RECENT CASES

U.S. Supreme Court reverses obscenity conviction because unauthorized exhibition of films by FBI, without a warrant, constituted an unreasonable invasion of film owner's privacy

In 1975, an interstate shipment of several securely sealed packages containing eight-millimeter sex films was mistakenly delivered by a private carrier to a third party, rather than to the intended recipient. Employees of the company that received the shipment opened it and found individual film boxes on the sides of which were suggestive drawings and explicit descriptions of their contents. One of the employees opened one or two of the individual film boxes and unsuccessfully attempted to view the films by holding them up to the light.

The FBI was notified and it picked up the packages. FBI agents then viewed the films using a projector without first having made any effort to obtain a search warrant and without having made any effort to contact either the company that shipped the films or the intended recipients. Thereafter, a number of people were indicted and convicted of interstate transportation of obscene films.

In a five to four decision, the United States Supreme Court has just reversed those convictions. The Court's majority held that even though the FBI had lawfully acquired possession of the films, the FBI's subsequent exhibition of them, without authorization from their owner and without a search warrant, "constituted an unreasonable invasion of their owner's constitutionally protected interest in privacy."

The Court's majority held that the fact that the FBI agents were lawfully in possession of the film boxes did not give them authority to search their contents, because an officer's authority to possess a package is distinct from his authority to inspect it. Moreover, said the Court, when a package contains books, films or other materials that may be protected by the First Amendment, and the package is seized because the message contained in those materials is suspected of being illegal, it is especially important that the Fourth Amendment's search warrant requirement "be scrupulously observed."

The Court also held that the fact that the packages and one or two of the film boxes had been opened by private parties before they were acquired by the FBI did not excuse the FBI's failure to obtain a search warrant, nor did it alter their owner's legitimate expectation of privacy in the films."

Walter v. United States, U.S.Sup.Ct. No. 79-67 (June 20, 1980) [ELR 2:4:1]

Owner of "Trek" trademark for shoes is denied preliminary injunction against licensee of "Star Trek" trademark for shoes

A Federal District Court in New York has held that Clarks of England, Inc., a manufacturer of adult leisure and hiking shoes sold under the registered trademark "Trek," was not entitled to a preliminary injunction in its action for trademark infringement and unfair competition against Glen Shoe Company, whose children's shoes bear the trademark "Star Trek." Once again, as in the recently decided "bionic" boot dispute (see ELR 1:21:1), the likelihood of consumer confusion was found insufficient to warrant the issuance of an injunction.

In reaching its conclusion, the court noted that the shoes were made of different materials and were designed for different markets, resulting in a substantial 'competitive distance." Further, the trademark "Star Trek" registered by Paramount Pictures Corporation and licensed to Glen, was not identical or even confusingly similar to Clarks' trademark or to similar unregistered marks used by Clarks on other adult shoes. The lettering styles of the marks and the marketing presentations used also differed considerably. The "Trek" mark appeared on the inner heel of Clarks' shoes accompanied by the company's logo, while the name "Star Trek" was prominently printed on the sides or the bottoms of Glen's shoes "accompanied by pictures of the starship 'Enterprise', as well as familiar Star Trek characters..." In all, according to the court, "the 'Trek' mark conveys an image of rusticity and durability, while the 'Star Trek' mark summons images of flight in outer space."

It was not shown that Glen had acted in bad faith; the company was simply tying-in to the movie version of "Star Trek" and the "public familiarity with Star Trek themes and characters." The court also noted that Clarks was not planning to introduce a line of children's play shoes using the mark "Trek" and that Glen did not plan to produce hiking shoes. Thus, due to the "divergence in type of product, appearance and marketing technique, as well as the familiarity of the trademark Star Trek ... even undiscerning consumers would be [un]likely to confuse the origin of 'Star Trek' shoes." And no evidence of actual consumer confusion had been introduced.

However, the court pointedly observed that Clarks does manufacture children's footwear using the trademark "Star Wars" and that Clarks may have brought its action to preclude Glen from competing with the "Star Wars" shoes. This possibility, coupled with the substantial harm to Glen's business that might occur if the company were barred from selling its products at a then imminent trade convention, led the court to conclude that the equities were not in Clarks' favor, and that a preliminary injunction would be inappropriate.

Glen and Paramount were also denied injunctive relief on their counterclaim alleging interference with their businesses by Clarks, because the companies had not shown that money damages would be inadequate to compensate them for any injuries.

Clarks of England, Inc. v. Glen Shoe Co., Inc., 485 F.Supp. 375 (S.D.N.Y. 1980) [ELR 2:4:2]

Federal Court of Appeals affirms judgment that movie "Macon County Line" did not infringe copyright to script of unreleased movie "Rednek Amerika"

In a brief, four-sentence order, a Federal Court of Appeals has affirmed a judgment that the movie "Macon County Line" did not infringe the copyright to the script of an unreleased movie entitled "Rednek Amerika, Love It Or ... !"

"Macon County Line" was produced by and starred Max Baer (of the long-running television series "The Beverly Hillbillies"). It was released by American International Pictures beginning in 1974, earned approximately $10 million in gross rentals, and was broadcast on network television in 1976 and 1977.

The script for "Rednek Amerika" was copyrighted by Midas Productions, Inc., a Texas corporation owned by the father of the script's author and by another couple. Midas began production of "Rednek" in 1972 in Mississippi, and although it was never released, Baer had access to the script, because he was hired by Midas to play the role of a deputy sheriff in the film. After a day of shooting, however, Baer quit, because he felt that the director was incompetent and the script inferior. When he left, Baer took a copy of the "Rednek" script with him back to California where he gave it to Richard Compton, an experienced television and motion picture writer. Baer was unable to convince Midas to hire Compton to rewrite the script, and thus neither Baer nor Compton had any further involvement with "Rednek."

Immediately thereafter, however, Baer and Compton decided to produce the movie "Macon County Line." According to Midas, "Macon County Line" was copied from "Rednek Amerika," and Midas' expert witness did testify that the two movies had the following similarities. Both movies involved three young people traveling through the south. While stopped at a service station, they are warned by a lawman to "keep moving." Their vehicle becomes stranded after a breakdown, and they camp out. A murder occurs, and circumstantial evidence suggests that the trio committed it. As a result, the three are pursued by southern law enforcement officials. In "Rednek," one of the three is thereafter murdered; in "Macon," two are murdered. In both movies, there is a romantic involvement between a female hitchhiker and one of the males in the group, and this relationship includes a scene of them frolicking nude in the water. Both movies contain a service station scene in which the wife of the station operator is depicted as a fat, coarse, country woman. And both movies have a scene in which the young travelers "rip off" a cafe owner.

The defendants contended that these elements were common to many "exploitation" films produced both before and after "Rednek" was written, and they called witnesses who testified about a "laundrylist" of those movies. Common to all those movies were most of the following characteristics: longhaired males in their early

20s traveling in the south; a female hitchhiker is picked up along the way and becomes involved with one of the males in sexual encounters which culminate in a scene of nude bathing; their vehicle becomes disabled and help is sought at a service station operated by a "redneck type"; a lawman treats the youths with disdain and subjects them to ridicule and assault; one of the young people leaves a diner without paying his bill; a murder occurs under circumstances that implicate the youths even though they are innocent; a chase ensues during which one or more of the innocent youths are brutally slain.

Given this testimony, the Court of Appeals held that the alleged copying was "clearly a question of fact," and it found no error in the trial court's determination that "Macon County Line" had not been copied from "Rednek."

The trial court had concluded that a comparison of the two movies indicated that their differences outweighed their similarities. The trial court pointed out that "Rednek" depicts the drug culture and hippies of the late 1960s, while "Macon" is set in the 1950s and involves mischievous but reasonably wholesome youth. "Rednek's" sheriff is a racist philanderer while "Macon's" sheriff is a devoted family man. The sheriff's wife in "Rednek" is promiscuous, while the wife in "Macon" is faithful. These contrasts, the trial court held, "indicate that the Baer-Compton script was an independent creation."

Although the movies may have been similar, the trial court ruled that copyright protects only the expression of an idea, not the idea itself, or themes or stereotyped characters.

Midas Productions, Inc. v. Baer, (No. 77-3912, 9th Cir. Nov. 19, 1979, affirming, CV 76-579-DWW, C.D.Cal. 1977) [ELR 2:4:2]

Court of Appeals reverses judgment in favor of Columbia Pictures and Savoy Records in record company finder's fee case

Whether Jon Meadow, president of Inventive Music, was the "efficient producing cause" of the negotiations between Savoy Record Company and Columbia Pictures for Columbia's purchase of Savoy, thereby entitling Meadow to a finder's fee, and whether Columbia tortiously interfered with Meadow's alleged right to a finder's fee, were questions for the jury, a Federal Court of Appeals has held, reversing the District Court's directed verdict in favor of Savoy and Columbia.

In December of 1973, after learning that Savoy Record might be available for sale, Meadow called Jack Cohen, attorney and business advisor of the now-deceased owner of Savoy, to offer his services as a finder. Cohen wrote to Meadow that "if an interested party communicates with us through you, we will recognize you as the finder."

Starting in February of 1974, Meadow made several attempts to contact officials at Columbia regarding the availability of Savoy. On June 28, 1974 Meadow contacted Alan Adler, an employee of Columbia Pictures, Inc. in charge of acquisitions. When Adler asked what company was for sale, Meadow told him that it was Savoy. Adler responded he would have to discuss the matter with Clive Davis, a consultant to Columbia, and that he would get back to Meadow by July 12th.

Adler then contacted Cohen, for the first time, on July 9th. According to Cohen's testimony, Adler told Cohen that Columbia was not approaching Savoy through a finder. On July 12th, Meadow contacted Adler by phone, at which time Adler informed Meadow that Clive Davis had already been working on the Savoy purchase and that Columbia considered the purchase to be an "in-house" deal, rendering Meadow's services unnecessary.

On July 15th, Meadow wrote to Cohen informing him that Columbia had teamed of Savoy through him. Cohen then contacted Adler and told him that if the facts in Meadow's July 15th letter were true, "you have been far from candid with me." In response, Adler told Cohen that Davis and another Columbia employee named Backer had been working on the acquisition prior to Meadow's call on June 28th.

After consummation of the sale of Savoy to Columbia, Meadows filed suit to recover a finder's fee from the co-executors of the deceased owner of Savoy and to recover damages from Columbia for tortious interference with his contract with Savoy.

Under New Jersey law, a person earns a finder's fee if he was the "efficient producing cause" in bringing about a sale, and there may be tortious interference with economic interests if a buyer represents facts to a seller in a manner that deprives a broker of commissions.

With regard to the directed verdict in favor of the co-executor defendants, the court found that the only evidence presented that Meadow was not the producing cause of the sale was a statement of Adler that Backer showed him some general information about Savoy, such as a list of the records put out by Savoy. "This shows only that Columbia was aware of Savoy's possible availability," stated the court, and it does "not negate the possibility that Meadow caused Columbia to contact Savoy and commence negotiations." Thus, the court did not think the New Jersey courts "would hold that the mere fact that the buyer had some general information about the seller proves, as a matter of law, that the plaintiff here was not the efficient producing cause in the sense of prompting the buyer to commence negotiations with the seller." Accordingly, the court held that the directed verdict in favor of the co-executor defendants was impermissible here.

Turning to the directed verdict in favor of Columbia, the court determined that the jury could have found that Adler was not telling Cohen the truth when he said Davis had been "working on" the Savoy purchase prior to Meadow's June 28th call. If so,"said the court, "then that conduct would fall within the rule ... that a buyer may not deprive a broker of a commission by making representations to the seller."

After discussing other questions which should have been left for the jury to decide, the court held the directed verdict was not warranted and the judgment of the District Court was reversed.

Inventive Music Ltd. v. Cohen, 617 F.2d 39 (3d Cir. 1980) [ELR 2:4:3]

Service of process on Barry Manilow's manager was not sufficient to give New York courts jurisdiction over Manilow personally in breach of contract case

A breach of contract lawsuit has been filed against singer Barry Manilow in New York state court involving contracts he allegedly entered into to perform in concert at the Providence, Rhode Island Civic Center. The summons and complaint in the case were personally served on Miles Lourie - Manilow's manager - but not on Manilow himself.

The plaintiff in the case, Edward V. Green Enterprises, Inc., argued that Lourie had been authorized by Manilow to accept service of process on Manilow's behalf, because Lourie was Manilow's manager and had acted as his agent in connection with the agreements which are the basis for the lawsuit.

Manilow, however, denied that he had authorized Lourie to accept service on his behalf, and moved to dismiss the complaint. A New York Supreme Court has granted that motion, holding that service of the summons and complaint on Lourie was insufficient to give the court personal jurisdiction over Manilow. The court ruled that it did not have jurisdiction over Manilow, even though Manilow's lawyer phoned the plaintiffs lawyer within five days after service had been made on Lourie, because New York law requires personal service on individuals (except under circumstances which were not alleged to exist in this case).

Under New York law, service of process may be made on a "managing or general agent" of a corporation, but not on the manager or agent of an individual. The court noted that there does not seem to be a reason for this distinction between corporations and individuals, and said that "Persons in the performing arts usually do business through a managing agent ... and should logically be as amenable to process as the managing agent of a corporation." "That, however, is a matter for legislative, not judicial consideration," the court said as it dismissed the case.

Edward V. Green Enterprises, Inc. v. Manilow, 427 N.Y.S.2d 199 (1980) [ELR 2:4:4]

Construction of domed sports stadium in Minneapolis is approved by Minnesota courts

In 1977, the Minnesota legislature passed an act authorizing the construction of a domed sports stadium in Minneapolis. Among other things, the act provided for the sale of $55 million worth of municipal bonds to finance the stadium's construction. The act contemplated that Minneapolis would impose a tax on retail liquor sales and on the gross receipts of hotels and motels located in the city, in order to provide revenues, in addition to income from the operation of the stadium, for the repayment of bond obligations and for the payment of operating expenses.

By the fall of 1979, virtually all of the agreements that were necessary for the construction of the stadium and for the sale of the bonds had been entered into. At about that time, however, a suit was filed by some Minneapolis hotel owners and liquor retailers challenging the constitutionality of the sports stadium act and the propriety of several of the contracts that had been entered into for operation of the stadium.

The hotel owners argued that the hotel-motel gross receipts tax was unconstitutional because it gave an unfair competitive advantage to hotels located outside of the City of Minneapolis. However, other testimony indicated that most other hotel-motel operators in the city favored the stadium and the accompanying tax on the assumption that the stadium will benefit their businesses. Furthermore, said the court, the legislature may legitimately establish taxing districts, and thus it held that the liquor and hotel-motel taxes are constitutional.

Those opposed to the construction of the stadium also objected to the terms of the lease entered into by the Sports Facilities Commission with the Minnesota Twins. The stadium act provided that leases with sports teams could permit termination of those leases because of the bankruptcy, insolvency or financial incapability of the teams. Pursuant to this authority, the Commission entered into a lease with the Twins which permits the Twins to terminate the lease if they do not sell, on the average for three years, at least 1.4 million tickets annually or the average number of tickets sold by all teams in the American League, whichever is less; or if the Twins have a net operating loss for three consecutive years. The objectors contended that these provisions were arbitrary and capricious. The court pointed out, however, that the legislature had not defined what it meant by "financial capability," and it held that the terms negotiated by the Commission with the Twins were not arbitrary or capricious.

Those opposed to the construction of the stadium also objected to the terms of the agreements the Commission had entered into with the American League guaranteeing the Twins' performance of their lease, and with the National Football League guaranteeing performance by the

Minnesota Vikings of their lease. The stadium act required the Commission to enter into agreements with those leagues "which guarantee the continuance of franchises in the metropolitan area" for the period of the leases. The guarantee agreements actually entered into provide that the leagues will not voluntarily approve the relocation of the Twins or Vikings if relocation would violate their leases. The American League and the NFL also agreed that if the teams' memberships in the leagues are terminated, the leagues shall agree to the assessment of the leases to other entities which will assume the teams' obligations, providing the successor teams comply with league membership requirements. However, the agreements with the leagues do not require the leagues to perform the teams's obligations under the leases, nor do they require the leagues to create and provide owners to operate teams in the stadium.

Nevertheless, the court ruled that it was the legislature's intent to prohibit the leagues from arbitrarily or summarily transferring the teams to another city, and that intent had been respected by the Commission in its guarantee agreements with the leagues. "It would be an absurdity to construe this statute to mean the legislature intended for the major leagues to guarantee to operate a team in the stadium for a period of thirty years," the court concluded.

Those opposed to the construction of the stadium also objected to the provisions of an agreement the Commission entered into with General Mills requiring General Mills to buy all tickets to Vikings home games which remain unsold 72 hours prior to those games. The stadium act required the Commission to obtain a purchaser of such tickets for twenty years, in order to assure that Viking home games would be broadcast on local television. General Mills agreed to spend as much as $1.5

million buying such tickets. The objectors contended that this amount may be inadequate to assure that all tickets will be sold for the next twenty years.

The court disagreed, however. It noted that the Vikings have a waiting list of 15,000 applicants for season tickets; that in the last four years they have sold out every home game but two more than 72 hours in advance; that the Vikings agreed with General Mills to act as its agent in reselling any tickets General Mills may have to purchase; and that the Vikings themselves agreed to pick up any excess over $150,000 per year that General Mills may have to spend. Thus, the court ruled, "If the past history of the Vikings ticket sales is any indication of the future, the amount of money General Mills is pledged to use to purchase tickets should be more than adequate."

Other objections (to non-sports features of the stadium project) were also rejected by the court.

The decision was rendered by a Minnesota District Court. It has been published as an "appendix" to a decision of the Minnesota Supreme Court that the time for the objectors to appeal expired without an appeal being taken. Thus, the decision of the District Court has become final.

Minnesota Vikings Football Club v. Metropolitan Council, 289 N.W.2d 426, 433-448 (1979) [ELR 2:4:4]

Government official's decision to revoke art exhibit permit violated artist's First Amendment rights

In the fall of 1978, John Sefick, an "environmental" sculptor, wrote to the Coordinator of Programs and Exhibits at the Richard J. Daley Civic Center concerning the possibility of displaying his work. Sefick was granted a three-week exhibition, the first two of which ran smoothly. At the start of the third week, however, the artist set up a display which satirized then-mayor Michael Bilandic's handling of the snow removal operation necessitated by a record snowstorm. The Coordinator of Programs and Exhibits at the Center immediately revoked Sefick's exhibit permit and covered the display with a blanket. Asserting that this violated his First Amendment rights, Sefick filed a lawsuit to compel the exhibition of his work for the agreed upon time. A Federal District Court has ruled in his favor.

According to the court, Sefick's art exhibit constituted speech within the meaning of the First Amendment and thus was entitled to constitutional protections. Among other things, this meant that absent a substantial government interest, any infringement could not be motivated by content alone. In addition, the court noted that although a government entity was under no obligation to provide a forum for the exhibition of art, once it chose to do so, it was subject to constitutional requirements.

The court then made the factual determination that the decision to revoke Sefick's permit and cover his exhibit with a blanket was, in fact, primarily motivated by the social and political nature of the artwork. Moreover, the court rejected the argument that a substantial government interest existed in protecting unwitting passersby from the exhibit's message.

The court thus concluded that Sefick's First Amendment rights had been violated. It issued an order that the artist's exhibit be shown for five consecutive days at the Richard J. Daley Civic Center where it had previously been restricted.

Sefick v. City of Chicago 485 F.Supp. 644 (N.D.Ill. 1979) [ELR 2:4:5]

Flamingo Hotel required to report "markers" as taxable income, even though gambling debts are unenforceable under Nevada law

A significant portion of Nevada casino play results from extensions of credit by casino operators to their patrons. In fact, in a recent case involving the Flamingo Hotel, it was estimated that 60% of the Flamingo's casino play resulted from credit extensions.

Like other casinos, the Flamingo has its patrons sign a marker when they are given chips on credit. The Flamingo's marker is in the form of a countercheck and has places for the insertion of the name of the gambler's bank and account number.

For the 1967 tax year, the Flamingo excluded from its gross gambling receipts the face amount of the markers it had outstanding at year end. It did so, because it contended that gambling debts are unenforceable under Nevada law, and thus are not taxable income unless and until the markers actually are paid. The Internal Revenue Service, on the other hand, contended that the markers were taxable income. The Flamingo paid the extra tax claimed by the IRS and then filed suit in Federal District Court in Las Vegas for a refund.

The tax regulation in question provides that when the accrual method of accounting is used. income is taxable "when all the events have occurred which fix the right to receive such income...." Treas. Regs. sec. 1.451-1(a). The issue in this case thus became whether the Flamingo had a "fixed right" to the income represented by the markers it had accepted from its patrons but which had not yet been paid.

Under Nevada law, gambling debts are not enforceable, and a check written to cover gambling losses is not collectable if the debtor stops payment on it. For this reason, the Tax Court held just last year that markers accepted by Caesars Palace were not includible in taxable income until they were actually paid. Desert Palace, Inc. v. Commissioner, 72 T.C. 1033 (1979).

Federal District Judge Roger Foley has disagreed with the Tax Court's conclusion, however, and has held that the Flamingo must include in its income the face amount of its markers even though they are unpaid. Judge Foley held that legal enforceability is not necessary for a taxpayer to have a right to receive income, for income tax purposes. Whether a right to income is "fixed" for tax purposes depends upon "a practical rather than a legal test," he ruled. In this case, he held that the Flamingo had a practical right to collect the markers, because the markers were for certain sums, there were no events which could alter either their amounts or the fact that they were due, and they could be collected through normal banking channels if the Flamingo magnetically encoded them. Furthermore, the Flamingo had "collection procedures short of resort to the courts" which in fact had resulted in its collecting more than 90% of the markers.

Judge Foley acknowledged that there seems to be something inherently unfair about imposing taxes on "income" that may never be received. "This objection is met, however, by the availability of a bad debt or loss deduction if the receivable [the marker] actually becomes uncollectible," he concluded.

Flamingo Resort, Inc. v. United States, 485 F.Supp. 926 (D.Nev. 1980) [ELR 2:4:6]

District Court refuses to lift preliminary injunction against "The Progressive" even though government documents about the H-Bomb had been accidentally

declassified and several non-governmental publications had dealt with the same topic

In March of 1979, a Federal District Court granted the government's request for a preliminary injunction to enjoin the publishers of The Progressive from publishing the article, "The H-Bomb Secret - How We Got It, Why We're Telling It." The court based its decision on the Atomic Energy Act, 42 U.S.C. sec. 2280, but also noted that even in the absence of statutory authorization, the likelihood of direct, immediate and irreparable injury to the nation warranted the injunction.

In June of 1979, however, the magazine's publishers asked the court to reconsider and vacate the preliminary injunction on the grounds that the case had since changed. According to the publishers, two inadvertently released classified documents and a number of non-governmental publications had already placed in the public domain the information which the government sought to keep secret. These facts, the publishers argued, compelled the lifting of the injunction. The Federal District Court disagreed, however.

First, the court noted that the government's error in accidentally declassifying certain documents did not, "from a legal point of view," move the information contained in them into the public domain. 'Prior release of classified information should not be binding on the government," the court reasoned, "if, at a later time, it is determined that further release would jeopardize national security."

Second, the court found the non-governmental sources cited by the publishers to be "clearly dissimilar" from the article enjoined. According to the court, these other publications only stated the key concepts in a "highly speculative and generalized framework," while The

Progressive account provided "an accurate. detailed and comprehensive ... analysis."

Concluding that the enjoined article still contained information not in the public realm, the court denied the motion for reconsideration of the preliminary injunction.

United States v. Progressive, Inc., 486 F.Supp. 5 (W.D.Wisc. 1979) [ELR 2:4:6]

Briefly Noted:

Sports.

The parents of two high school students brought suit against the University Interscholastic League to invalidate an order of the League declaring that the students were ineligible for the 1978-79 basketball season by reason of their participation in a "three-on-three" basketball tournament in July, 1978. The Civil Appeals Court of Texas held that the trial court had jurisdiction to hear the suit and that the trial judge's order enjoining the enforcement of the League's order during the pendancy of the action did not constitute an abuse of discretion.

University Interscholastic League v. Green, 583 S.W.2d 907 (Tx.Civ.App. 1979) [ELR 2:4:7]

Obscenity.

An exemption for motion picture projectionists from the criminal penalties of a Rhode Island obscenity statute does not deny equal protection, under a "rational relationship" standard, to book store employees and clerks who are not given the benefit of the same or similar exemption, held the Supreme Court of Rhode Island. In addition, the Court held the statute itself is not void for impermissible vagueness and overbreadth, since the Court may constructively incorporate the standards of Miller v. California, 413 U.S. 15 (1973), into the definition of "obscene" as used in the statute.

Slate v. Lesieure, 404 A.2d 457 (R.I. 1979) [ELR 2:4:7]

Obscenity.

A municipal ordinance which restricts the hours of exhibition of "X-rated" motion pictures from 7 p.m. until midnight does not violate the First Amendment, held a Superior Court of New Jersey. The Court, citing Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976), ruled that the impact upon plaintiff's constitutionally protected film exhibitions is no greater than that which is necessary to promote the legitimate governmental interests articulated by the municipality.

New Chancellor Cinema, Inc. v. Town of Irvington, 405 A.2d 438, 169 N.J.Super. 564 (1979) [ELR 2:4:7]

Obscenity.

A Wisconsin Court of Appeals has brought a Wisconsin obscenity statute into conformity with requirements enunciated in Smith v. United States, 431 U.S. 291 (1977), by holding that "the serious literary, artistic, political, or scientific value test shall henceforth be employed not by using contemporary community standards, but by using uniform and objective national standards."

State v. Princess Cinema of Milwaukee, 280 N.W.2d 323 (Wis.App. 1979) [ELR 2:4:7]

Obscenity.

An injunction entered pursuant to a Florida obscenity statute restraining a bookseller from disseminating any printed materials or other merchandise, absent a judicial determination that the particular materials or merchandise are obscene, constituted an impermissible prior restraint prohibited by the First Amendment, held the Supreme Court of Florida.

Ladoga Canning Corp. v. McKenzie, 370 So.2d 1137 (Fla. 1979) [ELR 2:4:7]

Tax.

In an appeal from a determination of a Vermont Board of Tax Appraisers concerning the fair market value of a television station's transmitting facility, the Vermont Supreme Court held that the Board properly adopted the appraisal of an expert witness which was based on original cost, tended to reflect current reproduction cost, less depreciation.

Mt. Mansfield Television, Inc. v. Town of Stowe, 407 A.2d 172 (Vt. 1979) [ELR 2:4:7]

Tax.

The Wisconsin Department of Revenue sought to impose a sales tax on the sale proceeds of all the tangible business assets of a television broadcasting station, normally exempt from such tax, for the sole reason that it possessed a seller's permit for the sale of phonograph records, from which it derived a small portion of its revenues on a sporadic basis during nearly four years prior to the sale of its operating assets.

The Wisconsin revenue statute exempts "occasional sales," but in defining that term provides that "No sale of any tangible personal property or taxable service may be deemed an occasional sale if at the time of such sale the seller holds or is required to hold a seller's permit."

Recognizing that it is the manifest object of the statute to impose a sales tax only upon the retail sales of tangible goods and on the retail sales of specifically enumerated services, the Court of Appeals of Wisconsin concluded that "it would be contrary to the legislative purpose to impose a sales tax on the sale of ... assets solely because the taxpayer hold a seller's permit ... in connection with another activity, only remotely connected to its business." Thus, the broadcasting station is not a "seller" who holds" a permit within the meaning of the revenue statute and, therefore, the sale was an exempt "occasional sale."

Midcontinent Broadcasting Company of Wisconsin Inc. v. Wisconsin Dept. of Revenue, 284 N.W.2d 112 (Wisc.App. 1979) [ELR 2:4:7]

Libel.

A newspaper article entitled "Flight School Vanishes Into Thin Air," concerning the involvement of the plaintiff and others in the operation of a sky sailing school was not libelous per se, because the article's generic reference to crime was susceptible of an "innocent construction" and nonactionable as a matter of law. The

Appellate Court of Illinois therefore affirmed the order of the trial court dismissing the plaintiffs complaint with prejudice.

Makis v. Area Publications Corp., 395 N.E.2d 1185 (Ill.App. 1979) [ELR 2:4:8]

Libel.

A newspaper column and editorial describing a "Mr. and Miss Nude Teeny Bopper" pageant which was to be held at Naked City, a nudist camp located in Indiana, was not libelous as a matter of law, held an Appellate Court of Illinois. The court stated that the headline "This nudist pageant seeks to lure kids," when considered together with the text of the article, accurately depicted the conduct of the pageant; and the columnist's statement that the pageant might result in the taking of photographs which could end up as child pornography was an expression of opinion, rather than a statement of fact, and thus receives constitutional protection.

Naked City, Inc. v. Chicago Sun-Times, 395 N.E.2d 1042 (Ill.App. 1979) [ELR 2:4:8]

Libel.

A newspaper article appearing under the headline "Executive Recruiter Pledges Much - And Keeps The Fee" was ruled not defamatory as a matter of law by an Appellate Court of Illinois. The "innocent construction" rule, held the court, requires that the trial court's dismissal of the amended complaint be affirmed.

Dauw v. Field Enterprises, Inc., 397 N.E.2d 45 (Ill.App. 1979) [ELR 2:4:8]

DEPARTMENTS

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The Descendibility of the Right of Publicity: Is There Commercial Life After Death? by Peter L. Felcher and Edward L. Rubin, 89 Yale Law Journal 1125-1132 (1980)

A Motion Picture Producer's Standing to Recover Treble Damages from a Movie Distributor for Block Booking by John K. Lieberman, 14 Beverly Hills Bar Association Journal 185-196 (1980)

Public Access Teetering on the Tightrope of FCC Jurisdiction Over Cable Television by Perry Rosen, 16 Idaho Law Review 123-142 (1979)

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