Playing it too safe?

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FRI-C07
Education Session

Boston Convention and Exhibition Center
Room: 205
PDH Credits: 1.5

Are playgrounds today giving children what they need? This panel for landscape architects, project managers, and advisers will balance risk and safety in planning play spaces and consider how play environments have changed in the 21st century, from both the European and American practitioners’ perspectives.

Learning Objective

1) Discover what it means to design-and to grow up-in a risk-averse society.

2) Understand the risks (real and perceived) in planning outdoor play environments.

3) Enumerate the differences and similarities between European and American playground safety standards.

4) Learn to form creative design and community solutions that balance risk and play value.

Speakers:

Jane Clark Chermayeff Architectural Playground Equipment, Inc.

Philip Howard Common Good

Julian Richter & Peter Heuken Richter Spielgeräte GmbH
Playing It Too Safe?

I. Introduction, Jane Clark Chermayeff, moderator (15 min)
   a. To consider how play has changed in the 21st Century
      • Elimination of recess, reduced play radius, increased screen time
   b. To consider playgrounds designed to encourage free play
      • Key differences between US and European approaches to play.

II. Risk: Perception vs. Reality, Philip Howard (15 min)
   a. Perceived risk versus reality
      • Policy making decisions based on a situation’s effect on an individual vs. effect on everyone
      • American drive toward risk elimination vs. risk management
   b. American safety standards
      • CPSC Handbook for Public Playground Safety aim to protect against ALL risks, including tripping
      • Influence of legal risk on policy choices
   c. Risk as necessary for opportunity and as the “attractive part” of play

III. Balancing Risk and Play Value, Julian Richter (15 min)
   a. Play value, the joy of play and the needs of children and their caretakers
      • Play for all—equipment for all the senses and dimensions, including teens and adults
   b. Re-introducing children to nature
      • Natural materials—i.e., wood, water, sand
      • Integration of elements into the site
   c. Approach to playgrounds that balances risk and play value
      • Children’s development is shaped by their experiences
      • Risk is necessary to learn self-protective behavior
      • Design playground environment and equipment to meet the developmental needs of the various age groups
   d. The underlying criteria for establishing the European Safety Standards

IV. Moderated Conversation (15 min)
   a. Inhibiting factors to optimal playground design
      • American vs. European
      • Materials
      • Site Management
   b. What is required to impact the ASTM/CPSC safety standards in the US to achieve positive outcomes for children?
      • Reclaim legal authority in drawing enforceable boundaries of reasonable risk
      • Create “Risk Commissions” to offer guidance on where to draw the line
   c. Real future opportunities for playground design that push the envelope
   d. Conclusions

V. Audience Questions and Conversation (30 minutes)
Speaker Biographies

Jane Clark Chermayeff

Jane Clark Chermayeff has 30 years of experience advocating for improved communication between designers and the needs of children. In 2010, she founded Architectural Playground Equipment, Inc. (APE), the U.S. partner of Richter Spielgeräte GmbH. An educator and planner, Chermayeff co-chaired the 1990 International Design Conference in Aspen, “Growing by Design,” and continues to lecture extensively on design and play, most recently at the MoMA symposium, “Child in the City of Play.” Chermayeff has held positions at the Smithsonian Institution, National Endowment for the Arts, and Smithsonian Cooper-Hewitt National Design Museum, where she was the first Director of Education. jcc@jcc-nyc.com

Philip Howard

Philip Howard is an author and national leader of legal reform. He has advised elected leaders of both parties and wrote the Introduction to Vice President Al Gore’s book Common Sense Government. In 2002, Howard formed Common Good, a nonpartisan coalition dedicated to restoring common sense to America. Common Good has worked with health care and child development organizations to create guidelines for healthy play. Howard’s new book, The Rule of Nobody, will be published in January 2014. He is a partner of the law firm Covington & Burling, LLP.

Julian Richter

Julian Richter, Sr. is the Managing Director of Richter Spielgeräte GmbH, one of Germany’s largest play equipment manufacturers. The company is renowned for its advanced designs and its commitment to child-centered solutions. As the former chair of the European Committee for Standardization’s Working Group on Installation and Maintenance, he developed the criteria and test for the majority of the existing European safety standards or European Harmonized Standard for Commercial Playground Equipment (EN).

Peter Heuken

Peter Heuken is Richter’s Director of Special Projects worldwide. He began his Richter career in 1992, bringing to the team expertise in wood engineering and project planning. During his time at Richter he served as project lead for a number of award-winning playgrounds including the Diana Princess of Wales Memorial Playground in Kensington Gardens, London and Center Parks in the Netherlands. From 2004 to 2007 Peter worked as Technical Director and Concept Manager at Playmobil Leisure Park. In 2008, Peter returned to Richter and was named Director of Special Projects worldwide. In the USA, he works with Architectural Playground Equipment to support play and playground design for such firms as MVVA, AECOM, Sasaki Associates and West 8.

Reference Material

Putting Playground Safety in Perspective

Reported Injuries per Year, age 12mo-14yr

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Data from the US Consumer Product and Safety Commission's National Electronic Injury Surveillance System. Search parameters: Adjusted Estimate of all injuries for children age 12mos to 14 years associated with the following CPSC codes. (https://www.cpsc.gov/cgibin/NEISSQuery/home.aspx)

- 3273 Playground equipment, not specified
- 611 Bathtubs or showers
- 5040 Bicycles or accessories (exc. Mountain or all-terrain)
European and US safety standards for playground equipment

**EN 1176**: European Standards for Playground Equipment
(see EN 1177 for playground surfacing standards)


(Other ASTM standards exist for playground surfacing and home playgrounds)

**Consumer Product Safety Commission (CPSC)**: Handbook for Public Playground Safety
CHAPTER 2

THE FREEDOM TO TAKE RISKS

The houses on Wildemere Avenue in Milford, Connecticut, sit under the shade of towering hickory and oak trees. It’s the kind of old-fashioned neighborhood where both young families and retired couples live next to one another, like a scene from a Norman Rockwell painting. You can practically see the young boy pulling his red wagon down the street.

Milford is the last place you would expect to see pushing the boundaries of social policy defining unacceptable risks of life. Since the 1960s, as we’ve seen, few areas of daily life have been immune from legal scrutiny. Food, drink, play, social relations of almost every sort, you name it. But the town fathers of Milford introduced a new area of legal scrutiny—nature itself.

In 2005, Una Glennon, a grandmother who lives on Wildemere Avenue, put in a pool for the enjoyment of her fourteen grandchildren. The hickory trees spread their branches all around her house. That was the problem. One of her grandchildren is allergic to nuts and can’t play in the pool with the other children when the nuts are falling. Mrs. Glennon sent a letter to the mayor demanding the removal of three large hickory trees on the street near her
house. What’s a mayor to do? Allergy to nuts is indeed a serious risk to those who have it, and requires that parents or caretakers of children always carry a shot of epinephrine to counteract the reaction when there is unintended exposure. On the other hand, the neighbors on Wildemere Avenue weren’t happy at the prospect of leaving a gap in the middle of the block, three stumps instead of a canopy of shade.

Where do you draw the line? Public choices are not usually matters of right and wrong. They require balance and trade-offs of one sort or another—here balancing the extra effort to safeguard the child, on the one hand, against the majesty of trees rising over sixty feet above Wildemere Avenue. Deciding between competing interests is one of the main jobs of government. But how does an official decide? The philosopher John Rawls famously suggested that social choices should be made behind a “veil of ignorance,” where the decider here would imagine that he could end up in the position of either a tree lover or someone with a nut allergy.

The logical implications here would probably be enough to convince me. Cutting down trees to accommodate people with allergies could be ominous news for trees that reproduce themselves with nuts—walnut, chestnut, pine, pecan, and hazelnut as well as hickory trees. About one out of 200 Americans is allergic to tree nuts. Making all their neighborhoods safe from nuts could spawn a new logging industry. And what do we do about all the other serious allergies—say, bee stings, shellfish, and pollen? Do we start a national drive to obliterate bees? Doctors say that there is no safe zone for people with severe allergies; children with an allergy have to learn to be always on their guard. Balancing the risks of allergies against nature’s realities should lead us down a path toward personal caution, not obliteration of nature.

Balancing these interests is not what happened in Milford, however. In the letter to the mayor, Mrs. Glennon enclosed a letter from a doctor suggesting the possibility of dire consequences to the child. Risk to the child, no matter how remote, was enough to
Life Without Lawyers

make the mayor capitulate. The town ordered the trees chopped down. According to the mayor, he had no choice. “It really came down to taking a risk,” he said, “that the child may be sick or even die.”

Risk has become a hot button in public and private decisions. Press the risk button, and discussion pretty much ends. If there’s a risk, better not do it. Part of the problem, as we’ve seen, is fear of lawsuits. The accusation “You took a risk” is reason enough to get sued. But there’s something deeper that’s infected our cultural psyche. There’s a compulsion to move heaven and earth to eliminate a risk even if in the clear light of day, everyone agrees that the effect is a grotesque misallocation of resources. There was a panic to require flame-resistant pajamas for children in the early 1970s—at a cost seven times greater than the cost of smoke alarms that would save the same number of lives. Then it turned out that the flame retardant was carcinogenic, and it had to be banned. Certain pesticides that result in dramatically greater safety and increased crop productivity have been banned because of minuscule cancer risks.

Humans are wired by evolution to deal with immediate risks—uh-oh, there’s a saber-toothed tiger and I’d better do something about it. Human nature exaggerates this tendency for vivid risks, such as fear of shark attacks—the phenomenon identified by Nobel laureates Daniel Kahneman and Amos Tversky as the “overweighting of low probabilities.” But an interdependent society presents risks at many levels; exhausting resources to deal with one risk means that we are defenseless against other risks.

Risk, by definition, is a question of trade-offs and odds—accepting one set of risks in order to accomplish something (or in order not to incur worse risks). Build a heavy car for maximum safety and it may be less affordable, as well as burn more fuel. A key role of public leadership is to sort through these risks and put resources and legal protections where they are most effective. These are the choices we refer to as public policy.
In the age of individual rights, however, American leaders have been told not to focus on the odds. Instead they focus on the effect on one person. No one wants bad things to happen to other people, but in America today we try to make public policy by looking at the effect of one situation on one person. Uncle Sam has become a kind of mad scientist, peering all day through the microscope to identify risks to individuals instead of looking at the effect on everyone. Any risk is cause for a campaign to eradicate it. With enough money and effort, we assume, we can create a world without danger or disappointment. The superfund pollution cleanup, for example, required dirt to be purified to a level where people could eat it every day and not get sick. As Justice Stephen Breyer observes in *Breaking the Vicious Circle*, redirecting those resources to vaccinating children against meningitis would have dramatically greater health effects for urban children.

Risk, unfortunately, is inherent in all life choices. Every choice involves a risk. Every movement involves a risk. Doing nothing involves risk. Crossing the street, exercising, taking a job, getting married, all involve risks. Risk is just the flip side of opportunity—do away with risk, and we lose all chance for accomplishment. Safety itself, as I discuss shortly, is impossible without risk. The question with each choice is to weigh the risks and benefits, not reflexively to avoid risk. Using the logic of Milford, we might as well enact a legal ban on nut trees. Certainly this logic was not lost on the residents of Milford. The town hall received forty calls from residents asking whether they should chop down their hickory trees.

This hair-trigger approach to risk, about as thoughtful as a scared squirrel’s, makes it impossible to make coherent choices. “People seem to think that products and activities are either ‘safe’ or ‘unsafe,’ ” Professor Cass Sunstein observes, “without seeing that the real questions involve probabilities.” More children could be saved, Professor Sunstein notes, if we didn’t spend so much on futile treatments for people who are terminally ill. Responsi-
ble choices, whether about risk or any other aspect of life, always involve trade-offs.

The mayor of Milford didn’t even know how to talk about the common good. Reclaiming the vocabulary of public choice is the first hurdle here. We must learn again to talk as leaders. The rhetoric of risk avoidance must be abandoned, at least for most public decisions, and replaced by a practical discussion of trade-offs. This requires getting beyond the obsession with safety.

**THE NEED TO PROMOTE RISK**

The surge in childhood obesity was the topic for a panel of health care leaders convened by Health and Human Services Secretary Tommy Thompson. The trend, they agreed, is unsettling—the rate of obesity in children has tripled in two decades. One in three is overweight, and one in six is obese. The harm to these individuals is inevitable. More than 70 percent will be overweight as adults, and most of these will suffer chronic illness as a result, including heart problems and type 2 diabetes. The harm to society is also frightening: The cost of obesity today is more than $100 billion—almost enough to provide health insurance to all Americans who don’t have it, or to give each teacher in America a $30,000 raise. This self-inflicted cost will only rise as obese children become obese adults.

But what do we do about it? Lecturing kids about their diet is unlikely to be effective. More responsible marketing, such as selling juice instead of soda in school vending machines, is certainly useful, but only at the margin. Banning all the things that contribute to the trend would lead to a pretty bare landscape—candy, fast food, soft drinks, bread, video games, television, the Internet . . . But most of us grew up with candy, soda, and fast food and didn’t have this problem. The difference is how children spend their days. Obesity is mainly a cultural problem. Kids no longer find it fun or feel peer pressure to lead active lives.
Reversing this trend, the experts on the panel agreed, required reinstilling a culture of physical fitness. Almost fifty years ago JFK’s President’s Council on Youth Fitness, with the same goal, recommended installing monkey bars and other athletic equipment in playgrounds across the country. But they’ve all been ripped out. Why? Someone might fall and hurt himself.

Playgrounds are so boring, according to some experts, that no child over the age of four wants to go to them. Jungle gyms, merry-go-rounds, high slides, large swings, climbing ropes, even seesaws are, as they say, history. Recess in school is also not what it used to be. About 40 percent of elementary schools have eliminated or sharply curtailed recess. Dodgeball is gone. Tag has been banned in many schools.

Playgrounds are only the tip of the sedentary lifestyle. Children don’t wander around the neighborhood anymore; one study found that the range of exploration from home by nine-year-olds is about 10 percent what it was in 1970. Only 15 percent of children walk or bike to school, compared to half in 1970. Kids have been taught that outside means danger—from cars, from adults, from the uncertainty of the real world; almost two-thirds of children think unknown adults pose a danger to them. The hovering parent wants control—unstructured play is too risky. “Countless communities have virtually outlawed unstructured outdoor nature play,” Richard Louv observes in Last Child in the Woods. So what are children doing instead of wandering around, pushing their friends on swings or making mischief? Eight- to ten-year-olds spend an average of six hours per day in front of a television or computer screen. These trends, more than any others, account for the surge in obesity.

Safety is the reason for many of these changes in children’s play opportunities. Ever since Ralph Nader exposed GM for making an unsafe car in the 1960s, safety has been a primary goal of public policy, right up there with individual rights. SAFETY might as well be a billboard that looms over almost any activity. AVOID
RISK is its twin. Nothing in schools or camps or home activities occurs without people first looking up at those billboards and asking themselves whether, well, something might go wrong. Amen, you might say, especially with children, our most precious assets. This cult of safety, drawing out parents’ worst fears, new envelops children in America. Better not let the dear darling out alone. Who knows what might happen out on the street?

It’s hard to be against safety. Regulators should certainly try to keep us safe from hidden defects. We can hardly protect ourselves against lead paint on toys and other invisible flaws of mass-market products. But the Consumer Product Safety Commission (CPSC) and other safety groups go a lot farther than hidden defects. They want to protect against any activities that involve risks. The CPSC has standards that recommend removal of “tripping hazards, like . . . tree stumps and rocks.” Many other organizations, public and private, also loudly champion the cause of ever-greater safety. The National Program for Playground Safety, at the University of Northern Iowa, advises that “Children should always be supervised when playing in the outdoor environment.” Professor Neil Williams, at Eastern Connecticut State College, has created a Physical Education Hall of Shame, whose inductees include dodgeball, kickball, red rover, and tag.

Focusing on safety, it’s hard to know where to stop. The drive toward eliminating risk grows ever more powerful, pushed by true believers and by people terrified by legal liability. Each new risk avoided ratchets up the stakes for the next one. Broward County has put up warnings on playgrounds admonishing children not to use equipment “unless designed for your age group.” That’s about as effective, I suspect, as warning fish that the lure is “harmful if swallowed.” But we can’t help ourselves. We’ve become safety addicts.

Something is wrong here. The headlong drive for safety has resulted in a generation of obese children who bear not only the risk, but the near certainty, of terrible health problems.
Safety, as it turns out, is only half an idea. The right question is what we’re giving up to achieve safety. A playground may be designed to be accident-free, but be so boring that children don’t use it. Conversely, a playground may serve its purpose perfectly, but there will be a certainty that every once in a while, a child will be hurt. Safety and risk always involve trade-offs—of resources, of efficiency, and, especially in the case of children, of learning to manage risk.

Taking risks, it also turns out, is essential to a healthy childhood. Risk in daily activities—running around in a playground, confronting classmates at recess, climbing trees, or exploring the nearby creek—is different from hidden product flaws. Learning to deal with these challenges is part of what children need—not only physically but socially and intellectually. “The view that children must somehow be sheltered from all risks of injury is a common misperception,” says Professor Joe Frost, who ran the Play and Playgrounds Research Project at the University of Texas. “In the real world, life is filled with risks—financial, physical, emotional, social—and reasonable risks are essential to a child’s healthy development.”

Let’s start with the most obvious. Children need exercise, and traditionally they get it not mainly in organized activities but as part of their daily going and coming. To deal with the crisis of obesity, the most important change would be to revive a sense of freedom by children to wander around and do what they feel like. “Opportunities for spontaneous play may be the only requirement that young people need,” observes Dr. William Dietz, a senior official on obesity at the Centers for Disease Control and Prevention.

But what is it that attracts children to running around? It’s not that compulsiveness that drives many adults to the gym with clenched jaws and fierce self-discipline. What attracts children is the fun of it. It’s fun to play a pickup game of baseball or tag. It’s fun to test your limits on a climbing rope or jungle gym. Exploring anything, especially if you’re not supposed to, is fun. What’s really
fun—more fun than anything—is risk. I used to climb up on the roof of the neighbor’s garage (using an adjoining fence as a ladder), test my balance by walking around on the sloping roof, and then, with my heart beating fast, take the leap down to the lawn. Why did I do that? I don’t know. It was fun. It was fun to experiment with different ways of cushioning my fall.

Risk is an essential attraction of a culture of physical fitness. Mandatory PE classes are OK, but they’re not fun, at least not unless there’s an element of risk—like dodgeball, an activity exciting (and now banned) precisely because of the somewhat sadistic attraction of hitting someone with the ball. An informal survey of children by the University of Toronto’s Institute of Child Study found that “merry-go-rounds . . . anecdotally the most hated piece of playground equipment in hospital emergency rooms—topped the list of most desired bits of playground equipment.” The centrifugal forces that throw kids off the merry-go-round are also the forces that make it fun. Those of us of a certain age can remember the sprinting required to get the contraption really moving. That was fun. And a lot of exercise.

Socialization skills are learned not under adult supervision but by coping with other children. “The way young people learn to interact with peers is by interacting with their peers, and the only place this is allowed to happen in schools is at recess,” observes psychology professor Anthony Pelligrini. “They don’t learn social skills being taught lessons in class.” “Life is not always fair,” notes Professor Tom Reed, an expert in early childhood education. “Things like this are learned on the playground.” Dr. Stuart Brown, who led the commission trying to understand why Charles Whitman murdered fourteen people at the University of Texas in 1966, found that “his lifelong lack of play was a key factor in his homicidal actions.” This was also true with other mass murderers. Dr. Brown went on to found the National Institute for Play, dedicated to understanding the cognitive and cultural benefits of play.

Being on your own is a critical component of play because, among
other benefits, it makes you responsible for yourself. Responsibility, like risk, is intrinsically interesting. Instead we have trained children to believe that being on your own presents an ever-present danger of abuse by adults who are strangers. Milk cartons display photographs of abducted children, as if there’s a scourge of kidnappers up from Mexico City or Manila intent on nabbing children in Akron and Atlanta. In fact, the chances of abduction by a stranger are about as small as getting hit by a meteorite, and dramatically smaller than having an accident when riding in a car with your parents. Contrary to popular wisdom, the National Crime Prevention Council advises that “If children need help—whether they’re lost, being threatened by a bully, or being followed by a stranger—the safest thing for them to do in many cases is ask a stranger for help.”

Perhaps the most surprising, and important, benefit of children’s risk is this: Children’s brains do not fully develop without the excitement and challenge of risk. A report from the American Academy of Pediatrics found that unsupervised play allows children to create and explore worlds of their own creation, helps them develop new competencies, teaches them to work in groups and to negotiate and resolve conflicts, and, perhaps most significant, is important for developing their cognitive capacity: Play “develop[s] their imagination, dexterity, and physical, cognitive, and emotional strength.” Research at Baylor College of Medicine found that “children who don’t play much or are rarely touched develop brains 20 percent to 30 percent smaller than normal for their age.” Professor Joe Frost concludes: “Early experiences determine which neurons are to be used and which are to die, and consequently, whether the child will be brilliant or dull, confident or fearful, articulate or tongue-tied. . . . Brain development is truly a ‘use it or lose it’ process.”

All these activities—merry-go-rounds, tag, climbing trees, wandering around on their own—involve risk. That’s what’s appealing. That’s how kids stay healthy. That’s what fires their neurons, leading
to better brain development. That’s how kids learn to smell danger, and to deal with difficult people. That’s how kids learn confidence.

The error of the safety police was to move from protecting against hidden hazards to meddling in life activities where the risks are apparent. The most sacred of CSPC’s sacred cows is that playgrounds should be covered with soft material, preferably rubber matting, to cushion the falls of the dear ones. “Asphalt and concrete are unacceptable. They do not have any shock absorbing properties. Similarly, grass and turf should not be used.” It seems sensible that soft surfaces are best for toddlers who can’t be expected to understand risk, and for equipment on which we expect children to be hanging upside down, like jungle gyms. But for almost everything else, the hard ground is just part of the risk calculus that kids, consciously or unconsciously, will factor into their play. I actually learned, all by myself, without any regulator’s help, that concrete has no “shock absorbing properties.”

I’m bracing myself for the return blast: More than 200,000 injuries per year on slides, swings, and climbing equipment! Not only that—there are fourteen deaths per year on playgrounds. I can practically hear the accusation now—that I’m in favor of kidocide, and that a generation of brain-damaged and lame children would be limping around America were it not for the vigilance of the safety police.

Yes, there are many accidents involving children on playgrounds. Whether the number is reasonable involves evaluating not only the positive benefits of risk, but also the universe of other life risks. It turns out that there are almost five times as many children’s accidents in the home—over 200,000 on stairs alone, another 200,000 falling out of beds, 113,000 crashing off chairs, and almost 20,000 from falling television sets. What are the policy implications? Carrying the logic of safety to these home risks, we could mandate rubber floors, safety rails on beds, air bags on televisions, and, almost certainly, a ban on running at home.

What’s going on in the child safety movement is not prudence,
but something more akin to paranoia. Instead of safety, we are creating the conditions of danger: children who are not physically fit, have arrested social development, and don’t have the sense or satisfaction of taking care of themselves. In the name of safety we’re creating, in the words of Hara Marano, editor at large of *Psychology Today*, “a nation of wimps.”

**REBUILDING BOUNDARIES OF REASONABLE RISK**

A wealthy society, like a wealthy person, is apt to err on the side of caution, an instinct akin to trying to protect a lead in games. But what’s going on here is not the age-old tension between caution and risk. There’s a third dimension of risk that never existed, at least not in ordinary daily choices, until recent decades: legal risk. In any social dealings, whether selling products, managing employees, running a classroom, or building a playground, there’s a chance that someone might be hurt or offended. And in modern America that carries with it the risk of being sued.

Dealing with legal risk is different from dealing with other risks because, instead of weighing the benefits and costs of a choice, it requires focusing on the lowest common denominator. A choice might be beneficial or productive but nonetheless carry huge legal risk. The playground could be perfectly suited for its purpose, attracting tens of thousands of children to healthy activity, and still be the source of liability whenever some boy decides to launch himself off the swing and breaks his leg—as is certain to occur from time to time.

This is not a problem that takes care of itself. America has a public health crisis but doesn’t know how to make the legal choices needed to let children to take the risks of growing up. We don’t know how to say that sometimes things go wrong. This is an odd phenomenon, as if the adults fell on their heads and developed a kind of amnesia about how life works. The victim of an accident appears, demanding satisfaction, and we shrink back in legal fear.
Every time there’s an accident—each and every time—it couldn’t be easier to identify something that could have been done differently. When a six-year-old in Valparaiso, Indiana, broke his femur sliding head-first down a slide, the claim was that the school “did not provide proper supervision.” Broward County decided to ban running in the playgrounds after it got a report showing that it had settled 189 playground lawsuits in the prior five years. “To say ‘no running’ on the playground seems crazy,” said a member of the Broward County School Board, “but your feelings change when you’re in a closed-door meeting with lawyers.”

There’s never been a time a like this in American history. Society has lost its sense of balance on ordinary life choices. Many people no longer have a clear sense of what we should allow our children to do. Once fear sets in, and common sense capsizes, nothing short of leadership can make it upright again. Here are two changes I think are required.

1. **Law must reclaim its authority to draw enforceable boundaries of reasonable risk.** Prevailing judicial orthodoxy today allows anyone to sue for almost anything—allowing any injured person, in effect, to set unilaterally the agenda on risk for the rest of society. Just allowing the claim to go to the jury sets social policy, as we will discuss shortly. Judges, legislatures, and regulators must take back the responsibility of drawing these boundaries.

2. **Create “Risk Commissions” to offer guidance on where to draw the lines.** Legislatures should set up nonpartisan risk commissions to offer guidance to courts and regulators for activities that have been most affected by legal fear, including for children’s play and for physical contact with children. These risk commissions should be independent of existing safety agencies, which are dug in too deep to see the trade-offs. Standard-setting bodies are common in industry—for example, for industrial tools—and in professions such as medicine. The standards set by these bodies enjoy broad
support and are considered authoritative by courts. If legislatures
don’t establish these independent risk commissions, then private
groups should seize the authority by building broad-based coalitions
that assert standards. Common Good, working with health care and child development organizations, has begun the process
of creating a playbook of guidelines for healthy play.

In 2005, U.K. Prime Minister Tony Blair gave a speech on risk in
which he observed that “something is seriously awry when teach-
ers feel unable to take children on school trips, for fear of being
sued” and that “public bodies . . . act in highly risk-averse and peculiar ways.” Blair called for laws to “clarify the existing com-
mon law on negligence” and for issuance of “simple guidelines” on
reasonable risks. He concluded with these thoughts:

Government cannot eliminate all risk. A risk-averse scientific
community is no scientific community at all. A risk-averse business culture is no business culture at all. A risk-averse public sector will stifle creativity and deny to many the oppor-
tunities to be creative. . . . We cannot respond to every acci-
dent by trying to guarantee ever more tiny margins of safety.
We cannot eliminate risk. We have to live with it, manage it.
Sometimes we have to accept: no-one is to blame.

In countries across the globe, children run and play all by them-
selves. In India unstructured play is considered an essential tool
of child development. Germany has adventure playgrounds that
are stocked with scrap lumber, nails, and hammers, so children
can come and build things, and then tear them down and build
something else. These are the children against whom our children
will be competing. Are we really protecting our children, or are
we putting them at risk of failure because they lack tools of self-
reliance?

“The age cries out for all the freedoms,” historian Jacques
Barzun observed, “Yet it turns its back upon risk, the companion to free will.” Accomplishment at all levels, as well as personal growth, requires looking at the challenges of life realistically, not succumbing to the cheap rhetoric of a safety utopia. People will disagree on where the lines will be drawn. Certainly the safety zealots will defend decades of a bubble wrap approach to child rearing. But that difference in view only underscores the need to reestablish sensible boundaries. More than at any time in recent memory, America needs legal red lights and green lights. Our freedom depends on it.