

NOTICE:

This tryout packet was assembled for the sole purpose of providing aspiring USC Mock Trial team members with a dynamic tryout opportunity. Nothing is to be interpreted or gleaned from these characters or the issues covered. These materials are not intended to communicate or advance any member (coaches and students alike) of the Team’s political, religious, or socio-economic beliefs.

We want you to do your best to create a sound legal argument, but the most important thing in this tryout is your performance. Should you make the team, we’ll teach you the law. So, what we want to see is your hard work, your dedication, and your creativity. Please prepare carefully and completely. Good luck!

Case Introduction

Kouka v. American College Sports Federation

Ballet dancer, Devon Kouka, is suing the ACSF (American College Sports Federation) for banning her from competing in the women's ballet division. Ms. Kouka failed to pass a newly introduced hormone test, having too much testosterone. Ms. Kouka has Elizabeth's Disease and is taking one of the two popular treatments for her symptoms. The medication she is taking causes an increased production of testosterone, while the other medication does not affect testosterone levels. Because of her Elizabeth's Disease, Ms. Kouka believes the ACSF's ban is unfair and is suing the ACSF for discrimination under the Midlands Disability Discrimination Act of 1990.

Authored by Ashley Nguyen & Lora Dohler

Try Out Instructions

Prospective team members will perform *all three* of the tasks listed below based upon the instructions and provided materials.

Your first task is to perform a PLAINTIFF-SIDE OPENING STATEMENT as an attorney representing Ms. Kouka. Your goal is to introduce the plaintiff’s argument and theory – give an overview of why Ms. Kouka should win. This task must be performed within five minutes. Use only the provided witness statements, expert reports, exhibits, and other materials in this packet. You may print out exhibits to use during this task if you so desire. Remember, Devon Kouka is suing the ACSF for discrimination.

Your second task is to perform a DEFENSE-SIDE CROSS EXAMINATION of Devon Kouka as an attorney defending the American College Sports Federation. This witness is suing your client, so your job is to elicit facts that would bolster the defense case or weaken the plaintiff case. You have five minutes to cross. The witness will be provided for you.

Your third task is to perform a three to five-minute MONOLOGUE as defense witness JO RESNIKOFF, the Chair of the American College Sports Federation. Consider Jo’s motivations, feelings, backstory, life experiences, etc. to make this character come to life. We encourage you to be creative as you come up with Jo’s story but be sure that nothing you create contradicts or affects any facts of the case. Explain your side of the story. Be dynamic and believable. Make use of props, accents, mannerism – any performance choice that will make the coaches say WOW!

1 STATUES

2 **Midlands Disability Discrimination Act of 1990**

3 **42 USC 12132 § 202 DISCRIMINATION**

4 No qualified individual with a disability shall, by reason of such disability, be excluded from
5 participation in or be denied the benefits of the services, programs, or activities of a public entity,
6 or be subjected to discrimination by any such entity.

7
8 **42 USC 12102 § 322 DISABILITY DEFINED**

9 (1) The term “disability” means, with respect to an individual –

10 (A) a physical or mental impairment that substantially limits one or more of a person’s
11 major life activities; (B) a record of such an impairment; or (C) being regarded as having
12 such an impairment.

13 (2) Major Life Activities

14 (A) In general – Major life activities include, but are not limited to, caring for oneself,
15 performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, speaking,
16 learning, reading, concentrating, communicating, and working.

17 (B) Major bodily functions – A major life activity includes the operation of a major
18 bodily function, including but not limited to, functions of the immune system, normal cell
19 growth, digestive, neurological, brain, respiratory, circulatory, endocrine, and
20 reproductive functions.

21 (C) Mitigating measures – The determination of whether an impairment substantially
22 limits a major life activity shall be made without regard to the ameliorative or remedial
23 effects of medication or treatment.

1 **ACSF Policy on Accommodations for Student-Athletes with Disabilities**

2 The ACSF encourages participation by student-athletes with disabilities in intercollegiate
3 athletics and physical activities to the full extent of their interests and abilities. An ACSF
4 member school will have the right to seek, on behalf of any disabled student-athlete participating
5 on that member’s team, a reasonable modification or accommodation of a playing rule, provided
6 that it would not:

- 7 • Compromise the safety of, or increase the risk of injury to, any other student-athlete.
- 8 • Change an essential element that would fundamentally alter the nature of the game.
- 9 • Provide the student-athlete an unfair advantage over the other competitors.

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IN THE SUPERIOR COURT
RAYDER COUNTY, STATE OF MIDLANDS

DEVON KOUKA,

Plaintiff

v.

AMERICAN COLLEGE SPORTS
FEDERATION,

Defendant

Case No. CV 23-322658

Action Filed: October 16, 2023

Judge Olu K. Orange

STIPULATIONS

The following are facts which both sides have stipulated to be true. In other words, there is no debate that...

- 1. The American College Sports Federation is a public entity.
- 2. All available exhibits are already admitted into evidence and may be used at any point during the trial.
- 3. All witnesses are familiar with and may be cross-examined on the contents of all exhibits.

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3
4 CASE LAW

5 Use the rulings from these related cases to better understand the law in this case (the MDDA).

6 ***Kang v. Marquez Theatre Company (2018)***

7 Defendant refused to provide a sign language interpreter as requested by the plaintiff, who is
8 hard of hearing. Defendant claimed the plaintiff could purchase a hearing aid and therefore did
9 not have a disability that required accommodation. Plaintiff prevailed: Under the MDDA, an
10 individual’s access to mitigating factors—including assistive technology—does not affect the legal
11 determination of whether that individual’s impairment constitutes a disability. The plaintiff *is*
12 disabled, and the defendant was discriminating against him on account of that disability.

13
14 ***Nam v. Albright School District (2020)***

15 The plaintiff, who has a severe peanut allergy, sued the defendant for discrimination under the
16 MDDA after being asked to eat lunch at a designated “peanut free” lunch table, claiming she
17 should be allowed to eat lunch wherever she desired. Defendant prevailed: the defendant
18 provided a reasonable accommodation by creating a peanut free table. It would be unreasonable
19 to expect every student to refrain from bringing food with peanuts so that the plaintiff could sit
20 anywhere she desired.

1 AFFIDAVIT OF DEVON KOUKA

2 After being duly sworn upon oath, Devon Kouka hereby states as follows: I am over 18
3 and competent to make this affidavit. I am testifying voluntarily and was not subpoenaed or
4 compelled to testify.

5 My name is Devon Kouka. I am a ballet dancer at the Midlands College - School of
6 Dance where I have been continuing the rigorous ballet training. I first started when I was just
7 old enough to walk. To me, ballet is everything. I won't say it ever came easy for me, but I have
8 had an incredible support system all these years.

9 I knew I wanted to go pro at 13. My friends wanted to be veterinarians, teachers, lawyers,
10 but all I could think about was ballet. At 15, I performed at the Youth America Grand Prix
11 (YAGP) Finals, which opened so many doors for me. With hard work, good grades, and a killer
12 portfolio, I was one of 24 dancers selected into the BFA dance program at Midlands College.

13 A month into freshman year, my health took a turn. Twenty minutes into rehearsals, I'd
14 start feeling fatigued or dizzy. And soon, I began fainting on stage. I was so frustrated I couldn't
15 show my new coaches what I was really made of because every time I tried, my body failed. I
16 figured it was just nerves or that I just needed to be stricter with my nutrition. *Push through it,*
17 I'd always tell myself. But one day, I had a seizure on stage. For weeks after that, I experienced
18 continued seizures and slicing pain in my abdomen. That's when I decided to see a doctor.

19 I first saw Dr. Lopez on November 14, 2021. I explained my symptoms, and she ran some
20 tests. She diagnosed me with Elizabeth's Disease, meaning that my adrenal glands were damaged
21 and weren't producing enough hormones. Dr. Lopez said I could take three pills a day or a
22 monthly shot. I thought such a strict medication regiment would disrupt my rehearsals, so I chose
23 the shot. Soon, I came back to ballet better than ever and even got to perform as a soloist for our
24 winter and spring shows. I was picking up on new choreography faster than before, and my
25 endurance improved by leagues. I look back on those miserable months of constant pain feeling
26 so much gratitude that I never have to experience that again.

1 In 2023, the ACSF began sponsoring ballet events, starting with the October Imperial
2 Showcase, featuring the top 36 ballet dancers in the state. When the curtains went up for our next
3 performance of *Sylvia Pas de Deux*, I put my best pointe forward to secure a chance to represent
4 Midlands College at the Imperial Showcase. A month later, I was on the official roster!

5 On March 13, 2023, the ACSF announced that all athletes had to complete eligibility
6 testing. Exhibit 1 looks to be a true and accurate copy of the announcement. I completed my test
7 and received the results a week later. Exhibit 2 is a true and accurate copy of my test. On the
8 bottom of the page, it said I had failed the Sex Eligibility Test and was thus disqualified from the
9 Imperial Showcase. I was so confused. I am a cisgender woman. My passport says female. My
10 birth certificate says female. I know I have more testosterone than most women, but it's because
11 of a medication that is quite literally saving my life. All my success is because I work hard and
12 train like my life depends on it. I can't believe the ACSF has tried to undermine that.

13 My coaches and I tried to appeal, and we provided evidence that I do not have an unfair
14 advantage over other dancers, like records documenting what happens to my body if I don't take
15 my medication --- the seizures, fainting, immense pain. Ultimately, the ACSF didn't budge on
16 their decision, and I watched my fellow dancers from the audience as they lived out their dreams
17 on the Imperial Showcase stage. I'll never get this opportunity back. I try not to think too hard
18 about the doors that could have opened if it were me on that stage instead.

19 I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this
20 testimony, I was told I should include everything I know may be relevant to my testimony, and I
21 followed those instructions. I know that I can and must update this affidavit if anything new
22 occurs to me until the moment before opening statements begin in this case.

23
24 DATED: August 21, 2024.

25 *Devon Kouka*

AFFIANT

AFFIDAVIT OF JO RESNIKOFF

After being duly sworn upon oath, Jo Resnikoff hereby states as follows: I am over 18 and competent to make this affidavit. I am testifying voluntarily and was not subpoenaed or compelled to testify.

My name is Jo Resnikoff. I am the Chair of the Board of Governors for the American College Sports Federation where I oversee and participate in the writing and passage of new ACSF policies and rules. A little bit about me, I was born on a sprawling farm in rural Utah, the youngest of 8 children. My mother was a ballet dancer turned homemaker, and my father was the CEO of Koller Campbell Air, the premier airline company for domestic flights. Growing up with so many siblings, it was easy to get lost in the chaos. That is, until I joined my local youth basketball team. It was there where I learned hard work, grit, and the power of a team.

I continued playing sports through college (go Blue Devils). These experiences made it clear how important it was to have an outlet to push my physicality. At the beginning of junior year, my mother passed away. It was the most heartbreaking experience of my life. Basketball helped me turn my grief into something positive. I led my team to its first championship in sixteen years that season. If anyone knows how a sport can save someone's life, it's me.

In 2016, I became a voting member on the ACSF Board of Governors. In 2021, I was elected as the Board Chair. Over the past few years, we've changed policies on several pressing topics, like negotiating compensation for student-athletes, addressing mental health, cracking down on doping, and, of course, the inclusion of transgender student-athletes.

One of the first things I did as Chair was push to add new sports in the ACSF. I remember how my mom would drive 40 minutes into town and back, just so I could play basketball. She always said that she was happy to drive me because when she was a girl, her mother drove her to rehearsal. Student-athletes are the product of the villages that raise them, and to honor all the parents who worked tirelessly to support their kids in sports, the Board and I decided to add ballet, as well as a few other new sports, to the ACSF list of sponsored sports events.

1 That same year, we announced a new policy for transgender student-athletes. In the past
2 decade, thanks to rapid advancements in medicine and evolving social norms, sport's governing
3 bodies have faced a new challenge: finding a place for transgender athletes in strictly gendered
4 sports. Now, I'm a firm believer that everyone is entitled to their own opinions, but as the Chair
5 of a national organization, it's difficult to reconcile the beliefs of not just our Board, but of the
6 millions of student-athletes, coaches, and parents who all believe their word is law. And this is by
7 far the most divisive issue I've ever dealt with. If we allow transgender athletes to compete, my
8 voicemail overflows with death threats from angry parents. But if we ban them, I have every
9 civil rights attorney under the sun threatening a lawsuit. It's an impossible puzzle.

10 After months of debate, I decided that there was only one way to handle this: defer to
11 science and data. The biggest concern for the ACSF regarding transgender athletes is the fact that
12 higher testosterone levels aid performance. Of course, other factors affect an athlete's ability, but
13 at the end of the day, the average man will almost always outperform the average woman in
14 athletics. This is why sports are separated by gender: it would be unfair to have a man competing
15 in a woman's sport when his testosterone gives him an automatic leg up.

16 Now, I'm all for inclusivity, but as the Chair, it's my responsibility to make sure that our
17 guidelines are fair. Depending on the nature of a transgender woman's transition, she may still
18 have an elevated level of testosterone that give her an unfair biological advantage. As such, the
19 ACSF centered our new gender-eligibility policy around testosterone levels, *not gender identity*.
20 In contrast to our previous policy which only applied to transgender athletes, we announced that
21 *all* female athletes, cisgender and transgender alike, would be required to test their testosterone
22 levels. To ensure that no one has an unfair advantage, all female student-athletes are required to
23 have testosterone levels of 5.0 nmol/L or less.

24 Research has determined that the average range for testosterone levels in women is 0.5 to
25 2.4 nmol/L (less than half of our maximum), while men average at 10 to 35 nmol/L. We provided
26 as wide a buffer as possible to accommodate women with slightly elevated testosterone levels,

1 particularly women with PCOS (Polycystic Ovary Syndrome, a condition which naturally
2 increases testosterone production) or transgender women who use testosterone blockers.

3 In Ms. Kouka’s case, her testosterone level wasn’t just outside the average range for
4 women, it far exceeded the wide range we provide. Ms. Kouka’s testosterone level was 6.7
5 nmol/L. I understand that this is *over double* her measured level before beginning her medical
6 treatment. If her injections are creating this drastic an increase, it raises concerns about doping.

7 For decades, athletes at the collegiate and professional levels have unfairly and
8 unnaturally advantaged themselves through the injection of anabolic steroids such as artificial
9 testosterone. Testosterone is a particularly common dopant for female athletes. The issue of
10 doping is entirely separate from any debate regarding the inclusion of transgender female
11 athletes or athletes with PCOS, because we’re no longer talking about the natural, biological
12 production of testosterone. We’re talking about the *artificial injection* of testosterone, which not
13 only violates the rules of every sport’s governing body, but demonstrates entirely
14 unsportsmanlike conduct.

15 Athletes who are deemed ineligible by a gender-eligibility test are allowed to retest at a
16 later date and will gladly be welcomed back if they meet our guidelines. As it is the ACSF’s
17 understanding that Ms. Kouka’s elevated testosterone level is due to a medication that she is
18 taking, we provided her with an opportunity to alter her medication regiment to be compliant
19 with our policy and compete. Ms. Kouka refused.

20 I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this
21 testimony, I was told I should include everything I know may be relevant to my testimony, and I
22 followed those instructions. I know that I can and must update this affidavit if anything new
23 occurs to me until the moment before opening statements begin in this case.

24 DATED: August 23, 2024.

25 

AFFIANT

1 EXHIBIT 1 ACSF TRANSGENDER STUDENT-ATHLETE PARTICIPATION POLICY

2 *Dated: March 13, 2023*

3 At its January 22, 2023, meeting, the ACSF Board of Governors updated the transgender
4 student-athlete participation policy governing all college sports, including the recently added
5 pickle ball, breakdancing, and ballet.

6 The new policy aligns transgender student-athlete participation with the international
7 sports tournament, The Spartanic Games. The new approach preserves opportunity for
8 transgender student-athletes while balancing fairness, inclusion, and safety for all who compete.

9 Previously, the ACSF required transgender female student-athletes to complete at least
10 one year of testosterone blocking therapy with documented proof before being permitted to
11 compete in the women’s division of an ACSF event. However, the Board of Governors sees the
12 need for more stringent guidelines to eliminate unfair advantages, monitor use of banned
13 substances, and promote consistency within the games.

14 Like the U.S. Spartanic Games Committee, the updated ACSF policy calls for all who
15 wish to compete in a women’s division of any sports, regardless of their assigned-at-birth sex, to
16 complete a Sex Eligibility Test and submit results to the governing body of that sport. All
17 student-athletes who wish to compete in the women’s division, transgender and cisgender alike,
18 must meet a testosterone level requirement of *equal to or less than 5.0nmol/L*. This requirement
19 is consistent with the most comprehensive science basing the average female testosterone level at
20 0.5 to 2.4nmol/L, providing ample margin for variation. All prospective participants in an ACSF
21 sponsored event who do not meet this requirement will be disqualified.

22 The Board of Governors urges the divisions to consider future eligibility for student-
23 athletes who lose eligibility based on the policy change, provided they meet the new standards.

24 Sincerely,

25 **JO RESNIKOFF**

26 Chair, ACSF Board of Governors

1 EXHIBIT 2 Declaration from Kouka’s Doctor

2 I, Marina Lopez, hereby declare as follows:

- 3 1. I am a board-certified endocrinologist, duly licensed to practice in the state of Midlands. I
4 am over 18 years of age. If called and sworn as a witness, I could and would competently
5 testify to the following based on personal knowledge or on my review of files regularly
6 maintained by my office:
- 7 2. I have been Devon Kouka’s doctor for the past 3 years. Ms. Kouka first came to my
8 office on November 14, 2021, reporting severe dizziness, fainting spells, and seizures.
9 Given these symptoms, I feared Ms. Kouka might be experiencing issues with her adrenal
10 glands, so I ordered extensive blood work.
- 11 3. Five days later, I received Ms. Kouka’s test results. She had dangerously low aldosterone
12 and cortisol. Aldosterone regulates the body’s salt levels and blood pressure. Cortisol
13 regulates the body’s stress response. I also found that her immune system was mistakenly
14 attacking her adrenal cortex for months on end, causing extensive damage to her adrenal
15 glands and disrupting the production of aldosterone and cortisol.
- 16 4. The following Monday, November 21, 2021, I diagnosed Ms. Kouka with Elizabeth’s
17 Disease, a rare but deadly disorder. Most patients ignore initial symptoms such as fatigue,
18 muscle and joint pain, and dizziness, mistakenly attributing it to stress or lack of sleep.
19 Ms. Kouka is not the first patient to delay a doctor’s visit until symptoms have drastically
20 worsened. However, if left untreated, Elizabeth’s Disease could result in an Elizabethan
21 Crisis, a flare-up that causes extreme weakness, several abdominal pain, and seizures. I’m
22 honestly surprised Ms. Kouka’s body was able to sustain an Elizabethan Crisis for as long
23 as it did without organ failure. Luckily, she is young and active—her commitment to her
24 health as a ballerina is probably what saved her life.
- 25 5. While the damage sustained to Ms. Kouka’s adrenal cortex is irreversible, there are
26 treatments available to alleviate symptoms and increase her quality of life. One option is

1 a combination of the pills *dexacortimethasone* to supplement cortisol, *aldofludrisone* to
2 supplement aldosterone, and *hydrothemasonone* to regulate adrenal antibodies. Patient's
3 must take each medication once daily: *dexacortimethasone* in the morning before a
4 patient ingests any food; *aldofludrisone* exactly 30 minutes later; and *hydrothemasonone* 1
5 hour before bed. This schedule can be difficult to maintain, but it is critical that patients
6 follow it exactly or the medication can be rendered ineffective, and a patient's symptoms
7 could return. Up until a few years ago, these pills were really our only option.

- 8 6. Everything changed when Kebede Pharmaceuticals developed the *hypodemasonone*
9 injection, a single monthly shot that manages symptoms and mitigates further adrenal
10 damage. Clinical trials were incredibly successful, and it's now my go-to treatment for
11 Elizabeth's Disease. I'm admittedly on the more progressive end of the endocrinological
12 spectrum—most doctors still prefer the pills. I don't blame them: it's a tried-and-true
13 method used far more commonly than the injection. But many of my patients prefer to
14 minimize disruption to their daily life, avoiding the stress of following an exact schedule.
- 15 7. Now while the injection works great because it's a package deal, that's also the main
16 downside. As a side effect, the *hypodemasonone* injection triggers the overproduction of
17 testosterone. To be clear, the injection doesn't *supplement* testosterone like it does for
18 cortisol and aldosterone, it inadvertently spurs the overproduction. This is a side-effect
19 that scientists have not yet found a way around. But thankfully, the medication is still
20 safe. I will also note that this is unique to the *hypodemasonone* injection: there's no research
21 indicating that the pills have this effect.
- 22 8. It is possible for patients to transition from one form of treatment to another without
23 complication. For example, if a patient starts with the pills but feels they cannot keep up
24 with the schedule, they can switch to the injections. It is also possible to switch from the
25 injections to the pills. If a patient were to do this, the excess production of testosterone

1 triggered by the injections would stop, and—within a couple of months—the patient’s
2 testosterone level would lower to where it was before the patient started the injections.

3 9. I understand that Devon Kouka, a cisgender woman, was disqualified from the female
4 division of ACSF collegiate ballet competition due to her elevated testosterone level. In
5 the blood test she took before beginning the injections, Ms. Kouka’s testosterone level
6 was 2.6 nmol/L. The average range for testosterone levels in women is 0.5 to 2.4 nmol/L.
7 By that standard, Ms. Kouka’s testosterone level was already in the upper percentile for
8 women. Since she began the *hypodemasonone* treatments, Ms. Kouka’s testosterone levels
9 have averaged between 4.7 and 6.8 nmol/L. When Ms. Kouka took the ACSF’s gender
10 eligibility test in May of 2023, her testosterone was measured at 6.7 nmol/L. I would like
11 to note that average testosterone levels in men range from 10-35 nmol/L, so while Ms.
12 Kouka’s testosterone level was higher than most women, it was still significantly lower
13 than most men.

14 10. It is my professional medical opinion that this increase in testosterone is due to the
15 *hypodemasonone* treatment. Because of this, I will emphasize that should Ms. Kouka stop
16 treatment for her Elizabeth’s Disease, her symptoms would quickly worsen, and she
17 would be at significant risk for an Elizabethan Crisis. It is highly likely that she would
18 begin experiencing seizures as she did before treatment. Worst case scenario, Ms. Kouka
19 could be dead within a year.

20 I declare under penalty of perjury under the laws of the United States of America that the
21 foregoing statements are true and correct. Executed on August 22, 2024, in Owojori
22 County, Midlands.

23
24 DATED: August 21, 2024.

25 Marina Lopez

26 AFFIANT