

# **Mock Trial EXERCISES**

**for Grades 7-8**

**Featuring Winning Cases from the New Jersey  
State Bar Foundation's Law Adventure 2007 Competition**



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# Preface

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

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

Following are the winning cases from the Law Adventure 2007 Competition. Themes for the 2007 contest were as follows: (1) Plagiarism and (2) Privacy in the Computer Age.

The cases may be used as a guide to prepare a submission to the Law Adventure Competition or as a classroom exercise. Please note that some of the cases may contain “laws” created by the students for the purpose of this competition, which may not necessarily be actual laws. Since these mock trials were written by children, the content should not be considered technically accurate.

*These exercises were created by children and are intended for school use only. Any resemblances to characters, names, events and circumstances are intended only for the purpose of education, and all characters, names, events and circumstances described herein are fictitious.*

This project is made possible by funding from the IOLTA Fund of the Bar of New Jersey.

Law Adventure won the Award of Excellence in the 2002 Associations Advance America Awards program, a national competition sponsored by the American Society of Association Executives in Washington, D.C. This prestigious award recognizes innovative projects that advance American society in education, skills training, community service and citizenship.

If you would like to participate in the Law Adventure Competition, please call 1-800-FREE LAW or 732-937-7519 for a free copy of the State Bar Foundation’s Law Adventure Competition booklet, e-mail [sboro@njsbf.org](mailto:sboro@njsbf.org) or write to Law Adventure, New Jersey State Bar Foundation, One Constitution Square, New Brunswick, NJ 08901-1520.

*For information about other free, law-related education services available from the New Jersey State Bar Foundation, visit us online at [www.njsbf.org](http://www.njsbf.org).*

# Something's Phishy This Election Time

## SCHOOL

East Brook Middle  
Paramus  
Grade 7, First Place

## TEACHER

Kathy Murray

## STUDENTS

Kristina Bacich, Michelle Cheripka, Christine Do

## FACTS

Cindy Phishy and Electa Mee were running against each other for student council president. The election was to be on Friday, September 13, 2004 at Happy High School. Cindy Phishy was known for cheerleading and good grades. Her friends do community service, support the school's decisions, and are normally making new cheers for the high school cheer squad.

Electa Mee and her friends are known for drawing dark and morbid things in their notebooks, wearing dark clothing, and being unsupportive of the school. Cindy was not happy about Electa running against her since Cindy has been president for the last three years.

One day when Cindy saw Electa's laptop open, she looked through it to find Electa's candidacy speech to see what she was up against. Cindy then stumbled on Electa's personal diary. She saw hate words, dark angry poems directed at two individuals whose names were not mentioned, and thought that Electa might harm someone in the school. She decided to save it on a floppy disk so she could show it to Principal Cheers, and then she printed Electa's diary to show her friends.

Electa was suspended and Cindy won the election by default. Electa is now suing the school and Cindy for invasion of privacy and emotional distress.

## ISSUE

Did the school violate Electa's Fourth Amendment right by taking and looking at the disk from Cindy?

## WITNESSES

### *For the Plaintiff*

Dexter Webbs

Electa Mee

### *For the Defense*

Cindy Phishy

Like A. Cheers





# WITNESS STATEMENTS

## *Testimony of Dexter Webbs*

I'm a new teacher here at Happy High School, and I don't know the social pyramid of this school. Everyday Electa Mee has come into the computer lab with her laptop. I don't question what she is doing, because the school allows students to bring in laptops to use in school during Period 2 study hall.

On Friday, September 13, 2004, Electa Mee went to the bathroom and left her laptop on. I remember the date because there were many announcements for the speeches. They were to be given after lunch. I then saw Cindy Phishy go on Electa's laptop. I asked her why, and she said that she was sick the day before. Electa let her use her notes, I suppose. She was silent for about a minute and then asked for a floppy disk to save the notes, I guess. She left and pretty soon, maybe a minute or two later, Electa came back from the bathroom. I always thought Electa was kind of strange, but if she gave Cindy her notes, I guess she's a good kid.

## *Testimony of Electa Mee*

I have gone to this school for three years. Every year, Cindy Phishy is elected president. She only does things that benefit the "jock table." What about all of the other kids in the school? I ran against her so I could make the school better for everyone.

I asked Mr. Webbs if I could go to the bathroom on the day I was suspended. I forgot to put password lock on when I left, so anyone could have used my laptop. When I got back, I didn't really notice anything wrong. Since I was only gone for about four minutes, I figured no one could be on my laptop that quick. I continued typing my candidacy speech.

A couple of periods later, Cindy told me that Principal Cheers wanted to see me. When I was in her office, she showed me a copy of my diary on her computer. It was an entry from the day I found out about my parents' divorce and I was particularly angry. She told me that she had to take action because it might be a threat to the school. I don't understand how expressing my

anger at my parents could possibly be a threat to the school.

I was suspended because my diary had some angry things in it. It's not my fault that I don't write poems about rainbows and sunshine. Writing releases my anger from my parents' divorce, but I would never hurt anyone. It's unfair because people assume I will hurt someone from the way I dress and look. If one of Cindy's friends did this, they would have ignored this and brushed it off. I'm suing Cindy and the school for invasion of privacy and causing me emotional distress.

## *Testimony of Cindy Phishy*

My brother went to this school and my father did, too. They were both presidents of their class and I have followed in their footsteps. I felt that it was my duty to protect the school from people like Electa. She always complains about the school, but never does anything to help. She is also kind of weird. It doesn't make sense to me that all of a sudden she wanted to be president.

I saw Electa's laptop open. I decided to look through it. I also wanted to see what I was up against in terms of the speeches that we were supposed to give later that day, because I heard from a friend that she was being made fun of in the speech. I ended up finding her diary instead. I was about to X out of the page when hate words and morbid images of the Grim Reaper caught my eye. I went to Mr. Webbs so I could save the file on a floppy disk and show it to the principal.

The day before, I overheard Electa and her friends talking in detail of their hate of the school and the people in it. Electa Mee was rightly suspended in my opinion because I think she might harm someone sooner or later with that kind of attitude.

## *Testimony of Principal Like A. Cheers*

I have been principal of the school since it opened 30 years ago. Electa Mee wanted to run for student council president. I didn't object, and Electa entered her name. Cindy entered her name as well. Cindy has been president the past three years, so this was no surprise.

I was in my office when Cindy came in and gave me a floppy disk. Cindy said it contained threats to our school, which worried me greatly. When I opened it, it contained a diary with hateful words and dark poems. They were about two people, but the diary did not mention who these people were. I asked Cindy where she got the documents, and she told me that she was absent the day before. She said Electa let her use her notes, which were on Electa's laptop, when she stumbled upon this disturbing document.

I was concerned that it was a threat to the school because I was not sure to which individuals this diary was directed. Quite frankly, I was shocked when I read what was in her diary and I believe I acted accordingly. I'm no lawyer, but it didn't seem to me that any laws were broken.

## INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that the school violated Electa Mee's Fourth Amendment right to privacy.

## SUB-ISSUES

1. Does Electa have a reasonable expectation of privacy?
2. Does this change since she left her laptop open?
3. Was the suspension based on the diary or prejudice against Electa's appearance?
4. Should Dexter Webbs have been stricter with Cindy when he saw her using Electa's laptop?
5. Does Principal Like A. Cheers have a reasonable basis for her decision?
6. Is the principal exempt from needing a probable cause to read the disk containing Electa's diary?
7. Does the principal know that the diary was directed at Electa's parents?
8. Would it have affected her decision to suspend Electa?
9. Was Electa given a chance to tell her side of the story?

10. Did Cindy have a probable cause to search Electa's computer?
11. Was saving the diary on a floppy disk an unreasonable seizure?

## CONCEPTS

1. Prejudice and bias based on appearance.
2. Credibility of witnesses.
3. Probable cause.
4. Reasonable expectation of privacy.
5. Unreasonable search and seizure.
6. Due process – the right to be heard.

## LAW

Fourth Amendment to the Constitution of the United States of America.

Fifth Amendment to the Constitution of the United States of America (due process).

# Test Messaging

## SCHOOL

East Brook Middle  
Paramus  
Grade 7, Second Place

## TEACHER

Kathy Murray

## STUDENTS

Noelle Mattessich, Esteban Mora, Kento Tanahashi

## FACTS

Kevin F. Ailure and David A. Right were best friends. They both had a big science test on Friday. David was taking it first period and Kevin was taking it third. David was a high honor roll student, however, Kevin struggled in science. When David took the test, he wrote the answers on a scrap piece of paper. David asked Mr. Garfield if he could go to the bathroom. When he got to the bathroom he text messaged the answers to Kevin.

In between classes, Kevin took out his phone and wrote down the answers on a piece of paper. When Kevin took the test, Mr. Garfield was surprised by Kevin's A plus. After class, Mr. Garfield saw Kevin's cell phone in his desk. He went through the phone and saw the answers that David texted to Kevin. Mr. Garfield gave a failing grade and the principal gave an in-school suspension to both Kevin and David. Kevin is now suing Mr. Garfield for violating his Fourth Amendment rights when he searched through his cell phone.

## ISSUE

Did Mr. Garfield violate Kevin's Fourth Amendment rights?

## WITNESSES

### *For the Plaintiff*

Kevin F. Ailure

David A. Right

### *For the Defense*

Mr. Garfield

Jack the Janitor

## WITNESS STATEMENTS

### *Testimony of Kevin F. Ailure*

I am an eighth-grade student at Wright Junior High. On Friday, October 13 2006, I had a big science test. David is my best friend, who unlike me, gets good grades in science. He usually helps me study, but this time he did a little more to help. He text messaged the answers to me and I wrote them down.

I left to go to math, after science, and forgot my cell phone in my desk. After school the principal told me that Mr. Garfield told him that he had caught me cheating on my test. He said that I had an in-school suspension. I asked him why he thought I was cheating and he said he saw the answers on my phone. I knew he had violated my Fourth Amendment right by looking through my cell phone without permission and now I am suing the school for invasion of privacy.

### ***Testimony of David A. Right***

Kevin and I are best friends. We had a science test on Friday, October 13. Kevin asked me if I could give him the answers to the test. I knew he needed to get an A on the test, or his parents would ground him, so I said sure. Once I took the test on Friday, I recorded my answers before handing in my test. I then asked Mr. Garfield if I could go to the bathroom. I took out my cell phone in the bathroom and text messaged the answers, which I had recorded on the paper, to Kevin. When I was leaving, the janitor asked why I had my phone. I didn't know how he knew, but I said it was none of his business. I went back to my classroom believing that I didn't get caught.

Later, I was called down to the office and found out that Mr. Garfield had found Kevin's cell phone. He knew I gave Kevin the answers. The principal, who was there with Mr. Garfield, gave me an in-school suspension. Even though I got an A on the test, Mr. Garfield gave me an F for helping someone to cheat. After school, Kevin told me he got caught and had a suspension, too.

### ***Testimony of Mr. Garfield***

I have been a science teacher in this school for 39 years. I know the students' little tricks to try and cheat. Cheating has gotten worse since cell phones now have text messaging. On Friday I was suspicious when David went down to the bathroom with a piece of scrap paper. I didn't say anything to him because I was busy at that moment grading papers.

After third period, I looked over Kevin's test and he got an A. I was surprised at this grade. I then spotted Kevin's cell phone in his desk. I took out the cell phone and turned it on, because I was suspicious. Then, as I was looking around Kevin's inbox, I saw that there were answers to today's test. I got really suspicious since Jack the Janitor told me that he had seen David use his cell phone in the bathroom. I immediately called Kevin into my room. I gave both David and Kevin a failing grade and reported them to the principal, who suspended them both.

### ***Testimony of Jack the Janitor***

I have been working at the school as a janitor for 15 years. Every day during first period, I clean the boys' bathroom. On Friday, October 13, I saw a kid coming into the bathroom. I recognized him as David, because he usually says hi to me.

He went into one of the stalls, and I heard beeping sounds. I recognized it as a cell phone turning on. I asked him why he had a cell phone and he said that it wasn't my business. When he walked out, I saw his hall pass and I knew that he had come from Mr. Garfield's room. I reported it to Mr. Garfield and told him that I had seen David use his cell phone in the bathroom. I finished my work and continued on with the rest of my day.

## **INSTRUCTIONS**

The plaintiff must prove by a preponderance of the evidence that Mr. Garfield violated Kevin F. Ailure's Fourth Amendment rights.

## **SUB-ISSUES**

1. Did Kevin have a reasonable expectation of privacy on his phone in the school?
2. Should Kevin and David have been suspended and received failing grades on their tests?
3. Does text messaging count as a cell phone conversation, or is it protected by the Fourth Amendment, like a diary?

## **CONCEPTS**

1. Rights of students in a public school.
2. Credibility of witnesses.

## **LAW**

1. *New Jersey v. T.L.O.* - Supreme court ruled that students retain a reasonable expectation of privacy in the things they bring to school.
2. United States Constitution, Amendment IV.



# Did He Jack the Words?

## SCHOOL

Harrington Park  
Harrington Park  
Grade 7, Honorable Mention

## TEACHER

Joan Dever

## STUDENTS

Kayla Farrell, Demie Kim, Melanie Peragine,  
Daniel Rozel, Vincent Spinelli

## FACTS

By the spring of 2003, Jack D. Words had already spent two years trying to sell one of his songs to a recording company. On May 4, Jack's luck began to change when the BAD recording company purchased one of his original tunes. The song that the BAD recording company purchased was quickly recorded and released by the trendy band, Panic! At the Retirement Home. The single was marketed to pop radio stations and began to get airplay.

On September 19, 2003, a music teacher named Sue U. Now was listening to the radio station Z200 in her car. She recognized the lyrics of the new hit song, "As We Grow Older," as her own. She had co-written those very same lyrics with her student, Jack D. Words, for their original graduation play two years ago. Although the melody of the song had been altered, Sue U. Now was convinced that the lyrics were the exact same as those that had been written for the finale of the musical *Little Shop of Seniors*.

On October 15, 2003, Sue U. Now filed a plagiarism suit against Jack D. Words and BAD recording company for past and future royalties.

## ISSUE

Did Jack D. Words commit plagiarism when he sold the song "As We Grow Older" as an original and solo creation?

## WITNESSES

### *For the Plaintiff*

Sue U. Now

Dee Fendinger

### *For the Defense*

Jack D. Words

Seymour Words

## WITNESS STATEMENTS

### *Testimony of Sue U. Now*

In the spring of 2001 I was, as always, hard at work on the senior play. As the music teacher at the high school, one of my responsibilities was to produce the play for the graduating class. That year the play was called *Little Shop of Seniors*. It was an original play that was written by a team of our AP English students.

Although the students had scripted the play, it was my responsibility to support the story with music. The play was progressing well, but I had been searching for just the right song for the finale. I had an idea of what I wanted it to be and began to hear the music in my head. I wrote out the melody and had begun to lay down the lyrics when I brought it to practice for the students to hear. The song was a big hit. The students felt, as I did, that it was just what we had been looking for! As I oversaw practice that day, Jack D. Words sat at the piano and added the finishing touches to the

lyrics of the song.

On September 19 2003, I was driving in my car and listening to my favorite radio station, when I heard those very lyrics! I quickly recognized the words in the song as the lyrics from the play *Little Shop of Seniors*. The melody was changed from its original slow beat to an upbeat, pop version. Even with the small changes, the song could be immediately recognized. The DJ on the radio station explained the song was new by the popular band Panic! At the Retirement Home.

When I got home from the car ride, I went on to the computer and Googled the band Panic! At the Retirement Home. I found out the song was supposedly written by Jack D. Words. I recalled the name as that of a past student who took part in the writing of the song for the play two years ago. I dug out the video of the play to confirm the lyrics were the same. Just as I had suspected, the new song by Panic! At the Retirement Home had the same words as the finale in *Little Shop of Seniors*.

Jack D. Words has not acknowledged that I took part in the writing of this song. He has stolen my creativity and my ideas and is profiting from them as if they were his own!

### ***Testimony of Dee Fendinger***

Before my high school graduation in 2001, our class participated in a play called *Little Shop of Seniors*. Our music teacher, Sue U. Now, wrote the original song used in our finale. Ms. Now is one of the most talented people I have ever known! She may have had some help from Jack, but the bulk of the lyrics came from her.

I was the stage manager for the play and overlooked every aspect of the play. I remember that we were struggling with an ending for the play. Ms. Now wanted an ending that would be really memorable and we just couldn't find the right song. After several days, Ms. Now came to practice and was very excited to have solved the problem by creating an original song. When she came to practice, she had the melody set but was still working on the lyrics. Jack stepped in to help Ms. Now put the finishing touches on the lyrics.

Ms. Now emailed me in September to inform me that our high school song had been stolen by Jack D. Words and was being performed by the band Panic! At The Retirement Home. I had not heard the song on the radio before Ms. Now contacted me, but in her email she linked me a download of the song. I listened to it and found that she was definitely right. The melody of the song was altered, but the lyrics were obviously identical. Speaking as one of her most trusted former students, I know that Jack stole those lyrics from Ms. Now and has sold them as his own!

### ***Testimony of Jack D. Words***

I have spent the last two years of my life trying to sell my music to a recording company. I am a song writer and no other job holds any interest for me. It is a difficult way to try and make a living but I finally got lucky in the spring of 2003. BAD recording company contacted me and bought the rights to a song I had written when I was a teenager. I had written the song for the senior play at my high school. It was used in the finale of the play *Little Shop of Seniors*.

When I sold the song, I had altered the original melody to have a more commercially appealing pop sound. The song was quickly recorded by the trendy band Panic! At the Retirement Home and became a hit. I was ecstatic with the success of the song as I felt it would be my stepping stone to greater success. My high hopes were dashed when I received information that I was being sued by my former music teacher.



Ms. Sue U. Now claims that she wrote the lyrics to “As We Grow Older” for our high school graduation play. The truth is Ms. Now was struggling with a strong finish to our play as she could not find a way to end the play on a really memorable note. Practices had been going on for weeks and we had no finale. I finally approached Ms. Now and told her that I was confident that I could create exactly what she was looking for. I spent a whole weekend writing that song and brought it her for her approval. She loved the song! She made some changes to the melody and presented the song to the senior class. Everyone agreed that it was exactly what we had been looking for.

I admit that two years ago I had some problems with the melody. I couldn’t find the right tune to fit into the chorus of the song so I went to Ms. Now for assistance. It’s no secret that she helped with the original version of the song, but that melody was changed before the song was purchased by the BAD recording company. I am the sole creator of the song “As We Grow Older.” Ms. Now has no claim to my talent. This is what I do, I write songs.

### ***Testimony of Seymour Words***

Jack D. Words is my twin brother whom I am very close to. We both started taking piano lessons at a young age, but I had lost interest quickly. On the other hand, Jack kept on playing and was consistently practicing and performing. He was and still is a very talented musician with a great passion for music. Jack began writing his own songs by the age of 13. He was always original and never asked for help on his songs.

To hear that he has been accused of having a joint effort on his new hit song “As We Grow Older” seems preposterous to me. He has always been very dedicated to his work and never accepted help and was very independent when it came to writing lyrics. I remember how long he spent in his room at his computer typing up his lyrics and making changes. I had a minor part in *Little Shop of Seniors* and remember Ms. Now praising Jack for his wonderful lyrics.

## **INSTRUCTIONS**

The plaintiff must prove by a preponderance of evidence that Jack D. Words was not the sole creator of the song and therefore he committed plagiarism.

## **SUB-ISSUES**

1. Which witness should be believed?
2. Does the fact that Jack D. Words has numerous original songs to sell support his testimony that he has talent for writing?
3. Does Sue U. Now have any other songs to support her claim that she can compose original songs?
4. If the song was never copyrighted, is it plagiarism to copy the lyrics and publish it?
5. Are all song writers subconscious plagiarists?

## **CONCEPTS**

1. Burden of proof: preponderance of the evidence.
2. Credibility of the witness.
3. Definition of plagiarism.

## **LAW**

Plagiarism is the practice of claiming, or implying, original authorship (or incorporating material from) someone else’s written or creative work, in whole or in part, into one’s own without adequate acknowledgment. Unlike cases of forgery, in which the authenticity of the writing, document, or some other kind of object, itself is in question, plagiarism is concerned with the issue of false attribution.

# Steelers in Myworld

## SCHOOL

Jefferson Township Middle  
Oak Ridge  
Grade 7, Honorable Mention

## TEACHER

Kathleen D'Ambrosio

## STUDENTS

Dakota Buell, Daniel Cassara, Stephen Cuccio,  
Desiree Devoe, Rachel Faust, Robert Johnson,  
Rosealie Lynch, Shannon Muller,  
Francesca Mundrick, Deonna Purazzo,  
Crystal Spear, Henry Wang, Jennifer Wendt

## FACTS

Bea Yu and Issa Frend wrote a poem together and posted it on Myworld. They wanted to share it with their friends on the Internet. Six months later Bea Yu and Issa Frend heard their poem sung as the lyrics to a song on the radio by the band The Steelers. These men claim they never saw those words before, and they wrote the lyrics to the song. Bea Yu and Issa Frend are suing the band for the royalties and rights to all profit made from the song.

## ISSUE

Did the band The Steelers unlawfully copy Bea Yu's and Issa Frend's poem and use it as the chorus of their song?

## WITNESSES

### *For the Plaintiff*

Bea Yu

Issa Frend

### *For the Defense*

Ray Deo

Guy Tar

## WITNESS STATEMENTS

### *Testimony of Bea Yu*

My friend, Issa Frend, and I wrote a poem and put it on Myworld as a bulletin. My profile on Myworld is not private, and I think that everyone had access to the poem. We did write that it was our poem on Myworld by introducing it as "Bea's and Issa's poem," so anyone should have known that they were taking our work. We had written the poem for a language arts project, and we posted it to show our friends the good job we did.

In April, six months after we posted it, I heard the new single release by The Steelers on WLAW 121.12. They were singing our words as their chorus! I was so shocked! I called Issa on my cell phone to tell her to turn her radio on to WLAW.

### *Testimony of Issa Frend*

In October, my friend, Bea Yu, was my partner for my language arts project. The assignment was to write a poem, and we spent several days putting our poem together. We liked it a lot so we made a bulletin on Bea's Myworld. We did this so that all of our friends could read it. I'm not allowed to have a Myworld profile, so when Bea put it on hers, she made her Myworld public. She did this so that some of my friends, with whom she isn't a buddy, can go on Myworld and read it.

On April 1 I received a phone call from a very upset Bea Yu who told me to turn on the radio to WLAW. Our poem was being sung by The Steelers! I ran downstairs to tell my parents, and they felt



that we should be able to get some recognition for our work. We tried to contact The Steelers, but they never responded.

### ***Testimony of Ray Deo***

My name is Ray Deo. I have been a member of the band The Steelers for five years. About a year ago I started talking to Guy Tar to think about making a new album. We spent time writing this song. I wrote the lyrics and Guy Tar composed the music. Our band does have a Myworld profile, but we couldn't have stolen this poem for our song because I haven't been signed on to Myworld for quite a while. We've just been too busy with all our new hits out. We were inspired to write this song by a fight that we had and how we got back to being friends again.

### ***Testimony of Guy Tar***

I have been working with Ray Deo for a long time, and we were childhood friends. For this song, I composed the music for the instruments, and Ray wrote the lyrics. I know that he does not have to steal words to write a good song. We have not been on Myworld in a long time because we have been traveling and we have no wireless connection on our bus.

## **INSTRUCTIONS**

The plaintiffs must set out such a convincing case against the defendants that the judge or jury believes that there is a preponderance of evidence that the defendants unlawfully used the words in the plaintiffs' poem. The plaintiffs are seeking recognition of their authorship and payment for the words used in the chorus of the song.

## **SUB-ISSUES**

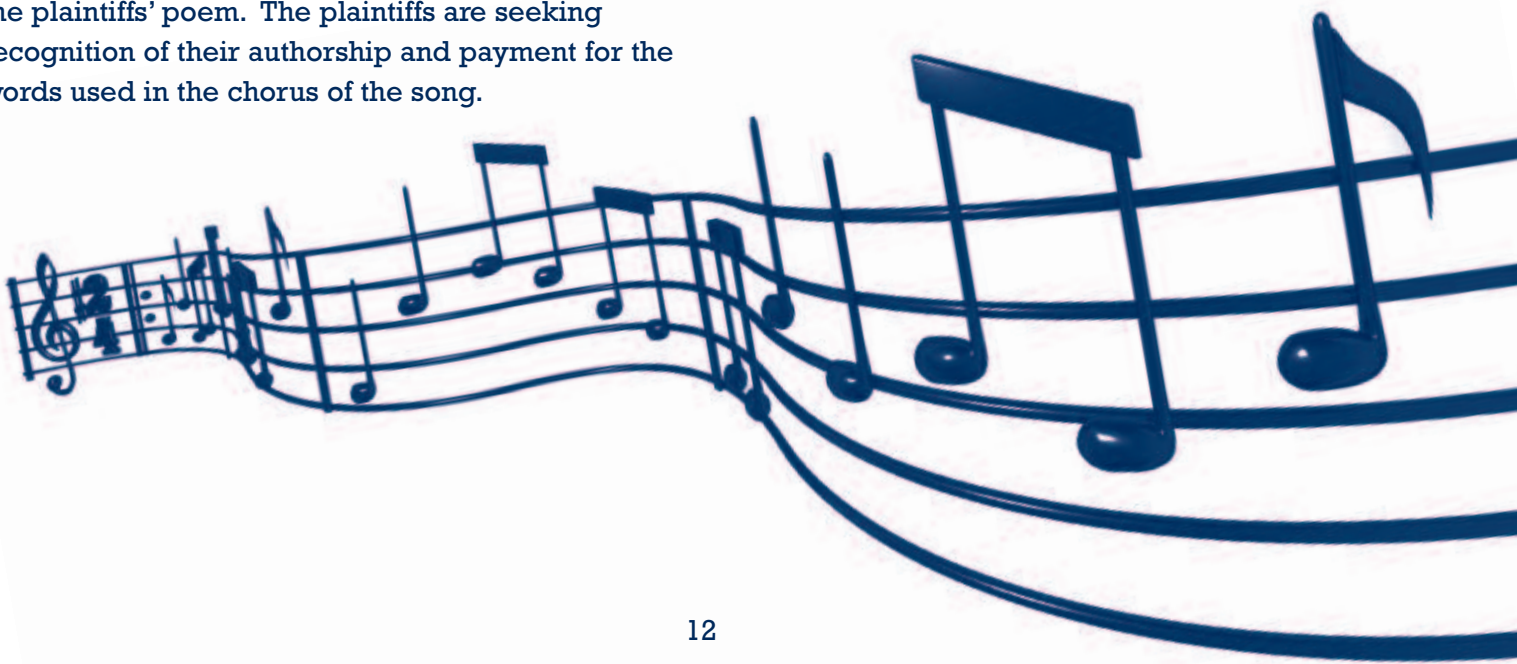
1. Was Bea Yu partly to blame because she posted the poem on Myworld?
2. Did her Myworld profile clearly state that the poem was written by Bea Yu and Issa Frend?
3. Did The Steelers sign onto Myworld during the time in question?
4. When was the song written?

## **CONCEPTS**

1. Circumstantial evidence vs. direct proof.
2. Credibility of witness.
3. Burden of proof: on the plaintiff.
4. Preponderance of evidence.
5. Definition of plagiarism.

## **LAW**

Whoever purposely practices the wrongful appropriation and publication of another's own ideas, expression of ideas, artistic, musical, or mechanical, and publishes said materials for profit, shall be liable to the original author for any monies, royalties, or recognition derived from that publication or sale.



# Invasion of Private Lee

## SCHOOL

East Brook Middle  
Paramus  
Grade 7, Honorable Mention

## TEACHER

Kathy Murray

## STUDENTS

Dana Brodsky, Rebecca Heaps, Stephanie Marino,  
Alexsandra Safonova

## FACTS

On Friday, October 25, 2005, Ima Partyin was hosting a party, and she was inviting everyone, including Private Lee. Ima Partyin didn't know of the strict curfew Private Lee's football coach, Coach Gotobed, had for the team, so she called to invite him. Private Lee knew about his strict curfew, but he snuck out of his house because of his desire to go to the party.

Private Lee arrived at the party, and he saw many of his friends there. A couple of hours had passed, and he found out his friend Tommy Talker couldn't make it. So, somewhere in the middle of the party, Private Lee stepped outside onto the sidewalk to make a private phone call. He didn't want anyone to overhear.

I.M. Sneaky followed him outside. I.M. Sneaky had tried out for the football team, but he didn't make it. He was very jealous that Private Lee made the team, and was trying to look for a way to get Private Lee kicked off the team.

Private Lee called his friend Tommy Talker to tell him how much fun the party was. Meanwhile, I.M. Sneaky recorded the conversation with his phone.

At 1:30 a.m., Private Lee went home to try to get some sleep before his game the next day. When he went to the game on Saturday, Private Lee saw Coach Gotobed talking to I.M. Sneaky. I.M. Sneaky played the conversation for Coach Gotobed. After the conversation ended, Coach Gotobed walked up to Private Lee and told him that he wasn't allowed to play in the game. I.M. Sneaky was standing right

beside him, and he grinned.

After the game, Coach Gotobed explained that the reason he did not let him play was because he went to bed beyond the curfew. Private Lee asked him how he knew, and Coach Gotobed explained by playing the conversation recorded by I.M. Sneaky at 11 p.m. of Private Lee talking to Tommy Talker on the phone at the party. Private Lee was very upset because there were going to be college scouts at the game to watch him play, and if he did well he had been promised a full scholarship. Coach Gotobed said he should have thought of this before he went to the party.

Private Lee is now suing I.M. Sneaky for invasion of privacy resulting in his loss of a full scholarship.

## ISSUE

Was I.M. Sneaky violating Private Lee's right to privacy when he recorded the conversation?

## WITNESSES

### *For the Plaintiff*

Private Lee

Tommy Talker

### *For the Defense*

I. M. Sneaky

Coach Gotobed

## WITNESS STATEMENTS

### *Testimony of Private Lee*

My name is Private Lee, and I'm 17 years old. I play football for my high school team. It was October 25, 2005, which was a Friday night. I had a football game the next day, and my coach, Coach Gotobed, said we had to be in bed by 10:30 p.m. in order to play. That same night, my friend Ima Partyin called to invite me to a party at her house. It was going to be the biggest party of the year!

I snuck out and walked to her house. A little while later, I went outside to make a private phone call to my best friend, Tommy Talker, whose parents wouldn't allow him to come to the party. When I arrived home, I thought I had made it without anyone finding out.

The next morning, I discovered I was wrong by thinking that. When I arrived at the field for the football game, I saw I.M. Sneaky talking to Coach Gotobed. A few minutes later, Coach came over to me with an angry look on his face; he asked to talk to me privately. He said that I.M. Sneaky played him a conversation between Tommy Talker and me from a party last night at 11 p.m. He then told me that I couldn't play in the game that morning. I was outraged! It was the most important game of the season, and college scouts were going to be there. Even though I protested, Coach Gotobed still wouldn't let me play.

I lost the chance at a college scholarship because of I.M. Sneaky. He must have done it because I was captain of the football team, and he hadn't even made it on the team. He let his jealousy get the better of him, and he ruined my future!

### *Testimony of Tommy Talker*

My name is Tommy Talker, and I'm 17 years old. My best friend is Private Lee. On Friday, October 25, 2005, Ima Partyin called and invited me to a party at her house. My parents said I couldn't go, and I was extremely upset.

My friend Private Lee had also been invited. He had the most important football game of the year the next day, and the coach had a strict curfew that all players had to go to bed at 10:30 p.m. before a game, but Private went anyway.

A little into the party, Private Lee called to tell me how much fun the party was. He specifically said that he went outside so no one would hear. The next morning, Private Lee called to tell me that Coach Gotobed had found out that he hadn't gone to bed until 1:30 a.m. He told me that he had been ratted out by I. M. Sneaky, who had recorded our conversation. Coach Gotobed then forbade Private Lee from playing in the game, which prevented the college scouts from seeing him play. Private Lee had lost his chance at a football scholarship for college.

### *Testimony of I.M. Sneaky*

I went to a party that was hosted by I.M. Partyin the day before the big football game. I was minding my own business until I saw Private Lee walk through the house with a bunch of his friends. I was appalled! I knew that he had a big game ahead of him tomorrow. I also knew about the strict curfew that Coach Gotobed had for the team.

Way before, when the team tryouts were taking place, I tried out and so did Private Lee. I did not make the team, but Private Lee did. I really believed that I was a much better football player than Private Lee, but I did not say anything.

When I saw Private Lee at the party, I knew that he shouldn't be there. This was my chance to prove to the coach that he was not fit to be on the team, and that he would take away any chances the team had for victory. I saw him go outside to make a phone call, and thought that this was the perfect chance to get evidence that he was at the party. I followed him outside and taped his conversation, only to prove to the coach that he was at the party, and that this would not be good for the team.



The next morning, I played it for the coach, and he disqualified Private Lee from the game. Private was very mad at me that he lost a valuable scholarship and is suing me, even though he should have followed the rules set by the coach. It is not my fault. I just wanted the best for the team, and I should not be sued.

### ***Testimony of Coach Gotobed***

My name is Coach Gotobed. I coach my town's high school football team. Our star player is Private Lee; without him we probably would have lost every game this season! All I ask of my players is that they try their hardest during the games, try to keep up their grades, and go to sleep by 10:30 p.m. the night before every game. This way they will be able to play their best.

The morning of our biggest game of the season, the game where we would have many college scouts observing our players' abilities, I.M. Sneaky walked up to me with his cell phone in hand. He asked to talk to me privately. I followed him to an empty spot on the field. I.M. Sneaky played a conversation between Tommy Talker and Private Lee. It was at Ima Partyin's house the night before, and it was recorded at 11 p.m., after the players were supposed to be in bed. He told me that he recorded the conversation because he wanted to make sure that all the rules were followed.

When Private Lee arrived at the game, I was forced to forbid him from playing; I had to follow the team rule, even though he was our ticket to victory. It cost us the chance to win the huge game, and I wasn't happy about it, but I just had to punish Private Lee. Maybe it would teach him to take my rules seriously in the future.

## **INSTRUCTIONS**

The jury must decide by a preponderance of the evidence whether I.M. Sneaky violated Private Lee's right to privacy.

## **SUB-ISSUES**

1. Can Coach Gotobed really know the time of the conversation between Private Lee and Tommy Talker simply by hearing it on the phone?
2. Is it reasonable to have an expectation of privacy when you are talking on a public sidewalk?
3. Is it reasonable to have an expectation of privacy that what you say on the phone would remain private?
4. Even If I.M. Sneaky did not interfere, would Private Lee have been awarded the scholarship?
5. Was I.M. Sneaky justified in telling the coach what Private had done? Did he have a legitimate reason?

## **CONCEPTS**

1. Circumstantial evidence vs. direct proof.
2. Burden of proof: preponderance of the evidence.
3. Reasonable expectation of privacy.
4. Interference with possible economic gain.
5. Principle of justified disclosure.

## **LAW**

Common law right to privacy



# Who Got Yurinfoe?

## SCHOOL

South River Middle  
South River  
Grade 7, Honorable Mention

## TEACHER

Renée S. Fidek

## STUDENTS

Melissa DeJesus, Jennifer Dias, Blaine Haniff,  
Kristin James, Taariq Phillips, Casey Ruston,  
Matthew Ryfa, Kamilla Wicinski, Jonathan Wolf

*This exercise was created by children and is intended for school use only. Any resemblances to characters, names, events and circumstances are intended only for the purpose of education, and all characters, names, events and circumstances described herein are fictitious.*

## FACTS

Brittney Simpson is being treated by therapist Connie F. Denshal via web-cam as a result of all of the drama in her life; divorce from Kevin Lachey and partying too much with Paris Richie. Brittney is seeking therapy over the Internet because she doesn't want the public to find out. Since the paparazzi follow her everywhere, she feels this is more secure.

Reporter Moe Monee "Elgoogs" Brittney Simpson and finds a link to all video sessions between Ms. Simpson and Dr. Denshal. On December 2, 2006, Moe Monee publishes a tell-all story in *Persons* magazine and hits pay dirt. When the story hits, Ms. Simpson is horrified. She is suing the owner of Elgoog, Iona Yurinfoe, and Moe Monee for invasion of privacy.

## ISSUE

Are Iona Yurinfoe and Moe Monee guilty of invading Brittney Simpson's privacy?

## WITNESSES

### *For the Plaintiff*

Brittney Simpson

Dr. Connie F. Denshal

### *For the Defendant*

Iona Yurinfoe

Moe Monee

## WITNESS TESTIMONY

### *Testimony of Brittney Simpson*

My name is Brittney Simpson. I have been in treatment with a therapist named Connie F. Denshal. I was in her care for about four months starting on August 4, 2006 and ending on November 28, 2006. My sessions with Dr. Denshal are confidential, but are based on my issues with my soon to be ex-husband, Kevin Lachey, and with the fact that I have been partying with Paris Richie.

On December 2, 2006, I was on my way to my parents' home. While stopped at a red light, I saw a 24/7 store and turned in. I took my boys in and was horrified to find a *Persons* magazine that read "Brittney Simpson seeking Psychiatric Help!" I soon took my kids to the counter and bought a copy of the magazine. I read it after I put the boys in the car and was terrified.

After arriving at my parents' home, my father read the article and pointed out the author was freelance writer Moe Monee. I e-mailed Moe Monee and

asked what his source was. Afterwards, I notified Dr. Denshal, who was shocked to hear this.

A day later, Moe e-mailed back saying that his source was Elgoog. I called up Elgoog and demanded to talk to the owner, Iona Yurinfoe. She said it wasn't private information because many people want to know about celebrities' lives. Even though some things about people's lives are able to be viewed by the public, my private life shouldn't be viewed by anyone else but Dr. Denshal and myself. Somehow the information of the sessions were found by Mr. Monee and published in *Persons* magazine. Now, what was thought to be confidential can be viewed by everyone. This is why I am not only suing Elgoog and Iona Yurinfoe, but also Moe Monee for invasion of privacy.

### ***Testimony of Dr. Connie F. Denshal***

My name is Dr. Connie F. Denshal. I have been treating celebrity Brittney Simpson for about four months starting on August 4, 2006 and ending on November 28, 2006. All of our sessions were confidential. Now that the information was made public, I can tell you what our sessions were about. Ms. Simpson was seeking help for her issues with her soon to be ex-husband, Kevin Lachey, and the fact that she has been partying too much with Paris Richie.

On December 2, 2006, I received a call from Ms. Simpson stating that she had found an article reading, "Brittney Simpson Seeking Psychiatric Help!" Ms. Simpson then accused me of selling her personal information to a freelance writer named Moe Monee. I had calmed her down and later explained to her that it would be unethical for me to sell the confidential sessions to anyone. If I did so, I could lose my license and be sued. She had also mentioned that she had e-mailed the freelance writer, Moe Monee, and was waiting for a response.

I have been in this business for over 20 years and would never sell the confidential information to anyone. The Elgoog Base cannot "violate the legal rights, such as rights of privacy and publicity, of others." Since I had nothing to do with the information being put on the Internet, my guess is that the sessions were hacked by someone who was looking for money.

### ***Testimony of Iona Yurinfoe***

My name is Iona Yurinfoe. I am the owner of Elgoog, the widely used search engine. On November 30, 2006, Moe Monee searched Brittney Simpson and found out that she was seeking therapy because she had a lot of drama in her life. In addition, she was getting divorced from Kevin Lachey. Moreover, she was also seeking treatment because of her excessive partying with Paris Richie.

It is indeed correct that the information was posted on Elgoog, but it is legal information according to the Elgoog Base. According to the Terms of Service in the section that reads "Appropriate Conduct," it is clearly stated that "any information posted on Elgoog is the responsibility of the person from which such content originated. You must understand that by using Elgoog services you may be exposed to the content that is offensive, indecent or objectionable. Moreover, you must know that you are responsible for your own conduct and content while using Elgoog Data Base and for any consequences thereof." So please do not point fingers at us before you read the Elgoog Data Base. Whoever posted this information on Elgoog is responsible, not me!

### ***Testimony of Moe Monee***

My name is Moe Monee. I'm a freelance writer. I sell my articles to well-paying magazines. On November 30, 2006 I searched the name Brittney Simpson on Elgoog. I found out she was seeking therapy because of all drama in her life. I am here because I have been accused of invasion of privacy, but I have not done anything wrong. I searched the Internet and found this information. It could have been anybody.

I received an e-mail on December 2, 2006 from Brittney Simpson asking why and how I got that information. I said the source I used was Elgoog, which is information I did not have to share with her. I merely did so because I felt sorry for her once I heard how upset she was. Any and all information used in my article was public information and therefore I am not guilty of invading anyone's privacy.

# INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that Moe Monee and Iona Yurinfoe invaded Brittney Simpson's privacy allowing the public to see confidential information.

## SUB-ISSUES

1. Who posted the information on the Internet?
2. Did Dr. Connie F. Denshal sell Brittney Simpson's confidential records?
3. Could someone have hacked into Dr. Denshal's files?
4. Is Elgoog responsible for the information posted on its website?
5. Should Moe Monee be held responsible for using information published on the Internet that anyone could possibly have access to?
6. Were Brittney Simpson's rights to privacy invaded or should celebrities expect to have their private lives made public?
7. Is there a certain expectation of privacy between Dr. Denshal and Ms. Simpson despite the fact the sessions were held over the Internet?

## CONCEPTS

1. Preponderance of evidence.
2. Credibility of witnesses.
3. Doctor/patient confidentiality.
4. Elgoog Terms of Service.
5. Definition of invasion of privacy.
6. Expectation/rights to privacy.
7. Privacy vs. freedom of press.

## LAW

"Because privacy is an emerging right, a discussion of privacy is typically a list of examples where the right has been recognized, instead of a simple definition. Privacy can be discussed in two different directions: the nature of the right and the source of the right (e.g., case law, statute, Constitution).

Prosser, in both his article and in the Restatement (Second) of Torts at §§ 652A-652I, classifies four basic kinds of privacy rights:

1. Unreasonable intrusion upon the seclusion of another, for example, physical invasion of a person's home (e.g., unwanted entry, looking into windows with binoculars or camera, tapping telephone), searching wallet or purse, repeated and persistent telephone calls, obtaining financial data (e.g., bank balance) without person's consent, etc.
2. Appropriation of a person's name or likeness; successful assertions of this right commonly involve defendant's use of a person's name or likeness on a product label or in advertising a product or service. A similar concept is the 'right of publicity' in Restatement (Third) Unfair Competition §§46-47 (1995). The distinction is that privacy protects against 'injury to personal feelings,' while the right of publicity protects against unauthorized commercial exploitation of a person's name or face. As a practical matter, celebrities generally sue under the right of publicity, while ordinary citizens sue under privacy.
3. Publication of private facts, for example, income tax data, sexual relations, personal letters, family quarrels, medical treatment, photographs of person in his/her home.
4. Publication that places a person in a false light, which is similar to defamation. A successful defamation action requires that the information be false. In a privacy action the information is generally true, but the information created a false impression about the plaintiff."

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# To Text or Not To Text?

## SCHOOL

George G. White Middle  
Hillsdale  
Grade 7, Honorable Mention

## TEACHER

Suzanne Pausz

## STUDENTS

Victoria Bellmay, Zachary Costa, James DeChiara,  
Maddy Fein, Allison Gargiulo, Michael Killian,  
Eric Rosenfeld, Jordan Roses, Michael Niego

## FACTS

On October 8, 2005 at Stickyville High School in Stickyville, Wyoming, Jimmy Textalot, a senior in high school, was having a text message conversation with his friend. He was in calculus and they were having a test that day. During the test, his teacher, Dr. P. H. Dee, saw him on his phone text messaging. He wanted to look at the messages because there were problems arising in the school where students were texting answers to each other to cheat on tests and classwork. Dr. P. H. Dee had a suspicion that Jimmy was cheating. Dr. P. H. Dee took his phone and looked at the first text in his inbox which said, "What's Up?" Then he looked in Jimmy's outbox. The first text message said, "Test." Dr. Dee was still suspicious so he continued to look through the phone. The next text message was an indirect threat that said, "Dr. P. H. Dee is so mean, I should slash his tires."

Dr. P. H. Dee sent Jimmy Textalot to the principal, Mrs. Sue Spension. She suspended Jimmy for five days for making an indirect threat about a teacher. Jimmy claims that the text was just a joke and the suspension was unfair.

Jimmy Textalot is currently applying to colleges and this suspension on his record could damage his chances of getting in. He has always wanted to get into The Texas Institute of Technology and is positive he will not get accepted due to these circumstances.

Jimmy's parents are suing Stickyville High School for invasion of privacy.

## ISSUE

Was Jimmy Textalot's privacy invaded when Dr. P. H. Dee looked through the messages on his phone?

## WITNESSES

### *For the Plaintiff*

Jimmy Textalot

May I. Textalot

### *For the Defense*

Dr. P.H. Dee

Mrs. Sue Suspension





# WITNESS STATEMENTS

## *Testimony of Jimmy Textalot*

My name is Jimmy Textalot. I am senior in Stickyville High in Stickyville, Wyoming. I am an above-average student and receive A's and B's. Currently, I am applying to The Texas Institute of Technology and hope to attend there next fall.

At about 11:45 on October 8, 2005, I was in Dr. P. H. Dee's calculus class text messaging my friend from another class. I was in the middle of taking a test when all of a sudden, I saw Dr. Dee right behind me. He grabbed the phone out of my hand, and I could not understand why. I saw him looking through it, and didn't understand why he kept going back to more messages. All I had written to my friend was that I was taking a test.

All of a sudden, he got really upset. He came over to me, and showed me a text message that I had sent that read, "Dr. Dee is so mean. I should slash his tires." Dr. Dee got really mad, and I tried to explain that it was a joke. He called Mrs. Sue Spension, the principal, and told her what happened. She made me come down to her office. Mrs. Spension said that she was very disappointed in me and she suspended me for five days.

This suspension has damaged my hopes of getting into college. These colleges probably think that I am a troublemaker and no longer want to accept me. My parents, May I. Textalot and Kevin Textalot, are suing Stickyville High for invasion of privacy. Dr. P. H. Dee and Mrs. Sue Spension say that they had the right to look through my phone because of reasonable suspicion. I do not understand why they would think that because they know that most students send text messages during school. Once Dr. P. H. Dee saw the text message that my friend sent that said, "What's up?" he should not have kept going through my cell phone.

## *Testimony of May I. Textalot*

My name is May I. Textalot, and I am the mother of Jimmy Textalot. I am outraged by the action taken by Dr. P. H. Dee. My son was sending text messages during a test in school and was caught by Dr. Dee. I would not have minded if the teacher

just took my son's phone away, but I am mad that he took advantage of my son and went through his personal information. The teacher took his phone when he caught him texting and looked at the first text message. It said, "What's Up?" and there was no need to check his other personal messages. Still, the teacher looked in his inbox and his out-box. He had no right or reasonable suspicion to keep checking my son's personal messages.

Dr. Dee found the message that my son sent that said that he was mean and was going to slash the tires on his car. That statement does not mean anything because kids joke like that all the time. I think Dr. Dee is unjust and my son is innocent. He should not have been suspended. This could ruin my son's chances of even going to college. Dr. Dee invaded my son's privacy by searching through his phone without reasonable suspicion.

## *Testimony of Dr. P. H. Dee*

My name is Dr. P.H. Dee. This is my fourth year working at Stickyville High. During a calculus test on October 8, 2005 I heard Jimmy Textalot's phone make a noise so I confiscated it to make sure that he wasn't cheating.

In his inbox I saw a message that said "What's Up?" but I was still suspicious so I checked his out-box too. I saw a message that said, "Test." I looked for the next one because I was almost sure he was cheating. The next text message said, "Dr. P. H. Dee is so mean, I should slash his tires." I was so enraged that I informed the principal and he was suspended.

I had every right to check his phone. I thought he was cheating and that was a good enough reason. This is not the first time this has happened. Cheating by text messaging has become a problem in schools and I have been dealing with it for my entire career at Stickyville High. What I did was standard procedure and was not in any way an invasion of privacy.

## *Testimony of Sue Spension*

My name is Sue Spension. I have been the principal at Stickyville High for 11 years. I have built up a very high level of trust with Dr. P. H. Dee, and his teaching record has been flawless over the

years. When he came to me about this texting issue, I had no reason to distrust his judgment.

Later on, I talked with Jimmy Textalot about the incident. Even after talking to him, he still thought he did not do anything wrong. Here at Stickyville High, we have a very strict policy on using phones in class. Our faculty is told that if they are suspicious of a student using his or her phone in any way, they can closely examine the student's phone to see if he or she was using it for cheating purposes.

In Dr. P. H. Dee's case, he had seen Jimmy Textalot repeatedly looking down and his hands were placed around his stomach, which is a typical texting position. When Dr. P. H. Dee caught Jimmy red-handed texting during the test, he checked Jimmy's history to see if he actually was cheating. In Jimmy's sent messages, the first message said, "Test," so Dr. P. H. Dee was suspicious that Jimmy was in fact cheating. In the next message there was an indirect threat made to Dr. Dee which offended him greatly. Jimmy received a five-day suspension due to his threatening remarks. The actions that Dr. Dee took were in line with our school's procedures. In no way did he invade Jimmy Textalot's privacy.

## INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that the defendant, Dr. P. H. Dee, invaded Jimmy Textalot's privacy when he searched through his cell phone's history.

## SUB-ISSUES

1. Was the text about Dr. Dee a joke or a threat?
2. Did Dr. Dee look at one too many text messages?
3. Is a five-day suspension reasonable?

## CONCEPTS

1. Burden of proof – preponderance of the evidence.
2. Credibility of witness.
3. Invasion of privacy.

## LAW

Reasonable suspicion: Although you also have the right to be free from unreasonable search and seizure while in school, it is not as strong as an adult's right in the community. The standard which allows a school to undertake a search is not as high. Rather than probable cause, the school must have *reasonable suspicion* to justify searching you or your property.

A teacher, principal or other school personnel may search you, your locker, your purse or other property if they suspect that you have drugs or other prohibited materials. Students have a right to privacy in school but their right has to be balanced with the school's need to maintain control and provide all students with an environment in which learning can take place.

# Mia Werk or My Work

## SCHOOL

South River Middle  
South River  
Grade 7, Honorable Mention

## TEACHER

Renée S. Fidek

## STUDENTS

Ryan J. Fenyak, Aline Filipe, Mariya Karcelova,  
Nicole Kline, Susan Lukacs, Samantha Mulvihill,  
Brandon Patton, Alex Tur, Chris S. Witte

## FACTS

On Monday, December 11, 2006, Ms. Sheba Lyon, eighth-grade Language Arts teacher for Isaac Paper Memorial Middle School, collected original poetry from students who wished to enter the local newspaper's poetry contest. Ms. Lyon gave extra credit to her students that submitted poetry. On Wednesday, December 13, Ms. Lyon was informed that one of her eighth-grade students, Bea Coppian, won first place, a \$100 gift card, and her poem would be published in Sunday's edition of the newspaper.

On Sunday, Mia Werk, another student at IPMMS, saw Bea Coppian's poem in the paper and was furious since the poem was very similar to the poem she had written, but did not submit to Ms. Lyon. Mia is suing Bea Coppian for plagiarizing her work. She is suing for the \$100 gift card, court costs, as well as lawyer fees, and is asking the paper to republish the poem under her name.

## ISSUE

Did Bea Coppian plagiarize Mia Werk's poem and enter it in the newspaper contest, thereby committing fraud?

## WITNESSES

### *For the Plaintiff*

Mia Werk  
Sheba Lyon

### *For the Defendant*

Bea Coppian  
Shea N. O'Cent

## WITNESS STATEMENTS

### *Testimony of Mia Werk*

My name is Mia Werk. This is my fourth and last year at Isaac Paper Memorial Middle School. I am a part of the school newspaper, and I submit poems to the newspaper every month. I enjoy writing poetry and I think I do very well.

On Friday, December 8, 2006 I finished writing a poem that was to be submitted to the local Sunday newspaper. When the bell rang at the end of fourth period, I didn't want to be late for my next class, so I quickly packed up and left.

I didn't realize that I left my poem on my desk. I thought it was collected with the others. In 10th period, Shea N. O'Cent gave me my paper. She said she found it under Bea's desk, which is my desk the period before Bea Coppian's. I was going to bring my paper to Ms. Lyon after school, but I had to leave 10 minutes early for an orthodontist appointment and couldn't hand it in. I figured I would just hand it in on Monday, the due date.

I ended up being sick all weekend and was absent on Monday. When I returned to school Tuesday, I tried to hand the poem in to Ms. Lyon, but she wouldn't accept it because there was a coffee stain on the paper from breakfast. She also told that she had already faxed the poems to the paper as the deadline was Monday.

When I looked in the newspaper on Sunday to see who won first place, I saw that the winner was Bea Coppian. I was furious because her so-called poem was almost identical to mine. Bea Coppian is a pretty good student overall in school, but not the best in Language Arts. I'm on the school newspaper and do well in Language Arts. She could have very easily copied my poem from under the desk. It could have fallen off my desk when I left class. She could have looked at it on the floor and copied it, but not taken it so nobody suspected anything.

Why would she do this? Well, all she's been talking about for the last month is a new pair of hazelnut-colored UGG boots that were \$98.76 that she had wanted so badly. Since she has been talking about getting UGGs for such a long time, it is easy to believe that she would copy my work to be able to get the gift card to buy her UGGs.

### *Testimony of Sheba Lyon*

My name is Sheba Lyon. I have been a Language Arts teacher at Isaac Paper Memorial Middle School for 10 years. I have been Mia Werk's teacher for almost four years.

On Monday, December 11, Bea Coppian handed in her poem for the newspaper's poetry contest. It was the last day for the participants to hand in their poetry.

Tuesday, December 12, Mia Werk wanted to hand in her poem. I saw that Mia's paper had a coffee stain on it. I told Mia that I couldn't send her poem since the deadline already passed, plus the paper had a stain on it.

I received an e-mail from the newspaper on Wednesday, December 13, saying that Bea Coppian won the newspaper's poetry contest. Bea Coppian would receive a \$100 gift card and would have her poem published in the newspaper. When I read the newspaper publication of the poem, I noticed it was written in the style of Mia Werk's

writing. She is an excellent pupil at our school. She makes the Principal's List every marking period. Bea Coppian, on the other hand, is not as much of an exceptional student as Mia. It struck me as odd that her work sounded so much like Mia's and I wondered why I didn't recognize it before.

As Mia's teacher for the school newspaper, I know her writing. I know that she enjoys poetry the most of all types of writing. After re-reading Bea Coppian's poem, I am confident that the poem is, in fact, Mia Werk's work.

### *Testimony of Bea Coppian*

My name is Bea Coppian. I am an eighth-grade student at the Isaac Paper Memorial Middle School. I am an above average student, earning A's and B's. I am in Ms. Sheba Lyon's 5/6 Language Arts class.

On December 11, 2006, during Ms. Lyon's class, I wrote a poem for the local newspaper poem contest. The winner would get a \$100 gift card and it would be published in the Sunday edition of the local newspaper.

On Wednesday, December 13, 2006, Ms. Lyon informed me that I had won first place, and I would be getting the \$100 gift card and my poem would be published in the Sunday edition of the local newspaper. Then, on Monday, December 18, 2006, Mia Werk walked up to me and accused me of plagiarizing her poem.

Why would I use her poem, not knowing whether or not she would submit one herself? I am a good student; plagiarizing would be a foolish thing to do. I did not see Mia Werk's paper, and I had no reason whatsoever to use Mia's poem, when I had my own.

### *Testimony of Shea N. O'Cent*

My name is Shea N. O'Cent. I am also an eighth-grade student at the Isaac Paper Memorial Middle School and in Ms. Sheba Lyon's 5/6 Language Arts class.

On December 11, 2006, I saw Bea Coppian writing a poem for the local newspaper poem contest. I also wrote a poem for the contest. I confirm that Bea Coppian did **not** plagiarize Mia Werk, for she did not have any other papers with her at the moment. During the entire period, she was writing



furiously, like she had to get all her ideas down on paper before she forgot them, not like she was copying from another paper. She even finished before the period was over! Five minutes before the bell rang, Bea Coppian handed in her poem. She packed up and waited for the bell to ring.

I saw Bea Coppian the whole period. She never glanced down at her feet or her lap. She never looked at any other papers, other than her own. That means that Bea Coppian did not plagiarize Mia Werk.

As soon as the bell rang, I handed in my poem. Everyone was gone, and as I was leaving I saw a paper under Bea Coppian's desk, which is also Mia Werk's desk. I took the paper, and later handed it to Mia. If I had known it was her final copy, I would have just given it to Ms. Lyon.

There would be no reason for Bea Coppian to leave evidence that she plagiarized. If she was going to copy Mia's work, why wouldn't she just get rid of the poem when she was done plagiarizing it? Mia didn't know that Ms. Lyon didn't have her paper.

## INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that Bea Coppian plagiarized Mia Werk's poetry.

## SUB-ISSUES

1. Was Bea really too busy in class to copy the poem?
2. Why didn't Ms. Lyon notice the poem sounded like Mia's writing before it was submitted?
3. Is it possible that Mia copied Bea's work?
4. Is it possible that Ms. Sheba Lyon favored Mia over Bea?
5. Is it possible that Bea Coppian would do anything to get UGs?
6. If Mia knew that the poem was due on Monday, why didn't she ask her mother to drop it off at school when she was absent?
7. Does Bea really have the ability to write an award-winning poem?

## CONCEPTS

1. Preponderance of evidence.
2. Credibility of witnesses.
3. Definition of plagiarism.

## LAW

"Beyond intellectual property issues (e.g., copyright and trademark), the plagiarist committed fraud. The plagiarist *knows* that he is not the true author of the work, yet the plagiarist willfully and deliberately puts his name on the work (thereby concealing the true author's name), then the plagiarist submits the work as an inducement to some kind of reward (e.g., good grade on a term paper, awarding a graduate degree for a thesis or dissertation, obtaining a scholarship, winning a prize in a science fair, ...)."

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# The Mocked Mock Trial

## SCHOOL

Chestnut Ridge Middle  
Sewell  
Grade 8, First Place

## TEACHER

Lori Bathurst

## STUDENTS

Jenna Conroy, Mark Maglio, Parth Parihar,  
Samantha Phillips, Lindsay Piatek,  
Victoria Saponara, Kelly Wong

*All characters, names, events and circumstances described herein are fictitious. The New Jersey State Bar Foundation does not award monetary prizes for its competitions.*

## FACTS

On June 12, 2005, Ida Nuthan of Inn A. Sense Middle School sued the Plagiarville mock trial team for copyright infringement. Ida Nuthan claimed that students Faye Kerr, Paige Coppiyer, and Marc Salotte had wrongfully plagiarized her students' mock trial case from 2000, which was protected by a copyright from the New Jersey State Bar Foundation, in order to win first place and \$5,000. Though Ida Nuthan's team did **not** win first place, they received an honorable mention, and their article was published in a pamphlet of mock trial cases.

Ida Nuthan first noticed the copyright infringement when she read the case written by Kerr, Coppiyer and Salotte, in the New Jersey State Bar Foundation's Mock Trial Exercises booklet. Reading over it, she immediately remembered a similar case. Then it hit her, it was her own students' case from five years ago. Ida Nuthan reported her findings to the New Jersey State Bar Foundation's board. A five-sentence passage in the facts and the issues sections was exactly the same in both cases. Upon much discussion, the foundation unanimously took measures to revoke the \$5,000 won by Plagiarville Junior High for its first-place finish.

However, students Faye Kerr, Paige Coppiyer and Marc Salotte, as well as instructor George Callow, reiterated their innocence and refused to relinquish the prize money as it had already been spent by the school district. They argued that they could not possibly have accessed the case written by Ida Nuthan's students as they were not even competing in mock trial five years ago. Although each year's booklet of winning cases is published on the Internet for the public, they claimed that they did not review it. Plagiarville's students also claimed that their case contained original matter and the similarities between the two cases were coincidental.

## ISSUE

Did the students from Plagiarville Junior High copyright infringe the mock trial written by Ida Nuthan's students?

## WITNESSES

### *For the Plaintiff*

Ida Nuthan  
Thomas DiTraine

### *For the Defense*

Faye Kerr  
George Callow

## WITNESS STATEMENTS

### *Testimony of Ida Nuthan*

My name is Ida Nuthan and I am a teacher at Inn A. Sense Middle School. For the past seven years, my class has entered the Law Adventure Competition. In 2000, one group from my social studies class was awarded an honorable mention for their case on arson. Two weeks ago, however, I was infuriated to learn that the Plagiartville Junior High team plagiarized my students' case. I became aware of this when I read their case in the mock trial booklet distributed at the conclusion of the 2005-2006 school year. A side-by-side comparison of the two cases clearly shows that Plagiartville copied a five-sentence passage of the facts and issues. It is obvious that this cannot possibly have been merely a coincidence! I immediately reported this to the New Jersey State Bar Foundation judges.

It is totally unfair that students who copied off of my students' painstaking work should receive \$5,000 when our honest efforts earned us nothing but an honorable mention. My students worked harder, day and night, than anyone ever could, and now their case has been plagiarized! It is simply unthinkable! I can bear losers, but never a cheater! It is blatantly obvious that Plagiartville Middle School plagiarized and should lose their prize money. If they get away with such horrible actions, it would be a terrible disgrace to not only our school, but an injustice and mockery of the entire competition!

### *Testimony of Thomas DiTraine*

My name is Thomas DiTraine and I represent the New Jersey State Bar Foundation. I have served as both an attorney and the head of the foundation for 17 years. When Ida Nuthan reported that Plagiartville Junior High had copied off of her students' case, I was skeptical. Such an occurrence has never transpired within the walls of the foundation. However, when I was presented with the evidence by Ida Nuthan, my skepticism turned into unwavering belief.

It became clearer than ever that Plagiartville Junior High had fraudulently won the prize money.

Since each winning case, Ida Nuthan's included, is automatically copyrighted when it is published in the Bar Foundation's mock trial booklet, Faye Kerr, Paige Coppiyer and Marc Salotte are guilty of not only plagiarism, but also serious copyright infringement. I completely agree with the sentiment of Ida Nuthan and believe that the \$5,000 prize money should be given back to the New Jersey State Bar Foundation and instead given to an honest winning team. I urge the court to take proper action in the face of such an injustice to Ida Nuthan and her mock trial team.

### *Testimony of Faye Kerr*

My name is Faye Kerr and I attend Plagiartville Junior High. I am a 14-year-old student in Mr. Callow's eighth-grade history class. We were assigned the task of coming up with an original mock trial case between November and mid-January. My group members, Paige Coppiyer, Marc Salotte and I, worked very hard and diligently on our case. We researched laws, judicial procedures, legal definitions, as well as other information related to the formation of a case. We were very proud of our finished product upon its completion.

A couple of months ago, we received news that our case had won and we were naturally ecstatic. The reward for our hard work was \$5,000 for the Plagiartville school district and the approval of our peers and teachers. The entire district was abuzz with the good news and got new audiovisual equipment. These purchases included a television, VCRs, DVD players, a smart board, and an LCD projector. Then, six days ago, Mr. Callow grimly reported to us that we had been accused of plagiarism and copyright infringement. I recognized what a serious accusation this was because of all my legal research in preparation for the case.

The sentences Ida Nuthan has accused us of plagiarizing were based on facts, not original ideas. For example, Ida Nuthan claims proof of plagiarism because the sentence "McFarland allegedly set fire to the trailer park, thereby committing arson..." is similar to "Antonio Landfar allegedly set fire to the trailer park, and therefore committed arson..." in our case. However, neither of these sentences exhibit new, groundbreaking ideas as they are theses.

Therefore, I don't see the basis for these accusations. Our only sources were the guidance of an attorney, several law school websites and *Black's Law Dictionary*. Moreover, since it was Mr. Callow's first year at the school, he did not receive a mock trial booklet until mid-February. Also, we had no idea that winning cases from previous years were published on the Internet. In less than a week, we were wrongly transformed from heroes and academic achievers into hated criminals. We felt slandered by those who truly valued our success. I don't even know how people can believe we could be capable of plagiarism.

### ***Testimony of George Callow***

My name is George Callow, and I am a first-year eighth-grade history teacher at Plagiarville Junior High. Like any other teacher, I have the utmost faith in my students. I must express my belief that these accusations are not only preposterous, but also the fabricated imagination of an envious teacher. Ida Nuthan is simply jealous because her kids didn't win first prize for a case on the same topic. Neither Faye Kerr, Marc Salotte nor Paige Coppiyer had access to the case written by Ida Nuthan's students five years ago. I did not receive last year's mock trial cases booklet and was not aware the cases were published online. How could any of my wonderful students have copied off of the case?

Granted that some similarities are present in both cases, but such overlapping is unrelated and purely coincidental. Plagiarism constitutes the appropriating of ideas and passing them off as one's own. Nonetheless, the sentences found to be similar are rather generic, and though the language may be the same, the ideas of both cases are distinct. After all, only minor resemblances are evident in the facts and issues. This demonstrates an inconsistency in similarities and demonstrates that our students could not have plagiarized. Plagiarville Junior High should not be charged \$5,000 for the rash judgments of Ida Nuthan and the foundation judges who were easily deceived by her cogent yet untrue words.

## **INSTRUCTIONS**

The plaintiff must prove by a preponderance of the evidence that students Faye Kerr, Marc Salotte and Paige Coppiyer plagiarized the case written by Ms. Nuthan's students, thereby committing a copyright violation, in order to win first prize and \$5,000.

## **SUB-ISSUES**

1. Did the Plagiarville students have reasonable access to Ms. Nuthan's students' mock trial from five years before?
2. Does the five-sentence passage found to be copied constitute a substantial amount of plagiarism, and thus copyright infringement?
3. Do Ida Nuthan or the New Jersey State Bar Foundation have reasons other than the conducting of a fair contest to revoke the \$5,000 prize money?
4. Do the sentences found to be similar in both cases contain original ideas or factual information?
5. Are Faye Kerr and George Callow misleading the jury from the facts in their repeated claims of not having gotten the booklet and not being aware that it was online?
6. Has the Plagiarville mock trial team violated the Copyright Act?
7. Should the Plagiarville school district lose money if, in fact, the students are found guilty, for something which was not under its control?

## **CONCEPTS**

1. Credibility of witnesses.
2. Burden of proof: preponderance of evidence.
3. Copyright infringement and plagiarism.



## LAWS

1. To be liable for plagiarism it is not necessary to exactly duplicate another's literary work, it being sufficient if unfair use of such work is made by lifting of substantial portion thereof ...*O'Rourke v. RKO Radio Picture*, D.C. Mass., 44 F. Supp. 480, 482, 483. December 17, 1942.
2. Copyright Act of 1976
  - a. All literary, musical, dramatic, pantomime and choreographic, pictorial, graphic, sculptural works, architectural works, motion pictures, other audiovisual works, and sound recordings that are copyrighted or original and fixed are protected by the Act.
  - b. Only the author of any of the above has the exclusive rights to reproduce (copy), create derivative works of the original, sell, lease, or rent copies of the work, perform the work publicly, and the right to display the work publicly.
  - c. The following should be considered when making a decision regarding copyright infringement under the fair use clause for the defense:
    1. the purpose and character of the use of the work;
    2. the nature of the copyrighted work (i.e., fictional, amount of creativity, etc.);
    3. the amount and substantiality of the portion of the original work used; and
    4. the effect of the use of the work upon the market or the public.

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# Peeping Parent Pulverizes Privacy Protection?

## SCHOOL

Bloomfield Middle  
Bloomfield  
Grade 8, Second Place

## TEACHER

John M. Shanagher

## STUDENTS

Sonia Amladi, Jordan Bahno, Kathryn Barbetta,  
Sarah Borja, Elias Chalet, Robert Charde,  
Alex Contreras, Alec Donovan, Adam Elmonairy,  
Sarah Gonzalez, Alicia Greulich, Matt McDonnell,  
John McGroarty, Silvia Milla, Jessamyn Nucum,  
Alejandra Pena, Aaron Petersen, Alicia Quirolo,  
Darcy Reynolds, Krishna Savalia, Erik Sepulveda,  
Irvin Shuster, Michael Wellins, Brandon Williams

## FACTS

Lou Conline is the father of a 17-year-old girl who attends Blue Sky High School. Without her knowledge, Mr. Conline had a program installed on his daughter's computer which enabled him to store all of her instant message conversations. He checked her messages every two or three days.

One afternoon he became alarmed when he found a series of messages between his daughter and her new boyfriend, Mason Rubble. Mason is a 17-year-old boy who recently moved to town. In their instant messages, the couple discussed websites that the young man had visited. It appeared to Mr. Conline that Mason had repeatedly visited websites which discussed how to make bombs. He also found copies of the floor plans for the new construction at Blue Sky High. Given the fact that Mr. Conline was aware that there had been several bomb scares at the high school in recent weeks, and what he perceived as strange behavior on Mason Rubble's part, he called the high school principal and notified her of his findings.

Based on Mr. Conline's phone call, school officials searched Mason's locker where they found electrical wires and four bottles of insecticide. The school suspended Mason and scheduled an expulsion hearing. They also contacted the police. Mason Rubble's family has filed suit against Lou Conline for violating his privacy rights.

## ISSUE

Did Lou Conline violate Mason Rubble's right to privacy when he revealed to the high school principal the contents of instant messages between Mason Rubble and Luca Conline?

## WITNESSES

### *For the Plaintiff*

Mason Rubble

Dr. Anna Lyze

### *For the Defense*

Lou Conline

Philip D. Tank



## WITNESS STATEMENTS

### *Testimony of Mason Rubble*

My name is Mason Rubble and I am a senior at Blue Sky High School. Six months ago, just before I transferred to Blue Sky High, my grandfather passed away. My grandfather fought in Vietnam during the early sixties. His job was to defuse bombs and land mines. I was very close to my grandfather, and we spent a great deal of time together. He told me many interesting stories involving his adventures defusing explosives.

After he died I was emotionally distressed, so my parents made me see a psychiatrist. Dr. Anna Lyze, the psychiatrist, suggested that I study the war and the role of the men who worked with explosives, in order to learn more about my grandpa's role in the war and to feel closer to him. I've spent a great deal of time looking at sites that involve explosive devices, but my interest was in the men who defused bombs, not in those who built them. I also looked at a number of sites about the Vietnam War.

As a new student at Blue Sky High, I found it difficult to make it to my classes on time. Being the new kid is hard enough, but there is major construction going on at the school. I have been assigned detention twice for being late to class. My girlfriend suggested that I look at the high school's website which features plans for the new construction. She helped me find the quickest route from one class to the next using the plans we found online. On my way around the construction site, I found a lot of discarded construction materials, including wires which I collected to use for my robotics project.

About a week after I transferred to the high school, I discovered ants crawling around my locker. They were in my gym clothes and in my lunch. The student that uses the locker to my left told me that one of the other students frequently left food in a nearby locker for long periods of time. She said the school tried to take care of the ant problem, but the ants always came back. So she kept bug spray in her locker. It seemed like a good idea to me, so I went to CVS where I found a sale on a four-pack of Raid.

It has been very lonely for me being in a new school and having lost my grandpa all at the same time. However, I was very lucky to have met Luca Conline, who became my girlfriend. We talk about everything, both in person and online. What we say to each other is no one else's business. Our instant messages are just as private as our diaries would be. I don't understand how keeping track of our instant messages without our permission is any different than tapping our phones without a warrant. Not only did Mr. Conline copy our messages, but he revealed my innermost thoughts and secrets to the high school principal. His actions have not only embarrassed me, but because of him I may actually be kicked out of school.

### *Testimony of Dr. Anna Lyze*

I am a psychiatrist who has been practicing for 12 years. About six months ago, Mason Rubble's parents contacted me because Mason was having difficulty accepting his grandfather's death. Mason was very close to his grandfather and showed signs of chronic depression. As if the loss of his grandfather was not devastating enough, shortly afterwards, the family moved and Mason had to attend a new high school. He said that the school was very large and it was difficult to travel from one room to another because of construction. He also talked about how lonely it was being the new kid in school.

In order for Mason to find ways to cope with his sense of loss, he and I explored ways for him to continue to feel close to his grandfather. I know that Mason enjoys spending time online, so I suggested that he do some research on the Vietnam War and the men, like his grandfather, who risked their lives for the safety of their fellow soldiers.

I was very happy when Mason told me that he was developing a relationship with a young lady named Luca. He said that he liked her a lot and felt safe confiding his deepest secrets to her. For the first time in months, Mason appeared happy.

I was shocked when Mason's parents called to say that he had been suspended and was being investigated by the police. This young man has had many difficulties to deal with in the past six

months. While I would like to take some credit for his recovery, I know what really helped was his ability to talk freely with his new girlfriend. He told me that he was able to say things online that were private and might have been too embarrassing to say face to face. Mr. Conline's invasion of Mason's and Luca's privacy has resulted in Mason's catastrophic relapse into depression.

Children need to feel that there are places where they can safely be honest and open without their most private thoughts being read by others. I've spoken about the issue of privacy rights with my husband who is a successful attorney. He has explained to me the concept of "reasonable expectation of privacy." According to him, there was a case in the 1940's where a bookmaker sued the government because they violated his privacy rights by listening in on a conversation he was having in a phone booth. Apparently, the court said that people have a reasonable expectation of privacy when they use the phone to communicate with others. In 2007, millions of people use the Internet as a means of communication. Shouldn't the same protections exist for them?

### ***Testimony of Lou Conline***

My daughter Luca is a 17-year-old senior at Blue Sky High. Recently, she began dating a boy named Mason Rubble. I was a little concerned about their relationship because he appeared to be a bit antisocial, and he often seemed sullen and unhappy. My daughter spends a lot of time worrying about him.

I have heard many horror stories about young people and their use of the Internet. You read in the papers everyday about children lured into the hands of predators because of their ignorance and inexperience. When a young girl became a victim of an Internet predator in a nearby town, I decided I needed to take precautions to protect my family. Therefore, I installed software which enabled me to keep track of all of Luca's Internet usage, including her instant messages. It has been my habit to check Luca's laptop two or three times a week.

Several weeks ago, while checking Luca's instant messages, I found the usual large number of conversations between Luca and Mason. I became

alarmed however, when I read one from Luca which said, "hav u bin visitin thoz bom sites agen?" When I saw his response was, "yeah," I decided to look back at other conversations more carefully. I saw several discussions where Mason talked about the fact that he was always sad. There was a lot of anger directed towards his parents for making him change schools. He also talked about how unfair it was that he had been assigned detention by the principal. There was a message from my daughter which said, "u still ticked @ da princpl???" His response was, "#%\$& yeah!!!! I hate her nd all thoz techers."

When I saw a reference to blueprints, I clicked on the link and found myself looking at the construction plans for Blue Sky High on the high school's website. I was now very concerned because I remembered a dinner conversation where my daughter told us about several bomb threats in recent weeks which caused the high school to be evacuated. I called the high school principal and told her how concerned I was about the things I had seen. I also forbid my daughter to see or speak with Mason ever again.

### ***Testimony of Philip D. Tank***

My name is Philip D. Tank, and I own a gas station down the block from the high school. I am also a very good friend of Lou Conline. Last year, there was a terrible tragedy in a nearby town. A young girl had been pretending to be much older than her actual age in an online chat room, and apparently, she made arrangements to meet an older man after school. The girl disappeared and was never found.

Lou and I both have teenage daughters and we were very concerned that something similar might happen to them. I read about a software program which would allow parents to keep track of their children's online usage without their knowledge. Lou and I both purchased the software and have been using it ever since. I have always been very clear with my children that since I pay for the Internet and their computers, I have the right to view all of their online activity. My rule is if you don't agree with the policy, then you don't use the Internet. This may sound harsh, but in today's



world parents have to protect their children. Suppose Mason had said something about committing suicide? Would saving his life by telling someone in authority have been an invasion of his privacy?

After the nightmare at Columbine High School, people complained that no one had reported the strange behavior of the two young men who were responsible. In this case, Lou did the right thing by contacting the school and warning them of a potentially dangerous situation. He was protecting his daughter as well as all of the children at Blue Sky High, and I will always be grateful.

## INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that Lou Conline violated Mason Rubble's expectation of privacy when he revealed the contents of Mason's and Luca's instant messages.

## SUB-ISSUES

1. Does the case of *Katz v. United States* 389 U.S. 347, which grants an expectation of privacy to phone calls, extend to online instant messages?
2. Did Lou Conline have the right to keep track of his daughter's IMs without her permission?
3. Does Mason's expectation of privacy outweigh the safety of the school?
4. Did Lou Conline's installation of software to record his daughter's instant messages violate AOL's terms of use?

## CONCEPTS

1. Burden of proof: preponderance of the evidence.
2. Credibility of the witnesses.
3. Right to privacy.
4. Expectation of privacy.

## LAW

1. Fourth Amendment.
2. *Katz v. United States* 389 U.S. 347

Justice Harlan, concurring:

My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person has exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as "reasonable."

3. AOL.COM Terms of Use: You may not use AOL.COM in any manner that could damage, disable, overburden, or impair our servers or networks, or interfere with any other party's use and enjoyment of AOL.COM. You may not attempt to gain unauthorized access to any services, user accounts, computer systems or networks, through hacking, password mining or any other means. We may take any legal and technical remedies to prevent the violation of this provision and to enforce these Terms of Use.

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# 25 Cents for Your Thoughts?

## SCHOOL

St. Leo the Great  
Lincroft  
Grade 8, Honorable Mention

## TEACHER

Cheryl Marzigliano

## FACTS

In early 2006, Kanye East and his closest friend of many years, Willie Steel, also known as 25 Cent, were up-and-coming rappers looking to break into the recording industry. The two 21-year-olds had been friends for 12 years. They went to school together and after graduating high school, they put their minds into starting rap careers, and focused on writing their own songs. Although they were very close, they each pursued their own careers and did not collaborate with each other. They did, however, bounce ideas off each other and listened to each other's creations.

In the early years of his writing, Kanye East was spiritual and socially conscious. He often wrote songs that read more like poetry than rap songs. In 2004, he believed he had written a song that was actually good enough to launch his career. It was called "Jesus Rides" and its message was that even in these dark times filled with violence, racism and hatred, people can turn to their faith to guide them.

Kanye recorded the song on a hand-held recorder and played it for only Willie Steel and Willie's longtime girlfriend Anita Newman. The chorus repeated:

*Jesus Rides*

*Lord help me out today cause them thugs tryin' a'  
take me away*

*Jesus rides*

*Keep me up from the ground cause I don't want  
them to throw me around.*

*Jesus Rides (fade)*

Although Anita liked it, Willie sat Kanye down and told him he would never make it in the rap industry with such sensitive lyrics. Kanye was discouraged, but remained determined and tried to change to a tougher style of writing. Kanye took his friend's advice and gave up on promoting "Jesus Rides" and never applied for a copyright for the song.

After that, by the fall of 2005, Kanye and Willie each gained recognition in their hometown, New York. Each performed in local night clubs and drew large crowds. As time went on, however, the public seemed to be more interested in Kanye East. He became known for his writing, and reviewers raved about his lyrics. Seeing his longtime friend advance faster than he was, Willie



Steel tried to re-invent himself. He changed his image and even his name. His new stage name was 25 Cent. But even with these changes, Kanye was still the one drawing most of the attention. Despite his success, Kanye had difficulty projecting the tough image that the public expected of a rapper. When he wasn't performing, he preferred to just stay at home and write.

In January 2006, word was out that PHAT Records, a prominent recording company on the West Coast, was planning to sign a fresh new artist to its label. Rumor had it that both Kanye and Willie were in top consideration for the deal and agents from PHAT Records watched each of the rappers perform on several occasions. The agents told Kanye his lyrics were exceptional, but his image was a little soft. The agents told Willie his image was perfect, but his material needed more depth.

Desperate for the contract, Willie invited the record reps to one last performance before their decision was made. At that show, he performed his usual song list, but at the end added something no one had heard before. He introduced them to his newest song, "Jesus Runs." It was about the struggles, pressures, and prejudices in this life and remembering that you can rely on Jesus.

The audience loved the new song as did the record executives, who announced the next day that the contract was going to Willie Steel. When Kanye learned of this news, he was happy for his friend. He rushed to Willie to congratulate him. Willie avoided Kanye's request to hear the new song and it wasn't until two weeks later that Kanye turned on the radio in his car and heard the song. He heard not only a familiar melody but a chorus that was almost exactly the same as the original "Jesus Rides":

*Jesus Runs*

*God help me out with the hard times ahead*

*Jesus Runs*

*Be my guard or I'll be dead*

*Jesus Runs with me (fade)*

In disbelief, he turned his car around and headed straight for Willie's house. When he saw Willie, he screamed, "You stole my song! That's 'Jesus Rides' and you know it!" Willie denied taking the song

and the friendship ended.

Kanye then brought this legal action against Willie, claiming he plagiarized his song and is seeking damages for his injury. For the purposes of trial, the issue of liability will be tried before the issue of damages. This proceeding concerns liability.

## ISSUE

Did Willie Steel, a.k.a. 25 Cent, plagiarize plaintiff's song, "Jesus Rides"?

## WITNESSES

### *For the Plaintiff*

Kanye East

Anita Newman

### *For the Defense*

Willie Steel, a.k.a. 25 Cent

Holly Wood

## WITNESS STATEMENTS

### *Testimony of Kanye East*

My name is Kanye East and I am 21 years old. When I was nine years old, I moved to New York City and immediately became friends with Willie Steel, who lived in my apartment building. We went to school together and hung out together almost everyday after school. We shared the same interests, especially our love of rap music.

I have always regarded rap as a way of expressing feelings and addressing personal and political issues. Willie was really more interested in the whole "thug" image and commercial aspects of rap. Willie and I both dreamed of making names for ourselves as rappers, but for very different reasons. We both put our minds to our careers.

Everyone always told me that to be a successful rap artist, you had to have a certain image and tone to your music to make it in the industry. I did not agree and truly believed that you could still make it in the industry even if your music addressed

sensitive and important personal and social issues. Living with prejudice and violence in the world, and right in my own neighborhood, caused me to write the song “Jesus Rides.” I was very proud of it.

When I played “Jesus Rides” for Willie and our friend Anita, Willie reacted very negatively and took the tape out of the recorder it was in. I remember Willie saying, “This is garbage, it will never sell. People can go to church if they want to hear you preach.” I know he left that day with the tape because I didn’t see it again until Anita gave it back to me after Willie and Anita broke up.

Because of Willie’s negative reaction, I toned down my lyrics in the years after that. Audiences still seemed to enjoy my songs and critics really praised my music. I focused on my writing, but Willie concentrated more on his image. He started going by the name 25 Cent, dressed differently, talked differently, and hung out with a much tougher crowd. Still Willie was not as successful, and although he looked the part, his songs were not as popular with the critics.

Both Willie and I really wanted the PHAT records contract. The difference is I wouldn’t stab my friend in the back to get it. Now I know why Willie would not play his “new” song for me when I went to congratulate him when I heard he got the deal. Willie was extremely nervous and pushed me out the door. I thought it was strange that he didn’t want to talk about it, but I thought he was just being humble.

When I heard the song on the radio, I knew in an instant what had happened. I immediately recognized lines and phrases from my song “Jesus Rides.” Although the rhythm and lyrics were slightly different in some places, the chorus was basically the same. In addition to the stolen chorus, it was obvious that a whole verse was copied.

The original stated:

*I swear Lord this is my last*

*I hope you can forgive and forget my past*

*Before I die*

*And live in the sky*

*Cause I am yours*

Willie’s copy stated:

*Forgive me Lord, for my past*

*I know if I pray you’ll save me at last*

*I wanna say I’m sorry Lord*

*Cause you’re my man*

When I wrote “Jesus Rides,” I decided to take a risk by putting a spiritual theme in a rap song. Never before had I heard of a successful rapper doing this. There is no way that Willie came up with a song with that type of emotion. He stole it from me and he knows it!

### ***Testimony of Anita Newman***

My name is Anita Newman. I have known both Kanye East and Willie Steel since high school. The three of us were very good friends, and by the end of our freshman year Willie and I began dating and continued to see each other until we broke up in January of 2006. Kanye and Willie were such close friends; I can’t even believe that this is happening.

Although Kanye and Willie were very different, they were inseparable. Kanye was very sensitive and creative, and spent much of his free time reading and writing. Willie, on the other hand, was much more outgoing; he loved to party and was very popular.

I first saw a change in Willie when Kanye’s career seemed to take off faster than his own did. I remember watching Willie as he read a critic’s review of one of Kanye’s performances; the critic stated that Kanye was a musical genius. Willie crumbled up the paper, threw it in the garbage, and proceeded to slam the door shut as he stormed out of the room. It was after this that Willie began to spend less time working on his material and more time in clubs, socializing and showing off his new image. Our relationship ended shortly after that because I couldn’t stand what he had become.

When I first heard “Jesus Runs,” I couldn’t place it at first but I knew I had heard it before. When Kanye came to me and asked me if I remembered the day Kanye played his song “Jesus Rides” for us, it all came back to me. I recall thinking that the song was really good, and I remember Willie’s terrible reaction to it. After Kanye played us the



song, Willie pulled the tape out of the recorder, and I remember thinking that he would break or destroy it somehow, but instead, he put it in his pocket. It wasn't until months later when I was taking some of my belongings from his apartment, that I discovered the tape on Willie's dresser. I thought that Kanye deserved to get it back so I gave it to him.

If you listen to both songs, it's obvious Willie stole Kanye's song. Even without listening, I have known Willie for many years and I'm positive that he is not capable of creating something so eloquent and thought-provoking.

### ***Testimony of Willie Steel, a.k.a. 25 Cent***

My name is Willie Steel and I am 21 years old. I grew up in New York City, and met Kanye East when we were nine years old. He moved into my apartment building. When Kanye moved in, we were real tight from the beginning. We went to middle and high school together, that's where I met my ex, Anita Newman. The three of us would chill every day after school to try and stay off of the streets and away from the gangs. We'd always listen to our favorite music, rap.

Kanye and I always wanted to make it as rappers. We would always make up our own songs and bounce them off each other. I always thought Kanye's lyrics were too soft. Back then, I believed that to be a rapper, you needed to have a tough image.

One day in 2004, Kanye came to my house and played his new track "Jesus Rides" for Anita and me. When the song finished, I told Kanye to get real and that this track would never sell. I also told him nobody would like the song and it would soften his image even more to rap about all that religious stuff. I now regret telling him that because I now realize that inspirational topics have just as much place in rap music as anything.

One of the things that changed my mind was when I was almost shot and killed a year later. I started to think about stuff like street violence and racism and tried to let others know to rely on their faith even when things are rough. If I can use rap to get a message out, I will. I'm sorry I got all over Kanye, but why should that stop me from changing my style? Kanye and I shared a lot of ideas and

songs with each other over the years. There are so many thoughts of mine in his music and I've never thought that he shouldn't use them. I was happy to help and I wanted him to use any ideas of mine if he wanted to.

If you listen to my song, besides street violence, I also rapped about poverty, saying:

*Living in gutters, trash cans, slums*

*No food no tables*

*Everybody bums*

*Infected with disease and no medicine to spare*

*We've only got you Lord cause we know you're there*

There was nothing in Kanye's song that dealt with this theme. I can't believe Kanye and Anita turned on me when I finally made it big.

### ***Testimony of Holly Wood***

My name is Holly Wood and I am an executive of PHAT Records. There is no question in my mind that Willie Steel was by far the most deserving of this contract. His song, "Jesus Runs," is an original and brought something "fresh" to the rap scene. He is very capable of creating his own songs and is proving to be a talented song writer. In my opinion, he was better qualified than Kanye East. When we first scouted them, I admit, Kanye had great lyrics, but needed to step up his image. We at PHAT records didn't think his soft, clean-cut image would sell enough records to justify our investment.

25 Cent, on the other hand, had a hardcore image that was much more eye-catching and flashy. I admit that at first we were a little concerned that his songs, standing alone, might not get as much radio play, but, when 25 Cent performed "Jesus Runs," our doubts were put to rest.

We expect 25 Cent's \$12 million record contract to be a money-spinning investment. We estimate his records will make us about \$100 million. His song, "Jesus Runs," is a hit and we believe it will launch his career rapidly. Obviously, he was the better choice. If we chose Kanye East, we did not think we would have made as much money; we did not believe his video productions or live performances would attract enough attention because of his weak image.

This lawsuit is pointless. We told 25 Cent to step up his lyrics and he did. He made himself better and helped himself. I've been in this business for 25 years, and I'm trained to recognize what will sell and I know talent when I see it. There is no question here that 25 Cent had the talent to write "Jesus Runs" and did write that song. In this industry, I see the same recurring themes and concepts run through many different songs by many different artists. It is absurd to say that someone can own an idea. If we start limiting the ideas or topics artists can write about, this industry will die quickly because it will be denied the creativity to develop.

## INSTRUCTIONS

Plaintiff must prove by a preponderance of the evidence, the greater weight of credible evidence, that Willie Steel, a.k.a 25 Cent, plagiarized plaintiff's song, "Jesus Rides."

## SUB-ISSUES

1. Was Kanye's theme of rapping about Jesus "protectable expression" or an abstract idea that cannot be owned?
2. Are the two works sufficiently similar to each other?
3. Was any similarity inadvertent or independent of Willie's exposure to Kanye's song?

## CONCEPTS

1. Burden of proof.
2. Circumstantial evidence v. direct proof.
3. Credibility of witnesses.
4. Motive.

## LAW

1. Plagiarism is presenting another's ideas or written material without giving credit or attribution to the original author, or worse, giving the distinct impression that the copied material is the original work of the plagiarizer.

2. Plaintiff may prevail in this action for plagiarism only if the material he claims was copied is itself considered "protectable expression." Ideas, titles, themes, locales, and even the basic plot do not constitute protectable material. Whether or not a protectable interest exists depends upon the originality of form and manner of expression.
3. Abstract ideas are not now entitled to protection in an action for plagiarism. Therefore, if plaintiff's work is not considered an original expression, his claim for plagiarism must fail.
4. Plagiarism law does not preclude others from using the ideas or information contained in another's work. It pertains to the original literary, musical, graphic, or artistic form through which the author chose to express himself.
5. In determining whether a substantial similarity exists between a literary, dramatic, or musical work and an alleged copy, the common knowledge of the average reader, observer, spectator or listener is the standard of judgment which must be used.
6. Even if a substantial similarity exists between the works of plaintiff and defendant in this case, plaintiff must prove that defendant actually copied plaintiff's original work and that any similarities were not the product of coincidence or independent thought.
7. Plaintiff need not show that the entirety of the complaining work is similar. Plaintiff need only demonstrate that the similar portions of the music were indeed copied from his original work.

*This exercise was created by children and is intended for school use only. Any resemblances to characters, names, events and circumstances are intended only for the purpose of education, and all characters, names, events and circumstances described herein are fictitious.*

# Stage Fraud

## SCHOOL

Chestnut Ridge Middle  
Sewell  
Grade 8, Honorable Mention

## TEACHER

Lori Bathurst

## STUDENTS

Lindsey Hatch, Giovanni DiGabriele,  
Peter Muraca, Dan Geraghty, Haley Klose,  
Gabriella Marrone, Candace Brown

## FACTS

In September of 2005, the Maple Hill High School, located in southern New Jersey, hired Charles Scoudini to be the new drama teacher. To continue the great reputation of the high school, he decided to write the first play of the season that he hoped would be a great success.

On December 18, 2005, Charles Scoudini's old college friend Raphael Dizeri, a play writer and director for the Five Star Theater in northern New Jersey, called and invited Charles Scoudini to his upcoming play. It was called *The Sound of Freedom* and it was scheduled to run from December 28 to January 14 at 8 p.m. Mr. Scoudini attended the play on December 28, and it turned out to be a total disaster! It closed down in two weeks due to low profits and lack of audience interest.

On January 3, Mr. Scoudini held his first drama club meeting. He informed his students about the new play they were going to perform, which was called *The Voice of Liberty*. After months of practice, it was finally ready to be presented to an audience. The school charged \$5 a ticket and it ran from April 19 to April 22 at 7:30 p.m. The play was a financial and critical success.

Because Charles supported Raphael's play, Raphael thought he owed Charles Scoudini the same support. Obafemi Zeus, a theater critic for *The Oak Tree Times* newspaper in northern New Jersey, saw *The Sound of Freedom* and also attended *The Voice of Liberty* to see his nephew,

who starred as a lead role in the play. At the end of the show, Obafemi happened to run into Raphael in the lobby and saw that he was very upset. Raphael and Obafemi shared their concerns that there were too many similarities between the two plays, including a number of characters and some of the lines. Even though Raphael was Charles Scoudini's friend, he still felt that the right thing to do was to sue Mr. Scoudini for plagiarizing his work.

## ISSUE

Did Charles Scoudini plagiarize the play *The Sound of Freedom* from Raphael Dizeri?

## WITNESSES

### *For the Plaintiff*

Obafemi Zeus

Raphael Dizeri

### *For the Defense*

Charles Scoudini

Admina Strator

## WITNESSES STATEMENTS

### *Testimony of Obafemi Zeus*

I am Obafemi Zeus, theater critic for *The Oak Tree Times* in Maple Hill, New Jersey. I attend shows in theaters all over New Jersey. On December 28, 2005, I attended the play, *The Sound*

of *Freedom*, at the Five Star Theater in northern New Jersey. Even though it was a decent play, it turned out to be a total disaster. Believe me, I have seen plays a lot worse. I spoke with the playwright, Raphael Dizeri, after the show, and although it was a financial failure, he was very proud of his piece of work.

The following year, on April 19, I attended my nephew's school play, *The Voice of Liberty*, directed by Charles Scoudini, who I found out was a very good friend of Raphael Dizeri. As I watched the show, I realized that many parts of it reminded me of *The Sound of Freedom*. The characters, two parents, two younger siblings, and an older sibling, were featured in both shows. As I compared the two, the similarities piled up. The situations and even a few lines were the same! I realized that I viewed Mr. Dizeri's and Mr. Scoudini's shows at very different times, and that my recollection of *The Sound of Freedom* may be a bit foggy, but anyone could have noticed the obviously plagiarized parts of the show.

### ***Testimony of Raphael Dizeri***

My name is Raphael Dizeri. I am a play writer and director for the Five Star Theater in northern New Jersey. I am also a very good friend of Charles Scoudini. I have known him since I was a freshman in college.

Last September, I finished writing my latest play, which happened to be called *The Sound of Freedom*. I invited Charles on the opening night at our playhouse. Sadly, my play was financially very unsuccessful. However, I received a positive review

from a man named Obafemi Zeus, a critic for *The Oak Tree Times* newspaper. He told me that he loved to see local plays, and this was one of the better ones he'd seen. I thanked Mr. Zeus, and that was the last I saw of him for quite a while.

On the night of April 19, 2006, I attended a play that my good friend Charles had just written and directed for the students at his school. He had been hired as a drama teacher at the nearby high school, and he was determined to maintain their good reputation. This was the first play he'd ever directed and he was very excited. I really wanted to support him as he had done for me.

I was really looking forward to the event because Charles had been very supportive when he saw my play and helped encourage me even though it didn't do well. At 7 p.m., I took my seat in the high school auditorium and waited for the play to start. When the curtain rose, I saw that the name of the play was *The Voice of Liberty*, and it reminded me of my play, *The Sound of Freedom*. I must say that I was outraged at what I saw that night. My original play was about a Polish family living during World War II. There was a mother, a father, an 18-year-old son, and two daughters. The boy was a soldier in the war who was killed by an enemy grenade. Poland was later captured by Germany and a few years later was liberated by the Americans.

As I began to watch the play, I began to heat up when I saw the apparent similarities between my play and the one he wrote. In his play there were two parents, two younger sons, and a 19-year-old daughter who was in the war. The daughter dies of a disease obtained in the war, and North Vietnam takes over South Vietnam where the family resides.

The only real difference was the wars each play was set in, his takes place during the Vietnam War and mine was set in WWII. It was like reading the same book with a different cover! Not to mention, there were several lines copied word for word he took from my play, and put straight into his. Come on, he got all the credit for most of my work. He charged \$5 per admittance. By the end of the several showings, Charles had made a large profit. To top it off, *The New York Times* called his play one of the best high school performances. Charles Scoudini has left me no choice but to sue him for





plagiarizing my work. It astonishes me that my once best friend would do this to me.

### ***Testimony of Charles Scoudini***

This past December, I went to visit my friend Raphael after he called and invited me to the play, *Sound of Freedom*, which he wrote and was directing at a local playhouse. During the telephone conversation, I told Raphael that I was hired at Maple Hill High to be the new drama teacher and told him I would be directing the school's spring play. I drove up to northern New Jersey where Raphael lives and we attended his play. The play was okay and later that night I went home.

I still had a giant task in ahead of me. I had to come up with a play for our drama club to perform in the spring and I knew it had to be good enough to maintain our extraordinary reputation as one of the best drama clubs in southern New Jersey. Nothing really stuck out as a good play to do so I decided to write my own play. My play is called *The Voice of Liberty* and is set in a totally different period in history.

It is during the Vietnam War and about a totally different family. I no idea that anybody would see my play as even relatively similar to *The Sound of Freedom* nor did I think anyone would care more than 100 miles away from where it was first performed and failed. My play is an original! I am really hurt that my best friend would criticize me for plagiarizing his work when he knows what a good character and conscience I have. I would never do such a thing. I am a new drama teacher who is also a very experienced playwright. When all else failed, I decided to write a play that would keep this drama club as popular as it has always been. Producing, playwriting, and teaching are my life and I would never plagiarize from another playwright and person whom I greatly respect.

### ***Testimony of Admina Strator***

My name is Admina Strator. I am one of the vice principals at Maple Hill High School and I am Charles Scoudini's supervisor. Charles Scoudini came to me in January after the winter break with his idea for a new play to be performed by the students in his drama club. It was to be called *The Voice of Liberty*. He told me that it would be about a family that was struggling through the Vietnam War. It sounded like a very good idea to me because I thought it connected to the current military struggle that our country is presently involved with in Iraq. At the time, he acknowledged that his friend Raphael Dizeri had written a play about World War II, and that acted as his catalyst. Mr. Scoudini and I both felt that his ideas were not an exact replication of Mr. Dizeri's play, so I allowed him to cast it as the school production.

As the weeks went on, I saw him working on the play in his office and then later with his students in the auditorium. I recognized how hard he was working and what a great job he was doing as a new teacher. As I expected, the play went well and was a great success. They made a good profit and the audience seemed thrilled. Although I've only known Mr. Scoudini for less than a year, he seems like a really honest and trustworthy person. I am convinced that he is not the type of person who would plagiarize anyone's work.

## **INSTRUCTIONS**

The plaintiff must prove by a preponderance of the evidence that Mr. Scoudini is guilty of plagiarizing Raphael Dizeri's play, *The Sound of Freedom*.

## **SUB-ISSUES**

1. Is Raphael Dizeri's work protected under copyright laws?
2. Is Raphael Dizeri entitled to a percentage of the school's profits from the play?

## CONCEPTS

1. Preponderance of the evidence.
2. Credibility of the witnesses.
3. Copyright infringement.
4. Plagiarism.
5. Fraud.

## LAW

1. Any work created in the USA after 1 Mar 1989 is automatically protected by copyright, even if there is no copyright notice attached to the work. 17 USC § 102, 401, and 405.
2. Restatement of the Law (Third) Unfair Competition § 2, 3(b), 5 (1995).
3. Amendments to the U.S. Copyright statutes in 1998 included a new section making it wrongful to “intentionally remove or alter” any one or more of the following items: the notice of copyright, the title of the work, the author’s name and other identifying information about the author, the copyright owner’s name and other identifying information about the copyright owner, or “terms and conditions for the use of the work.” 17 USC §1202. Violation of this section entitles the copyright owner to statutory damages between US \$2500 and US \$25,000 for a first offense by the defendant, or payment of actual damages, whichever are greater. For a subsequent offense by a defendant within three years, the damages may be tripled (i.e., statutory damages of at least US \$7500). In addition, the judge “may award reasonable attorney’s fees to the prevailing party”. 17 USC §1203.

4. These new penalties for removing or altering a copyright notice give authors and owners of copyrights a new tool to prosecute plagiarists. The fair use statute, 17 USC §107, says: Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include — the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

## BIBLIOGRAPHY

<http://www.rbs2.com/plag.htm#anchor333344>

# Franklin v. Fall Hills High School

## SCHOOL

Mount Olive Middle  
Budd Lake  
Grade 8, Honorable Mention

## TEACHER

Becky Hull-Clark

## STUDENTS

Marissa Bello, Kelly Brand, Sachin Gupta,  
Peter Hess, Maria Liberopoulos, Kaitlyn McDonald,  
Chantal McStay, Erin Omahen

## FACTS

At Fall Hills High School, most students consider Arnold Franklin, a senior, the school pariah. He strolls down the halls with an air of confidence, proud of his nonconformist reputation, despite the majority of the student body's teasing and addled stares. He seems about as concerned with typical teenage interests as any of the faculty members, as if he thinks himself wise beyond his years. Overall, Franklin is an average student, has a 3.3 grade point average, shows an unusual interest in history, and has only a few minor infractions on his disciplinary record.

On October 20, 2005, Franklin spent part of his lunch period in the school media center in order to research for a project on the Holocaust he had been assigned by Steven Boulder, his honors world history teacher. After a few minutes of surfing the Internet to no avail, Franklin approached Linda Reed, the librarian, and explained his assignment, asking where he should look for better information. Mrs. Reed provided Franklin with a list of recommended websites compiled by another teacher who had assigned a similar project. Franklin gratefully accepted the list and set back to work.

After a few minutes, Mrs. Reed wandered over to Franklin's computer to check on his progress. The web page across his screen did not match any of the web addresses on the list. The monitor displayed explicit photographs of Nazi acts and Holocaust records with a severe anti-Semitic slant. Alarmed, Mrs. Reed quickly reminded Franklin of Fall Hills High School's strict zero tolerance policy

on the use of media or participation in a discriminatory act that promotes prejudice and discrimination based on race, religion, gender, sexual orientation, etc. Franklin nodded and keyed in the first web address on the list he had been given.

The next day, Mrs. Reed visited Mr. Boulder's class to observe the students', in particular Franklin's, Holocaust project presentations, just to make sure that he had adhered to her clear admonition. When Franklin marched military-style to the front of Mr. Boulder's classroom to deliver his presentation, the change in his appearance became apparent. Franklin now sported pale blue contact lenses, a blonde buzzed haircut, and camouflage pants. His presentation was riveting and informative. It gave real facts from an unexpected point of view. From the graphics and quotes he used, Mrs. Reed knew that Franklin had continued to utilize the prohibited website, despite her warning. After he had finished, Mrs. Reed immediately left the room.

Mrs. Reed contacted Dr. Amelia Featherworth, the principal, and told her about the entire situation. Once in Dr. Featherworth's office, Mrs. Reed proceeded to Dr. Featherworth's laptop and, using her keen processing skills, pulled up Franklin's Internet history folder. As she had claimed, Franklin had visited the prohibited website two more times after her warning. In addition to this, Mrs. Reed logged onto [www.HumansSearch.com](http://www.HumansSearch.com), a records database used by employers for background checks on possible employees. Mrs. Reed discovered by searching

Franklin's parents' names that Franklin is of German descent. She and Dr. Featherworth took this as an overwhelming amount of evidence that Franklin had, through his project and presentation, discriminated against Jewish students by belittling Jewish sufferings during the Holocaust and showing mortifying images of their torture.

Dr. Featherworth later met with Franklin in her office, who denied visiting the forbidden website after Mrs. Reed had told him not to. When he heard that Mrs. Reed had searched the Internet for his ethnicity, he became indignant, claiming that retrieving this personal information without his consent was a complete breach of his privacy. Dr. Featherworth pointed out the exact page in Franklin's agenda book where the discrimination policy was clearly stated and decided to revoke Franklin's school computer privileges for the remainder of the school year.

This will cause Franklin to fail the two semesters of computers he must complete to graduate, meaning he will not walk with his class on graduation day. Franklin is suing Fall Hills High School for violation of his rights as per the Computer Fraud and Abuse Act of 1986.

## ISSUE

Did Fall Hills High School violate Arnold Franklin's computer privacy as stated in the Fraud and Abuse Act of 1986 by searching him on [www.HumansSearch.com](http://www.HumansSearch.com)?

## WITNESSES

### *For the Plaintiff*

Arnold Franklin  
Steven Boulder

### *For the Defense*

Dr. Amelia Featherworth  
Linda Reed

## WITNESS STATEMENTS

### *Testimony of Arnold Franklin*

My name is Arnold Franklin and I am a senior at Fall Hills High School. On Friday October 21, 2005, I presented my assigned Holocaust project in Mr. Boulder's senior honors world history class at Fall Hills High School. The purpose of the project was to thoroughly report on the major and war altering events in the time of the Holocaust. My point was clearly stated, and my work cited page was plainly visible for any teacher to spot.

Four periods later, the principal, Dr. Featherworth, summoned me to the office. Dr. Featherworth then sat me down in her office and accused me of accessing inappropriate media for my project in world history. She asked me numerous times what sites I had visited, and if I had disobeyed Mrs. Reed after she had stated I was not to go back onto the website that I had visited once before. I answered her countless times that I had gone only to school appropriate sites after the





librarian had warned me once. She then pursued the subject by telling me that she and the librarian, Mrs. Reed, had gone onto my school username and looked at my files and recent site visitations. She then informed me that Mrs. Reed had gone to [www.HumansSearch.com](http://www.HumansSearch.com) to research my ethnic background. There they found that I was of German descent.

The school then prohibited me from using the school computers for the rest of the year. This will cause me to fail the two computer classes that I had chosen to take during the year and all the in-school projects I had to partake. Having no computer at home, having my parents now constantly fighting, and with the local library under construction, it is nearly impossible for me to get access to the Internet anywhere but school. As a senior at Fall Hills High School, I will not be able to graduate if I fail several classes. I am suing Fall Hills High School for violating my rights to the Fraud and Abuse Act of 1986.

### ***Testimony of Steven Boulder***

My name is Steven Boulder and I am the senior world history teacher at Fall Hills High School. Recently, I assigned my classes a project on the Holocaust for which they had to research different major events that could be found in books or on the Internet. A few days later, Linda Reed, the librarian, notified me that she had found a student named Arnold Franklin using a certain website for the project. She told Arnold the website could not be visited by the students because of the inappropriate material it contained concerning race and religion. Also, he should have had enough common sense not to go on the site. The agenda clearly states that those kinds of sites are not to be visited. She announced that the site was forbidden to all, and that was her last word on the matter.

The next day was presentation day in the classroom. Mrs. Reed came to watch the presentation. When Arnold began to present, Mrs. Reed and I noticed a change in his appearance: he had cut and dyed his hair blonde, dressed in camouflage clothes, and put in blue contacts. The new look suited him well. We also saw discriminatory yet historical and informative graphics on his poster

and heard some summarized information from the now forbidden site. When he was finished, I began to clap in amazement at the accurate and deep presentation, but Mrs. Reed suddenly left the room.

Four periods later, I was told that Arnold had been interdicted from using the school computers because of "evidence of racial discrimination from discriminative websites." I could not believe it. I talked to Arnold during lunch about this privately. He sobbed because he was now failing two computer classes. He said the principal had told him he could not graduate because of his failing grades. He also said that the principal, Dr. Featherworth, looked at recent site visitations under his username and Mrs. Reed had figured out he was German thanks to a new website called [www.HumansSearch.com](http://www.HumansSearch.com). They both had jumped to the conclusion of racial discrimination. I knew this was unjust. When he told me he was going to take Mrs. Reed and Dr. Featherworth to court for obtaining private information without his consent, I volunteered to support him during the trial.

### ***Testimony of Dr. Amelia Featherworth***

My name is Dr. Amelia Featherworth. I am the principal of Fall Hills High School. On October 21, 2005, Linda Reed, the librarian, rushed into to my office, looking flustered. When I asked her what the matter was, she informed me of a disturbing incident involving Arnold Franklin. Apparently, she saw Arnold in the school media center, accessing a website that promoted anti-Semitism and had warned him that the site was inappropriate. The second I was told this, our school's strict policy forbidding the use of racist media and the participation in acts that promote discrimination came to mind. Mrs. Reed went on to declare that she later watched Arnold present his project in Mr. Boulder's class. She told me that the presentation had been condescending, distasteful, and had contained information obviously taken from the prohibited website. Adding to my suspicions, Mrs. Reed explained that Arnold had arrived at the front of the class in blue contacts, camouflage pants, and a blonde buzz cut. I took Mrs. Reed's claims extremely seriously, as she is one of my most trusted employees; however, I still needed more information.

Using my computer, Mrs. Reed somehow accessed Arnold's search history. He had, in fact, used the prohibited website several times after her warning. She then looked up Arnold's parents on [www.HumansSearch.com](http://www.HumansSearch.com) and found that he was German. I dismissed Mrs. Reed and brought Arnold down to my office. I asked him many times what sites he had visited, even though I already knew. I was trying to see if he would tell the truth. He denied accessing the website I mentioned to him and fidgeted in his chair. I asked him if he had disobeyed Mrs. Reed's orders not to visit that website and he claimed that he had not. I clarified that Mrs. Reed had looked up his background, which she found was German. He started to get a little nervous.

I explained that the website was clearly prohibited on school grounds based on the policy listed in his agenda, and Mrs. Reed had shown me the website in his search history in several places. He started to shout that it was an invasion of privacy and that our school had no right to search his username for the websites.

We banned Arnold from all computer privileges regarding any online projects, research, etc. that he may have to complete during the school year. He will fail two semesters of computer class, which means that he will not graduate with his friends. I think that my actions were justified since he disrespected Fall Hills High School by disobeying our school policy.

### ***Testimony of Linda Reed***

My name is Linda Reed, and I am the librarian at Fall Hills High School. At the time of the incident, a senior, Arnold Franklin, visited our school library to work on a school project. He asked me if I was aware of any websites about the Holocaust that he could use. I generously put together a list of websites and gave it to him. As I was taking the library cart around to ask the students if they had my books to return, I glanced at Arnold's computer and noticed he was on a website that was not appropriate for school use. I told him that it would be unadvisable to use the thoughts and opinions expressed on this website.

I was aware that the project was due the next day, Friday October 25, 2005. I approached his honors world history teacher, Mr. Boulder, and asked if I could watch the presentations. This was so I could see if the student had used the website after I had told him not to. Arnold Franklin's project was very anti-Semitic. There was also a change in his appearance. He sported a new blonde buzz cut, blue contacts, and camouflage pants.

I told Dr. Featherworth of my suspicion and we discussed the matter. I took it upon myself to search Arnold Franklin's parents on a website by the name of [www.HumansSearch.com](http://www.HumansSearch.com) to see what ethnicity he was. I found out that he was German and I alerted Dr. Featherworth immediately. Four periods later she summoned Arnold to her office. She accused him of using websites that were not school appropriate. The student claimed that the sites he had used were only school appropriate, and that after I communicated with him not to use the websites, he had not.

Dr. Featherworth banned him from using any school computers for the rest of the year. This means he will fail two classes that require computer use. He will not graduate with his fellow classmates.

Arnold Franklin is now suing Fall Hills High School for violating his rights to the Fraud and Abuse Act of 1986. I am convinced that this student should continue to have his computer privileges taken away from him. Fall Hills High School has a strict rule. He obviously did not care about the consequences of his irresponsible actions.

## **INSTRUCTIONS**

The plaintiff must prove by preponderance of the evidence that Fall Hills High School violated Arnold Franklin's rights to the Fraud and Abuse Act of 1986 by searching him on [www.HumansSearch.com](http://www.HumansSearch.com), and viewing his school database without his consent or knowledge.

## SUB-ISSUES

1. Was the severity of Franklin's punishment appropriate?
2. Was the site Mrs. Reed used to search for Franklin's ethnicity legal?
3. Can illegally obtained information be used against Franklin?
4. Was the purpose of Franklin's project to inform or discriminate?
5. If Dr. Featherworth had searched his information, would Franklin's computer privacy rights be different?
6. Since Mrs. Reed was able to obtain Franklin's Internet search history, could she have altered it?

## CONCEPTS

1. Burden of proof: by a preponderance of the evidence.
2. Circumstantial evidence vs. direct proof.
3. Reasonable suspicion v. probable cause.
4. Student's right to privacy.
5. Credibility of witnesses.
6. Reasonableness of actions taken.

## LAWS

1. Computer Fraud and Abuse Act of 1986 – It is illegal to modify, destroy, or disclose information gained from unauthorized entry into a computer. It is unlawful to exceed authorization access while knowingly accessing computer information without authorization. This enables protection against unauthorized entry for reasons of national defense and safety. Consequences for violating this Act will result in incarceration.
2. Fall Hills High School Agenda Rules
  - a. Computer Violations – Rule #24, Bullet 13
    1. No student may access inappropriate media in which hate, racism, and prejudice against gender, religion, race, or sexual orientation is encouraged. Consequences for violating this will result in suspension from computer privileges, suspension from school, and/or expulsion from this learning establishment.

# Fire the Flag or the Teacher?

## SCHOOL

Chestnut Ridge Middle  
Sewell  
Grade 8, Honorable Mention

## TEACHER

Lori Bathurst

## STUDENTS

Olivia Dippo, Grace Glennan, Alexis Parrillo,  
Alexandra Richards, Christian Salera

## FACTS

On September 8, 2006, Reese Earching and her father Ben Rhys Earching came across a private message board about political views on the Internet. Reese noticed her history teacher's name and found evidence to prove that it was her. They printed out the information and brought it to the principal of Westside High school. The principal fired Ms. Burna Flag for her political views on flag burning. Ms. Flag argued this matter and decided to sue Mr. Earching for invading her privacy.

## ISSUE

Did Mr. Earching invade Burna Flag's privacy by revealing her private opinions to the school, resulting in the loss of her job?

## WITNESSES

### *For the Plaintiff*

Burna Flag  
Test E. Fye

### *For the Defense*

Reese Earching  
Ben Rhys Earching

## WITNESS STATEMENTS

### *Testimony of Burna Flag*

My name is Burna Flag. I'm 42 years old and have worked as a history teacher at Westside High School for four years. My students earn good grades and there have never been any problems between us or with the way I teach.

I was called down to the principal's office before homeroom on the morning of September 9. I walked in and to my surprise I was not only greeted by the principal but by my student of two years, Reese Earching, and her father. I was asked about my personal opinions dealing with political issues. The principal said that one of my students, which I believed to be Reese, had substantial evidence that I had been expressing some extreme political views. I have never shown or spoken about these beliefs inside of school. Am I for one side more than the other? Yes, of course, but I have never told the students of this.

I asked to see the evidence for which I lost my job, and was handed a web page on which I had posted a flag burning ceremony. I tried to argue the fact that it was a private message board and that the information posted was not meant for students to see, but he said that it was posted on the Internet, and it was available to anyone on the message board. I asked him to reconsider, but he said his decision was final. I believe that Reese and her father have invaded my privacy, and for this reason, I lost my job.



## ***Testimony of Test E. Fye***

Hello, my name is Test E. Fye. I am the creator and administrator of the Private Political Views website. I decided to make this website because a few friends of mine wanted a way to express their political opinions. When I created the website, I did everything possible to make it as private as I could.

The website does not come up on search engines, it cannot be accessed by simply typing in a URL, and all member requests must be approved by me. I research all people who submit a member request thoroughly to ensure the privacy of the other members. I charge a \$30 membership fee for anyone who is serious about joining.

When Ben Earching requested a membership to the website, I did my research, and found no reason not to accept his request. However I do not think Burna Flag should be fired for her opinions. Ben Earching clearly violated Burna Flag's privacy because this website is not open for public viewing.

## ***Testimony of Reese Earching***

My name is Reese Earching. I'm a tenth-grade student at Westside High School. I'm in Ms. Flag's advanced history class. She was also my teacher last year and I must say she always seemed very political.

When I got home from school, I knew I had somewhere to go so I decided to start the homework assignment Ms. Flag gave me right away. When I walked in the house, I found my dad in the kitchen. I asked him if he had a pencil I could use. He told me to go into his office and look next to the computer. When I walked into the room, I noticed my dad had been on some sort of political website. Of course, I was curious. I sat down to see what it was about and saw that it was a political view blog. Perfect, I thought. I can use this for my assignment.

I was reading through the website when I came across Ms. Burna Flag's name. What a coincidence. I started to read it. It advertised a flag burning ceremony to be held on September 11. The blog included the time and address as well. [See Exhibit A.] At the end of the blog, I noticed a quote that I had heard Ms. Flag say many times in class

last year: "History is not a way of learning; it's a way of life." I had thought the name had been just a coincidence, but when I realized it really was my teacher, I was very disturbed. I decided to call my dad in to show him what I had found. My dad was very concerned with this and suggested we bring it in for the principal to see.

The following morning, my dad drove me to school and took me straight to the principal's office. After reading the web page we had printed out, you could tell from the look on his face that he was very disturbed. He called Ms. Flag down to his office where he explained to her that she would be fired for publishing her inflammatory opinions where they could be accessed by students. I do not think it is fair that my father is being sued. He was just concerned about my education and that of her other students. I think it's hard for teachers, especially history teachers, to hide their true political views from their students.

## ***Testimony of Ben Rhys Earching***

I'm Ben Earching, Reese's father. I'm a journalist and had to write an article for the September 11 issue of the *Westside Review*. The main thing I was looking for was political views. The process of finding a website was very difficult, but then I finally found a private political views message board. I requested membership, and my request was accepted. I was doing my research on it when I decided to get something to eat. I walked into the kitchen. As I was getting my lunch together, Reese walked in from school. She walked into the kitchen and asked where the pencils were. I told her to look in my office, right next to the computer.

A little while later, I heard Reese call my name, so I went into my office to see what she needed. She had found a statement about flag burning that was written by her history teacher, Ms. Burna Flag. I was very concerned about this. I suggested we should show it to the principal. I printed it out and the very next day I drove Reese to school and took her to the principal's office.

We showed the blog entry to the principal and he read it and decided immediately to fire Ms. Flag. It seemed to advocate some pretty extreme things, I mean burning a flag on September 11 seems

completely disrespectful to the memory of the Americans who lost their lives. Ms. Flag claims I violated her privacy by bringing it into the school. I do not believe I have violated her privacy in any way considering that I am a member of the message board. She is now suing me and I do not think that I should be held accountable for the principal's decision to fire her.

## INSTRUCTIONS

Plaintiff must prove by a preponderance of the evidence, the greater weight of credible evidence, that Mr. Earching did indeed violate Ms. Flag's privacy which led her to be fired.

## SUB-ISSUES

1. Did Mr. Earching have the right to print out Burna Flag's statements and show the principal?
2. Did Ms. Flag have an expectation of privacy for the information posted to a private website?
3. Did Ms. Flag hide her identity to the extent of her ability?
4. Did Reese have the right to look at the website in her dad's office?

## CONCEPTS

1. Preponderance of the evidence.
2. Invasion of privacy.
3. Credibility of the witnesses.
4. Freedom of expression.

## LAW

### Modern Privacy Law

1. Because privacy is an emerging right, a discussion of privacy is typically a list of examples where the right has been recognized, instead of a simple definition. Privacy can be discussed in two different directions: the nature of the right and the source of the right (e.g., case law, statute, Constitution).

The following are examples where privacy rights have been recognized:

- a. Publication of private facts, for example, income tax data, sexual relations, personal letters, family quarrels, medical treatment, photographs of person in his/her home.
- b. Publication that places a person in a false light, which is similar to defamation. A successful defamation action requires that the information be false. In a privacy action the information is generally true, but the information created a false impression about the plaintiff.

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<http://www.rbs2.com/privacy.htm#anchor333333>

## EXHIBIT A

The American Message Board

Newest Blog: Posted September 7, 2006

Hello,

I will be hosting our fifth annual Flag Burning ceremony at 5 p.m. on Monday, September 11. The address is 15 Burn Street. Look for a tall, shady brick building. Hope to see you there!

-Burna Flag

"History is not a way of learning; it's a way of life."

[www.theamericanmessageboard.com/friendswithopinions](http://www.theamericanmessageboard.com/friendswithopinions)

# The Golden Dove

## SCHOOL

Valley Middle  
Oakland  
Grade 8, Honorable Mention

## TEACHER

Jeanne Schulze

## STUDENTS

Danielle Andrade, James Applebaum,  
Matthew Baczewski, Joseph Gentiluomo,  
Brianne Hostutler, Danielle Imhoff, Kayla Knox,  
Christina Mastrangelo, Jeffrey Teichman,  
Kyle Whittle

## FACTS

Ivanna Ryte, a student of literature at Trenton Academy of Knowledge and Excellence (TAKE), authored a poem called “The Golden Dove” (Exhibit A). Noah Sboth, Ms. Ryte’s close friend and classmate, witnessed her typing the poem on January 16, 2006. On January 20, 2006, Ms. Ryte sent Mr. Sboth and four other friends the completed poem to critique. When sending the poem to Mr. Sboth, she left it as a comment on his YourZone, an online community website.

Some days later, Guy Tarplaya, a music major at TAKE, was browsing his friends’ YourZones and came across the poem Ms. Ryte had left as a comment for Mr. Sboth a few days earlier. Being a struggling musician, Mr. Tarplaya was always looking for inspiration for new songs. His band, Under\_Score, was yet to be acknowledged by anyone significant in the professional music industry. Mr. Tarplaya reviewed the poem numerous times throughout the next few weeks. One day he experienced an unattributed inspiration to compose lyrics for a song. However, prior to beginning the song, spring break arrived, and Mr. Tarplaya went on vacation leaving his laptop behind and forgetting about the poem.

Upon his return from spring break, without conscious recollection of Ms. Ryte’s poem, Mr. Tarplaya wrote the lyrics to a new song. Afterward, Under\_Score released the song “Golden Dove” (Exhibit B), which soon became a hit single. Ms. Ryte heard the song, recognized her words in the lyrics, and is suing Mr. Tarplaya for plagiarism,

seeking a portion of the proceeds from the sale of the CD for use of her words and credit as one of the writers of the song.

Mr. Tarplaya denies consciously copying Ms. Ryte’s poem. Rather, he may be suffering from cryptomnesia, a mental phenomenon in which a person reads, hears, or sees something so many times that he or she begins to think it is his or her own idea.

## ISSUE

Is Guy Tarplaya liable to Ivanna Ryte for the act of plagiarism by including verses of her poem in his new hit song?



## WITNESSES

### *For the Plaintiff*

Ivanna Ryte

Noah Sboth

### *For the Defense*

Guy Tarplaya

Howie Feele, Ph.D.

## WITNESS STATEMENTS

### *Testimony of Ivanna Ryte*

My name is Ivanna Ryte. I am 19 years old and currently attending the Trenton Academy of Knowledge and Excellence (TAKE) in Trenton, New Jersey. I am majoring in poetry, which has been my lifelong passion. On January 16, 2006, I wrote a poem entitled "The Golden Dove," which was based on my perspective of love. My friend Noah Sboth was with me when I wrote the poem. Four days later I sent the poem to five friends, including Noah Sboth, through their YourZones. YourZone is a website where teenagers can design a page based on their personalities and interests in order to communicate with others who share the same interests.

On June 6, 2006, there was buzz around the school that Under\_Score, the band of fellow student Guy Tarplaya, had landed a recording contract, and its first single was to be released that day. On my way home from school, I heard the DJ on radio station X200 introduce the new hit single from Under\_Score entitled "Golden Dove." Intrigued, I turned up the radio only to realize that the lyrics sounded familiar. I soon recognized some of them to be excerpts from the poem I wrote entitled "The Golden Dove." Quickly piecing together the puzzle, I concluded that Mr. Tarplaya had seen my poem on our mutual friend Noah Sboth's YourZone page. Apparently, Mr. Tarplaya took the words of my poem and turned them into a song.

He did not credit me, nor did he obtain my permission. I am deeply offended and believe that Guy Tarplaya has robbed me of the opportunity to receive praise from the public and to obtain credit for my creativity. I am now suing Guy Tarplaya for plagiarism.

### *Testimony of Noah Sboth*

My name is Noah Sboth, and I attend TAKE. I have an account on YourZone, which is a social networking website where I can post information about myself. On YourZone I have many friends including Ivanna Ryte and Guy Tarplaya, who both attend TAKE. I am in the poetry program with Ms. Ryte. She is an excellent poet and is always getting praise from our teachers. On January 16, 2006, I was with Ms. Ryte when she wrote a beautiful poem entitled "The Golden Dove." She sent the poem through YourZone to five of her friends, including me, as she normally does with her poetry.

Because Mr. Tarplaya is on my friends list, he can access my YourZone page as frequently as he wants. Therefore, it is very likely that he saw Ms. Ryte's poem on my YourZone page.

### *Testimony of Guy Tarplaya*

My name is Guy Tarplaya. I attend TAKE, and I am majoring in music. I am also the vocalist and lead guitarist of the rock band Under\_Score. On January 25, 2006, I was browsing YourZone when I found Ivanna Ryte's poem on Noah Sboth's YourZone page. I read the poem many times between that moment and the day I went away for spring break in March.

After spring break, I wrote lyrics for my band's new song, which is entitled "Golden Dove." My band and I composed the music to go with the lyrics. We sent numerous copies of our demo CD to various record companies in the hope of getting signed. Utterly impressed, North Jersey Records offered us a recording contract, which we hastily accepted. "Golden Dove" became a fan favorite and a hit single. Shortly after the song was released, I was informed that I was being sued. Ivanna Ryte, one of my classmates at TAKE, was suing me for plagiarism of one of her poems. I do recall reading her poem but do not remember her exact words. I deny consciously plagiarizing her poem.



## Testimony of Howie Feele, Ph.D.

My name is Dr. Howie Feele. My expertise is psychoanalysis, especially in the field of cryptomnesia. I was contacted and asked to testify in Guy Tarplaya's defense to support his claim of cryptomnesia. I have analyzed him and concluded that he had no recollection of Ms. Ryte's poem while writing his song. Therefore, his having cryptomnesia is a very likely explanation as to why Mr. Tarplaya's song has common elements with Ms. Ryte's poem.

Cryptomnesia is a mental phenomenon in which the subject reads, hears, or sees something so many times that he or she begins to think it is his or her own idea. One well-known case of cryptomnesia involved the former Beatle, George Harrison. George Harrison wrote a song called "My Sweet Lord," which is very similar to a song by The Chiffons entitled "He's So Fine." He denied consciously copying lyrics from "He's So Fine" and was found to be suffering from cryptomnesia.

From what I have gathered, Mr. Tarplaya was a fan of Ms. Ryte's poetry. One poem in particular, "The Golden Dove," struck him, and he read it many times. It sank into his subconscious; without realizing it, he began to assume the words of the poem were his own. This was around the time Mr. Tarplaya was beginning to write his song.

In *The Psychology Journal: Learning, Memory and Cognition*, a psychologist described a series of experiments demonstrating cryptomnesia. The researcher had groups of four people generate words for a category such as sports. Later, the subjects were separately asked to repeat their own responses and make up new answers. In this test 3 – 9% of the people, without conscious recognition, used other's contributions instead of making up new answers.

Mr. Tarplaya reported to me that he had not looked at Ms. Ryte's poem while writing the lyrics to his song. It was not until she sued him that he reread the poem. However, he is adamant in his belief that he did not plagiarize. My conclusion is that Mr. Tarplaya may be suffering from cryptomnesia.

## INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that the defendant committed the act of plagiarism by copying the plaintiff's work.

## SUB-ISSUES

1. Did Guy Tarplaya have access to Ivanna Ryte's poem on the Internet?
2. Is Guy Tarplaya's song substantially similar to Ivanna Ryte's poem?
3. Are the concepts of "love" and "golden dove" considered to be "unprotected ideas" in the eyes of the law for the purpose of plagiarism?
4. May Guy Tarplaya use cryptomnesia as a plausible defense to plagiarism?

## CONCEPTS

1. In order to prove plagiarism, the plaintiff must show that the defendant had access to the plaintiff's work and that the plaintiff's works and the defendant's works are substantially similar.
2. Even if both works are substantially similar, the ideas involved may be of such a general nature that they may be "unprotected ideas" for the purpose of plagiarism.
3. Cryptomnesia, or subconscious copying, has more recently been rejected as a defense to music plagiarism.
4. The burden of proof in a civil case belongs to the plaintiff, who must prove the case by a preponderance of the evidence.

## LAW

1. Plagiarism - The act of appropriating the literary composition of another, or parts or passages of his writings, or the ideas or language of the same, and passing them off as the product of one's own mind. - (From *Black's Law Dictionary*)

## 2. Case Law

- A. *Brown v. Perdue* - A trial judge found that Dan Brown, author of *The Da Vinci Code*, did not plagiarize elements of Lewis Perdue's novels, *Daughter of God* and *The Da Vinci Legacy*. The trial judge stated "a reasonable average lay observer would not conclude that *The Da Vinci Code* is substantially similar to *Daughter of God*; any slightly similar elements are on the level of generalized or otherwise unprotectable ideas."

This case was upheld on appeal to the Second Circuit Court of Appeals, and the U.S. Supreme Court in 2006 declined to review that decision.

- B. *ABKCO Music, Inc. v. Harrisongs Music, Ltd.* - George Harrison was sued for plagiarizing lyrics from the Chiffons' "He's So Fine" when he wrote "My Sweet Lord." The court states that subconscious copying is not a defense to plagiarism.

- C. *Three Boys Music v. Michael Bolton* - Michael Bolton was found to have unconsciously plagiarized lyrics from the Isley Brothers' "Love is a Wonderful Song" when he released a song by the same name. In 2001, the U.S. Supreme Court declined to review the Ninth Circuit Court of Appeals decision to uphold the trial court. The case concludes that the fact that Bolton's plagiarism may have been unconscious does not relieve him of liability.

3. All three cases above also state that in the absence of direct evidence of copying, proving plagiarism requires the plaintiff to prove the defendant had access to the plaintiff's work and that the two works are substantially similar.

Here is a comparison of the poem and song:

### EXHIBIT A

"The Golden Dove" by Ivanna Ryte

**Love the feel,  
Feel the love,  
Your heart is not your own,  
Belongs to the golden dove,**

The golden dove -

No thoughts to mind  
It's stupid and heartless  
It's deaf and it's blind

**Your heart and soul are prisoners,  
Of this golden dove,  
And this golden dove has  
another name,  
It's also known as Love.**

This golden dove has two friendships,  
Their names are Pain and Sorrow,  
They'll leave you alone on your bed,  
Wishing for tomorrow,

They'll kill your soul with no pity,  
And crush your heart and mind,  
But one day they'll join you in friendship,  
When your true lost love you find.

**Love the feel,  
Feel the love,  
Your heart is not your own,  
Belongs to the golden dove...**

### EXHIBIT B

"Golden Dove" by Guy Tarplaya

Walking by the water, alone in the night  
The sand shining under my feet,  
the seagull's a beautiful sight.  
Looking out to the sea, the water was cold and black  
But something glowed far out, and I am sure of that.

**Love the feel,  
Please feel the love,  
Your heart is not with you,  
It is now the golden dove's**

From far out it flew  
circling over my head  
Something I've never seen before,  
nothing I could have read  
The sight so magnificent, I could not believe my eyes  
From there on, in the shape of a bird,  
the golden light would rise.

**Your heart and soul are captives,  
of the golden dove  
And this beautiful bird has one more name,  
It is also known as love**

It controls your mind and heart,  
with power you can't deny  
It makes you crazy with passion,  
doing things you'd never try  
Sometimes you cannot get enough  
of it, but others you want it to end  
At points it feels like your enemy,  
but you want it to be your friend

**Love the feel,  
Please feel the love,  
Your heart is not with you,  
It is now the golden dove's**

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*Special thanks to Carol Russek, Esq.*



# The Case of the Texting Student

## SCHOOL

Warren Township Middle  
Warren  
Grade 8, Honorable Mention

## TEACHER

Susan Cooper

## STUDENTS

Candace Elmquist, Shaan Gurnani,  
Christopher O'Meara, Geoffrey Tanner,  
Isha Vasudeva, Zachary Wasserstein, Kevin Wu

## FACTS

On April 25, 2006, at approximately 2 p.m., Dr. Catherine Razy, a college professor at Orange University, was in her office grading compositions for her education graduate class titled Preparation for Student Teaching 401.

During office hours when college students are invited to visit their professors, Cindy Lulu, an elementary education major supervised and taught by Dr. Razy, visited her professor to discuss her concerns of eligibility for student teaching. Dr. Razy informed Miss Lulu that she did not have a high enough grade point average (GPA) to begin student teaching in the fall, and Miss Lulu began to sob hysterically. This news would force Miss Lulu to repeat the 401 class in the fall. Dr. Razy reached for her purse to obtain a tissue for Miss Lulu.

While reaching for the tissues in her purse, a bottle of prescription pills rolled onto the table. Miss Lulu picked up the bottle and read the label. The label was a prescription for Serdolect®, a drug commonly used to treat psychosis and schizophrenia. While Dr. Razy reached for the medication from Miss Lulu, a short discussion began. Dr. Razy said this medication was her personal business. Miss Lulu excused herself from the meeting and left sobbing.

The next day, Miss Lulu text messaged her classmate, Don Toldya, the news that Dr. Razy is crazy and taking medication for it. Over the course of the next 24 hours, Cindy text messaged the entire class about the meeting she had with Dr.

Razy. Eventually, the news was downloaded onto a student message board on the Internet. This information was sent to over 20,000 students enrolled at the university. Cindy met with Gene Dean, dean of students, to argue that Dr. Razy is not fit to make decisions for student teaching based on her mental illness.

The class members filed into the Dean's office contending that Dr. Razy is not able to make decisions on behalf of the education students. Dr. Razy is suing Miss Lulu for violating her privacy through the misuse of text messaging and for defamation of character.

## ISSUE

Did Cindy Lulu illegally violate the medical privacy of Dr. Catherine Razy by using text messaging on a cell phone?

## WITNESSES

### *For the Plaintiff*

Dr. Catherine Razy  
Gene Dean

### *For the Defense*

Don Toldya  
Cindy Lulu



## WITNESS STATEMENTS

### *Testimony of Dr. Catherine Razy*

My name is Catherine Razy. I am a professor at Orange University and have been working here for 10 years. When I was hired, I went through a long process just to obtain an interview. I was chosen out of over 50 people for this position.

My employers were aware of my medical condition and believed that it wouldn't affect my teaching as I was being treated for it. I don't share my personal life with my students, as most teachers do not. Not one of my students in my 10 years of teaching has known about my medical condition. Students will treat me with less respect and I feel that there is nothing more important than respect in a teacher-student relationship.

When Cindy Lulu came into my office on April 25, I was prepared to inform her that her performance in the 401 class would not suffice and that she would not have a high enough grade point average to student teach. When she realized what this meant to her future, she started to sob. I have never had a student do this in front of me before and was quite taken aback. I reached into my purse to grab a tissue to comfort her and my prescription medication rolled out of my purse. Cindy reached over to hand it to me. As Cindy read the label and realized what it was for, her expression turned to dismay.

Apparently her mother suffers from schizophrenia and she knows what the medication treats. Cindy told me, very confidentially, that her mother uses the same medication and we shared our stories. It was a personal conversation and I felt confident that it would not be used against me. I reached for the bottle and told her I would appreciate it if she wouldn't mention my medication to any other students. She agreed she would not do so. I made it very clear that she was not to share this information with anyone because it could be taken out of context. The next day I was called into Mr. Dean's office and was informed that students had found out about my condition, and they were complaining about my job performance.

### *Testimony of Gene Dean*

My name is Gene Dean and I am the Dean at Orange University. At Orange, we take pride in hiring only the best staff members to support our student body of over 20,000 students. Each member of our staff has to go through a rigorous hiring process before being hired. First, we look at each applicant's resume and background. After reviewing information about our candidates, we invite them in for an interview. During this time, the applicants are able to share more personal information with us.

Dr. Catherine Razy, a professor here at Orange University, has been employed for 10 years. She has received exemplary performance reviews and has served as a mentor and advisor for hundreds of education students. Dr. Razy voluntarily shared her medical information with me when she was first hired. It has never interfered with her ability to teach, evaluate and recommend students for student teaching assignments. Personally, I believe Dr. Razy is one of the best staff members here at Orange University and I consider her an expert in the field of education and a good judge of character.

Her evaluation of Miss Cindy Lulu, although objective and subjective, is legitimate with me. I believe Cindy Lulu is not ready to student teach and should repeat the course.

### *Testimony of Don Toldya*

My name is Donald Toldya. I am a senior in Dr. C Razy's student teaching class and a classmate of Cindy Lulu. On April 25, I overheard Dr. Catherine Razy call Cindy Lulu to her conference table in her office after class. When Cindy came out, I saw her sobbing and running out of the office.

The next morning, I woke up to find a text message saying that Dr. C. Razy had a mental illness. The text said, "OMG! C. Razys nuts. thats y she didnt pass me. she's skitzo and crazy and now im not student teachin. more later". I received this text message from Cindy and noticed that it was text messaged to everyone in our class, saying that Dr. Razy is mentally insane and is not fit to teach under this serious condition. The text messages flew back and forth from everyone. It was an epidemic.

I do agree if we continue to have her as our professor, then she may affect our chances of getting assignments to student teach because she doesn't have the mental capability to make appropriate recommendations. I agree with Cindy and think she saved us all from having to repeat the class. Now that the Dean is handling it, I believe this news is in our favor. No one with a mental illness such as schizophrenia should be making decisions about anyone's future. Dr. Razy is not fit to teach college.

### ***Testimony of Cindy Lulu***

My name is Cynthia Lulu. I am a senior in Dr. Razy's student teaching class. I am majoring in elementary education because I love kids and believe I can give back to the world. I believe that children should have the best education possible and I can provide that for the future generations in our world.

I have been doing very well in Dr. Razy's class; I never thought that I wouldn't start student teaching in the fall. When I met with Dr. Razy and found this out, I was taken aback. I thought that I was passing every test and exam. I didn't, and still don't, understand why I didn't have a high enough GPA.

When I found out about my teacher's medical condition, she and I shared a close moment together. My mother was severely schizophrenic and I know how it ruined her career. My mother was on the same drug and her mind deteriorated until she finally committed suicide.

I felt I should share Dr. Razy's medical condition with my other classmates, and I did make an appointment to discuss this with the Dean. They have a right, as do I, to know whether their teacher can give them a proper education. I feel because of this condition my teacher couldn't give my classmates and me a sound evaluation. I believe that this should have been exposed a long time ago. She shouldn't have kept this a secret.

I did text message the class, but I didn't say anything that was not true. It's not like Dr. Razy told me this information in confidence. She told me everyone knew about her condition. I exercised my freedom of expression to protect my classmates. This was not a defamation of character. Dr. Razy told me the whole truth. Shouldn't everyone know it?

## **INSTRUCTIONS**

The plaintiff must prove by a preponderance of the evidence that Miss Cindy Lulu, a student at Orange University, illegally violated Dr. Catherine Razy's personal and medical information through the misuse of text messaging. The plaintiff must prove that the defendant, Miss Cindy Lulu, defamed her character, thus impacting her reputation as a professor of college students.

## **SUB-ISSUES**

1. Did Cindy Lulu make untrue statements about Dr. C. Razy's medical condition?
2. Did Cindy Lulu violate a verbal contract between her and Dr. Razy not to share the medical information with anyone?
3. Are verbal contracts admissible in court?
4. Does Dr. Razy have to defend her performance as a professor based on her medical condition?
5. Did Cindy Lulu defame Dr. Razy's character?

## **CONCEPTS**

1. Burden of proof; preponderance of the evidence.
2. Fair and bona fide comment.
3. First Amendment right of freedom of expression.
4. Privacy in cyberspace.

# LAW

1. First Amendment of the U.S. Constitution guarantees the right of freedom of speech.
2. Defamation is defined as intentional false communication, either published or publicly spoken, by words, signs or visible representations that injures another's reputation or good name.
3. Fair and bona fide comment must be based on true facts or a fair and bona fide statement in matters of public interest.
4. Verbal contract is binding if there was an intention of the parties to assume a legal obligation. There is normally no special act required to show this, the intention is normally inferred from the actions of the parties.





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