so happy that I was going to get to see a snake, but when we walked in all I saw were frogs! Now Polly loved the frogs, but I don’t like them at all and Mom was breaking her promise to me so I started to get impatient. After Polly looked at the same frog tank for what seemed like forever, I went over to Mom and asked her again (with a please) if we could go see the snakes.

Now I guess Mom knew I was getting impatient so she told Polly to finish up because we were going to see the snakes now. Instead of being cooperative like I was, Polly started crying and stomping her feet, so Mom tried to calm her down, but I was done! I was going to see a snake whether Mom took me or not! So I wandered down the hall without Mom noticing because she was too involved with Polly’s temper tantrum. There was a door that said “employees-only” but Polly was being bad so I thought I could get away with some exploring. The

doorknob was easy to reach and it wasn't locked so I opened it up and went inside just to look.

There were a bunch of animals in cages, like a skunk and a monkey! Then I noticed a huge tiger and it was cool so I stayed to watch it for a little bit. There was also a cage that said "WARNING! SNAKE!" but it was open and there was no snake in it. I wasn't that sad because the tiger was even cooler than the snake! After a while of watching the tiger, I felt a really sharp bite in my back and then I don't really remember what happened. I woke up in a hospital and couldn't move my legs, and Mommy said now I can't ever leave this wheelchair because of the "stupid zoo." I can't play soccer or walk my dog anymore, so even though the wheelchair is cool, it's not fair that I'm different than my friends now.

Testimony of Mrs. O'Loof

First of all, I would like to say that the zoo is at fault for the paralysis of my son. I took my three-year-old daughter and eight-year-old son for a surprise visit to the zoo because the circus was visiting that day. Polly absolutely loves the frogs while Noah prefers the snakes. I was with my two children looking at the frogs for about eight minutes before the tragic incident. Noah clearly wanted to see the snakes but Polly, my strong-willed girl, refused to leave the frogs. She was so stubborn that she made a scene complete with tears and screaming. While I was dealing with Polly and her temper tantrum, Noah walked away and evidently tried the "employees-only" door without my knowledge.

Within a minute from the start of Polly's temper tantrum, I realized Noah was missing. I was terrified! I thought somebody might have taken him! We looked for Noah around the frog room and the snake room but he wasn't anywhere to be found. Polly and I went to the security office and reported that Noah wandered off. The zoo made an announcement and closed the gates so Noah wouldn't go off with a stranger – not that he would. Many of the employees were instructed to join in on our search.

After about 90 minutes into the search for Noah, my poor little angel was found on the cement floor of the "employees-only" room. Luckily we found him when we did because Noah was severely hurt.

Apparently a venomous snake – out of the cage – bit my baby. The doctors at the hospital said his legs were paralyzed – permanently. Now this was the most heartbreaking part of this event for me because my eight-year-old boy – who should be able to run around with his friends and have fun – can no longer move from the waist down, all because of an unlocked door! It sincerely breaks my heart to see my son longingly watch the neighborhood boys play knowing that he will never again be able to join in on their fun. If the Viper Zoo kept proper accommodations for their animals and the visiting circus animals, Noah would be able to live like an eight-year-old boy should.

Testimony of Milo Monké

The surveillance camera tells it all! My monkey did, in fact, open up the cage of the snake. According to the video, he reached through the bars of his cage and opened the door on the snake tank. The monkey was very well trained, but not to do that! I do understand why I am held accountable for my monkey's actions, but who could have predicted that a monkey would be smart enough to open another animal's exhibit without ever being trained to do so?! The room that the animals were being held in was very clean, roomy, and had good safety for the animals – actually I was very impressed.

The animals were only in that room a matter of hours before the nosy child came into the room! Obviously, a freak accident happened with the monkey and snake, and the horrible outcome could have been prevented had the boy's mama raised him the right way. I hope it is obvious that the zoo and my circus did nothing that could have possibly caused the boy any harm. His mama should know how to look after her children and should stop blaming others for her own negligence.

Testimony of Sid Serious

As soon as I heard the devastating news of the little boy's tragic accident, I was appalled! I had always hoped that nothing like this would ever happen at my Viper Zoo, and to ensure that nothing would, I have gone above and beyond with all the necessary safety issues to keep the public and the

animals as safe as possible. Before the circus came in, I asked Milo if all the animals had recent checks by a certified veterinarian so that they would not give any diseases to my animals or the public. He assured me that they did; I have been a good friend of Milo for a long time so I trusted his word.

Afterwards, we drove the cages of animals over to the Amphibian House, where there is a large storage room that houses any visiting or temporary animals we may be housing. The larger, more dangerous animals were given very secure enclosures just to make sure they did not cause harm to anyone else. I oversaw the placement of animals in the room myself, with Milo as well. He did inform me about the show that afternoon, which included the monkey juggling and walking a 20-foot tightrope. Milo did not train the monkey to open cages, and had never had a problem beforehand with the monkey.

As for the unlocked door, it also has to do with safety. By having the “employees-only” room doors unlocked, workers can have quicker access to equipment in case of an emergency. Without having to fumble around for a key, a worker can enter right away in case emergency equipment like an AED is needed. We had a case a few months ago when an AED was needed, and the quick access allowed the person’s life to be saved. When untrained people use an AED, it has been shown to be hazardous to the victim and bystanders. That’s why it was in an “employees-only” room. The rooms are clearly marked so non-employees know to stay out.

I feel terrible about the boy’s accident with Milo’s snake, but it is safer to leave those doors unlocked. It is unfair to make me pay for the boy’s medical condition because of the mother’s negligence to her own son’s whereabouts. Being a father myself, however, I can understand the pain she must have to endure. This is a terrible tragedy but one that could have been avoided if she knew how to supervise both of her children.

INSTRUCTIONS

The plaintiff, Mrs. O’Loof, must prove by a preponderance of the evidence that Viper Zoo is at fault for the snakebite that harmed her son, Noah Z. O’Loof.

SUB-ISSUES

1. Should Noah be expected to understand and abide by the “employees-only” sign at his age?
2. Is Mrs. O’Loof at fault for not keeping track of her son in a public place?

CONCEPTS

1. Animal liability laws (who is responsible when an animal harms another person/animal/property.)
2. Parental negligence.
3. Safety accommodations for public places.
4. Burden of proof: preponderance of the evidence.

LAW

1. A person who is legally in charge of an animal can be held responsible if that animal bites another person if given the right circumstances. If under the age of 18, the minor’s parents can be held responsible. (injury.findlaw.com “Dog Bites and Animal Attack Overview”)
2. A property owner may be held responsible for injuries caused by an animal that he or she allowed onto his/her property. (injury.findlaw.com “Dog Bites and Animal Attack Overview”)
3. A parent that is unwilling to provide care, support, or proper supervision for a child is considered a form of child abandonment. (criminal.findlaw.com)
4. *McKinney v. City of San Francisco* – A court ruled that a zoo can only be held liable for an accident involving an animal if an animal enclosure is deemed defective or dangerous.

Podle v. Jansen

SCHOOL

Mount Olive Middle
Budd Lake
Grade 8, Honorable Mention

TEACHER

Becky Hull-Clark

STUDENTS

Alexander Amorim, Alyssa Borozan, George Gabriel, Carson Heller, Sofia Lake, John Nguyen, Dalyn Nicoletti, Haley Schwartz, Dominic Spera

FACTS

On February 7, 2013, Carter Jansen's award-winning story was published online. This story was entered in a contest two months previous to the event. The winner received a grand prize of the story being posted online and a college scholarship. The antagonist of the story was a cruel math teacher. Although Carter said it was a simple, innocent story, his math teacher, Mrs. Mary Podle, claimed that it was about her. She claimed that this has ruined her reputation. Because of several similarities between the two, Mrs. Podle believes that the character in the story was fashioned after her.

Eventually the story gained popularity throughout the student body, school board and town; many people recognized certain similarities between Mrs. Podle and the fictional character in the story. Mrs. Podle, along with others in the town, claimed that the story allegedly quoted Mrs. Podle and tainted her image. When Mrs. Podle demanded that the story be taken down, Carter Jansen said that it was a story merely from his imagination and that the First Amendment allowed him freedom of expression.

ISSUE

Did Carter Jansen's award-winning story defame Mrs. Podle's character and reputation?

WITNESSES

For the Plaintiff

Mary Podle
Mayor Hugh Trunks

For the Defense

Carter Jansen
Robert Barr

WITNESS STATEMENTS

Testimony of Mary Podle

My name is Mary Podle, and I've been a teacher at Whirlwind High for 20 years. I've always encouraged creativity in my students, but this is taking it too far. In the beginning of the school year of 2013, I knew that Carter was entering a writing contest. Since it had offered a prize of a scholarship and online publication, I was well aware of how important this contest was for him and wholeheartedly supported him. Around March 18, the time when I had assigned a simple project for my students to complete, I heard that he had finished writing his story. Curious, I rushed to read it, but he had nervously told me I had to wait until

it was published. Finally, when it was online, I read it and found that not only the teacher's name, Mrs. Poodle, was similar to mine, but also her signature quote, "If you help me, I will help you," is the exact quote that I often use in my classes. I would not mind this resemblance had the story not been about the teacher being an unfair authoritarian, who would assign impossible projects with unrealistic due dates.

It is completely unfair that I should be portrayed in this terrible way. To townspeople, students and board of education members who read this story, it was clear that I was portrayed as the cruel teacher in it. This story has ruined my reputation and has negatively influenced my students greatly. They now cry out for me to be fired, signing petitions and getting parents involved. It is unthinkable to imagine that all of this was caused by a mere story. It is clear that there is no coincidence in the similarities between my name and the exact quote and the character, Mrs. Poodle, in Carter's story. Now that the story has circulated throughout the internet, my reputation had been defamed and my career destroyed. These are inexcusable consequences for a simple story.

Testimony of Mayor Hugh Trunks

My name is Hugh Trunks, the mayor of Whirlwind. I have recently been notified of a case involving a student and Mrs. Podle, my former math teacher. Mrs. Podle is a very caring and creative woman, always looking out for her students. When I had heard about the Teen Literature Association writing contest, I thought it was a great opportunity for students to express their writing skills in order to receive a college scholarship. It also offered an opportunity to have a publication of their story online for everyone to read. When I had read the story that had been published online, I knew that I had recognized a few things in it, such as the name of the teacher and a specific quote she always used. I realized the name in the story, Mrs. Poodle, had resembled Mrs. Podle. Also, the quote "If you help me, I help you," I had recognized as Mrs. Podle's.

What I had read had portrayed her as being cruel, making her seem like a menacing human being, assigning impossible projects with

unreasonable due dates. Because I have known Mrs. Podle for almost as long as she has been teaching at Whirlwind High, I can truthfully say that the last thing she would do is put her students under a lot of stress. This story harms Mrs. Podle's reputation and could even result in the destroying of her career. This should immediately be taken off the internet.

Testimony of Carter Jansen

I am Carter Jansen, a student at Whirlwind High. Mrs. Podle accused me of composing a story that allegedly included subtle attacks toward her, portraying her as a parsimonious authoritarian. I have done nothing of the sort. On February 17, 2013, I was introduced to the Teen Literature Association writing contest offering a grand prize of a college scholarship. Because I am an excellent English student, I took this opportunity and sent in a draft of my story to the association. Later that month, I received a letter in the mail stating that my story was exceptional and showed substantial talent. I had won the contest, and the scholarship was mine. In addition, my story was posted on the association's website for all to read.

On April 12, I was called down to the main office. When I arrived there, I found myself in an unexpected position. I was seated next to my math teacher, Mrs. Podle. She explained to me that my story was targeting her, using direct quotes and false information to ruin her image and reputation, and if I didn't do something about it, there would be harsh consequences. My First Amendment rights give me the freedom of expression, speech and press. I did nothing wrong for I have the freedom to write every word. Every word is my right, and I don't deserve any grave repercussions.

Testimony of Robert Barr

My name is Robert Barr, literary adviser for the Teen Literature Association. Being a part of this organization, I am always astounded with many of the students' pieces, but I was particularly impressed with Carter Jansen's story. The story was well-written, organized and was a real pleasure to read.

When I had heard that someone was trying to punish Carter for writing his story, I was shocked. How could someone be punished for such creativity and talent? Carter should not face any consequences just for being gifted. Also, our contest is for fictional stories, so there wouldn't be any true harmful statements within it. Fictional writing can be interpreted differently by different audiences, and the interpretation of the reader is not always the author's intent. I am astonished at Mrs. Podle's overreaction to Carter Jansen's extraordinary piece.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that Carter Jansen made slanderous and libelous statements, defaming Mrs. Mary Podle's character and reputation in his award-winning story for the Teen Literature Association's national competition.

SUB-ISSUES

1. Does the teacher figure in Carter Jansen's story resemble Mrs. Podle?
2. Does the story contain sufficient factual information about Mrs. Podle?
3. Does the Teen Literature Association have the right to revoke the scholarship from Carter Jansen?
4. Are there limitations to "freedom of expression" in artistic creations?

CONCEPTS

1. Credibility of witnesses.
2. Burden of proof/preponderance of the evidence.
3. Defamation of character.
4. Slander.
5. Libel.

LAWS

1. *Tinker v. Des Moines* states: "Students are not necessarily guaranteed the full extent of First Amendment Rights." This means that under certain circumstances, the amendment does not apply to students.
2. Defamation of Character – a communicated or published false statement that damages the image or reputation of any one individual, group, business, school, religion, nation or country.
3. The First Amendment of the U.S. Constitution—guarantees the freedom of expression; this includes freedom of speech, freedom of assembly, freedom of religion and freedom of press.
4. Libel – law protects people from published false statements that damage a person's image or reputation; a written defamation of character.

THE CASE OF THE LORD OF THE DANCE: DISTURBA MEI v. MT. WESTBOURN SCHOOL

SCHOOL

Newark Christian
Newark
Grade 8, Honorable Mention

TEACHERS

Stanley Holdorf, Shelley Remaly, Leslie
Stuifbergen

STUDENTS

Sherley Arias, Chase Engel, Rosa Escobar,
Eliezer Marc, Eric Mateo, Sara Vasquez

FACTS

The School Board of the Mt. Westbourn School, a New Jersey K-8 public school, implemented mandatory weekly yoga classes. The Board hired Ms. Spirit Ualism, a professional yoga instructor, to teach half-hour sessions to students in the fifth through eighth grades. Displayed on the wall were two basic yoga poses: one called the “Lord of the Dance” and the other the “Lotus Pose.” One student, Disturba Mei, said she would not participate in the classes because she believes yoga is a set of Hindu spiritual practices, and it is against her religion. She was told that she would receive a failing grade if she did not participate. Disturba’s parents sent a letter to the school principal requesting the yoga course be dropped from the curriculum. After the principal refused, they sued the school for teaching religious principles. They requested that the court order the school to cease and desist, expunge Disturba’s failing grade, and pay for their attorney’s fees.



ISSUE

Should the Mt. Westbourn School be ordered to stop teaching yoga?

WITNESSES

For the Plaintiff

Disturba Mei
Preffor Reglion

For the Defense

Spirit Ualism
Nota Problem

WITNESS STATEMENTS

Testimony of Disturba Mei

I have attended Mt. Westbourn for four years. I am currently in the eighth grade and my class has been mandated to take weekly yoga classes. I will not participate in these classes because it goes against my spiritual beliefs. Ms. Ualism began by explaining the breathing techniques and poses that my class had to do in yoga. I knew that doing yoga was against my beliefs so I said I was not able to participate. Ms. Ualism sent me to the principal's office where I was told I would receive a failing grade. I chose the failing grade but I felt a bit disturbed throughout the day and I kept wondering if what happened was actually fair. I felt my freedom of religion was violated.

Testimony of Preffor Reglion

My name is Preffor Reglion and I teach religion at Alays Riggt University. I teach about all the major world religions and compare and contrast them based on their beliefs. I have published a book and many articles on the subject of yoga. Yoga is a Hindu discipline and religious practice. The Hindu people do it to relax and to worship their gods. One of the basic poses in yoga is called the "Lord of the Dance," and it is to honor the Hindu God Shiva as the "cosmic dancer." Also, the "Lotus Pose," in yoga terms, has a "*spiritual* unifying power." If the school wants an exercise class that will enhance their grades, I suggest offering Pilates. Over all, yoga should not be taught at Mt. Westbourn School.

Testimony of Spirit Ualism

I have been teaching yoga for 23 years. Many of my students have outstanding grades in school because of calmness and lack of stress during class. My students come from diverse religions. At Mt. Westbourn, I am teaching yoga only as a relaxation technique. Once I had explained the positions and breathing during the first class, Disturba said she could not take part in the classes. I had never had anyone reject the classes. I didn't know what to do so I sent her to the principal's office. She received a failing grade for the mandatory class. I may be Hindu but I have no intention of teaching this religion to the class.

Testimony of Nota Problem

My name is Nota Problem and I am another student at Mt. Westbourn School. I am not a Hindu but am a deeply religious person. I was a little concerned at first with the yoga classes because I wasn't sure if they would affect my religion. But since then I have realized yoga is not a problem. I still do all of the spiritual disciplines of my religious faith. I think yoga is not a problem and is actually a benefit for the students in Mt. Westbourn School.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that the teaching of yoga is a violation of Disturba Mei's First Amendment rights, and a cease and desist order is the only way to ensure that these rights are protected.

SUB-ISSUES

1. Is yoga a spiritual discipline of Hinduism?
2. Is Ms. Spirit Ualism endorsing or promoting religion in her yoga classes?
3. If yoga is a Hindu principle, should principles from other religions and atheism also be taught in classes?
4. Does Disturba deserve a failing grade for not attending?
5. Does Ms. Ualism's intent make a difference?
6. Does it matter that only one student is complaining about the yoga classes?

CONCEPTS

1. Credibility of witnesses.
2. Burden of proof: by a preponderance of the evidence.

LAW

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .”¹ “In public schools this means students are free to believe what they wish and that school officials must remain neutral and may not endorse, promote, fund or otherwise impose religious beliefs in any way.”²

¹First Amendment of the U.S. Constitution.

²American Civil Liberties Union of New Jersey. “*Students’ Rights Handbook*, A guide for public school students in New Jersey” Fourth Edition Sept. 2011: 22. Web, accessed January 17, 2014.

Note: some ideas for the facts and the basic issue in this case came from this article: Pitcock, Jenny. “Harmless Exercise or Spiritual Practice.” God’s World News 5 Feb. 2013: 12-13.

Hoops v. Fair Lane High School

SCHOOL

Clinton Township Middle
Clinton Township
Grade 8, Honorable Mention

TEACHER

Diane Cormican

STUDENTS

John Anderson, Lauren Connors, Siddharth Datar,
Patrick Hill, Amrit Kumar, Emma Mikitiuk, Nicole
O'Connell, Kyle Piekarski, Prajeet Sarker, Noah
Willsey

FACTS

Johnny Hoops is 15 years old and is hearing impaired, a disability he has had all his life. He wears a visible hearing aid in his right ear. In his left ear he has a cochlear implant that is not visible. After several surgeries and with corrective hearing aids, Johnny's hearing has been restored to 90%.

Johnny was on the basketball team when he was in the seventh and eighth grades at Red Hawk Middle School, where he played point guard. A personal FM system was used for Johnny by his coach, Jim Schwartz. The personal FM system was worn by both Johnny and his coach, and enabled him to hear calls and directions from across the court. Johnny had a great deal of success on his middle school team, and was team captain in his eighth-grade year and was voted most valuable player.

Coach McKenzie has been the Fair Lane High School basketball coach for 15 years. He has never had a student with a hearing impairment try out for his team. Johnny's parents inquired about an FM system for Johnny before the tryouts, and the school counselor told them that one would be installed if Johnny made the team.

The school has a Special Olympics program. The first day of tryouts, the coach allegedly told Johnny that the Special Olympics team meets on Saturdays and he should sign up. There were two days of tryouts. Throughout the two days, the coach ran a few different scrimmages, where he recorded each boy's performance in five different areas on



a scale of 1-5. The areas evaluated were shooting, dribbling, passing, rebounding and defense. Coach MacKenzie's evaluation chart on all the players will be submitted for evidence.

Johnny's parents are suing Coach McKenzie and Fair Lane High School because they believe he was discriminated against and was not put on the team because of his hearing impairment.

ISSUE

This case is being brought before the court due to alleged discrimination against a hearing impaired child.

WITNESSES

For the Plaintiff

Johnny Hoops
Jim Schwartz

For the Defense

Mark McKenzie
Clancy Smith

WITNESS STATEMENTS

Testimony of Johnny Hoops

My name is Johnny Hoops, and I have come before you today to testify against the head coach of the Fair Lane High School freshman team: Coach McKenzie. An act of discrimination was made against me due to my hearing disability. All my life I have been dealing with people who judge me when they see my hearing aid, but never has a teacher been so obvious and insensitive.

Basketball is my life. Let me tell you that I was a point guard when I was in middle school. I was given a lot of praise and received the MVP award last year. I averaged 10 points a game and 4 assists. I got all good comments from both Coach Schwartz and the other players, who are like brothers to me. During the championship game in my eighth-grade year, I made the winning shot. We won the game 64 - 62. May I note, I was not on the Special Olympics team nor was I told to go and play for them instead of the regular one.

During the freshman team tryouts, Coach McKenzie was looking at me strangely the first day when we were getting ready in the locker room. When I walked out onto the court, he pulled me aside and said, "Hey, Hoops. You know the Special Olympics team practices on Saturday." I stopped in my tracks: surprised and embarrassed. I looked

around to see if anyone else heard, but there were no other kids around. I did see two other adults talking, but am not sure if they heard what he said to me. I was deeply offended and felt really uncomfortable, but I still stayed for the rest of the tryouts.

After that I may have been a little agitated and distracted at first, but after we warmed up, I did well during the shooting drills and made some good shots. What I lack in height I make up for by being fast, accurate and agile. In middle school I wore an FM system, but I didn't have one for the tryouts. A couple of times the other players told me some directions that the coach said and I could not hear. I know I am a better player than several of the guys who made the team.

On the day the list was posted, one guy came up to me and said, "So sorry, man, it should be you up there instead of me." My friends and I were all in shock. I heard that Coach Schwartz, from the middle school, called Coach McKenzie to see if there had been some sort of mistake.

Ask any one of the other players: this should not have happened. Sure, the coach scored me lower just so that he would have some charts to back up his decision, but that was completely biased. This was all due to the coach who clearly discriminated against me due to my hearing impairment.

Testimony of Jim Schwartz

My name is Jim Schwartz. I am currently employed by the Red Hawks Middle School as a physical education teacher and coach several sports, including basketball. I have a great deal of experience as a player, which is what led me to want to become a coach. I was shooting guard for the Ohio State Buckeyes basketball program in undergraduate school. In my junior year I tore my ACL on a ski trip with my family. It was life-changing injury, and after surgery I could not take the wear and tear that professional sports put on my body. However, I had spent too much of my life around sports and it was in my blood. That is why I went into education, so that I could teach kids to love sports and physical fitness. It is such a joy to be working in the school of my childhood and to be giving back to the community that helped shape my life.

I have been coaching basketball and teaching physical education at Red Hawk Middle School for 12 years. In those 12 years my basketball team has won 9 championships, including last year's team.

Johnny Hoops was on my middle school basketball team for two years. He is hearing disabled, but it never negatively impacted his performance. When he first arrived at the school, we set up a personal FM system so that he would be able to hear my instructions. Johnny was good in seventh grade but eighth grade was his year. In his eighth-grade year his teammates elected him as team captain. Johnny averaged 10 points per game and 4 assists last year. He is very smart and gives his heart and soul to the basketball team. He is a great teammate and also gets along well with all the players, and he was a great role model to the younger players. This boy truly has a basketball mind and he could go far. When I heard he did not make the freshman team, I was very surprised. I am assuring all of you that Johnny Hoops deserves to be on the high school freshman team and he has the mindset and skill level to be successful on the team.

Testimony of Mark McKenzie

My name is Mark McKenzie and I am the basketball coach at Fair Lane High School. I have been coaching at Fair Lane for 15 years, and played basketball through my junior year of college at Penn State. I also teach physical education and health at Fair Lane.

On November 20, 2013, the freshman basketball team tryouts kicked off with 35 young men who were eager to start. I stood outside the locker room to greet each boy, figure out their names, and give them all some encouraging words. I recognized Johnny right away, and had heard that he was going to be trying out. The school counselor had explained that we would need an FM system installed if he made the team, but that was not a big deal. The middle school coach, Jim Schwartz, just beamed when he talked about Johnny, but he says great things about all his players.

We start the tryouts with several laps around the gym, stretching and cardio. I use a standard system of evaluation, with a score of one to five, with five being the best. The average student got a three

or four. Multiple skills are observed on the first day, such as dribbling, passing, athletic ability and stamina. The second day, the boys play multiple scrimmages to see their overall performance, including shooting, rebounding, defense and coachability. Everyone pairs up for the dribbling exercises, from one end of the gym to the other, while the other plays defense. This drill was used to see the level of ball handling, and overall I was not very impressed. During the dribbling drill, Johnny lost control of the ball multiple times. Though all skills are important, I personally believe ball handling is the most important skill in the game, especially for point guard.

At the end of the tryouts, I gathered the boys around to talk about the practices and game schedule, and other options if they did not make the team. For example, we need managers and scorekeepers to assist the team. I do remember mentioning that we did not practice on Saturdays because that was the day they have the Special Olympics program. Maybe Johnny thought I was singling him out, but I can assure you that I mention that every year.

I understand how hard it can be at times for Johnny with his hearing, but because there can only be 10 players on my team, I must fairly evaluate them based on performance, not how good a student's hearing is. He had some good skills, but not good enough for a high school level. Thirty-five boys tried out, and only ten were chosen for the team. It is my job to coach, and to choose the boys that will make our team successful.

Testimony of Clancy Smith

My name is Clancy Smith. I am the assistant coach of the freshman basketball team at Fair Lane High School. I also teach history. I have been working as a basketball coach in several different high schools for a total of 12 years. I also volunteer as a referee for the Special Olympics, and have a 14-year-old daughter with Down syndrome. Therefore, I am very aware and sensitive to students with special needs.

I was there during the tryouts and I observed all of the players. I noticed right away that Johnny was hearing impaired, so I kept a close eye on him throughout the tryouts. Although I am very

practical in my expectations, I always root for the special needs kids to have success. I noticed Coach McKenzie pull aside Johnny the very first day and say a few words to him. I know Mark and I believe him when he said that they were words of encouragement.

During the tryouts, Johnny looked a little bit agitated, but I didn't think anything of it. Most of the boys seemed a little nervous. I was impressed with his conditioning and stamina during warmups. He is not a big kid, but is fast and agile. He didn't have a good control of the ball during the dribbling exercises.

Although I sympathized with his disability, Johnny unfortunately lacked the skills required to make the team. He attempted three shots during the scrimmage but missed two of them. His team could have scored if he had passed the ball instead. Compared to others trying out, he lacked in areas that others excelled in. I felt sympathy for his struggle due to his impairment, and could empathize because I have seen this many times with my daughter. I also felt that he should play on the Special Olympics team. I think that the Special Olympics team is a great program, and they could really use his talent. He would be the star of the team for sure.

I stand with Coach McKenzie. Johnny was not selected for the team because he was not one of the top 10 players. It had nothing to do with his disability.

INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that the coach discriminated against him due to his hearing impairment.

SUB-ISSUES

1. Did the middle school coach provide Johnny with special consideration due to his hearing impairment?
2. Does Johnny's disability qualify him for protection under the Americans with Disability Act?
3. Were the boys chosen for the team truly better players?

4. Did the high school coach really make the comment to Johnny about Special Olympics as the plaintiff claimed?
5. Did Coach McKenzie purposely score Johnny Hoops lower?
6. Did Coach McKenzie consciously OR subconsciously expect more of Johnny?
7. Would Johnny have higher scores if he had been provided with an FM system during the tryouts?
8. Was the expense and/or inconvenience of installing and using an FM system an issue?

CONCEPTS

1. Hearsay vs. facts.
2. Reliability of witness statements.
3. Discrimination.
4. Inclusion of the disabled.

LAW

The following law expresses how the Americans with Disabilities Act deals with discrimination.

Americans with Disability Act Title III Regulations: Subpart B - General Requirements

(a) *Denial of participation.* A public accommodation shall not subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

(b) *Participation in unequal benefit.* A public accommodation shall not afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

Lergic v. Justice Falls Elementary

SCHOOL

Mount Olive Middle
Budd Lake
Grade 8, Honorable Mention

TEACHER

Becky Hull-Clark

STUDENTS

Nicholas Bartell, Kyle Bastarrika, Julia Chang, Anthony DiMonda, Mark Fagan, Isabella Ferrara, Jackson Growe, Matthew Hallac, Madeline Jordan, Juliana Kim, Seahyun Lim, Brandon Mai, Gerardo Segovia, Ryan Sly, Olivia Timmermans

FACTS

Allen Lergic, a student at Justice Falls Elementary School, claimed that the school has neglected its responsibility to provide him with a thorough and efficient education, a right guaranteed to all children in the State of New Jersey.

On April 9, 2011, Sophia Grey, a girl with Type 1 Diabetes who is hypoglycemic unaware*, was placed in Mr. Werk's fifth-grade honors math class. She had just moved to Justice Falls and was a new student at Justice Falls Elementary School. Sophia requires a service dog to perform at the best of her ability and achieve her high academic standards. Spots, the dog, is trained to detect and alert when Sophia could have a severe anxiety attack or seizure, which is considered diabetic hypoactivity. Sophia has experienced these symptoms before, and Spots has been able to identify the signs.

Allen Lergic, also a student in Mr. Werk's class, had been able to focus and pay attention to the class despite his severe allergies to pollen. However, after Sophia and her service dog Spots joined the class, Allen claimed that Spots distracted him. He did not feel comfortable on school property with a dog that could cause him to have a dangerous allergic reaction. Therefore, Allen requested to have the dog removed from the classroom but was unsuccessful.

Sophia's pediatrician, Dr. Phil Better, recommended the service dog for Sophia to detect low blood sugar, seizures, anxiety attacks and passing out, all of which she has experienced before. Sophia has created a bond with Spots and now relies on him for her own safety and the safety of others when her blood sugar is low. Sophia thinks she should not have to be forced to give up Spots or her place in the class.

Allen told the guidance counselor, Mr. Johnson, that he was physically uncomfortable with the dog's presence in the classroom. After listening to Allen, Mr. Johnson suggested that he transfer into a different class. However, Allen and Sophia are students in the school's only honors math class. The school agrees that both of the students are high-achieving math students, and are properly placed in that math class. The school believes that both of the students have the right to participate in the highest available class. Because of this, both students had to remain in Mr. Werk's class. However, Allen demanded that Sophia and her dog be removed from the class immediately because his health and safety were being compromised. Sophia claims that she has the right to remain in the class even though she needs Spots. Therefore, Allen is taking action against Justice Falls Elementary School for not providing a safe learning environment and a thorough and efficient education, which is offered to all students in the State of New Jersey.

*Hypoglycemic unaware is a condition that occurs in patients with Type 1 Diabetes. The patients are unable to feel the warning signs of low blood sugar and may not notice that their blood sugar is dropping or is dangerously low.

ISSUE

Should the school remove Sophia from the class in order to provide Allen with the safest learning environment?

WITNESSES

For the Plaintiff

Allen Lergic

C. Moore Werk

For the Defense

Sophia Grey

Dr. Phil Better

WITNESS STATEMENTS

Testimony of Allen Lergic

My name is Allen Lergic, and I am a student in Mr. Werk's fifth-grade honors math class here at Justice Falls Elementary School. A new girl, Sophia Grey, moved into my class on April 9, 2011. Unfortunately, my eyes became very itchy and irritated due to her service dog Spots. The first time I met the dog, I had a severe allergic reaction; my throat swelled up and I broke out into hives. The school nurse had to come and administer my Epi Pen, without which I would've potentially stopped breathing. Afterwards I took a traumatic trip to the hospital.

In class I try to keep my distance from the dog, but I constantly find myself sneezing and my throat tightening no matter where I place myself in the room. Also, I find myself subconsciously scratching at my now red eyes. Because of these side effects caused by the dog, I find it very hard to focus on my studies.

It is my right to feel safe in my school, and I do not wish the dog in class. I suggested that Sophia be transferred to another class so I won't have any more reactions and I can focus on my schoolwork again. The school replied by saying that because we are both in the honors math class, a transfer for either of us would be unsuitable. I understand that

Sophia needs her service dog to function in school, but it is not only my safety being compromised, but my education suffers as well.

Testimony of C. Moore Werk

My name is C. Moore Werk and I teach the honors level math class that Sophia and Al are both enrolled in. Before Sophia and her dog arrived, Al was doing well in class; he had an average of about 99%. However, as soon as Sophia and Spots, her service dog, joined the class, Al's grades began to greatly decrease dramatically. He now has an average of 73%. Al has to leave class almost daily to visit the nurse's office, and he often misses important math concepts. It concerns me that he isn't working at his fullest potential because I know he can do better. Al shouldn't have to switch classes because of allergies and asthma attacks caused by another student's dog. The dog that is supposed to be protecting Sophia is beyond distracting another student. It most definitely is interfering with Al's education. Irrefutably, Spots is a serious threat to Al's safety and the school must take action to fix this problem and prevent further predicaments.

Testimony of Sophia Grey

My name is Sophia Grey and I have a severe case of Type 1 diabetes. In addition, I am hypoglycemic unaware, which means that I am unable to tell when my blood sugar is low. If this happens, I can have seizures or possibly pass out. On April 9, 2011, I transferred into a new school because my dad was hired for a new job. I was introducing myself to my new classmates when I noticed that one of them was sneezing a lot and had very irritated eyes.

At first, I didn't realize that Al's reaction was caused by my service dog. The next day, I was called to the nurse and was surprised to see that the same boy who had the reaction was sitting on one of the nurse's beds. Al's eyes were once again very irritated, and he was coughing and sneezing. I felt terrible because of this. I understand that this student has an allergy to my dog, but I need Spots in order to keep me healthy at all times. I cannot predict when one of my reactions may take place.

The guidance counselor suggested that we transfer classes, but it is not fair for either of us to switch since we are both deservedly placed in the honors math class. I, for one, will not transfer to a less challenging class because of my condition. I have the right to an equal education.

Testimony of Dr. Phil Better

My name is Dr. Phil Better. As Sophia's pediatrician, I recommended the service dog for her. She's been visiting my office ever since she was young, but her visits have become more frequent lately because of her diabetes. Since she's been my patient for six years, I am very aware of the severity of her condition. I prescribed the service dog for Sophia because he can detect any warning signs of her low blood sugar. Every time Sophia comes back for another visit, she tells me that there are more serious symptoms of her diabetes and they are occurring more often. It is necessary for Spots to remain at her side during school in order to keep her safe and healthy at all times.

INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that Justice Falls Elementary is negligent in providing Allen Lergic with a thorough and efficient education.

SUB-ISSUES

1. If Al is the one having the reaction, should he be moved or the other student?
2. Should Sophia be moved into a new class to suit her need for the dog or is this demand from the plaintiff unfair?
3. Typically, service dogs are allowed in general areas that serve the public. However, they may be excluded from a safe or sterile environment. Since this law is conflicted within the school, what actions must be taken?

4. If the girl in question really needs this service dog, then would it be considered exclusion from others in her school environment if she were to be moved?
5. Will the decision still uphold the school's requirement to provide a thorough and efficient education to the students in question?

CONCEPTS

1. Preponderance of the evidence.
2. Children's right to education.
3. Credibility of witnesses.
4. School responsibility for student safety.
5. Burden of proof.

LAW

1. According to the ADA, state and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go.
2. According to the IDEA, the law requires federally funded schools to provide a free appropriate public education to all students, regardless of their disability.
3. Under the ADA, service animals must be harnessed, leashed or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices.
4. According to the ADA, allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

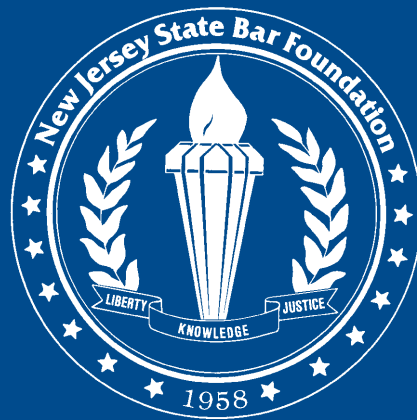
5. Title II of the ADA provides that no individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, program or activities of a public entity, or be subjected to discrimination by any such entity.
6. Articles 28 and 29 of the United Nations Convention on the Rights of the Child states that primary education should be “compulsory and available free to all.”
7. “The New Jersey Constitution requires the state to provide ‘a thorough and efficient system of free public schools for the instruction of all children in this state between the ages of 5 and 18 years.’” (*Student Rights Handbook, 2007*)

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