

Exam Number: \_\_\_\_\_

GEORGETOWN UNIVERSITY LAW CENTER  
EXAMINATION  
"THE LAW OF INFORMATION PRIVACY"  
(3 HOURS)

Professor Rotenberg

May 6, 2005

INSTRUCTIONS:

1. This is an OPEN book examination.
2. You should select three of the following four questions. Each question will receive equal weight. There will be no additional credit for answering a fourth question.
3. Use only one side of the paper. Write clearly.
4. I will consider only the material that is in the exam book or in the typed submission.
5. Organize your answers carefully. Note the particular format requested in each question.
6. Laptop users: To write your exam answers, use a blank document screen in Word or WordPerfect (or vi or teco) as directed by the proctor(s). Laptop users are permitted to access other documents, outlines, notes, files, macros, etc. on their hard drives (or other storage devices) and are also permitted to access the Internet. Access to the Internet does not mean that students may consult one another or any other person during the exam by computer or other electronic device. Functions such as Autocorrect, Spell Check and Grammar Check must be disabled. Palm Pilots and other electronic devices that store information may be used in the exam room.

This exam consists of 4 pages including this cover page. Please be sure that your exam is complete.

PLEASE DO NOT TURN THE PAGE  
UNTIL THE PROCTOR GIVES THE SIGNAL

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Question 1

You are a clerk to a federal appellate judge.

Before the judge is an appeal from a lower court decision upholding a drug testing policy for students enrolled in the Bologna School District. The Student Drug Policy applies to all students in grades four through twelve. Students are tested at the beginning of each school year. In addition, once each week, schools randomly test 1% of the students. Physical privacy is provided in the collection of the urine sample. The tests are designed to detect only the use of illegal drugs. The superintendent, school principals, and teachers have access to the test results. Students who test positive are subject to a range of disciplinary actions.

Anonymized records, identified by school and grade but lacking personally identifiable information, are retained by the Bologna School District. To aid law enforcement efforts, this data is made available to the local police.

Although the Bologna School District has not experienced a significant drug problem, the superintendent of schools has indicated that he would like to send "a clear message" that there will be no drug use in the Bologna school system.

Draft a brief memo for the judge as to the constitutionality of the Bologna School District Student Drug Policy.

Question 2

You are counsel to the Senate Judiciary Committee.

Several Members of the Committee have expressed concern about the privacy implications of DNA databases.

They generally support the collection of DNA samples from those who have been convicted of serious felonies, but they are concerned about the possible use of DNA samples for other purposes including employment and insurance determinations. They also want to ensure that the DNA samples that are collected for criminal justice purposes are accurate and properly maintained. And they support the use of DNA samples for exculpatory purposes, i.e. to prove innocence in a criminal proceeding.

Draft a brief memo for the Committee that outlines the key provisions of a DNA Privacy Protection Act.

### Question 3

You are counsel to the Chief Privacy Officer of the Department of Homeland Security.

She has asked you to undertake a brief review of the "Other Requirements" provision of the Real ID Act, sec. 202(d), under the outline set out in the DHS "Framework for Privacy Analysis of Programs, Technologies and Applications."

Outline a brief memo for the Chief Privacy Officer that identifies two or three of the Requirements that could be the most problematic under the DHS Framework for Privacy Analysis.

### Question 4

You are counsel to the Commissioner of the Bureau of Customs and Border Protection (CBP).

The European Court of Justice has just annulled the 2004 EU-US agreement on the transfer of airline Passenger Name Record (PNR) data. The agreement, which was supported by the European Commission and European Council but challenged by the European Parliament, provided a legal basis and some privacy protections for the transfer of passenger information on Europeans air travelers to the United States government under a border control program administered by the CBP.

The Commissioner of the CBP has asked you to provide a brief memo that will answer two questions: (1) how does the

European protection for airline passenger data compare with the US protection for airline passenger data, and (2) what options are now available to the United States to ensure that European passengers traveling to the United States are properly identified before they enter the country.

END OF EXAM

WRITE NOTHING AFTER TIME IS CALLED