A Drug Test to Join the Band?
by Barbara Sheehan

You’ve been thinking about joining the chess club at school. Finally, you decide to do it. Then you find out your school requires a drug test first to prove that you’re not using illegal substances. Does your school have a drug testing policy? Could a similar policy be used in your school? What would you do if you had to take a drug test to join your school’s extracurricular activity? What was the Oklahoma case about?

The landmark case of Board of Education of Independent School District No. 92 of Pottawatomie County et al. v. Earls began with two Oklahoma students — Lindsay Earls and Daniel James. Together with their parents, these students took legal action against their school district’s drug testing policy, which requires that all middle and high school students consent to drug testing in order to participate in any extracurricular activity. The intent of the policy is to prevent and deter drug abuse among students.

Lindsay Earls was reportedly a member of her school’s show choir, the marching band, the Academic Team and the National Honor Society. Daniel James wanted to participate in the Academic Team. Both students felt that the school policy violated their.

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Using Someone Else’s Ideas Can Cost You Big
by Karen M. Spring

Imagine that you wrote an important paper on Abraham Lincoln for school. You spent weeks working on it, carefully reading about Lincoln and his presidency. All your spare time was dedicated to writing this paper because you wanted to get a good grade. After you hand in your assignment on Lincoln, you hear rumors of how some students in the class cheated on their papers by copying information directly from the Internet. Then you receive your paper back and it has a C grade on it, while some of the cheaters received As and Bs on their papers.

What the cheaters did is an example of plagiarism. Eric Begun, a lawyer with experience in trademarks, copyrights and the Internet, says that plagiarism can best be defined as a “failure to attribute.” In other words, plagiarism is using someone else’s ideas or work and passing them off as your own, without giving the original person credit for his or her work. The Center for Academic Integrity at Duke University considers plagiarism cheating, and Begun claims that plagiarism is a moral concept as well as a legal one. It is okay to use information from someone else as long as recognition is given to that source, he says. For instance, high school and college students use footnotes in their research papers as a method to recognize that the information is coming from someone other than the writer of the paper. It is also fine to use information you find while doing research, Begun says, as long as you substantially rewrite the information in your own words.

In terms of rewriting, however, how much is enough? According to Begun, that is where common sense should come into play because there is no set formula. In the end, your final

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Security or Liberty: Must We Choose?
by Roberta K. Glassner, Esq.

The destruction of the World Trade Center on September 11, 2001 made each of us painfully aware that the U.S. is no more immune to terrorists than any other country in the world. Since that fateful day, Americans have focused on how to protect themselves and the country from terrorism, both at home and abroad.

The event that shocked the nation on 9/11 had a two-fold effect. It alerted us to the need for increased security to protect American lives and, at the same time, the need to protect our constitutional rights in the pursuit of that security.

What is national security?
National security can be defined as that which affects the health, safety and welfare of a country or its citizens, either directly or indirectly. Examples of direct threats to national security in the U.S. would be an assassination attempt on our president or an act of terrorism such as the one felt by Americans on 9/11. An example of an indirect threat to national security would be the bombing of an American embassy in a foreign country. While the bombing did not take place on U.S. soil, there is still a threat to U.S. citizens living abroad and a perceived threat to the U.S. in general.

Who is responsible for protecting our nation’s security?
The U.S. has international, federal and local agencies that protect the country in one way or another. The Central Intelligence Agency (CIA), which functions primarily outside the country, collects information for the U.S. on foreign spies and terrorist activity around the world, alerting government officials to potential danger. In contrast, the Federal Bureau of Investigation (FBI) is the critical law enforcement agency that operates principally within the U.S. The FBI was created by the Justice Department in 1908 to investigate domestic criminal activity on the federal level, such as kidnapping across state lines, bank robberies, organized crime, drug trafficking and civil rights violations. Finally, on a local level, police forces across the country take action against criminals within our cities and states.

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Assuming the Risk at Sporting Events: What Is the Price?

by Dale Frost Stillman

Consider this scenario. Tom had just finished his hot dog, put his soda on the ground in front of his chair. He and his brother had third row seats between home plate and third base at Yankee Stadium. As he sat back up, a foul ball hit by Derek Jeter was coming directly at him. Luckily, he had reacted in time to cover in front of Tom’s face with his mitt and caught the ball. But what if Tom had sustained an injury as a result of being hit with Jeter’s foul ball? Could he successfully sue the Yankees or Derek Jeter in the scenario described?

In real life, Brittanie Cecil was not as lucky as Tom. She died just days before her 14th birthday as a result of injuries she suffered after being struck in the head by a hockey puck while watching the Columbus Blue Jackets play the Calgary Flames. She had been standing more than 100 feet behind the glass with her father, who had bought the tickets as a birthday present. The Blue jackets center, Espen Knutsen, shot the puck that was deflected off the glass by Calgary defensemen Derek Morris. It flew into the crowd hitting Brittanie’s left temple. Two days later she was dead.

In the NHL’s 85-year history, Brittanie is the first fan to be killed by a puck, although flying pucks have killed three people at minor league hockey games when the glass around the rink is lower. Countless others have been injured. During hockey games, fans are warned that pucks may fly into the crowd. Some teams post warnings on scoreboards and/or on the back of each ticket. Do these warnings limit the team or the venue’s liability if an accident occurs?

Sports attorney James DeMarzo says that in order to prove a venue’s liability a plaintiff would need to prove that he or she was injured as a result of negligence on the part of the venue. For example, if the protective glass was not at the required height and someone was injured, that person would most likely have a case against the facility or the team.

Cost of watching the game

Does Britannie’s family have any legal avenue against the Columbus Blue Jackets or Nationwide Arena, where the game was played, as a result of her death? According to the legal principle, assumption of risk, they don’t.

Black’s Law Dictionary defines assumption of risk as a doctrine that means “a person may not recover [damages] for an injury received when he voluntarily exposes himself to a known and appreciated danger.”

In other words, Brittanie, who according to reports, after her death was a great hockey fan, should have been aware that there is an implicit risk of injury when attending a hockey game (i.e., flying pucks). DeMarzo believes that most sports fans understand the principle because it doesn’t normally happen in real life and are aware of the danger involved in attending a sporting event.

Assuming risk in other cases

In a case dating back to 1948, a Cleveland man attended his first hockey game. The fact that he was seated in an unscreened area when a hockey puck hit him, allowed him to successfully argue that since it was his first game, he didn’t realize that sitting in this area posed a danger to him. The defense of assumption of risk was defeated in that case.

Despite the legal basis, in a different scenario described?

What about New Jersey?

Although there have been cases in New Jersey involving skiing, roller skating and equestrian activities where assumption of risk has applied, the legal concept was essentially replaced. DeMarzo says, with comparative negligence in the 1970s, comparative negligence became the principle of law that looks at the negligence of the victim, and compared to a reduction of the award against the defendant, depending on the contribution of the

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What changed after 9/11/01?

Before 9/11, the FBI would need access to medical and banking records of people attending public events, the Fourth Amendment of the U.S. Constitution guarantees “the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures... and no
product should look different from the original. Belkin believes that the "ordinary prudent person" should know whether he or she is reading enough to be certain that he or she is not plagiarizing. But he also concedes, "what is enough may be more than what most people would first think."

**Downloading plagiarism**

The Internet has made information easier to access. Many students use the Internet to do research for school and copy information directly from a Web site to use in their homework. Others use the copy-and-paste feature of their computer to copy large portions of different documents into one paper.

"The Internet is a relatively new means of distributing content," Begun said. "The same issues still apply in terms of plagiarism that did years ago."

A Rutgers University survey of nearly 4,500 high school students revealed that only 46 percent of the students surveyed thought that cutting and pasting text directly from a Web site without attributing the information was cheating, while only 74 percent of those surveyed thought that copying an entire paper was cheating.

Ronald McCabe, a Rutgers University researcher that conducted the survey told USA Today, "in the students' minds what is on the Internet is public knowledge."

Begun says that the Internet has made it easier for plagiarism to be committed. Whether or not students think of the Internet as fair game, Begun says the same rules apply, and ignorance is not a defense.

**One teacher takes action**

In the fall of 2001, students in a 10th grade class at Piper High School in Piper, Kansas were given an assignment to write a paper on leaves. When teacher Christine Pelton began grading the papers, she suspected that some of the students had plagiarized their work. A check of some science books and a few Web sites proved her correct. Twenty-eight of the 118 students had indeed cheated on the project.

Pelton gave the 28 students a zero grade on their papers. Parents went to the school board to complain about the tough standards and what they considered unfair punishment. Piper High School's principal backed Pelton and said that her handling of the matter was fair.

In December, the school board ruled that the students' punishment was unfair, however, and asked Pelton to change the zero grades. Pelton refused and resigned her position with the high school, believing that what had been treated unfairly. She also stated that the decision was unjust to the other 90 students who had completed their own work on the project. Another teacher and Piper High School's principal also resigned in protest.

**Opposing views**

In support of the FBI's broad new powers, Attorney General Ashcroft has stated "lifting restrictions on domestic spying is necessary for us to continue to protect the life of every American. Our top job is preventing terrorist attacks against the U.S." He added, "these major changes will free field agents to counter terrorist threats freely and quickly."

FBI Director Robert Mueller also issued a statement saying, "I don't think there's an agent out there who doesn't feel the need, the necessity to over hear even the stone, to pick up on every clue out there to try to protect the American people."

President George W. Bush assured Americans about the revised guidelines saying "we intend to honor our Constitution and respect the freedoms we hold dear."

Despite this assurance, some organizations, including the ACLU and the Center for Constitutional Rights, are concerned that the FBI's broad new powers may be a threat to our civil liberties. Fear is that the FBI will again improperly create files on innocent citizens and harass political groups critical of government policies, with no evidence of any illegal activity.

The Council on American-Islamic Relations has voiced concern about the FBI's focus on Arab-Americans and its monitoring of mosques, objecting to the new powers that "spy on a religious minority engaged in lawful activities."

While expressing these concerns about the Patriot Act, all agree that measures to prevent future attacks and disrupt terrorist organizations are necessary. But what is necessary as well, they warn, is a watchful eye on the part of Congress to assure that Americans' constitutionally guaranteed freedoms under the Bill of Rights do not become casualties in the war against terrorism. To prevent that, both the U.S. Senate and the U.S. House of Representatives have formed committees to monitor the FBI's activities.

While the new surveillance provisions of the Patriot Act will expire in 2005, many "civil libertarians believe the U.S. Supreme Court may ultimately be forced to decide the constitutionality of the act. The challenge will be for the Court to delicately balance the increased security that the U.S. needs and the liberty Americans cherish."

Robert K. Glasser is an attorney in New Jersey.
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Fourth Amendment under the U.S. Constitution to be free from unreasonable search and seizure.

What did the Court say?
In considering this case, the U.S. Supreme Court relied heavily on its 1995 ruling in a similar case called Vernonia School District 47 v. Acton. Like the Oklahoma case, the Vernonia, Oregon case considered the constitutionality of school drug testing. Vernonia, however, considered only the testing of student athletes, whereas the Oklahoma case encompasses students involved in any extracurricular activity. In both the Oklahoma case and the recent Oklahoma case, the court upheld the school’s drug testing policies.

What was the reasoning?
First, in the Oklahoma case, the school’s policy was examined for reasonableness, which the Court deemed “the touchstone of constitutionality.” Ultimately, the court found that the drug testing undertaken was a reasonable means of preventing and deterring drug use among schoolchildren. Unlike in the criminal system — where a number of stringent standards must be met before a lawful search can be conducted — public schools have more relaxed standards due to their caretaking role, the Court noted. The Court said that schools must strike a balance between intrusions on students’ privacy and governmental interest in providing a safe and healthy learning environment.

Additionally, in the Oklahoma case, the Court held that the students directly affected by the policy voluntarily subject themselves to intrusions on their privacy merely as a consequence of extracurricular involvement. The most obvious example, perhaps, is communal undress, like changing clothes in a gym locker room, which was a notable point in the Vernonia case in reference to athletes. Even where undress is not relevant, the Court argued in the Oklahoma case that all extracurricular jobs and activities have their own rules and requirements that do not apply to the student body as a whole and that serve to further diminish participants’ expectation of privacy. Further in the Oklahoma case, the Court noted that the way urine samples were obtained for the drug tests and the confidential handling of the results were non-intrusive. Positive findings were not turned over to law enforcement authorities but rather used only to prohibit participation in extracurricular activities.

New Jersey courts respond in kind
Just two months after the U.S. Supreme Court announced its decision in the Oklahoma case, a New Jersey appellate court last August upheld a school’s drug testing policy in a similar case in New Jersey’s Hunterdon County.

Specifically, the Hunterdon County case challenged a drug and alcohol testing policy at Hunterdon Central Regional High School that expanded a prior drug testing program. The expanded policy was established for the 2000 – 2001 school year to cover “students engaged in extracurricular activities and students with permits to park on campus.”

Applying the reasoning in the Oklahoma case, the New Jersey appellate court concluded that Hunterdon’s policy does not violate the Fourth Amendment, however, an appeal in the case is pending with the New Jersey Supreme Court.

It all started in New Jersey
While the Oklahoma and Hunterdon privacy cases involved the search of a person’s bodily sample for drugs, the landmark Fourth Amendment student case of the U.S. Supreme Court involved the search of a teenager’s purse for cigarettes and it originated in New Jersey.

New Jersey school law attorney David B. Rubin served as counsel to the New Jersey school district where the 1985 case, New Jersey v. T.L.O., arose.

In brief, Rubin notes that T.L.O. involved a 14-year-old high school student in Piscataway who was caught by a teacher smoking cigarettes in a school bathroom with a friend. Upon questioning by the school’s assistant vice principal, the student denied smoking cigarettes and claimed she did not smoke at all. The assistant vice principal demanded to see her purse.

Upon opening it, he found a pack of cigarettes. He also reportedly found a package of cigarette rolling papers, as well as marijuana, a pipe, plastic vials, a “fairly substantial” amount of money, an index card containing a list of students who owed the teenager money, and two letters that implicated her in marijuana dealing.

The search by the assistant vice principal was initially deemed unconstitutional by the New Jersey Supreme Court. But then went to the U.S. Supreme Court where the New Jersey decision was overturned and the constitutionality of the search was upheld. An underlying theme in the Court’s decision, again, was that searches and seizures in schools should be reasonable, in accordance with the Fourth Amendment. Reasonableness standard continues to be widely applied.

Looking forward
While the Fourth Amendment court decisions discussed in this article highlighted the constitutionality of certain school policies, these decisions do not set policy in areas where there is no requirement to require drug tests like those in the Oklahoma case or in Hunterdon, let alone individual school districts. The U.S. Supreme Court’s message about balancing students’ privacy rights with governmental interests will likely not change.

According to Rubin, these latest court cases reflect an effort by the courts over the last couple of decades to harmonize students’ rights with school safety concerns. He questions whether the latest decision in the Oklahoma case is “the last word or just the next word.”

Rubin’s remaining question, Rubin claims, is whether there is “any principled distinction you can make between the person on the chess club and the general student body.”

In four words, schools one day may be permitted to conduct random drug searches on all students, not just those involved in extracurricular activities. Even the conservative makeup of our nation’s U.S. Supreme Court, Rubin predicts the answer is yes, and he believes that more students will be subject to drug testing in the future. Only time will tell.