

2004 Mock Trial Fact Pattern

Acknowledgements:



The following fact pattern was created for middle and high school students whose schools are participating in the 2004 Essex Vicinage Law Day Mock Trial Program. The Honorable James S. Rothschild, Jr. created this original fact pattern with the assistance of his law clerk, Adam Dratch and the Law Day Planning Committee.

INTRODUCTION

Fifty years ago, the United States Supreme Court unanimously held that “in the field of public education the doctrine of ‘separate but equal’ has no place. Separate facilities are inherently unequal”. The Court based its decision on the Fourteenth Amendment to the United States Constitution, which says that no State may “deny to any person within its jurisdiction the equal protection of the laws”. To commemorate the fiftieth anniversary of Brown vs. Board of Education, we have devised a hypothetical lawsuit based on a current problem New Jersey faces in the field of education. In our hypothetical, Abraham Lincoln High School in the City of Lincoln has less modern facilities and less resources than Thomas Jefferson High School in the neighboring town of Jefferson. A student at Lincoln High, and her mother, have sued Jefferson and the State of New Jersey (which is responsible for the education of all youngsters in the State), arguing that Brown vs. Board of Education demands equal facilities and resources. She wants to have equal resources and facilities at her school or, alternatively, the opportunity to attend Jefferson or any other school in the County which has space.

We do not know the answer to the questions raised by this lawsuit. We believe, however, the lawsuit highlights one of the questions left unanswered by Brown vs. Board of Education: when we no longer have segregation in law but still have cities with large percentages of less wealthy African American and Hispanics, and these cities, therefore, cannot provide educations equal to those of the schools in the wealthier cities, should the courts step in and remedy these problems as they did in Brown vs. Board of Education?

Some of these questions are being addressed in a series of cases heard by the New Jersey Supreme Court entitled Abbott vs. Burke. The New Jersey Supreme Court, relying on the New

Jersey State Constitutional guarantee of a “thorough and efficient system of free public schools” (Article 8 § 4, ¶1 of our Constitution) rather than on Brown vs. Board of Education, has directed that more State resources go to less wealthy urban school districts. While these cases discuss some of the problems in our exercise, they do not answer all of the questions our hypothetical raises.¹

¹In an effort to be perfectly accurate, we have contacted experts in school funding who tell us that many urban schools have less funding per student, based on their needs, than suburban schools, but these are no longer great disparities between urban and suburban school funding per student. Even as we celebrate Law Day today, New Jersey courts are dealing with issues like those raised in our hypothetical.

Law Day 2004 – Independent Courts Protect Our Liberties

Instructions for Teachers

The fact pattern attached should be reviewed and discussed with your students prior to Law Day. The students should be familiar with the text and understand the sequence of events. Students should be selected to portray the parties and the other fact witnesses, and six to eight other students can be designated as jurors.

On Law Day, two attorneys and a judge will visit your school and enact a brief mock trial calling the witnesses listed. The judge will instruct participants briefly on the applicable law, and the jury will be asked to render a verdict.

After the verdict, the judge and other participants will ask questions and encourage participation from the audience. We want your students to engage the participants and interact with them.

Instructions for Attorneys/Judges

- The Students have received the fact pattern in advance. Students have been selected to portray the parties and the witnesses.
- The judge will preside over the trial.
- The attorneys will role-play. One attorney will act as the attorney for the plaintiff and one attorney will act as the defendant's attorney.
- The direct and cross-examination of each witness should take no longer than 5 minutes total. Try to stick to the script.
- Each attorney will make a 3-5 minute opening and closing argument.
- The judge will give a brief charge on the law.

- The audience or selected jurors will then render a verdict. Feedback and participation is encouraged.

Judge's Preliminary Remarks to the Jury

My name is Judge _____ of the New Jersey Superior Court. You have been brought here to act as the jury in this case.

I realize jury service may be new to you, so I will give you some instructions. You are the judges of the facts. You will listen to the witnesses and at the end of the case, you will determine what facts have been proven or not proven. I am the judge of the law. In addition to regulating the trial, at the end of the case, I will tell you what the law is. You must accept the law as I tell it to you, whether you agree with the law or not, and you must apply that law to the facts as you find them to be, in order to reach your verdict. In a civil case such as this, there is a minimum of six people on the jury in deciding a case. It is not necessary that all six jurors agree on a verdict. An agreement by any five jurors is enough.

The burden of proof is on the plaintiff to prove the claim by a preponderance of the evidence, meaning that the evidence supporting that claim must weigh heavier and be more persuasive in your minds than the contrary evidence. In other words, the plaintiff's evidence must be a little bit better than the defendant's evidence. If you find that the evidence is equally balanced, then plaintiff is not entitled to your favorable decision.

Now please stand and raise your right hand, state your name after the word I and repeat after me: "I (state our name) do solemnly promise that I will listen to the evidence of the case with an open mind, without prejudice or favoritism and apply the law as it is given by the judge in reaching a fair and just verdict".

I will now introduce the attorneys and they will explain their positions and what they think the evidence will show. Remember that what the attorneys say in these opening statements is not evidence. Also, what they say in their concluding arguments is not evidence. The evidence on which you must decide this case will come from the testimony of the witnesses.

First, the plaintiff is represented by _____

The defendants are represented by _____

OPENING STATEMENTS

ARE WE READY? PLAINTIFF MAY CALL HIS FIRST WITNESS.

WITNESSES FOR THE PLAINTIFF:

Witness: Miguel Hernandez

Witness: Muriel Carver

Witness: Zora Simone

WITNESSES FOR THE DEFENDANT:

Witness: Jerome Thompson

Witness: Patrick O'Reilly

Witness: Barbara Jones

CLOSING STATEMENTS - SUMMATIONS

Statement of Miguel Hernandez

I am a junior at Abraham Lincoln High School. I am a superb student who very much wants to be a doctor, but I am afraid that the problems we have at Abraham Lincoln High School - - all caused by lack of money - - may make my dreams impossible. Let me explain my problems.

First, we have very poor laboratory facilities at our High School. When you want to study sciences, it is important that there be good laboratory facilities. In my chemistry and biology classes, there is only one beaten up old laboratory, which is not state of the art. This puts me at a terrible disadvantage compared to students at Thomas Jefferson High School where there are beautiful laboratories.

Second, when you want to get into college and become a pre-medical student, it is important that there be Advanced Placement and Honors courses. I have found that we have less Advanced Placement courses available to me in chemistry and physics than we should. How can I get into a college with a good pre-medical program when I am competing with students at Thomas Jefferson High School who will have several Advanced Placement and Honors courses on their resume when they apply to college?

Third, it is important that I have good teachers every year. Many of my teachers are good, but many of the good ones leave because the pay and conditions are better at schools like Thomas Jefferson. My guidance counselor and my biology teacher both left this year to go to Thomas Jefferson and both would have given me good recommendations for college. This is unfair.

A fourth problem I have is we do not even have one computer in some of our classrooms. I am told that almost every classroom at Thomas Jefferson has several computers. What makes this doubly unfair is that most of the students at Thomas Jefferson come from such affluent families that they have their own personal computers! In my case I was rejected from the National High School Honor Society because I did not have access to a computer to type my application.²

My mother and I brought this lawsuit after I studied Brown vs. Board of Education in Social Studies. I learned that in 1954 the United States Supreme Court ruled that “separate but equal” schools are illegal. Comparing Abraham Lincoln High School to Thomas Jefferson High School, we now have unseparate and UNEQUAL schools. In Brown, the Court said that separate schools are wrong because “Separate educational facilities are inherently unequal”. Lincoln High is **unequal** to Jefferson High; what was wrong in 1954 is wrong in 2004. I am being denied “the equal protection of the law” which was the basis of the Brown decision.

Most of our students are Hispanic and African American. They do not come from wealthy backgrounds. The students at Thomas Jefferson High School are often the children of doctors, lawyers and business people. While some are African American and Hispanic, many are not. They have enough advantages already and should not also have a High School that has better facilities, more course offerings, and better teachers than ours. I do not know if the system exists **because of** differences in the racial makeup of the student bodies and the parents, but the **effect** of the situation is that it is more difficult for the largely Hispanic and African American students at Abraham Lincoln to succeed. It is clear to me that this is an example of de jure

² Counsel for Abraham Lincoln should show the jury Mr. Hernandez’ rejected application and ask the court to mark this as Exhibit P1.

equality, but not de facto equality. We have equality in law, but INEQUALITY in fact. Fifty years after Brown vs. Board of Education, it is wrong for this situation to exist.

I ask the court to take money from Thomas Jefferson's budget and transfer it to Abraham Lincoln so that the two schools are equal. Alternatively, I should be allowed to attend any school in the County where I live - - whether or not it is mostly White. Many of the wealthy schools in the suburbs would fit my needs. Brown vs. Board of Education will not accomplish very much if we are condemned to schools with less resources.

Statement of Muriel Carver

I am President of the Board of Education in the City of Lincoln. I would like to explain how we obtain our monies to fund Abraham Lincoln High School, and why I believe we are entitled to more funds.

Basically, the State of New Jersey funds a good deal of public education in this State. We obtain approximately \$8,000 per student for Lincoln High. The first problem is that the remainder of the money must come from our local budget which is supported by local taxes. We have to spend so much of our tax money here in providing other services, as well as servicing tax exempt properties such as hospitals, colleges, churches and courthouses, we cannot collect nor allocate as much money for education as do towns like Jefferson. We collect enough money from local taxes to provide \$2,000 per pupil to Lincoln, giving Lincoln a total of \$10,000 per pupil. In Jefferson, on the other hand, the school board is able to use \$4,000 per student of tax money for its high school, meaning that there is \$12,000 to spend for every student at Jefferson High.

There is another problem. When New Jersey schools need capital improvements - - new classrooms, new roofs, new laboratory equipment - - they raise those monies through bond issues. Jefferson has had several successful bond issues in the past decade to give it new and improved buildings and equipment. We, on the other hand, have not been able to do so, leaving the Jefferson facilities much better than ours.

This is, I believe, a vicious cycle. All parents want to move into communities with better schools. As long as Jefferson has more money than we do for its schools, its schools will be better than ours, and parents who can afford to do so would prefer to move to Jefferson. The

differential in education has caused the middle class move from Lincoln to Jefferson, further diluting our base of tax payers.

Fifty years after Brown vs. Board of Education, I believe, we have not made sufficient progress. Unless the lawsuit of Miguel Hernandez succeeds, we will continue to have unequal schools tarnishing the goal of equality for all people. As Justice Marshall Harlan stated in his dissenting opinion in Plessy vs. Ferguson, “Our Constitution is color-blind and neither knows nor tolerates classes among citizens”. That is why I support Miguel’s lawsuit.

Statement of Zora Simone

I am a junior at Abraham Lincoln High School. Ever since I can remember, I have wanted to be a lawyer. I am constantly debating others and representing the underdog. I am not afraid to take a stand for a cause that I believe is important. That is why I am joining in the lawsuit for equal resources for our school. All of my friends and family tell me that one day I will be a great lawyer, possibly the first African American, female, United States Supreme Court Justice.

But, I have to be honest; it is very difficult to dream large when there are so few resources for students at my school. There may be six working computers in the entire high school and they are extremely slow because our school does not have the funds to pay for faster Internet access. It is very difficult to access the Internet for research or to get up-to-date information. In fact, the few computers that we have were handed down to us by the wealthier school districts when they purchased new computers.

Next, I recently learned from one of my friends that the students at Thomas Jefferson High School are all provided with and taught to use graphing calculators for their upper level math courses. I also heard that these calculators are used during the SAT. I have never seen a graphing calculator and believe that I will be disadvantaged when I take the SAT. We should be given every opportunity to excel, just like the students at Thomas Jefferson. I guess there are persons that believe that since we have so few Honors Courses and Advanced Placement Courses that it is not necessary to provide us with the same type of tools. This is not fair. When I was reading about the cases that came to the Supreme Court before the Brown v. Board case, the

Supreme Court said that even if there was only one qualified student, there still must be equal resources.

Another problem is that due to our limited resources, we have no after school clubs or extracurricular activities. I attempted to start a Pre-Law Club and a Debate Club in my school but was told by my Principal that there was no money in the budget for these programs. She said that there was no money in the budget for buses to take us to different schools to compete and no money to bring other students to our school. I thought we might be able to raise the money through bake sales and car washes, but due to the lower teacher salaries at our school, the teachers do not want to stay late or work on Saturdays.

I recently read the story of one of the five cases that went to the Supreme Court under the heading of Brown v. Board of Education. That case was brought in Prince Edward County, Virginia and was started by a high school student, Barbara Rose Jones, who fought to equalize the buildings and the equipment at her school. She successfully organized a boycott and brought attention to the inadequate and unequal facilities at her school in comparison with the local white high school. After hearing arguments in Brown, the Supreme Court ruled that “separate but equal facilities are inherently unequal.” I believe that the inequality between Thomas Jefferson and Abraham Lincoln High Schools is in violation of Brown and in many ways is exactly the reason why Justice Thurgood Marshall fought this battle at the Supreme Court 50 years ago.

It is also in violation of the New Jersey State Constitution’s “thorough and efficient” clause that directs that adequate physical facilities are essential when educating students and that “thorough and efficient” education is about more than basic communications and computation skills; it requires that we be given, at the very least, a modicum of variety and a chance to excel. If they do not wish to share their funding then I should be permitted to attend Thomas Jefferson.

Finally, I have worked extremely hard, am an excellent student, and I deserve an opportunity to succeed. I have two brothers and one sister; I am the oldest. My mother is a single parent, who works two jobs to make ends meet, and my father is deceased. I will be the first person in my family to attend college. Brown v. Board of Education stood for equal opportunity.

I believe that it is important to take a stand. Dr. Martin Luther King, Jr. said, “stand for something or fall for anything.” I believe that this is the most important fight of my life.

Statement of Jerome Thompson

I am a junior at Thomas Jefferson High School and have been elected the Captain of the Football and Wrestling Teams for next year. I am one of the best, if not the best, athletes in the school. Just a month ago we were told that if the lawsuit by the students from Abraham Lincoln High School to equalize funding between the two High Schools is successful, our school may have to cut its extra curricular programs, including its sports teams. If this happens, it will severely hurt my chances of getting an athletic scholarship to Rutgers. Needless to say, I am very upset about this.

To begin, I would like to explain our background. My mother is a successful lawyer, and my father is a Professor of Education at Rutgers. After my sisters and I were born, my parents moved to this town so that we could go to Thomas Jefferson High School which my parents believed to be the best High School in the State. My parents were willing to pay a high purchase price for our home here since they value education so much.

I am particularly incensed that the students and parents from Abraham Lincoln High School make this out to be a racial matter. Our school is perfectly racially balanced. Indeed, the top student in our class is an African American. The second best student is Asian. The President of our class is Hispanic. Three photographs I took are the best evidence of the diversity of our student body.³

The students and parents from Abraham Lincoln High School say that they are bringing this lawsuit because of Brown vs. Board of Education, which I studied in school. They have it

³ Counsel for Thomas Jefferson should show jury the photographs Mr. Thompson took which demonstrate the multiracial nature of the school and ask the court to mark this as Exhibit D1.

backwards. Our school is what Brown vs. Board of Education was all about: allowing students of all races to achieve together.

If the students and parents at Abraham Lincoln High School want better education, they should try to make more money and move into this town, just as my mother and father did. For them to sue us is, in my opinion, wrong. I deserve a chance for an athletic scholarship, and should not have it taken away because our school could not afford to have a football and wrestling team. My parents have worked too hard for this to happen.

Statement of Patrick O'Reilly

I am a junior at Thomas Jefferson High School, with high aspirations of becoming a professional musician and concert pianist. There is a chance that the changes proposed by the plaintiff in this lawsuit may not only destroy my career aspirations, but ruin any chances I have of attending college. Because the music program at my school is regarded as “peripheral” to the core academic curriculum at Jefferson High, the program will be one of the first to be eliminated if funds are withdrawn from my school district.

To give you some insight into my problems, I must first say that music is my gift. Further, my father has made grave sacrifices since I was a young child in order to nurture my gift. Since I was six years old, my father, who is a single parent, has worked an extra job just so he could afford to send me to piano lessons. I've done very well since, and have won several local, and statewide musical competitions for my high school after my freshman year at Jefferson. It is my performance in these competitions that has drawn the attention of a major music academy in New York City, as well as a few other good music programs at colleges in the tri-state area. But in order to be seriously considered for a music scholarship, I have to graduate from a high school with a reputable and recognized music program, such as the one Jefferson High School currently has. With that said, my father barely makes ends meet, and a college scholarship is my only realistic chance to further my education and fulfill my dreams.

The thought of losing my music program because of what a school in another town doesn't have is unfair. I was able to develop my gift because my father made countless sacrifices. When it was time for me to enter the first grade, my father made a deliberate decision to move here just so I could reap the benefits of a quality public school system. He could not afford to send me to a private school, but he believed that I deserved a quality education

nonetheless. Brown v. Board of Education was not about destroying dreams. It was about giving students like me the opportunity to fulfill them. The responsibility of improving schools in other towns shouldn't fall on the parents of Jefferson. The State should fulfill its financial responsibility to each school, and each town should be free to invest in its school system the way it sees fit. If the Jefferson School district wants to allocate additional funds to its budget to offer the opportunity for not only a "thorough and efficient education," but a superior education, it should be allowed to do so. The school system of Jefferson gives everyone who lives in this town the opportunity to attend here and succeed here, regardless of race or color. The diversity of our school speaks for itself. For all who are willing to make sacrifices such as my father did for me, the opportunity is there, and should never be taken away.

Statement of Barbara Jones

I am a proud parent of two students at Thomas Jefferson High School, and I would like to explain why I oppose the lawsuit brought by Miguel Hernandez. First, it is totally unfair to characterize this as a racial problem. Anyone may buy a house in Jefferson regardless of race or ethnicity. The fact that there is a greater percentage of whites in Jefferson than in Lincoln has nothing to do with racism, or the type of bigoted governmental action which the Supreme Court ruled illegal in Brown vs. Board of Education. It has to do solely with economics.

Second, the reason I decided to live in Jefferson was to have better schools for my children. Why do you think I work two jobs? I work two jobs so that my children will get a better education and better jobs than I. Indeed, I live in a smaller house in Jefferson than I could have had in Lincoln. If you take away some of our tax money and give it to Lincoln, it would be unfair to me and my children.

I see that Miguel Hernandez asks that some of the monies go from the Jefferson budget to the Lincoln budget, or he and other Lincoln children be allowed to go to Jefferson High. I am 100% opposed to this.

Jefferson High has made Advanced Placement and Honors Courses, great music and art programs, school plays and the like so that **our** children could have all these wonderful opportunities. Why should we share those wonderful opportunities for someone that does not pay our taxes? Worse, there are only a limited number of places in the school band, the student council and so on. My children should have those places. My children have worked hard to get into the school band. I bought them expensive music lessons so they could become better. I would be furious if Miguel Hernandez or anyone else from Lincoln came to our school and got a

spot in the school band over my children. The rewards in our society should go to those who can afford them, and our courts should not interfere.

JURY CHARGE

General Charge⁴

Ladies and Gentlemen of the Jury the time has arrived when you are to perform your final function in this case, but before you retire to discuss and decide on a verdict, it is my duty to instruct you as to the principles of law which apply.

Functions of the Court

In this trial the function of the Court is to instruct the jury with respect to the principles of governing the case. The jury is required to accept and apply the law as stated by the Court to the facts of this case.

Comments of Counsel and Judge

Counsels have, in their opening statements and closing statements (summations), commented upon the evidence to assist you in your deliberations. Their comments are not binding upon you because it is your recollection of the facts that controls.

Burden of Proof

The burden of proof is on the plaintiff in this case to prove a violation of the Fourteenth Amendment of the United States Constitution or the thorough and efficient education clause of the New Jersey Constitution. To prove an allegation by a preponderance of the evidence, plaintiff must convince you that it is more likely true than not true. You must ask yourself, as to each issue, which side has the better evidence.

⁴ Under New Jersey procedure, the case we have been discussing would probably be decided by a Judge (then eventually our Supreme Court), not a jury. We briefly discussed the possibility of having the students act as members of the Supreme Court, but decided that it would be a better exercise for the students to act as jurors.

If the evidence on a particular issue is evenly or equally balanced, that issue has not been proven. An easy way to understand this is to picture a scale or seesaw. If the weight on both sides is even, then plaintiff has not met the requirement to prove the case. However, if it tips a little more to plaintiff's side than the other, the plaintiff wins.

The Fourteenth Amendment

The Fourteenth Amendment of the United States Constitution says that no State may “deny any person within its jurisdiction equal protection of the laws”. In Brown v. Board of Education, the United States Supreme Court said that the Fourteenth Amendment meant that separate schools for different races were illegal because they denied “the equal protection of the laws”.

The Thorough and Efficient Education Clause

Article 8 §4 ¶1 of the New Jersey Constitution guarantees that the State will provide a “thorough and efficient system for public schools”. In Abbott v. Burke, the New Jersey Supreme Court held that certain sub-standard conditions for urban schools violated that clause; the State Supreme Court held that the Legislature will have to provide more monies to those urban districts to remedy that violation.

Your Role

The Fourteenth Amendment as interpreted by Brown vs. Board of Education and the “thorough and efficient education clause”, of the New Jersey State Constitution, as interpreted by the New Jersey Supreme Court in Abbott v. Burke are the law of the land. Your role is not to

question those decisions. Rather, it is to determine, based on the facts of the case, whether the plaintiff has proven a violation of either clause, and if so, what should the remedy be.

Evidence/Credibility

You are to determine the facts from the testimony you heard from the witnesses. You will do this by judging which testimony can be believed or what probably happened.

To help you in making this decision, I want to explain some legal principles. The evidence in a case can be direct evidence or circumstantial evidence. Let's say someone testified that they saw snow falling outside their window at night. If you believe them, that directly proves it snowed that night. But if that person testifies it was dry out when they went to bed but in the morning there was snow on the grounds, that is circumstantial evidence that it snowed that night. They didn't see it snow but we still know it snowed just as surely as if the witness actually saw the snow fall. Both types of evidence, direct and circumstantial, are acceptable as proof in a case. Also, you have to decide if you believe each witness after observing their behavior while testifying. Consider if they favor one side or the other and their ability to see or hear what they say they saw or heard.

You can believe all of what the witness said, some of it, or none of it. It's up to you. In other words, are you convinced by it, and does it make sense?

Under no circumstances should your deliberations be affected by any favoritism for a party or any prejudice against a party. Bias, passion, and sympathy may not influence your decision. Decide this case on the facts and law I have given you.

Deliberations and Verdict

You must discuss the case among yourselves and listen to the opinions of your fellow jurors. However, in the end, each of you must decide the case for yourself. Your decision is important to both sides.

Although your verdict need not be unanimous, you should try to agree on a verdict. Once all 6 of you, or 5 out of 6 of you, agree on the answers to the jury verdict form, that is your verdict. (The Judge may wish to poll the audience while the jury deliberates.)

VERDICT FORM

1. Did defendants violate the Fourteenth Amendment of the United States Constitution or the “thorough and efficient” education clause of the New Jersey Constitution by failing to equally fund Abraham Lincoln High School and Thomas Jefferson High School?

Yes _____ No _____

If your answer to Question 1 is No, please hand in your verdict form. If your answer is Yes, please go to Questions 2 and 3.

2. Should the remedy for the violation found in Question 1 be to equalize the funding per student between all high schools in New Jersey?

Yes _____ No _____

3. Should the remedy for the violation found in Question 1 be to allow any student at Abraham Lincoln High School to attend Thomas Jefferson High School or any other high school in the County which has sufficient space?

Yes _____ No _____

Law Day 2004

Vocabulary List

Commemorate – 1. to serve as a memorial or reminder of. 2. to honor the memory of by some observance.

De facto – in fact, indeed, actually. *Contrast with de jure.*

Defendant – the party against whom relief or recovery is sought in an action or suit.

De jure – under the law. *Contrast with de facto.*

Exercise – something done or performed as a means of practice or training. Putting into action, use or effect. Could be mental or physical exercise.

Hypothetical – assumed to exist by hypothesis; conjectural; supposed: *a hypothetical situation.*

Inherently – existing in someone or something as a permanent and inseparable quality, element or attribute; ingrained; innate.

Peripheral – pertaining to the minor or superficial aspects of something.

Plaintiff – the party who brings an action or who seeks relief for an injury to rights.

Segregation – the unconstitutional policy and practice of separating people on the basis of color, religion, nationality, etc. in housing and schooling. *De facto segregation is that which is inadvertent and without the assistance of school authorities, and not caused by any state action, but rather by social, economic, or other determinates. De jure segregation is that which is directly intended or mandated by law or otherwise issuing from an official racial classification; in other words segregation which has or had the sanction of law.*