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THE LEGAL EAGLE

NUMBER 1

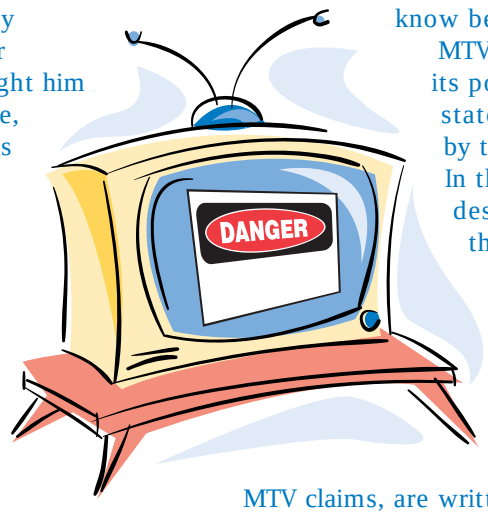
A newspaper about the law for young people

FALL 2002

Will the Real Jack#@% Please Stand Up?

by Dale Frost Stillman

Last year, after Johnny Knoxville threw himself on a barbecue grill in an episode of MTV's *Jackass*, a 13-year-old boy from Connecticut re-enacted the stunt by having his friends pour gasoline on him and light him on fire. Unlike Knoxville, the boy forgot to dress in a flame-retardant suit. Consequently, he suffered second- and third-degree burns and spent five weeks in the hospital.



Although MTV is not producing new episodes of *Jackass*, due to the departure of Knoxville, the show can still be seen in reruns on the channel. The release of *Jackass: The Movie* has been promoted as even more shocking, and the onslaught of other reality-based shows that depict "ordinary people" doing outrageous stunts, begs the following questions. Are the producers of these television shows and the networks that air them to blame when copycat incidents occur? Should parents exercise better control over their children's viewing habits? And, what responsibility should a 13-year-old bear? Should he or she know better?

MTV has made its position clear in statements issued by the channel. In the situation described above, they do not believe that they bear any responsibility for the boy's actions. Backing up their stand, MTV claims, are written and oral warnings that air several times during every *Jackass* episode.

"The following show features stunts performed by professionals and/or total idiots under very strict control or supervision. MTV and the producers insist that neither you or anyone else attempt to recreate or perform anything you have seen on this show," the **disclaimer** says. Further warnings state that "neither you or any of your dumb little buddies" should try to re-enact the show's stunts.

Is that enough?

Critics of the show claim that the joking nature of these disclaimers may prevent viewers from taking them seriously. Senator Joseph Lieberman of Connecticut does not believe the disclaimers are enough. The parents of the13-year-old boy contacted him after the incident. Senator Lieberman, a vocal critic of media violence, laid the blame squarely on MTV's shoulders and asked Viacom, the company that owns MTV, to either cancel the show or "to eliminate stunts that could be dangerous if imitated by children."

"MTV is an enormously influential force in the world our children inhabit," Senator Lieberman said in a statement at the time of the incident. "With that power and the right to exercise it come a certain level of responsibility," the senator contends.

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Get Off My Back!

by Valerie Brown, Esq.

Do you sometimes feel that the weight of the world is on your shoulders? It could just be your backpack.

New Jersey Assemblyman Peter J. Barnes Jr. and Assemblywoman Arline M. Friscia are trying to alleviate the burden on the backs of New Jersey elementary and middle school students. They have introduced **legislation** that would require the New Jersey Department of Education to adopt maximum weight standards for textbooks, giving them six months after the adoption of the legislation to do so. The proposed legislation, which is currently being reviewed by the Assembly Education Committee, states that "the weight standards shall take into consideration the health risk to pupils who transport textbooks to and from school each day."

Assemblyman Barnes was prompted to take action on the school backpack issue after visiting an elementary school in East Brunswick. The students were asked to prepare questions in advance for the assemblyman and the overwhelming majority of the questions, according to Barnes, concerned the weight that students carry in their backpacks. Barnes says that some students needed to carry as much as 40 pounds in their packs, which included, among other things, books, calculators, gym clothes and sports equipment. Barnes left the school promising the students that he would look into the matter. After conducting his own research and realizing the "weight" of the problem, he wrote the legislation.

Carrying the weight

Backpack-related injuries sent more than 7,000 people to the emergency room in 2001, according to the U.S. Consumer Product Safety Commission. Elementary and middle school-aged students accounted for half that number, the Commission said. Some students, according to a survey conducted by the American Academy of Orthopedic Surgeons, are carrying as much as 20 pounds

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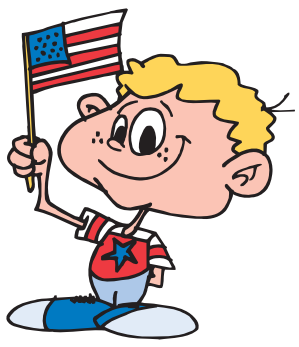
One Nation Under… What?

by Roberta K. Glassner, Esq.

Over the summer, radio and television stations broke into their programming with the announcement. Headlines shouted the shocking news—A California Court Had Just Declared the Pledge of Allegiance Unconstitutional.

The early summer calm was instantly transformed by a storm of anger and protest that rose up and raged across the country. How could the Pledge, which has begun every school day in this country for close to half a century, be in violation of the First Amendment to the U.S. Constitution?



What the Court Ruled

It turned out, in fact, that the court had not declared the entire Pledge of Allegiance unconstitutional. What the three-judge panel of the Ninth Circuit Court of Appeals declared unconstitutional was the "under God" phrase in the Pledge and the decision was limited to recitation of the Pledge in public schools only.

The California court, in a 2-1 decision, determined that when the Pledge is recited in the classroom, a student who objects on principle to the religious content introduced in the "under God" phrase is forced to make "an unacceptable choice between participating and protesting."

Judge Alfred Goodwin of the Ninth Circuit Court of Appeals held in his **opinion** written for the court that it is improper for the government to place school children in the position where they must make that choice.

"Although students cannot be forced to participate in recitation of the Pledge, the school district is nonetheless conveying a message of state endorsement of a religious belief when it requires public school teachers to recite, and lead the recitation of, the current form of the Pledge," Judge Goodwin wrote.

The Ninth Circuit Court ruled that when the phrase "under God"—added to the Pledge by Congress in 1954—is recited in a public school, it is a violation of the separation of church and state guaranteed by the establishment clause of the First Amendment to the U.S. Constitution. The establishment clause says, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof…"

Judge Goodwin wrote, "The establishment clause guarantees, at a minimum, that government may not **coerce** anyone to support or

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THE LEGAL EAGLE
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On-line DVD Sharing Makes Waves in Movie Industry

by Barbara Sheehan

It's the weekend and you're in the mood for a good movie. You log onto your computer and access a peer-to-peer networking service, such as "KaZaA" or "Morpheus," which allows you to tap into an anonymous hard drive and access "pirated," or illegally obtained, digital film files for free. Aha... *Lord of the Rings*. You download the movie onto your computer, and later that night, you settle in to watch it.

Currently, the large amount of hard drive space a DVD requires and the significant time needed to download a movie, among other challenges, makes this type of film sharing via the Internet difficult and inconvenient for many of today's mainstream computer users.

Still, many movie industry executives fear that this form of free movie viewing could gain momentum as technological and Internet capabilities continue to advance.

What is film piracy?

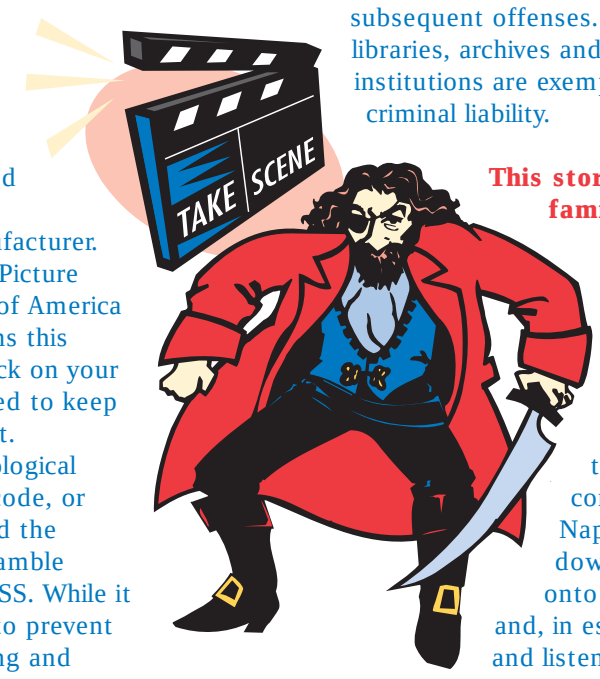
When an individual creates a work of art-whether it be a photograph, a song, a movie, or virtually any other creative entity-that individual has an automatic right to ownership of the work, also known as "**copyright** privileges," explains Richard A. Catalina Jr., a copyright attorney in Shrewsbury. From the moment it is created, the work is protected by law from copying, using, sharing or selling without the copyright owner's consent, he says.

An exception would be a work created by an employee during his or her course of employment, in which case the employer would hold the copyright privileges, Catalina explains.

In the case of movies, according to Catalina, the copyright privileges are by and large owned by the movie companies, such as SONY Pictures Entertainment or Universal Studios, who make many of the movies we see in the theaters and purchase for home use. These companies own the rights to sell and distribute as DVDs or videos the movies they create. Those who try to sell or distribute these movies without the owners' permission are in violation of copyright laws and guilty of film piracy.

How does film piracy occur?

In the past, film "pirates" made money by carrying a small camcorder into a theater and recording movies on tape for copying and illegal distribution. Today, with improvements in technology and the advent of the DVD, a new and cleaner form of film piracy has evolved. Essentially it involves cracking the code installed on DVDs by the manufacturer. The Motion Picture Association of America (MPAA) likens this code to a lock on your door intended to keep intruders out.



In technological terms, this code, or lock, is called the Content Scramble System or CSS. While it is intended to prevent illegal copying and distribution of films-and in doing so protect the profits and viability of movie makers-reported "hackers" have created a software utility commonly referred to as "DeCSS," which can break the CSS code on DVDs.

As a result, movies can be illegally copied and distributed in perfect format over mediums like the Internet. Those who attempt to break the CSS codes, however, are in direct violation of the Digital Millennium Copyright Act, signed into law in 1998.

What is the Digital Millennium Copyright Act?

According to the Motion Picture Association of America (MPAA), "the Digital Millennium Copyright Act (DMCA) was designed to implement World Intellectual Property Organization (WIPO) treaties signed in December 1996 in Geneva. The Act strengthens the protection of copyrighted materials in digital formats, such as motion pictures on DVDs, by outlawing the manufacture, importation or distribution of devices, programs or services that **circumvent** technical protection measures that restrict access to or prevent **infringement** [copying] of copyrighted works." In other words, the Act prohibits anyone from distributing a product designed to bypass the technology used to protect DVDs.

Violations of the DMCA could result in civil actions, as well as criminal charges for acts that are carried out for purposes of financial gain. Criminal penalties can range from a $500,000 fine to five years in prison for a first offense and a $1 million fine to 10 years in prison for subsequent offenses. Nonprofit libraries, archives and educational institutions are exempt from criminal liability.

This story sounds familiar

Some movie industry observers have drawn parallels between on-line sharing of movies and the Napster controversy. With Napster, users were downloading songs onto their computers and, in essence, accessing and listening to music without having to buy it. Catalina notes that Napster is now under court order to implement a system so that users cannot enlist Napster for purposes of copyright infringement.

As Catalina points out, there are some marked differences between sharing songs and swapping movies. First, a person must have the special, illegal software needed to crack the CSS code on a DVD, and then the movie has to be stored on the hard drive, which takes up a lot of space and also requires a substantial amount of time to download. Most people, Catalina concludes, cannot store hundreds of movies on their computers, as they could with songs.

Forecast: Threatening

In spite of these differences, the inevitable development of faster and better technology poses a threat of increased digital film piracy in the future. This is perhaps heightened by the growing number of peer-to-peer networking services that continue to offer consumers Internet access to pirated songs and movies in spite of the Napster ruling, and in the face of legal challenges by the movie and recording industries.

One key reason peer-to-peer networking seems to be succeeding where Napster failed, Catalina notes, is that these programs have no central server. In other words, a user doesn't

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Get Off My Back!

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of books in their backpacks. The American Academy of Pediatrics and the American Chiropractic Association both cite the recommended amount that anyone should carry on their backs as no more than 15 percent of an individual's body weight.

One source that Assemblyman Barnes came across in his research was Backpack Safety America (BSA), an educational program that promotes children's health by helping children pack, lift and carry their backpacks without injuring themselves, according to its Web site. Founded by a chiropractor and an entrepreneur, BSA offers the following information on its Web site. If the average student's backpack is roughly 12 pounds and the student lifts that pack 10 times per day, he or she is lifting a total of 120 pounds per day. Over the course of a 180-day school year, a student could lift as much as 21,600 pounds, which Backpack Safety America likens to the equivalent of lifting "six full-size automobiles."

Can this legislation pass?

Assemblyman Barnes says he has been amazed at the attention that the backpack issue has received. He has been a guest on several television shows and been quoted in newspapers, including the *Los Angeles Times*, bringing national attention to the issue. Although similar legislation was recently adopted in California (the California Board of Education has two years to come up with its plan), New Jersey may not be so quick to follow suit. While Barnes fully expects the Assembly Education Committee to vote on the proposed legislation, whether the bill will ultimately be signed into law in New Jersey is not certain. Assemblyman Barnes says even if the legislation is not adopted he expects, at a minimum, that it will encourage the Department of Education and the book publishers to come up with a viable solution to alleviate the burden on school children. The assemblyman also hopes that the legislation will result in safety programs, possibly carried out in health class, that would teach students the correct way to pack and carry their backpacks.

Other proposed solutions to the backpack problem include duplicate textbooks, CD-ROMs and backpacks on wheels, according to an article in *Governing Magazine*. However, lack of money by many school districts and the pressure to be fashionable, the article points out, make these solutions unlikely to be mandated.

Valerie Brown is Legislative Counsel for the New Jersey State Bar Association.

One Nation

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participate in religion or its exercise or otherwise act in a way which establishes a state religion or religious faith, or tends to do so."

The Challenge

One who shares that sentiment is Dr. Michael Newdow, an **atheist** and the father of a second-grader in a California public school, who filed the lawsuit that brought about the controversy. Dr. Newdow, a physician and lawyer, filed the suit against the state of California on the grounds that "under God" represents the government's endorsement of religious belief and has no place in a public school room.

"I am fighting for the Constitution," Dr. Newdow stated in media interviews after the court's decision. "The Constitution has no reference to God. The issue here is whether or not government should be placing religion in public schools."

The Development of the Pledge

The original Pledge of Allegiance (see sidebar for a complete timeline of the Pledge of Allegiance), written in 1892 by former Baptist minister Francis Bellamy, made no reference to God. Bellamy wrote the Pledge for this country's celebration of the 400th anniversary of Columbus' discovery of America. The Pledge of Allegiance was designed to be a patriotic oath commemorating, in Bellamy's words, "our national history… the Declaration of Independence… the Constitution… and the meaning of the Civil War…"

On Flag Day, June 14, 1954, 62 years after the original Pledge had been written, the U.S. Congress added the phrase "under God." At the time, some Americans opposed this newest addition, believing that it unnecessarily and unconstitutionally introduced religious belief into a purely patriotic expression.

Decision invokes strong reactions

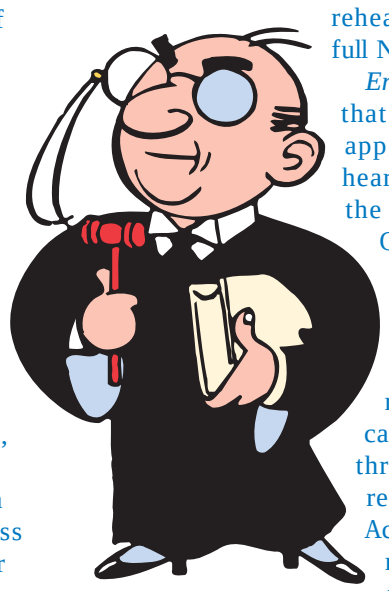
The day after the decision of the Ninth Circuit Court of Appeals became known in June of this year, the U.S. Senate expressed its "strong disagreement" by voting 99-0 to pass a resolution condemning the ruling. The House of Representatives, similarly, took immediate action and passed the same resolution by a vote of 416-3.

"We are one nation under God," proclaimed Senate Majority Leader Tom Daschle in newspaper reports. "We affirmed that today as Americans—not as Republicans or Democrats. And we did so proudly." Senator Daschle described the Ninth Circuit's decision as "just nuts."

President George W. Bush called the decision "ridiculous," saying it is "out of step with the traditions and history of America." The President stated at the time of the Ninth Circuit Court's ruling, "America is a nation that values our relationship with the Almighty."

The American public seems to agree with the President. In a *Newsweek* poll 87-89 percent of Americans expressed support for the inclusion of "under God" in the Pledge.

Attorney General John Ashcroft issued a statement declaring, "The Justice Department will defend the ability of our nation's children to pledge allegiance to the American flag by requesting a rehearing *en banc* by the full Ninth Circuit."



En Banc usually means that the entire court of appeals is required to hear a particular case. In the case of the Ninth Circuit Court of Appeals, en banc means that 11 judges, not the entire court will be required to rehear the case, instead of the three-judge panel that rendered the decision. According to CNN reports, the government will also argue that Dr. Newdow cannot claim to be an injured party because he is not required to recite the Pledge, and therefore "lacks proper standing" to bring a lawsuit. Dr. Newdow has stated all along that he brought the lawsuit on behalf of his eight-year-old daughter. However, as CNN reports, Dr. Newdow's ex-wife has come forward claiming legal custody of the girl and says her daughter has no problem with reciting the Pledge in school.

Not everyone disagrees with the decision

Domestic disputes with the Newdows aside, the lawsuit has already sparked national debate. In an interview with *Faithlinks Weekly Newsletter,* the Rev. Barry Lynn, executive director of Americans United for the Separation of Church and State, expressed his support for the Ninth Circuit decision, finding it "reflects an appropriate concern for the religious liberty rights of all Americans." Rev. Lynn added, "The decision shows respect for freedom of conscience. You can be a patriotic American regardless of your religious belief or lack of religion. Our government should never coerce school children—or anyone else—to make a profession of religious belief."

"The Ninth Circuit's opinion is soundly based on a 30-year-long line of Supreme Court cases barring the government's endorsement of religion in public schools," commented Frank Askin, professor of law at Rutgers Law School—Newark and founder and director of the Rutgers Constitutional Litigation Clinic.

Askin referred specifically to a 1992 case, *Lynch* v. *Donnelly*, in which Supreme Court Justice Sandra Day O'Connor held that while the government must allow the free exercise of religion in this country, it cannot go beyond "the limitations imposed by the establishment clause [of the U.S. Constitution]."

Justice O'Connor wrote, "…government endorsement of religion…sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders…"

The Ninth Circuit's Response

The day after the court's decision shocked the country, Judge Goodwin, of the Ninth Circuit Court, responded to the widespread criticism by issuing a **stay** on the ruling. Under the stay, the decision cannot go into effect until an 11-judge panel of the Ninth Circuit Court of Appeals reviews it.

In its review, the full-court, or *en banc* panel can **reverse** or **affirm** the decision. A reversal would mean that "under God" remains in the Pledge of Allegiance and it continues to be recited in public schools throughout the Ninth Circuit. But, if the decision is reversed, Dr. Newdow, as the challenger, has the right to go one step further and appeal to the U.S. Supreme Court to hear the case and hand down a final decision on the constitutionality of the "under God" phrase.

On the other hand, if the full-court panel of the Ninth Circuit affirms the decision, the Justice Department has the same right of appeal to the U.S. Supreme Court for a final ruling.

Members of Congress have said they would vote to amend the U.S. Constitution to preserve the words "under God" if the U.S. Supreme Court hears the case and the Court finds the phrase unconstitutional.

What about New Jersey?

Although the Ninth Circuit Court of Appeals is based in San Francisco, its decision affects California and eight other states—Oregon, Arizona, Washington, Hawaii, Alaska, Nevada, Montana and Idaho. The decision would have no affect upon schools in New Jersey or any of the other 40 states, unless the decision goes to the U.S. Supreme Court. In New Jersey, public school children will continue to recite the entire Pledge each day, as state law requires. And, as in every other state in this country, those students who prefer not to participate on principle are free to remain silent.

This provocative court decision gives rise to many legal questions regarding the issue of the separation of church and state. The United States is an extraordinarily diverse country with more than 2,000 different religions and denominations represented, as well as millions of people who practice no religion at all, which illustrates the remarkable freedom all Americans enjoy.

Roberta K. Glassner is an attorney in New Jersey.

Pledge of Allegiance Timeline

I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

1892

Francis Bellamy, a former Baptist minister, wrote the Pledge of Allegiance for the nation's 400th celebration of Christopher Columbus' discovery of America. The Pledge was published in *Youth's Companion*, a popular family magazine, and reprinted on leaflets distributed to schools. On Columbus Day 1892, the pledge was recited in classrooms throughout the country for the first time: "I pledge allegiance to my flag and the Republic for which it stands, one nation indivisible, with liberty and justice for all."

1924

Congress changes "my flag" to "the flag of the United States of America."

1943

The U.S. Supreme Court rules that school children cannot be forced to recite the Pledge. In the case of *West Virginia Board of Education* v. *Barnette*, the Supreme Court held that a law requiring school children to salute the flag and say the Pledge was unconstitutional.

1954

An Act of Congress creates a new law adding "under God" to the Pledge of Allegiance. President Dwight D. Eisenhower, who wants to establish a contrast between religiously faithful America and godless communism, directs the addition.

2002

California's Ninth Circuit Court of Appeals rules the recitation in public schools of the phrase "under God" in the Pledge is in violation of the First Amendment of the Constitution requiring separation of church and state.

Source: *The Associated Press*

On-line DVD Sharing

CONTINUED FROM PAGE 2

know whose computer he or she is tapping into when the file is retrieved from the peer network.

Proposed legislation

There are currently two pieces of pending legislation that address copyright issues and advancing technology—the Consumer Broadband and Digital Television Promotion Act and the Peer-to-Peer Piracy Prevention Act.

Introduced in the U.S. Senate, the Broadband Promotion Act deals with the prevention of copying DVDs and, if passed, would require that every computer, DVD player, radio and television be equipped with copy protection hardware or electronic "chips" to prevent copyright infringement. Proposed to the U.S. House of Representatives, the Peer-to-Peer Piracy Prevention Act would enable copyright holders to use radical measures to stop illegal file-sharing, including what detractors of the bill identify as hacking into unsuspecting people's computers to root out thieves. Supporters of the bill say this claim is untrue and, in a *Newsweek* article, contend that the bill simply allows copyright holders "to use reasonable, limited self-help measures to frustrate file-swappers."

Legitimate on-line services take shape

Given the likely inevitability of easier file-sharing in the future, it is perhaps no surprise that some movie studios have announced plans to launch their own Internet-based, on-demand services, which would provide a legitimate outlet for consumers to access films for a fee.

Movie companies hope, once they offer consumers an on-line service of their own, Internet users and others will jump ship from the pirates and opt for a legitimate digital movie source that upholds the copyrights of the film makers.

Jack#@%

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Parental responsibility

Some say placing the blame on MTV alone may not be fair. *Jackass* is rated TV-MA for mature audiences. Senator Lieberman admitted in his statement that "the primary responsibility falls on parents." While also saying that supervising a child's television viewing "is made more difficult in a 500-channel universe."

Dr. Drew Pinsky, a contributing editor at *USA Weekend* and ironically, a former host of the cancelled MTV show, *Loveline*, suggests that parents are responsible for assigning consequences to a child when he or she engages in dangerous behavior. He also suggests that parents and kids should watch questionable shows together and have an open discussion about the content of them.

Legal ramifications

Do the parents (who have hired a lawyer) of the 13-year-old Connecticut boy have a case against MTV? Attorney Steven Schechter of Fair Lawn specializes in media law. Schechter contends that disclaimers such as the one on *Jackass* are generally enough to protect the network. According to Schechter, the claimant should know that he is likely to get hurt if he tries a stunt at home. "Intervening stupidity" is usually a factor, Shechter says. "Copycats" staging their own stunts bear a lot of the responsibility for what happens, and Schechter contends that people who do stupid things often get hurt.

Bruce Rosen, a media law attorney in Chatham, confirms that the First Amendment of the U.S. Constitution protects speech, but if that speech "is directed to incite or produce lawless action and is likely to incite and create such action" then the First Amendment does not protect it. Rosen goes on to say that **foreseeability** is the real issue in these copycat cases. Foreseeability is an element of law that states a reasonable person should be able to anticipate that injury may come from certain acts or omissions.

In other words, an entertainment company, including television stations, networks, producers, etc., cannot be held responsible for another's actions. Because of the foreseeability issue, the courts have typically not held media companies liable, Rosen contends.

What about participants in reality television shows, such as *Fear Factor* and *Survivor* who have presumably signed a **waiver** against injury? Do they have any recourse if injured? Morristown attorney Meredith Grocott says that it "depends on the language in the waiver or the release."

Other Jackass copycats

The 13-year-old Connecticut boy's "copycat" injury is only one in a string of such incidents inspired by stunts seen on *Jackass*. In Hartford, Connecticut an 11-year-old boy was burned after he ignited a chemical-soaked rag he tied to his leg.

A 12-year-old boy from Florida decided to spray his hand with bug spray and then light it on fire. Then there is the case of two boys from Kentucky, ages 16 and 17, who drove a car into a third boy, breaking his leg and ankle. The third boy was supposed to jump over the car. The Kentucky boys wanted to make a tape of their stunt and send it to *Jackass*. MTV denies airing a similar stunt so that it cannot be called a "copycat" incident, but critics of *Jackass* believe that the show inspired the boys to try the stunt. MTV no longer accepts tapes from viewers and, in another disclaimer aired during the show, discourages them from sending them. However, most fans of Johnny Knoxville know that he got his start on *Jackass* after submitting a tape in which he was gassed with pepper spray and shot with a Taser.

The show's target audience according to MTV is 18 to 24–year-old boys. However, a much younger audience is performing the "copycat" incidents, suggesting that MTV's estimate is high.

Fatal copycat incidents

As distressing as the *Jackass* "copycat" incidents are, there have been more serious ones. In 1993, a five-year-old Ohio boy burned his house down, killing his younger sister while trying to imitate the MTV cartoon, *Beavis and Butthead*, according to his mother. After that incident, MTV removed references to fire from the cartoon.

The attorney for a 12-year-old Florida boy who was convicted of murdering his 6-year-old playmate claimed that the incident was an accident resulting from the boy imitating pro wrestlers he had seen on television. The boy was convicted of first-degree murder and received a sentence of life in prison, although his lawyers are appealing the decision.

With shows like *Fear Factor* and *Survivor* continually pushing the envelope of good taste and safety and the development of more shows just like them, the issue of television's responsibility to young viewers and the legal ramifications surrounding these incidents will likely be around for a while.

affirm — to uphold, approve or confirm.

atheist — a person who does not believe there is a God.

circumvent — to avoid by getting around something.

coerce — to influence another person's choices in a negative way.

copyright — a federal law that protects an author's work from being stolen.

disclaimer — a notice that takes no responsibility or blame if something unforeseen should happen.

foreseeability — element of law stating that a reasonable person should anticipate that injury may come from certain acts or omissions

infringement — violation of a contract, regulation or right.

legislation — a proposed law.

opinion — a document containing the reasons why a decision was rendered.

reverse — to void or change a decision by a lower court.

stay — an order to stop a judicial proceeding or put a hold on it.

waiver — a document, that when signed, gives up a legal right.

American Taliban Pleads Guilty

by Roberta Glassner, Esq.

In the Spring 2002 edition of *The Legal Eagle*, (A Case of Modern-day Treason?) we reported on the plight of John Walker Lindh, or as he is sometimes referred, the American Taliban. Here is a quick recap of the case.

After the attacks on the World Trade Center and the Pentagon on September 11, 2001, the United States became engaged in a war against terrorism in Afghanistan. On December 2, 2001, John Walker Lindh, a 20-year-old Californian, was captured by U.S. and Northern Alliance forces while fighting with Taliban Terrorists in Afghanistan.

In January 2002, the U.S. Department of Justice filed a 10-count criminal complaint against Lindh for, among other things, conspiring to kill U.S. citizens and supporting terrorist groups.

On July 15, 2002, John Walker Lindh entered into a plea bargain with the Justice Department. A month before his trial was to begin, Lindh pleaded guilty to two charges for serving with the Taliban and agreed to a 20-year sentence in federal prison.

What is a plea bargain?

A plea bargain is an agreement before trial between a defendant and the prosecutor in a criminal case. It usually involves the defendant pleading guilty to a less serious offense or to only one or some of the counts of a multi-count indictment. In return for a guilty plea to a lesser offense, the defendant is given a lighter sentence.

In John Walker Lindh's case, his guilty plea to two charges and his sentence of 20 years is far lighter than he would have received had a jury found him guilty of all ten charges against him. That could have resulted in Lindh spending the rest of his life in prison.

Although there is no parole under federal law, Lindh's sentence could be reduced by 15 percent, or three years, for good behavior. In addition, Lindh received credit for the time he was in custody before his sentencing, including the two months spent in military custody.

As part of his plea bargain, Lindh agreed that he would not keep any money he might make in the future from writing or speaking about his experiences as a Taliban. That agreement applies to his family as well. Lindh also agreed to cooperate with the government by providing information about others charged with terrorism in Afghanistan.