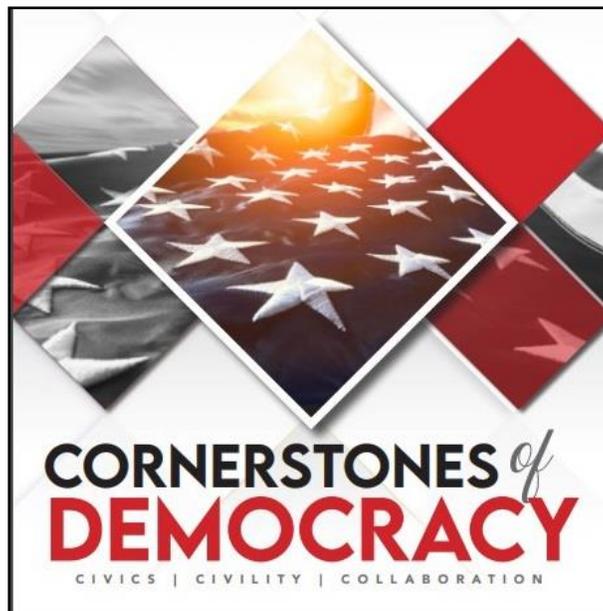




New Jersey Courts

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2023 LAW DAY



**ESSEX VICINAGE
ELEMENTARY SCHOOL
MOCK TRIAL FACT ATTERN**

Thomas v. Ocean Avenue School Board

Developed by:

4th Grade, Union Ave. School, Margate NJ

As modified by the Essex Vicinage 2023 Law Day Committee

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Fact Pattern

This case was brought by Rebecca Thomas, mother of Jenna Thomas. Jenna is a 4th grade student at Ocean Avenue School. The Ocean Avenue School student handbook has a rule which forbids: “extreme clothing or hairstyles which might distract students from the learning process.” On the first day of the school swim team competitive season, all the boys on the swim team came to school with their heads completely shaven. They planned to stay bald for the entire eight-week season. None of the boys were sent home for violating the school code. The next day, Jenna, a girl who was not on the swim team, also came to school with her head shaven bald. Jenna was sent home because of her hair style. She has been suspended until she agrees to wear a wig to school or until her hair grows back. Jenna’s mother is suing the school for discriminating against Jenna because of her gender.

We will be conducting a trial with a judge and two attorneys. You, the members of the jury, will have to decide the outcome. The jury will hear opening statements by the attorneys for Rebecca Thomas and the Ocean Avenue School Board. The jury will also hear testimony from several witnesses. At the end of the case, the jury will decide whether Rebecca Thomas is correct in her claim that her daughter was improperly discriminated against because she is a girl. If the jury finds that defendant Ocean Avenue School Board acted improperly, they will also consider what should now be done.

Instructions for Teachers

This fact pattern involves a civil case where plaintiff, Rebecca Thomas, claims that her daughter, Jenna Thomas, was improperly discriminated against when she was suspended for shaving her hair when the boys on the swim team were not suspended when they did the same thing. On the day of the mock trial, a judge and two attorneys will visit your school. One of the attorneys will act as the attorney for the plaintiff, Rebecca Thomas. The other attorney will act as the attorney for the defendant, Ocean Avenue School Board.

Teachers should select four students to play the parts of the witnesses. The students should be familiar with their witness statements and the sequence of events. Two of the witnesses will be testifying for the plaintiff and two of the witnesses will be testifying for the defense. At the mock trial, witnesses will answer direct questions for the attorney calling them as a witness and cross-examination questions by the opposing attorneys. Both attorneys will make final arguments. At the end, the judge will give an explanation of the law and then allow the students or the jury to decide the outcome of the case.

Teachers, if they wish, can also select two students to act as co-counsel. The students will assist the visiting attorneys. The co-counsel can also suggest a list of questions for each witness. Teachers should inform the visiting attorneys and the judge of the names of co-counsel prior to the start of the mock trial. If the judge, attorneys and teachers agree beforehand, the students can change the format noted above and present the case as the attorneys, with coaching from the actual attorneys.

The judge will decide whether to have a jury of six students or have the entire student body decide the case as a whole. Students should be familiar with the entire fact pattern and

understand the sequence of events prior to the date of the mock trial. There will be a question-and-answer period following the mock trial presentation. At the end of this packet, there are vocabulary words.

Instructions to the Attorneys & Judges

The students have received the fact pattern in advance of the mock trial date. The teachers have selected students to portray the witnesses and possibly to act as co-counsel. The judge will preside over the mock trial. The attorneys will role-play. One attorney will act as the attorney for the plaintiff and one attorney will act as the attorney for the defendant. The judge will give beginning instructions to the students. Each attorney will make a short opening statement. The direct and cross-examination of each witness should take no longer than five minutes. Then the attorneys will each make a short closing argument also limited to five minutes.

The judge will then give the ending instructions and final charge. This will include a brief explanation of the applicable law. The judge will provide an overview of the facts of the case and an overview of the issues and arguments. The judge will then lead the students and jury through an analysis of the issues so that they can make a decision.

The students acting as jurors should be encouraged to express their various viewpoints. Feedback and participation are encouraged. Following the presentation, a question-and-answer period is usually held with the students. The judge and attorneys are encouraged to lead a discussion with the students.

Judge’s Opening Instructions to Students

My name is _____ and I am a judge in the case of Thomas v. Ocean Avenue School Board. This is a civil trial in which the plaintiff, Rebecca Thomas, claims that her daughter, Jenna Thomas, is being discriminated against because she is a girl. The plaintiff claims that Jenna was improperly suspended from school after Jenna shaved off her hair. The plaintiff claims that members of the boy’s swim team were treated differently and not suspended when they shaved off their hair the day before. The defendant, Ocean Avenue School Board, claims that they properly suspended Jenna Thomas. The defendant claims that that there is a rule in the Ocean Avenue School student handbook which forbids “extreme clothing or hairstyles which might distract students from the learning process.” The School Board claims that they were correct in suspending Jenna Thomas for violating this rule.

I would like to introduce to you the attorneys. The plaintiff, Rebecca Thomas, will be represented throughout these proceedings by _____ (insert name of attorney(s) playing role of plaintiff’s attorney). I would like him / her to rise and introduce himself/herself to you. The defendant, Ocean Avenue School Board, will be represented by _____ (insert name of attorney(s) playing role of defendant’s attorney). I would like him/her to rise and introduce himself/herself to you, and his / her client.

Ladies and Gentlemen of the Jury, you are the sole judges of the facts in this matter. Your determination of the facts is to be based solely upon the evidence submitted during the course of the trial. When I use the term “evidence” I mean the testimony of witnesses who will testify and any exhibits which may be marked into evidence.

The plaintiff and the defendant are entitled to jurors who are impartial and agree to keep their minds open until a decision is reached. Jurors must be as free, from bias, prejudice or sympathy, as best they can be.

You will first hear the opening statements from the attorneys. The attorney for the plaintiff, Rebecca Thomas, will go first. The attorney for the defendant, Ocean Avenue School Board, if they so choose, will go next. What is said by the attorneys in an opening statement is not evidence. The evidence will come from the testimony of the witnesses and the other evidence presented to you.

At the end of the testimony, the attorneys will speak to you again in closing statements. At that time, they will present to you their final arguments on why their clients should win.

After closing statements, you will receive your final instructions on the law from me and you will then then consider your verdict. You must weigh the evidence calmly and without bias, passion, prejudice or sympathy. You must decide the issues of this case upon the merits.

Mock Trial Outline

OPENING STATEMENTS

ARE WE READY FOR WITNESSES? THE PLAINTIFF'S ATTORNEY MAY CALL ITS FIRST WITNESS:

WITNESSES FOR THE PLAINTIFF:

Witness: Jenna Thomas, 4th Grade, Ocean Avenue School

Witness: Mrs. Rebecca Thomas, mother of Jenna Thomas

Plaintiff rests

WITNESSES FOR THE DEFENSE:

Witness: David Eagle, Gym Teacher and Swim Coach

Witness: Lea Ann Nicholas, School Principal, Ocean Avenue School

Defendant rests

CLOSING STATEMENTS

JUDGE'S INSTRUCTIONS AND FINAL CHARGE

Statement of Jenna Thomas

I am a 4th grade student at Ocean Avenue School. Our school has a swim team and it competes in meets starting in October of each year. This year, when swim season started, I saw that the boys on the swim team had shaved off their hair. I decided that I liked the look and wanted to shave my head too. I was kind of upset that the boys were allowed to do this but the girls on the swim team were told they could not do the same thing. I wanted to show my support for the swim team but also wanted to show that girls and boys should be treated the same.

When I got home that day, I asked my mom if I could shave my head. She just laughed and said we would talk about it later. She always says that when she doesn't want to have to talk about something uncomfortable. I guess she figures that I will forget and not ask her again.

That night before I went to bed, I used scissors and my Dad's razor to shave off my hair. My Mom came upstairs when she heard the buzz of the razor echoing in the bathroom. At first she was angry but then she helped me finish the parts of my head that I couldn't reach.

When I got to school the next day I was very excited about my new look. However, the gym teacher, Mr. Eagle, immediately sent me to the principal's office when he saw me in the hallway with my bare head. He ordered me to keep my hat on and to not let anyone see my head. Mr. Eagle told me I was distracting the other students in the class even though I wasn't.

None of the other students in the class seemed to care much about my hair. I talked to some of my classmates after I was suspended and none of them told me that they found my bald head distracting. You wouldn't believe some of the hair styles that boys and girls come to school with these days. Two weeks ago, one of the boys came to school with a mohawk. A girl started the school last year with green hair. Neither of these students were suspended. The only one getting excited or upset about my hair was Mr. Eagle.

No one got excited when the boys shaved off their hair the day before. In fact, Mr. Eagle told our class that he was thinking about shaving his own head to show his team spirit. I think the school is wrong in allowing boys to shave their hair off but suspending girls when they do the same thing.

Statement of Mrs. Rebecca Thomas

I am Jenna Thomas's mother. When she mentioned to me that she wanted to shave her hair off I thought she was kidding. Jenna has been known to get some wild ideas sometimes. Jenna is a good student and helps me out a lot at home but sometimes she has a mind of her own.

Later that same evening, when I saw her shaving her hair, I was mad because I liked it the way it was. Once I realized this is something she wanted to do for herself, I quickly got over it and helped her finish. Although Jenna's bald head was not my idea, I do support her right to wear this style to school if she wants to.

I do not think a bald head is extreme or distracting. The boys on the swim team have been permitted to come to school this way. What's fair for one group of students should be fair for all students.

Jenna's hair is not green, purple or arranged in giant spikes. It is a neat and clean look suitable for either a boy or a girl. A wig would be more distracting to both Jenna and her classmates.

Jenna deserves fair and equal treatment in school. Girls should be subject to the same rules as the boys.

Statement of David Eagle

I am the swim team coach and Jenna's gym teacher at Ocean Avenue School. I could not believe what I was seeing when Jenna came into school that morning with all of her hair cut off. She looked awful. I knew that her bald head would be horribly distracting to my other students. I told her to put her hat back on and immediately sent her to the principal's office.

The boys on my swim team have shaved heads. Many swimmers believe that this helps them swim faster during their swimming competitions. I mentioned to some of my students that I was considering doing the same thing in support of the team.

None of the girls on the swim team shave their heads. One or two mentioned to me that they were thinking about it but I told them only boys on the team could shave their head. The girls all wear swim caps instead.

I am proud of the school spirit displayed by the members of the swim team. I think school spirit is important to the learning process. However, Jenna shaved her head just to test me. I will not tolerate students disobeying the rules in order to defy me. The rules must be followed. If we allow this rule to be broken, I can only imagine what would come next.

Statement of Lea Ann Nicholas, Principal Ocean Ave. School

I have been the principal at Ocean Avenue School for the last four years. Jenna Thomas is one of our better students and rarely gets in trouble. I have heard from her teachers that she is sometimes strong willed and has a mind of her own.

I first learned about the problem when Jenna Thomas came into my office wearing a hat. She said that Mr. Eagle, the gym teacher, sent her to me. When I asked why, she didn't say anything but took off her hat. I was amazed. Students these days have really strange hair styles but I've never seen a girl shave off all her hair.

We have a rule in our student handbook about extreme hairstyles. The student handbook is given to each student at the start of the year. It is also brought home by each student for a parent to sign and return to the school. The handbook forbids: "extreme clothing or hairstyles which might distract students from the learning process."

I cannot think of a more 'extreme hair style' than a girl shaving all the hair off of her head. It is clear to me that Jenna Thomas and her bald head will be distracting to other students in the classroom. This type of distraction will detract from the learning process. This was not the case for the boys on the swim team. It is currently popular for boys to wear closely cropped or partially shaved hairstyles.

Besides, the swimmers will change their hair styles once the season is over. Jenna is not a swimmer. She deliberately chose to challenge a school rule to gain attention and defy a teacher.

It is the schools right to determine what is distracting and what is permitted according to the student manual. This situation is not about different treatment for boys and girls but rather about what is best for the school. Jenna and her mother both knew about the dress code when school

started in September. It was my decision to suspend Jenna until she either agrees to wear a wig to school or until her hair grows back.

JUDGE'S CLOSING INSTRUCTIONS AND JURY CHARGE

Ladies and Gentlemen of the Jury, the evidence in this case has been presented and the attorneys have completed their summations. It is now time for you, as jurors, to perform your job.

First, let me thank for your attention and for listening so well during this trial. I would also like to compliment the attorneys on how well they presented their cases.

NATURE OF THE CASE

This is a civil case. The plaintiff, Rebecca Thomas, claims that her daughter, Jenna Thomas, is being discriminated against because she is a girl. The plaintiff claims that her daughter is being unfairly punished after she shaved the hair off her head. The plaintiff claims that members of the boy's swim team are not being punished even though they did the same thing. The defendant, Ocean Avenue School Board, argues that the suspension is justified and proper given the school rule which forbids: "extreme clothing or hairstyles which might distract students from the learning process." The defendant argues that they are not discriminating against Jenna because she is a girl.

BURDEN OF PROOF

For the plaintiff to be successful she has to prove her case by a preponderance of the evidence. That means that she must show that it is more likely than not that the Ocean Avenue School Board is improperly discriminating against Jenna Thomas because she is a girl. The defendant, Ocean Avenue School Board, has the burden to prove her case.

FUNCTION OF THE JURY

When we started the case, I explained that you are the jury and will decide the case on the facts presented. You must decide which witnesses are likely telling the truth. If you find that the plaintiff has not proven her case by a preponderance of the evidence, you must find for the defendant, Ocean Avenue School Board. But if you decide that Rebecca Thomas has proven her case and that the defendant Ocean Avenue School Board is improperly discriminating against Jenna Thomas because she is a girl then you must decide in favor of plaintiff. If you find in favor of plaintiff, you should also decide what relief should be ordered by the court.

DELIBERATIONS

As jurors, you are expected to use your own good common sense. It is your duty, as jurors, to talk with one another. Each of you must decide the case for yourself, but only after you discuss the case with your fellow jurors. As jurors, it is your duty to weigh the evidence calmly and without passion, prejudice or sympathy. Five of the six of you have to agree before a decision, one way or the other, is reached.

APPOINTING FOREPERSON:

(Insert juror's name) you are the foreperson of the jury because of your position in the jury box. You will tell us when a decision is reached.

THE JURY DELIBERATES, WITH JUDGE'S GUIDANCE

Verdict Sheet

: Date:

Rebecca Thomas,

Mother of Jenna Thomas

Plaintiff

: Docket No.

v.

: Judge:

Ocean Avenue School Board
Defendant

We the jury do hereby find that the plaintiff Rebecca Thomas, mother of Jenna Thomas,

_____ or _____ proven by a preponderance of the evidence
HAS HAS NOT

that the defendant Ocean Avenue School Board has improperly discriminated against Jenna Thomas.

Jury Foreperson

Vocabulary List

Attorney: a person who has been qualified by a State or Federal Court to provide legal services, including appearing in court.

Cross Examination: the examination of a witness by the party opposed to the one who produced her/him.

Evidence: Information that may be helpful for the jury which the Court allows to be admitted at trial.

Judge: an official in charge of the court who makes legal rulings.

Jury: a group of persons who promise to judge the case fairly.

Testify: to tell the Court and jury what you saw or heard as a witness.

Witness: an individual who actually sees or hears something. A person who testifies in court.

The 14th Amendment Summary

Today the 14th Amendment stands among the most often cited and the most litigated of any provisions of the United States Constitution. Rarely does a Supreme Court term go by without a landmark ruling that has its roots in the 14th Amendment.

Section 1 of the 14th Amendment to the United States Constitution states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

To truly appreciate the impact the 14th Amendment has had in transforming American democracy, it is important to learn about some seminal decisions. Students interested in this topic can research any number of United States Supreme Court decisions including the decisions in Brown v. Board of Education of Topeka, 347 U.S.483 (1954) (separate but equal); Gideon v. Wainwright, 372 U.S. 335 (1963)(right to an attorney in criminal matters); and Loving v. Virginia, 388 U.S. 1 (1967)(interracial marriage).

Due Process of Law

What is meant by the 14th Amendment's requirement for "Due Process" of law? Looking at it simply, due process is making sure the government acts fairly. It is a safeguard that protects certain rights like life, liberty or property. It ensures the government does not take away these rights unjustly. The 14th Amendment is not the only place in the Constitution where due process appears. It is also mentioned in the 5th Amendment. So why did Congress decide we needed to include it again when they wrote the 14th Amendment? The 5th Amendment applies to the federal government and the 14th Amendment applies to the states. This means there are limitations on the kinds of laws both the federal government and state governments can make when the law will affect a person's rights.

There are two kinds of due process. The first type is concerned with the process the government must follow. If a government passes a law that takes away or affects one of your rights, it must provide you with certain information. The second kind of due process is a bit more complicated. It looks at the reasons the government made the law and the kind of right affected. If the right is a fundamental right, then it is very difficult for the government to make the law.

Equal Protection Clause

Equality in the 14th Amendment means the same as it does in your math homework. In a math problem you have to solve the answer for the numbers being added, subtracted, multiplied or divided. What is on one side of the equal sign has the same value as the other side. The Equal Protection Clause makes sure that every person is treated the same as everyone else under the law.

The 14th Amendment says the government cannot: “deny any person within its jurisdiction equal protection of the laws.” This means the government could not decide to treat one person differently from another person just because it wants to. If the government decides to treat some people differently than others, it must first have a very important reason or goal. Then the government must explain to the court why treating some people differently is necessary to achieve that goal.

Civil War and Reconstruction: History of the 14th Amendment

At the end of the Civil War in 1865, during a period in history called Reconstruction (1865-1877), Congress passed the 13th Amendment which abolished slavery once and for all, but it did not carve out specific rights for newly freed men and women. Many questions remained about whether they were citizens, could vote or if they could own land. Even though they were now free, what would protect them and make sure that they were treated fairly? The first Civil Rights Act which was passed in 1866 despite President Johnson’s veto, defined citizenship and the idea of equal protection. To ensure that no one could argue whether Congress had the power to pass the act, Congress adopted the 14th Amendment in 1868. The first state to ratify the 14th Amendment was Connecticut on June 30, 1866 after which 35 more states would follow.

Citizenship

Who is a citizen? This may seem like a simple question now, but it has not always been so simple. A citizen is someone who is included as a member of a country under the law. A citizen may have rights that are not afforded to non-citizens. For example, only citizens are able to vote in elections and get U.S. passports. Until the 14th Amendment was ratified after the Civil War, many people who were born in the United States and lived here were not recognized as U.S. citizens. The largest group of people who did not have the status of citizens due to their race was African Americans.

A U.S. Supreme Court decision in 1857 called Scott v. Sanford (commonly referred to as the Dredd Scott Decision) determined that a person who was a slave or whose family members had been slaves could not be an American citizen. Many people disagreed with this decision, so when the 14th Amendment was written and added to the Constitution, Congress changed the definition of a citizen to include “all persons born or naturalized in the United States.” This critical definitional change meant that anyone born in any state of the United States is automatically a citizen. It does not matter if you were born in Oklahoma, Oregon or Ohio. This changed millions of lives of former slaves who were now legally recognized as citizens and entitled to the same rights as everyone else.

Conclusion

The 14th Amendment has reshaped American law and society. Through its Citizenship, Due Process, and Equal Protection clauses, this amendment has transformed and advanced the rights of all Americans. It has played a pivotal role in extending the reach of the liberties contained in the Bill of Rights to the states. Ratified during Reconstruction a century and a half ago, the 14th Amendment still serves as the cornerstone of landmark civil rights legislation, the foundation for any number of federal court decisions protecting fundamental rights and a source of inspiration for all those who advocate for equal justice under law.

(Adapted, with edits, from the 2017 Oklahoma Bar Association Law Day committee)