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. Frisica 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 backpacks, 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 more than 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 into school daily. New Jersey students carrying that weight may end up in the emergency room. New Jersey students carrying that weight may end up in the emergency room. New Jersey students carrying that weight may end up in the emergency room.

CONTINUED ON PAGE 3

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 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 the 13-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.

CONTINUED ON PAGE 4
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 trade an anonymous hard drive and access “pirated,” or illegally obtained, digital film files for free. Ahh... Lord of the Rings. You downloaded 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, limits the 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, inherent 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 video 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 discs by the manufacturer. The Motion Picture Association of America (MPAA) likened 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 technological 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 copyrighted 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 that uses encryption and a special 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, and also may react against 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 now have a central server. In other words, a user doesn’t

CONTINUED ON PAGE 4
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 since 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, 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 bring legislation to 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 other states—Oregon, Arizona, 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 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.

Robert K. Glassner is an attorney in New Jersey.

Pledge of Allegiance Timeline

The original Pledge of Allegiance (see sidebar for a complete timeline of the Pledge of Allegiance) was written in 1892 by Dr. Francis Bellamy, a former Baptist minister and father of a second-grader that had no problem with reciting the Pledge in school.

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 ground 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 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 reintroduced religious belief into a purely patriotic expression.
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, otherwise known as Jack##@%{}, who, for some time, has been referred to as 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 one or some 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 what 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 trial, 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 with the Taliban. That agreement applies to his family as well. Lindh also agreed to cooperate with the government for providing information about others charged with terrorism in Afghanistan.

The plea bargain also protected Lindh from any possible legal consequences for assigning blame if something unforeseen were to happen. The U.S. Government has not agreed to any settlement with Lindh for his actions in Afghanistan.

Infringement — violation of a contract, regulation or right.

Legislation — a proposed law.

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

Reversal — 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