

RECENT CASES

California Court of Appeal affirms \$90,000 arbitration award against AFTRA in favor of television producer because of union's failure to bargain in good faith concerning sale of previously produced programming to pay television

The California Court of Appeal has affirmed a \$90,000 judgment in favor of independent television producer Jackie Barnett and his company Jay Bar, Inc., against the American Federation of Television and Radio Artists. The judgement confirmed an arbitration award rendered by Dr. Mei Bickner who had been appointed to arbitrate Barnett's grievance pursuant to the AFTRA Code.

In his grievance, Barnett alleged that AFTRA had failed to bargain with him in good faith concerning the terms and conditions on which he would be permitted to license portions of previously produced television programs for use on pay television. As a result of AFTRA's failure, Barnett contended that he had been unable to comply with a contract he had made with 20th Century Fox for pay television use of his product.

The arbitrator agreed with Barnett and awarded him \$90,000 in damages on account of production costs incurred by him. Barnett's claim for lost profits was rejected by the arbitrator, however, as conjectural.

The arbitration award was confirmed by Superior Court Judge Leon Savitch. AFTRA then appealed to the Court of Appeal which has affirmed Judge Savitch. The decision of the Court of Appeal (which has not been certified for publication and therefore will not appear in the official California case reports) does not reconsider

the facts or legal principles upon which the arbitrator based her award. Rather, the Court of Appeal emphasized the narrow grounds that exist in California for vacating an arbitration award, and it concluded that none of those grounds existed in this case.

The most significant issue in the case, insofar as other parties are concerned, appears to have been the award of monetary damages for AFTRA's refusal to bargain. Under federal labor law, unions and employers have a duty to bargain in good faith with one another concerning wages, hours and other terms and conditions of employment. If one party refuses to bargain in good faith, the refusal constitutes an unfair labor practice, the remedy for which is an NLRB order requiring good faith bargaining. Continued refusal to bargain in good faith may ultimately result in a contempt of court citation, though not monetary damages in favor of the innocent

party. Generally, the end product of bargaining is a collective bargaining agreement.

In this case, however, Barnett successfully argued that AFTRA's existing collective bargaining agreement, to which Barnett was a signatory, required AFTRA to bargain with him concerning the terms upon which it would permit him to sell his product to pay television; and that AFTRA's failure to do so constituted a breach of that agreement, not a mere unfair labor practice. The usual remedy for breach of contract is monetary damages.

AFTRA petitioned the California Supreme Court for a hearing, but that court has declined to consider the case further.

American Federation of Television and Radio Artists v. Jay-Bar, Inc., Cal.Ct.App., 2d Civ. No. 57839 (Sept. 23, 1980) [ELR 2:15:1]

Libel suit against Jimmy Breslin, Dick Schaap and publisher of their novel ".44" is dismissed by New York appellate court

The novel ".44," written by Jimmy Breslin and Dick Schaap, depicted the efforts of the New York City Police Department to identify the individual called the "Son of Sam" who had used a .44 caliber revolver to murder or wound several young men and women. The novel contained a passage in which two police officers complained about a sheriff in Malone, New York who had failed to aid their investigation. They also referred to the sheriff as "this quiff in Malone." Percival C. Lyons, a County Sheriff with an office in Malone, N.Y., brought a libel action against Breslin and Schaap and New American Library, the publisher of the novel, in which Lyons alleged that the passage falsely charged him with incompetence and injured his reputation.

The decision of the New York Supreme Court at Special Term which denied a motion by NAL to dismiss the complaint has been reversed by the Appellate Division of the New York Supreme Court. The Appellate Division noted that a charge of general ignorance or lack of skill, rather than a mistake on a single occasion, generally is required to establish liability in an action based upon an accusation of incompetent performance of professional duties. The fictional sheriff's refusal to conduct the requested ballistics test was such a single incident and hence was not actionable. And the use of the word "quiff" was found to be "mere vituperation"; it was not used literally to mean a "male sexual pervert."

The court then observed that "[t]he statements which form the basis of the complaint cannot be read to refer to plaintiff. The work clearly states that it is fiction and that, combined with plaintiff's admission that he did not participate in the Son of Sam investigation, requires the

conclusion that the passage is not actionable." In California, the fact that ".44" was fiction would not have been of itself a sufficient basis for dismissing the complaint. However, as distinguished from the facts in *Bindrim v. Michell*, 91 Cal.App.3d 61, modified, 92 Cal.App.3d 869 (1979) (ELR 1:4:1), the fictional sheriff in ".44" was hardly a central character and Lyons himself had not even participated in the events in question. The *Bindrim* decision was not mentioned by the New York court, nor was the recent decision in *Geisler v. Petrocelli*, 616 F.2d 636 (2d Cir. 1980) (ELR 2:12:6) in which a Federal Court of Appeals ruled that a woman who had been acquainted with the author of the novel "Match Set" and who shared *the same name and physical characteristics as the novel's heroine, was entitled to establish that a "reasonable reader must rationally suspect that the protagonist is in fact the plaintiff,

notwithstanding the author's publisher's assurances that the work is fiction."

Lyons v. New American Library, (N.Y.S.C. App. Div., Case No. 37531, October 16, 1980) [ELR 2:15:2]

Sportswriter's libel judgment against New York Magazine is reversed and case dismissed on grounds that writer was "public figure" and had failed to prove "actual malice"

Tex Maule, a well known writer for Sports Illustrated magazine sued the publishers of New York Magazine (NYM) and one of that magazine's writers for publishing allegedly libelous statements about Maule in an article entitled "And Now for the Good News at Time, Inc."

The NYM article dealt primarily with the rejuvenation and success of Sports Illustrated. However, the following comments, among others, appeared in the article: "Maule, who in his youth was a trapeze artist, is not a graceful wordman. He is quite possibly the worst writer on the magazine ... On Sunday evenings during the football season the magazine mobilizes itself to rewrite Maule's copy ... Yet he maintains his beat year after year, not the least because he is [the managing editor's] long time drinking companion."

The trial court had refused to find that Maule was a "public figure" and, after a jury trial, the court entered a judgment in favor of Maule for \$75,000 compensatory and \$35,000 punitive damages. A New York appellate court has reversed that judgment, however, determining that Maule had become a "public figure" through his many books and articles in the sports field.

As a "public figure," Maule had the burden of proving that the statements were made with "actual malice," that is, with knowledge of their falsity or with reckless disregard of the truth. Because the trial court had failed to instruct the jury on these principals, a new trial was the minimum required, said the appellate court.

The appellate court went a step further, however. It noted that before the NYM article was written, its author solicited the views of his associates on the subject and many of them agreed that Maule's copy required unusual editing. This, the court found, was a good faith attempt to reach the truth of the matter. Consequently, the court ruled that Maule did not carry his burden of proving that the statements were made with "actual malice". On that basis, the court not only reversed the judgment, it dismissed Maule's case.

A dissenting opinion was filed in which the dissenting judges agreed that the majority was probably correct in

concluding that Maule was a "public figure," but the dissent stated that "It does not seem ... to follow quite so inescapably that the complaint should be dismissed." The dissent believed that Maule was entitled to a new trial.

Maule v. NYM Corporation, 429 N.Y.S.2d 891 (App.Div. 1980) [ELR 2:15:2]

Contempt citation against Recording Industry Association of America reversed by Federal Court of Appeals, because trial court order requiring production of RIAA investigation reports in criminal case was overbroad

An order of a Federal District Court in New York holding the Recording Industry Association of America,

Inc. in contempt of court has been reversed. The order was issued during a criminal action alleging that the defendants had sold and distributed counterfeit recordings. The RIAA refused to comply with the defendant's subpoena seeking certain investigative reports prepared by the Association's Anti-Piracy Unit. A Federal Court of Appeals has ruled that the scope of the production order was "patently overbroad and unreasonable", noting that "it appears that the potential harm that would be caused by the order as it now stands to the RIAA's private supplementary law enforcement program would clearly outweigh the questionable probative value of the documents..."

The subpoena might have required the RIAA to reveal the names of traders in counterfeits and the targets of RIAA and government investigations. The Court of Appeals therefore ordered the District Court on remand to devise a more limited document request.

United States of America v. Sam Goody, Inc., Docket No. 80-1365 (2d Cir., November 7, 1980) [ELR 2:15:3]

Public television station ordered by Federal District Court to televise controversial PBS program "The Death of a Princess"

A subscriber and regular viewer of KUHT-TV, a public television station owned and operated by the University of Houston, brought suit to compel the station to telecast on May 12, 1980 the Public Broadcasting System program "The Death of a Princess."

The station had cancelled the program in view of the "strong and understandable objections" raised by the government of Saudi Arabia. On May 9, 1980, a hearing was held before a federal district court in Texas, after

which the court directed KUHT to air the show as originally scheduled.

In issuing its order, the court noted that "This is not a case of a privately-owned-and-operated TV station making programming decisions." Here, the government, the state-supported University of Houston, is involved in the programming decisions of KUHT. "When the government gets involved in broadcasting, it has an obligation, at a minimum, to establish procedures that assure that programming decisions are not based on the political beliefs of its programmers and are not made arbitrarily or without due process of law," stated the court.

The court found that programming decisions at KUHT are normally made by the Director of Programming after consulting with the General Manager and the Vice President of University Relations, without any set guidelines. KUHT's Director of Programming testified that in this instance the decision was made solely by the Vice

President, who testified that he has complete authority to cancel a scheduled program for any reason, subject only to review by the President of the University. Since, the University President was not informed until after the decision was made, the court found it clear that the final decision not to air the show was made within the sole discretion of the Vice President of the University.

The court cited *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975), in which the Supreme Court struck down a decision by a municipal board rejecting an application to perform the rock musical "Hair" in a city-managed theater. In that case, the Court found that constitutionally required minimum procedural safeguards had been lacking. In this case, the court found a similar absence of procedural safeguards in the University's "failing to provide established guidelines for programming decisions and allowing one official the

unbridled discretion to program on the basis of his political beliefs."

In finding that the viewer had established irreparable harm, the court stated, "It had been widely held that the deprivation of a constitutional right constitutes irreparable injury," and "The injury is even more apparent where important First Amendment rights are involved."

The viewer had testified that if she were not able to view the show at its regularly scheduled time she would be denied important give-and-take discussions with friends around the country who were to view the film on May 12, 1980. The court decided that this threatened injury outweighed the threatened harm to the station "resulting from a court enforced prohibition of politically-based programming decisions."

The court rejected the station's offer to tape the show so that it could be shown at a later date if the court so ordered. A deprivation of the First Amendment will not

be countenanced for any period of time, said the court. The court had determined that the viewer had standing to bring the action, citing U.S. Supreme Court decisions which according to the court, "have consistently held that implicit in the First Amendment right to speak is the right to hear."

Finally, the court found ample evidence that the public interest would not be disserved by the broadcast of the program. Noting "the legion of other PBS stations around the country which will be airing 'The Death of a Princess' at the regularly scheduled date" and finding that "no threat of harm has been shown to exist in those communities," the court concluded that "no greater harm will befall the members of the community if the show is aired in Houston."

Barnstone v. University of Houston, KUHT-TV, 487 F.Supp. 1347 (S.D.Tex. 1980) [ELR 2:15:3]

Author's violation of publisher's exclusive publication rights is copyright infringement under new Copyright Act, even if publisher violates publication contract, until contract is terminated

In 1977 an author entered into a publishing agreement with Dodd, Mead & Co., granting to the publisher the exclusive right to print, publish and sell the author's book *The Zionist Connection*. Two years later, the author sued Dodd Mead in state court alleging that the publisher had breached the publishing agreement by failing to actively promote the book. That action was in its pretrial stages when Dodd Mead brought an action in federal court to stop the subsequent distribution and sale of *The Zionist Connection* by the author himself.

The author conceded that the version he published was virtually identical to the book sold by Dodd Mead and that the book-buying public is likely to be confused as to the source of the work. His only defense was that the federal court had no jurisdiction over the matter by virtue of the action pending in state court. Federal District Judge Duffy has disagreed however and has enjoined the further sale of the author's unauthorized edition.

The court noted that under the new Copyright Act, the doctrine of "indivisibility of copyright" is abolished as to exclusive licensees. Section 201 (b) of the new Act provides that any of the exclusive rights comprised in copyright may be transferred and owned separately. Thus, Dood Mead, as the exclusive licensee of the rights of publication and sale of The Zionist Connection, had standing to sue in its own name for any act of infringement of those rights. This is precisely what it did in this case, said the court, and the fact that Dodd Mead may

have breached the publishing agreement does not affect its assigned rights of exclusive publication, until that agreement is terminated.

Dodd, Mead & Co. v. Lilienthal, CCH Copyright Law Reports, Para. 25,186 (S.D.N.Y. 1980) [ELR 2:15:4]

Beauty pageant winner obtains order from Federal District Court in Texas requiring contest sponsors to recognize her as Miss New Mexico, despite her Texas residence, because of misrepresentations made concerning residency requirements

Kathy Patrick has successfully defended her right to retain the title Miss New Mexico-USA 1980 despite a pageant official's ruling after the contest that her residency in Texas disqualified her from holding the title.

Patrick resided near Anthony, Texas, a town on the border of New Mexico and Texas. In previous years, winners of the local Miss Anthony pageant had entered both Texas and New Mexico statewide pageants in the same year. Patrick had advised pageant officials of her intention to do like-wise and had encountered no objections.

A Federal District Court in Texas initially concluded that it possessed jurisdiction over the defendant Miss New Mexico-USA Universe Pageant, the event's local sponsor, under Texas' long-arm statute. Patrick was contractually obligated to perform some pageant-related activities in Texas and the pageant recruited her for "employment" purposes through a Texas intermediary; and these activities constituted "doing business" in Texas, the court held. Furthermore, Miss Universe, Inc., although operating state and local pageants as franchises, was not a Holiday Inn or a McDonalds according to the court, but rather, was "one overall

organization, one network, one octopus with 50 tentacles and countless subtentacles." The organization was doing business in Texas and New Mexico via the franchisees, who were also found to be agents of the national organization in this case as well.

In view of Patrick's reliance on the representations of the local pageant president that her Texas residence would not preclude her from entering pageant competition, the court ruled that Patrick was entitled to specific performance of her contract to serve as Miss New Mexico-USA 1980. Specific performance was considered appropriate in view of the unique nature of the position and its attendant Opportunities.

The national organization also was found responsible for the representations of the local pageant officials which were relied upon by Patrick. Both defendants were therefore prohibited from taking any action which

would deny Patrick the right to assume her title and to compete for the Miss USA crown.

Patrick v. Miss New Mexico, 490 F.Supp. 833 (W.D.Tex. 1980) [ELR 2:15:4]

Assignment of basketball coaching contract ruled invalid because condition requiring the accompanying assignment of the basketball franchise not fulfilled; terms of coaching contract calling for a bonus upon team's making of the play-offs satisfied by team's first place finish despite the cancellation of all play-off games

In 1974, the owners of the Israel Sabras, an International Basketball Association team, hired Herbert Brown to coach for a one-year term. After Brown had begun his

coaching duties, the owners formed a "Society of Limited Responsibility" (under Panamanian law) to which they assigned their rights and obligations under the coaching agreement. The basis for this assignment was the following clause in the contract:

"It is the intent of Owner, subsequent hereto, to assign its Franchise in the IBA to a corporate entity which will hold such Franchise, and upon the happening of such event, Owner shall assign to such corporate entity all of its rights and obligations under this Employment Agreement. Upon such assignment, the liability of Owner under this Agreement shall cease and terminate."

Brown contended, however, that the owners' assignment of his contract to the "Society" did not satisfy the requirements set forth in the preceding clause. He thus brought a breach of contract suit against the owners. According to the coach, the assignment by the owners of their basketball franchise was a condition precedent to

any assignment of the coaching contract; and since the team had not been assigned to the "Society," the owners were still responsible for the terms of his contract. The owners argued, on the other hand, that the language of the assignment clause merely expressed an intention to assign the team but did not create any condition precedent to a valid assignment of the coaching contract. A separate and independent assignment of the coaching contract was, according to the owners, covered by the assignment clause.

A trial court in Texas ruled in favor of the coach: and the Texas Court of Civil Appeals has affirmed.

In so ruling, the appellate court noted that under Texas law, absent advance consent or subsequent ratification, a party to an employment contract is "not ... required to apply his special skills and abilities for the benefit of anyone he has not elected to serve." The court pointed out that the validity of the assignment in question thus

depended upon its strict compliance with the terms of the coaching contract's assignment clause. The court then accepted the coach's interpretation of this clause:

"... it is clear that the parties intended the assignment of the franchise to be a condition precedent. To conclude otherwise would imply that appellee [Brown] knowingly and willingly agreed to permit appellants [the owners] to completely insulate themselves from personal liability under the agreement through making a corporate entity the sole obligor and placing no assets in the corporation which would guarantee appellee's compensation."

The court concluded that the owners were obligated to assign their basketball team prior to any attempt to assign their rights and obligations under the coaching contract.

The appellate court also ruled that Coach Brown was entitled to a bonus under a provision of his contract which called for a \$2,500 bonus in the event his team

made the play-offs. When the season ended, Brown's team was in first place and scheduled to play a Swiss team in the first play-off. The Swiss team, however, forfeited, and no other play-off games were played. Despite the failure of Brown's team actually to have engaged in any play off games the court found the coach to be entitled to the bonus. The court held that "under the ordinary usage" of the term "make the play-offs" "the team was not required to engage in any play-off games, but simply to qualify and be ready, willing and able to play." The court explained:

"Appellee [Brown] performed in the fashion the bonus incentive was designed to encourage. Having given the extra effort, skill, and attention and having achieved all that was required and anticipated, the clause does not saddle appellee with the consequences of the unintended and unanticipated cancellation of the play-off games."

Kosberg v. Brown, 601 S.W.2d 414 (Tex.Civ.App. 1980) [ELR 2:15:5]

Use of factual information, but not its particular "expression," does not constitute copyright infringement, Federal District Court holds in case involving similar chemistry textbooks

The likelihood that two introductory chemistry textbooks would contain similar topic selection and organization, tables, chemical nomenclature, problems and even common errors precluded a finding that T.W. Graham Solomons' text "Organic Chemistry" infringed a text, also entitled "Organic Chemistry," written by Robert T. Morrison and Robert Neilson Boyd. A Federal District Court in New York found that Dr. Solomons' testimony denying that he had copied Morrison and

Boyd's text was fully credible and required dismissal of the action. Nevertheless, the court proceeded to discuss the plaintiffs' claims that the two works were so similar that copying must have occurred.

Morrison and Boyd presented several experts attesting to hundreds of "correspondences" in words and phrases between the texts. However, this testimony was discounted by the court since the selection of comparative texts by the experts was arbitrary and far from comprehensive and therefore of minimal probative value. Morrison and Boyd also had cited noncopyrightable similarities of ideas or information. Many correspondences consisted of "commonplace items clearly inherent in and required by the necessity of the subject being taught." (This factor was mentioned in *McMahon v. Prentice-Hall, Inc.*, 486 F.Supp. 1296 (E.D. Mo. 1980) (ELR 2:6:4), a similar copyright infringement action involving psychology texts.) Although there were

allegedly approximately 800 to 900 similar passages in the texts, such passages "did not cumulatively constitute a significant portion of either text." The errors appearing in both texts had also appeared in other principal texts and did not occur on such a widespread basis as to demonstrate "faithful copying." And the organizational structure of the texts also was largely determined by the subject matter.

In conclusion, the court citing *Hoehling v. Universal City Studios, Inc.*, 618 F.2d 972 (2d Cir. 1980) (ELR 1:24:4) reasserted the Second Circuit position that factual information is in the public domain, as opposed to the view that the "fruits of original research" are copyrightable. According to the court, the principle that an author may make significant use of a prior work "so long as he does not bodily appropriate the expression of another" applies to scientific as well as to historical works. Thus, Solomons' use of the Morrison and Boyd

text solely to obtain factual information did not violate the copyright statute.

Morrison v. Solomons, CCH Copyright Law Reports, Para. 25,171 (S.D.N.Y. 1980) [ELR 2:15:5]

Briefly Noted:

Copyright Infringement.

A counterclaim in an action alleging the unauthorized reproduction and distribution of counterfeit versions of copyrighted musical works stated that the copyright owners had participated in the acts complained of, that the relief sought would be barred by the doctrine of unclean hands and that damages were due to the defendants from the copyright owners. A Federal District

Court in New York has dismissed the counterclaim however on the grounds that "it is well established that a copyright owner cannot infringe his own copyright," and thus the counterclaim did not state a valid claim upon which relief could be granted.

RSO Records v. Peri, CCH Copyright Law Reports, Para. 25,187 (S.D.N.Y. 1980) [ELR 2:15:6]

Copyright Infringement.

A motion for a jury trial in a copyright infringement action has been denied by a Federal District Court in Maryland which found that the remedy sought - statutory damages of \$250 for the alleged infringement of 11 copyrighted musical works - was equitable rather than

legal and that a jury trial therefore was not constitutionally required.

Broadcast Music, Inc. v. Dici Naz Velleggia, Inc., CCH Copyrights Law Reports, Para. 25,182 (D.Md. 1980) [ELR 2:15:6]

Copyright.

The owner of a Wausau, Wisconsin club has been found liable for infringing copyrighted musical compositions which were publicly performed without a license at the club. The club owner based his continued refusal to obtain a license upon a philosophical opposition to the policies expressed in the Copyright Act. The court noted that the club owner could seek repeal or modification of the Copyright Act, but was not free to infringe upon the

rights of the owners of the copyrights to the works in question. The copyright owners therefore were awarded double the minimum in damages - \$500 per infringement for a total of \$3500 as well as attorneys' fees.

Simon v. Spatz, 492 F. Supp. 836 (W.D.Wisc. 1980)
[ELR 2:15:6]

Libel.

A Federal District Court in Pennsylvania has dismissed a libel action brought by the City of Philadelphia on its own behalf and on behalf of the officers in the city's police department. The city's claim was based on statements in a Washington Post article regarding a lawsuit filed by the U.S. Department of Justice in which Philadelphia's mayor and police officials were charged with

violating the constitutional rights of the city's citizens by engaging in police brutality. The court ruled that an action for libel by a government entity was barred by the First Amendment.

City of Philadelphia v. Washington Post Co., 482 F.Supp. 897 (E.D.Pa. 1979) [ELR 2:15:6]

Tax.

The Court of Appeals for the District of Columbia has reversed the District Court (ELR, 1:7:7) and has held that Big Mama Rag, a feminist organization whose major activity is the publication of a monthly newspaper concerning issues of importance to women, was improperly denied tax exempt educational status. The court held that a Regulation requiring certain educational

organizations to present a "full and fair exposition" of the facts supporting its position was unconstitutionally vague since it was unclear which organizations needed to comply with the test and what standards would be utilized in determining whether a "full and fair exposition" had been made.

Big Mama Rag, Inc. v. U.S., 80-2 USTC Para. 9674 (D.C.Cir. 1980) [ELR 2:15:6]

Previously Reported:

The United States Supreme Court has declined to hear *Cohn v. NBC*, a case in which the state courts of New York held that the Universal movie "Tail Gunner Joe" did not defame New York lawyer Roy Cohn. (ELR 1:4:2)

The United States Supreme Court also has declined to hear *Memphis Development Foundation v. Factors, Etc., Inc.*, a case which held that under the law of the state of Tennessee, Elvis Presley's name and likeness are now in the public domain. (ELR 1:22:1)

Brewer v. Memphis Publishing Company (2:13:4) has been published at 626 F.2d 1238. [ELR 2:15:7]

DEPARTMENTS

New Books:

"Legal and Business Aspects of the Music Industry"; "Counseling Clients in the Entertainment Industry 1980"; and "Legal and Business Problems of Financing Motion Pictures 1979"

Most entertainment lawyers practice their profession in law offices rather than in courts or arbitration hearing rooms. And much of what an entertainment lawyer needs to know is industry custom and practice, rather than rules of law. In law school, students gain the impression that answers to questions are found in appellate court decisions and, occasionally, in statutes. While this may be true of legal questions, where does one turn for information concerning custom and practice, especially if one does not have time or the opportunity to learn them through personal experience?

From experienced lawyers, is one answer. Several organizations regularly conduct educational programs at which experienced entertainment lawyers share their knowledge with those who wish to learn. And the Practicing Law Institute is one of those organizations whose

offerings are announced several times a year in the "Educational Programs Calendar" of this publication.

Those who attend PLI programs receive course handbooks of materials prepared and compiled by their speakers. Although these handbooks are intended to supplement the speakers' oral presentations, they frequently are valuable even to those who did not attend the programs themselves. This is especially true of the handbooks distributed in connection with the three programs whose titles are quoted in the heading above. While the materials published in these handbooks do not appear to be truly "confidential," much of it is material that would otherwise be unavailable except in the private files of experienced entertainment lawyers. Indeed, flipping the pages of these handbooks is like rummaging through the form files of some of the best-known entertainment practitioners in the country.

"Legal and Business Aspects of the Music Industry" is the handbook for a program chaired by Donald Biederman in New York City in June of 1980. (Handbook Number 120; 736 pages; \$25.) It includes record industry forms used by Capitol, A & M, Warner Bros., Atlantic, RCA, CBS and MCA, for artists, producers, master purchases and licenses, custom labels, soundtrack albums and synchronization licenses. ASCAP, BMI and SESAC performing rights agreements are reproduced, as are forms of agreements for songwriters, mechanical licenses, and international publishing. In addition to these hundreds of pages of forms, the volume reprints several previously published articles on music industry law and practice, as well as specially prepared articles on customary contract patterns and problems in the record industry and those always important tax considerations.

"Legal Problems of Financing Motion Pictures 1979" is the handbook for a program chaired by Paul Baumgarten

and Morton Leavy in New York City in June of 1979. (Handbook Number 110; 538 pages; \$20.) This volume contains materials on "traditional" methods for financing movies, including copies of Warner Bros.' standard production-distribution agreement form and Avco Embassy's standard net profits definition; materials on "non-traditional" methods of finance, foreign territorial distribution agreements providing for the payment of front-money, network and syndication presale forms, bank loan and security agreements, and a sample completion bond form. The volume also contains materials concerning Canadian tax shelter funding including an almost 40 page article on the evaluation of Canadian film investment opportunities. Material on accounting problems also is included.

"Counseling Clients in the Entertainment Industry 1980" is a two-volume set of materials distributed at a program chaired by Martin Silfen in Los Angeles and

New York in March and April of 1980. (Handbooks Number 117 & 118; 1,433 pages; \$25.) This ambitious program covered personal management, sound recordings, music publishing performing rights, motion pictures, television, theatrical productions and tax considerations for American artists employed both here and abroad. The table of contents alone for these volumes runs eight pages. In addition to dozens of forms of agreements, they include several articles that appear to have been written especially for this program. Among these are one by Peter Dekom on independent motion picture financing; one entitled "Putting Together the Deal" by Lawrence Taylor-Mortorff; an article on television production problems by Charles Meeker and Kenneth Suddleson; a detailed article on the tax benefits of loan-out corporations by George Short; and several other tax pieces. For those lawyers interested in all

segments of the entertainment industry, this two-volume set appears to be a gold mine and a bargain.

The Practising Law Institute is located at 810 Seventh Avenue, New York, N.Y. 10019;-Phone (212) 765-5700. [ELR 2:15:7]

In the Law Reviews:

Obscenity and the Supreme Court: A Communication Approach to a Persistent Judicial Problem by John Kamp, 2 Communications and the Law 1-42 (1980)

The First Amendment Protection of Advertising in the Mass Media by Bradford W. Scharlott, 2 Communications and the Law 43-58 (1980)

A book review by Vivienne W. Nearing of "The Copyright Law: Howell's Copyright Law Revised and the 1976 Act" by Alan Latman, 2 Communications and the Law 59-64 (1980)

A book review by David S. Rosenbaum of "Mass Media, Freedom of Speech and Advertising: A Study of Communication Law" by Daniel M. Rohrer, 2 Communications and the Law 65-70 (1980)

Pay Television: The Pendulum Swings Toward Deregulation by Sandra Moss Fournet, 18 Washburn Law Journal 86104 (1980)

Should Cable Systems Pay Copyright Royalties?, 12 Ottawa Law Review 195-214 (1980)

Big Picture Before the 2d Circuit: Whether to Deregulate Cable TV by James C. Goodale, *The National Law Journal*, December 8, 1980, pages 28-29.

Mergers and Competition in Book Publishing by David A. Garvin, *25 The Antitrust Bulletin* 327-362 (1980)

Photography and the Right to Privacy: The French and American Approaches by W.J. Wagner, *25 The Catholic Lawyer* 195-227 (1980)

Media Searches After *Zurcher v. Stanford Daily*: A Statutory Approach by Stephanie Ann Christie, *20 Santa Clara Law Review* 491-510 (1980)

Broadcasting Seven Dirty Words: *FCC v. Pacifica Foundation*, *20 Boston College Law Review* 975-1002 (1979)

The Future of Film Censorship by G. Robertson, 7 British Journal of Law and Society 78-94 (1980)

The Performance of Music Under the New Copyright Law by Jack C. Goldstein, 43 Texas Bar Journal 515-525 (1980)

[ELR 2:15:8]