RECENT CASES

Movie director whose services are terminated after completion of principal photography has the right to consult with film's producers during post-production

DGA Arbitrator Edward Mosk has ruled that King-Hitzig Productions and Orion Pictures were entitled to terminate the services of director Michael Wadleigh after principal photography was completed on the film "Wolfen," but that King-Hitzig nevertheless was required to consult with Wadleigh regarding creative elements during post-production on the film.

The Directors Guild contended that once 100% of principal photography was completed, King-Hitzig had no right to terminate Wadleigh's services except for cause. Wadleigh was not notified of the grounds for his

termination. According to King-Hitzig, Wadleigh had ordered unauthorized props for the film, inserted dialogue which was not in the screenplay, incurred unauthorized costs and had failed to follow the producer's instructions. Mosk found that these events did not justify the discharge of Wadleigh for "cause."

King-Hitzig also alleged that Wadleigh was responsible for the increased cost of the film. But Mosk noted that Wadleigh may not have been shown the budget, and there was no evidence that Wadleigh represented that he could complete the film within any special budget.

Mosk then found that King-Hitzig would have been entitled to remove Wadleigh even in the absence of cause if the producer had followed the "hotline" procedure of the DGA Collective Bargaining Agreement. Section 7-502 of the agreement, which is entitled "Editing and Post-Production (including Hotline)," states: "Any director who prepares and has completed 90% of the

scheduled Principal photography of a theatrical motion picture ... cannot be replaced, except for cause, until the following procedure (herein referred to as 'hotline') has taken place...."

The section applies to events occurring after the director has completed 90% of the scheduled principal photography. Mosk concluded that the section would apply as well when 100% of principal photography is completed. But King-Hitzig did not use the "hotline" procedure at the time of Wadleigh's termination. Wadleigh was not given an opportunity to discuss his dismissal with a representative of the producer before being terminated. And a new director was not assigned to the film until the end of January. The delay was "inconsistent with the philosophy and objective of the Bargaining Agreement," stated Mosk. King-Hitzig argued that it did not need to employ a new director until post-production activities required the services of a director. Mosk

found, however, that this interpretation "could provide an opportunity for a producer to act in bad faith to defeat the post-production creative rights of the first director." King-Hitzig therefore erred in dismissing Wadleigh without going though the hotline procedure.

While upholding the producer's right to terminate pursuant to hotline, Mosk also acknowledged the Directors Guild's concern about the erosion of the one director concept, and he determined that it was necessary to accommodate the first director's creative rights. Thus, Mosk ruled that all post-production consultation rights granted to directors by the collective bargaining agreement become vested when the director has completed 100% of principal photography. If a new director is then employed, the producer must consult with both directors. The first director must have a good faith opportunity at each meaningful stage of post-production to comment on a procedure before any irreversible step is

taken, that is, at a time when it is still possible to make changes in accordance with the suggestions and vision of the first director if the producer finds there is merit in the suggestions.

Among the significant post-production procedures included by Mosk were optical effects, looping, dubbing of sound and/or music, negative cutting, and preview rights. Any inconvenience resulting from according such rights to two directors must be accommodated by the producer, Mosk ruled.

Mosk refused to reinstate Wadleigh as the director of "Wolfen." But King-Hitzig was required to provide Wadleigh with consultation rights and was required to .invite him to all film previews. King-Hitzig was also ordered to pay $20,000 to Wadleigh and $20,000 to the DGA as damages for its violation of the hotline procedures of the collective bargaining agreement.

In the Matter of the Arbitration Between Directors Guild of America, Inc. and King-Hitzig Productions, No. 00892 (Before the Arbitration Tribunal of the Directors Guild of America, March 17, 1981) [ELR 2:24:1]

Radio station enjoined from broadcasting Wichita State "away" games in its home area in violation of exclusive rights given to another station

Wichita State has won a preliminary injunction prohibiting radio station KWKN from broadcasting State's "away" games in the Wichita area. State was joined in its lawsuit by radio station KAKZ to which State had given the exclusive right to broadcast all of its games, both home and away. In a ruling rendered orally from the bench, Kansas state court Judge Paul Thomas recognized KAKZ's exclusivity rights even though KWKN

had entered into contracts with the colleges State would be playing in their own arenas.

KWKN tried to make a distinction between State's "home" games and its "away" games. But it was a distinction Judge Thomas found "illusive."

Although Judge Thomas noted that the law in this area "is not well settled," he found that certain business practices have become customary. For example, it is customary for the "home" team to have the "primary radio and television rights," and it is customary for the visiting team to have the right to broadcast the game to its own "home" territory.

Accordingly, Judge Thomas found that Wichita State had the right to broadcast its game into its own home territory whether those games were "home" games or "away" games. State did not have the right to decide who would broadcast its "away" games to "New York, Los Angeles, or Moose Jaw, Montana," Judge Thomas

said, but it does have a right to determine who will broadcast that game into the Wichita area. "It is an exclusive right and it is a right exclusive even of the opponent of Wichita State," Judge Thomas held. Because State's opponents had no right to broadcast their games in Wichita, KWKN "achieved nothing" by virtue of its contracts with those colleges.

Judge Thomas characterized State's right as a "right of publicity." "But regardless of what you call it" he said, KWKN's unauthorized broadcast of Wichita State's games "is a tort which the law recognizes and the commission of which it will enjoin."He therefore ordered that an injunction be issued pending further litigation.

Wichita State University v. Tri-City Broadcasting, District Court of Sedgwick County, Kansas, Case No. 81 C 130 (January 23, 1981) [ELR 2:24:2]

Television networks are permitted to copy and televise video tapes entered into evidence in Abscam trials

The fair trial-free press controversy has arisen again in connection with the Abscam cases - the celebrated FBI "sting" operation conceived, as the Court of Appeals put it, "to determine whether public officials would commit bribery offenses if presented the opportunity to do so." Federal Circuit Judge Newman has affirmed a decision allowing the television networks to copy and televise video tapes entered into evidence in the criminal trial of former Congressman Michael O. Myers.

Having considered the United States Supreme Court's decisions of Nixon v. Warner Communications, Inc., 435 U.S. 589 (1979) - recognizing a presumption in favor of public access to judicial records - and Richmond

Newspapers, Inc., v. Virginia, 65 L.Ed.2d 973 (1980) (ELR 2:6:6) - holding that absent an overriding interest, the trial of a criminal case must be open to the public - the Court of Appeals declared that there is a presumption in favor of public inspection and copying of any items entered into evidence at a public session of a trial. Once the evidence has become known to members of the public attending a public session of court, "it would take the most extraordinary circumstances to justify restrictions on the opportunity of those not physically in attendance at the courtroom to see and hear the evidence," said the court. "The presumption is especially strong in a case like this where the evidence shows the actions of public officials."

The court balanced the high responsibility of the courts to assure the accused a fair trial against the important public interest in a full opportunity to know whatever happens in a courtroom. The networks' proposal to copy

the tapes simultaneously with their presentation to the jury or at the end of court sessions posed no risk either to the integrity of the tapes or to the decorum of the courtroom. The risk to fair trials for Abscam defendants yet to be tried is too speculative tive to justify curtailing the public's right of access to courtroom evidence, the court ruled. "Defendants, as well as the news media, frequently overestimate the extent of the public's awareness of news," said the court. "We do not believe the public at large must be sanitized as if they all would become jurors in the remaining Abscam trials."

Although transcripts of the video tapes were made available to the public, and members of the press, the court recognized a legitimate and important interest in affording members of the public their own opportunity to see and hear evidence that records the activities of a member of Congress and local elected officials, as well as agents of the Federal Bureau of Investigation.

Application of National Broadcasting Company, Inc., 635 F.2d 945 (2d Cir. 1980) [ELR 2:24:2]

Appeals court refuses to enforce NLRB order requiring movie theatre owner to hire applicant for projectionist-manager position

The National Labor Relations Board determined that a motion picture theatre owner violated federal labor laws by refusing to employ a job applicant because he was a member of and was represented by the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators. The NLRB therefore ordered the theatre to employ the applicant in the position he would have been employed in had he not been discriminated against or in a substantially equivalent position. A

Federal Court of Appeals has refused to enforce that order, however.

The court found no substantial evidence to support the NLRB's conclusion. Said the court, "The record indicates that the only position available was that of projectionist-manager, which we believe to be a position not protected under the Labor Management Relations Act."

National Labor Relations Board v. R & R Theatre Company, Inc., 636 F.2d 149 (6th Cir. 1980) [ELR 2:24:3]

Trial required in suit against Warner Cable challenging award to it of cable tv franchise by City of Pittsburgh

A Federal District Court in Pennsylvania has ruled that Three Rivers Cablevision may proceed to trial against Warner Cable and the City of Pittsburgh with a suit charging that Three Rivers was denied equal protection and procedural due process when the city awarded its cable television franchise to Warner Cable.

In July 1979 Pittsburgh invited bids for the construction and maintenance of a cable television system in the city. Bidders were advised emphatically that all bids had to comply in every detail with the city's newly enacted Cable Communications Ordinance. By the deadline of October 1, 1979, Pittsburgh had received bids from four companies: Three Rivers, Warner, Community Cablevision, and Allegheny Cablevision. All four bids were rejected for failure to comply with the ordinance. Allegedly, Three Rivers' noncompliance related to a "technical requirement" concerning a surety bond, while Warner's proposal was "grossly deficient" and did not

comply in material and significant respects with the ordinance. The four companies were given until October 25, 1979 to submit new proposals.

Three Rivers alleges that in November 1979, the city's Bureau of Cable Communications held private meetings with Warner in order to provide Warner with an unfair advantage over the other bidders by advising Warner of the deficiencies in its second bid so that it could correct them by amendment. Warner was permitted to correct at least one of these deficiencies, which, according to Three Rivers, was as significant as the technical one for which the initial proposal of Three Rivers was rejected. On January 30, 1980, the Pittsburgh City Council passed a resolution awarding the cable television franchise to Warner.

Three Rivers contends that the award to Warner was the result of a preconceived plan to favor Warner and to make a sham of the entire bidding process. And it

asserts that the city's sole stated reason for the selection of Warner - its supposedly superior program for minority involvement - is "infirm" since the specifications outlined in the ordinance regarding that program were unconstitutionally vague and conflicting.

The court upheld the ordinance's minority involvement specifications, but found that the award to Warner raised triable issues concerning the denial of equal protection and procedural due process claims alleged by Three Rivers which were sufficient to overcome Pittsburgh's and Warner's motions for summary judgment.

Three Rivers Cablevision, Inc. v. City of Pittsburgh, 502 F.Supp. 1108 (W.D.Pa. 1980) [ELR 2:24:3]

Failure to broadcast programming to help unmarried adults find dates is not a basis for denying television license renewal

A petition filed by operators of a video dating service urging the Federal Communications Commission to deny license renewal of all five Washington, D.C. commercial television stations has been rejected by the FCC, and that decision has been affirmed by a Federal Court of Appeals in the District of Columbia.

The dating service operators, unable to sell their program to the stations, charged each station with failing to use local talent and to present programming specifically designed to serve a local adult nonmarried population. In its Ascertainment Primer, the FCC requires television stations to ascertain the needs of 19 specific interest groups and elements of the community. The dating service operators contended the procedures are incomplete

in not including adult nonmarried persons as a separate group.

The court found that the dating service operators have failed to define a particularized local need for programming designed for non-married adults, stating "single adults in the District of Columbia are no more in need of finding a date or a mate than single adults elsewhere in the country." There is no substantial reason why the renewal of television licenses should be made dependent upon the station catering to such an isolated need in which most unmarried adults do not need outside commercial assistance, said the court. Any objections to the Ascertainment Primer could have been aired in the earlier rule making proceedings.

The court concluded, in agreement with the FCC, that "each licensee has so amply demonstrated in its renewal application and opposition pleading the adequacy of its public affairs programming for its service area - with

program listings too numerous to enumerate here - that petitioners simply have raised no question of fact [as to the television stations' qualifications for license renewal]."

Walker v. Federal Communications Commission, 627 F.2d 352 (D.C.Cir. 1980) [ELR 2:24:4]

Applicant for television station license is disqualified because of misrepresentations made to FCC

Permission to construct a new television broadcast station for the operation of WFAA-TV (channel 8) in Dallas, Texas, has been denied by the Federal Communications Commission, on the grounds that the applicant had misrepresented to the Commission, and withheld from it, significant information. And that

decision has been upheld by a Federal Court of Appeals in the District of Columbia.

Wadeco, a communications corporation located in Dallas, Texas, applied on July 1, 1971 for the license to operate WFAA-TV, commencing August 1, 1977. The WFAA-TV license of that time was held by Belo Broadcasting Corporation. To obtain the permit, Wadeco needed to show, among other things, its financial ability to construct the station and operate it for three months. Wadeco filed a loan commitment letter from Castle Trust Company Ltd. - a bank in Nassau, Bahamas - promising to arrange a loan of up to $2.5 million provided that Wadeco's shareholders assume personal liability on the note, that its shareholders show a combined net worth of at least $5 million, and that documentation for the loan be satisfactory to Castle Trust and "participating institutions." The FCC Broadcast Bureau informally expressed to Wadeco's Washington

D.C., counsel its dissatisfaction with the Castle Trust letter. The Bureau insisted that it could not assess Wadeco's ability to satisfy the net worth condition and was troubled by the reference to "participating institutions." If other institutions were to participate in the loan, the staff wanted to know who those institutions would be and whether they were financially able to participate.

On April 4, 1972, Castle Trust agreed to a revised loan commitment letter - with the endorsement requirements limited to certain named shareholders and without the net worth requirement or the reference to participating institutions - which Wadeco soon filed with the FCC. A few weeks later, however, the broadcast bureau notified Wadeco that it continued to doubt the sufficiency of the Castle Trust letter. Meanwhile, Wadeco had revised its list of shareholders, on file with the FCC as part of its application, to show that two shareholders had

withdrawn from the venture. Wadeco had not stated in its amendments that these shareholders were among those whose endorsements were required by Castle Trust's loan commitment letter and that both had also been released as endorsers. In September 1972, having received no direct response to its previous letter, the Broadcast Bureau notified Wadeco a second time that it did not believe the Castle Trust letter constituted a commitment by the bank to provide funds. In response, Wadeco's D.C. counsel stated in an amendment filed October 12, 1972, that in his opinion the Castle Trust letter was a valid commitment.

The Commission, agreeing with an administrative law judge who had conducted 17 hearing sessions between July 2, 1973 and August 6, 1975, concluded that Wadeco lacked the basic character qualifications to be an FCC licensee, on the ground that Wadeco had withheld and misrepresented significant information. The

Commission therefore disqualified Wadeco; and Belo Broadcasting's application for renewal, being otherwise unchallenged, was granted.

The Court of Appeals affirmed, finding that Wadeco's response to the Broadcast Bureau's concern about other participating institutions was "seriously lacking in candor" and that the October 12, 1972 representation that the Castle Trust loan was available to Wadeco was a misrepresentation. Rejecting Wadeco's contention that its conduct amounted to no more than good faith, "albeit misplaced, reliance on counsel," the court found that the Commission acted within its discretion in finding that Wadeco's conduct warranted disqualification,

Dissenting, Circuit Judge Mikva stressed that the principle stockholder of Wadeco, James Wade, had no prior experience in dealing with the Commission; that many of the decisions that led to the Commission's actions were made by counsel without Wade's or Wadeco's

participation or even knowledge; and that Wade, after having relayed to his counsel his belief that the Castle Trust letter was null and void and instructed counsel on more than one occasion to withdraw the letter, ultimately deferred to his lawyer's professional judgment. "Perhaps it was naive for Wade to continue to rely on his Washington counsel for this period of time, but this is no basis for disqualification." Furthermore, said Judge Mikva, "Because it can permanently bar the applicant and its principles from a communications license, because it tars people with a moral taint, the sanction of disqualification in this case is excessive to the purpose served."

Wadeco, Inc. v. Federal Communications Commission, 628 F.2d 122 (D.C. Cir. 1980) [ELR 2:24:4]

Legal expenses incurred by broadcaster in defending an FCC license revocation proceeding are tax deductible

BHA Enterprises, Inc., operated two radio stations in Apple Valley, California. In 1973, the FCC commenced legal proceedings against BHA for the purposes of revoking its broadcast licenses for both KAVR and KAVR-FM. In its Order to Show Cause, the FCC listed various causes for the revocation, including a stock transfer without authorization by the FCC, inaccurate filings and false information concerning a principal shareholder. In 1974, hearings were held before an administrative law judge, who found that all allegations against BHA were established and ordered the licenses for the two radio stations revoked. BHA appealed and requested a full bearing before the FCC. In 1978 the FCC found that certain misstatements had been made on

various applications by BHA; however, the more serious allegations against BHA were not supported. The FCC did not order a revocation of BHA's licenses to operate the radio stations, but fined BHA $1,000 for its misstatements.

BHA paid approximately $46,000 in legal fees for the hearings before the FCC. It deducted the full amount of its fees as an ordinary and necessary business expense. The IRS disallowed the deductions and BHA petitioned the Tax Court.

BHA contended in the Tax Court that the legal fees paid to contest the FCC proceeding were ordinary and necessary, because a successful defense of those revocation proceedings was absolutely necessary for the continuation of its business. The IRS contended that those expenditures were capital expenditures since they involved BHA's right to an intangible whose useful life extended beyond a single taxable year. Since current

deductions for capital expenditures are not allowed (Internal Revenue Code Section 263), the IRS argued that no deduction was allowable in those years.

The Tax Court held that the legal expenses were ordinary and necessary business expenditures and were deductible in full. The Court based its decision in large part on Revenue Ruling 78-389, 1978-2 C.B. 126. That Ruling involved a taxpayer in the business of quarrying and supplying sand and stone in a municipality. After the taxpayer had been in business for several years, the municipality passed an ordinance prohibiting the operation of the taxpayer's business. The taxpayer invalidated the municipal ordinance and incurred attorney's fees doing so. The Internal Revenue Service ruled that the legal expenses incurred in the successful prosecution to invalidate the ordinance were ordinary and necessary business expenses and fully deductible. As the Tax Court concluded "[s]urely, if the hypothetical owner ...

of a quarry can attack a municipal ordinance which would have put the taxpayer out of business and deduct the legal expenses . . . , then the owner-taxpayer of a broadcasting station can with as much justification deduct the cost of a defense against an FCC action which, if successful, would have put the taxpayer out of business."

BHA Enterprises, Inc. v. Commissioner, 74 T.C. No. 46 (1980) [ELR 2:24:5]

Pharmacy operator convicted of Medicaid fraud loses defamation suit against television station because broadcasts were privileged and substantially accurate

On December 30, 1976, KOMO-TV, operated by Fisher's Blend Station, Inc., broadcast reports about the filing of a Medicaid fraud case against Albert Mark, the operator of two Seattle pharmacies. Between May 19, 1977 and September 23, 1977, KOMO-TV broadcast reports of (1) the complaints by Mark's attorneys that the prosecutor was denying Mark a fair trail by over-publicizing the case; (2) the progress of the trial; (3) the jury's return of guilty verdicts on one count of grand larceny and five counts of first degree forgery; and (4) Mark's sentencing.

Mark subsequently filed a lawsuit in the Superior Court of King County, Washington, against KOMO-TV for negligently defaming him in all but one of these broadcasts. He did not challenge the broadcast reporting the return of guilty verdicts. Mark alleged that KOMO-TV grossly exaggerated the amount of money involved, distorted the alleged means of committing the offenses,

accused him of a motive for cheating the state, and accused him of destroying evidence. In particular, Mark complained about the initial broadcast in which the prosecutor's office called Mark's prosecution "the largest case of Medicaid fraud by a pharmacy in memory." He alleged that the later rebroadcast of that statement was equally defamatory. These broadcasts about the magnitude of Mark's crime were based on earlier televised statements by the chief prosecutor.

The affidavit of probable cause filed by the prosecutor's office and later given to the media apparently stated that Mark fraudulently billed over $200,000 during a period of two and two-thirds years. Mark thus alleged that he was defamed by a broadcast that erroneously reported over $300,000 in Medicaid fraud. The affidavit further stated that in one audit sample, 63% of the prescriptions billed to the state were invalid. The broadcast reporting that statement, Mark complained, referred

instead to a 65% figure. Mark made numerous other defamation claims also, the last of which concerned a report that he had been sentenced for $200,000 in Medicaid fraud. Although the affidavit or probable cause had alleged $200,000, only $2,473.78 was proven at his criminal trial.

Because he was not a public figure, Mark was not required to prove that the reports were broadcast with ..active malice" - that is, with knowing or reckless disregard for the truth. Instead, under the rule of Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974), he need only establish that the broadcaster negligently reported falsehoods. Mark failed to meet his burden of proof, however, and the trial court granted summary judgment for the broadcaster. Mark appealed but was unsuccessful.

On appeal, Mark insisted that summary judgment was improper because (1) there was a genuine dispute as to the accuracy of the broadcasts; (2) the broadcaster was

not privileged to report the contents of the affidavit of probable cause or the oral statements of prosecuting officials; and (3) even if the broadcaster were privileged, that privilege was abused and therefore lost when KOMO-TV broadcast false statements without any reason to believe they were true.

The Washington appellate court recognized several factual errors in KOMO-TV's summaries of the affidavit's contents, but concluded that the alleged falsehoods "were so insignificant that they could not have increased the harm over that resulting from perfectly accurate reports of the affidavit's contents." The court emphasized This is not a case of true statements interspersed through a false report. It is a case of substantially accurate reporting of the contents of the affidavit of probable cause. Where a few inaccurate statements may have occurred, they were manifestly harmless.

The court further concluded that "[t]o the extent Mark alleges falsehoods in the affidavits (rather than inaccurate summaries by KOMO-TV), he cannot prevail because he alleges no facts tending to show abuse of the privilege to report the [affidavit's] contents." There was no evidence, said the court, that KOMOTV was at fault "in relying upon an affidavit filed in court, open to the public, and distributed to the news media." Similarly, the court concluded that KOMOTV acted reasonably by continuing to rely on the affidavit's $200,000 figure after the criminal trial even though only $2,473.78 was proven at the trial.

Mark v. Fisher's Blend Station, 621 P.2d 159 (Wash.App. 1980) [ELR 2:24:5]

Briefly Noted:

Libel.

Bebe Rebozo - friend and advisor to former President Richard Nixon - was a "public figure" in 1973, a Federal Court of Appeals has held. Rebozo was a public figure because he was Nixon's closest friend while Nixon was in the White House, because Rebozo acted as Nixon's agent in certain financial matters, and especially because he played an active role in Nixon's 1972 re-election campaign. As a result, Rebozo was required to prove that The Washington Post had acted with "actual malice" in 1973 when it published an article reporting that Rebozo had "cashed $91,500 in stolen stocks" after being told by an insurance investigator that they were stolen. A Federal District Court ruled that the Post had not acted with actual malice, and thus it had granted the

Post's motion for summary judgment. The Court of Appeals has reversed, however. It held that there was a material question of fact on that issue, because the reporter who wrote the article had expressed uncertainty to his editor about whether Rebozo himself had cashed the stock, or whether it had been cashed by the Key Biscayne Bank. By resolving his uncertainty against Rebozo, the reporter made "a front-page story of an episode which otherwise might not have commanded any significant attention." This could amount to evidence of the reporter's reckless disregard for the truth, the court held.

Rebozo v. Washington Post Co., 637 F.2d 375 (5th Cir. 1981) [ELR 2:24:6]

Libel.

The mayor of Dallas, Texas has been allowed to proceed to trial on his case against the publisher of D, The Magazine of Dallas for allegedly publishing libelous statements in its January 1975 issue in an article entitled "The Unauthorized Biography of Wes Wise." A Texas Court of Civil Appeals reversed a summary judgment previously entered in the magazine's favor. A recent change in Texas summary judgment procedure appears to make it easier for a public figure to proceed to trial for the determination of actual malice.

Wise v. Dallas Southwest Media Corp., 596 S,W.2d 533 (Tex.Civ.App. 1980) [ELR 2:24:6]

Trademark Infringement.

Entertainer Tommy Cook's unauthorized use of the service mark "The Platters" in billing his performance resulted in a consent judgment which enjoined Cook's use of the mark. However, Cook violated the consent judgment. He then pleaded guilty to contempt of court, and received a suspended sentence. When Cook used the service mark again in connection with a night club performance, thereby violating the conditions of his suspended sentence, a Federal District Court in Pennsylvania ordered the issuance of "an appropriate order" which apparently will require Cook to serve the sentence which was previously suspended.

Five Platters, Inc. v. Cook, 491 F.Supp. 1165 (W.D.Pa. 1980) [ELR 2:24:7]

Copyright.

Although Bestways magazine is sold in stores in Arizona, a Federal District Court in that state has transferred a copyright infringement lawsuit filed there to the state of Nevada where the magazine has its principal place of business. The court held that the mere fact that the magazine is sold in Arizona is not sufficient to give it jurisdiction over the magazine, or over its editor, publisher, president and shareholder who are residents of Nevada. Maintenance of the suit in Arizona would offend "traditional notions of fair play and substantial justice," the court ruled.

Airola v. King, 505 F.Supp. 30 (D.Ariz. 1980) [ELR 2:24:7]

Obscenity.

The constitutionality of a Little Rock city ordinance which prohibits the exhibition of sexually explicit films within 100 yards of a church, school or residential area has been upheld by a Federal District Court in Arkansas. The court relied heavily on Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976), in which the U.S. Supreme Court upheld a similar ordinance which provided that adult movie theaters could not be located within 1,000 feet of each other.

Avalon Cinema Corp. v. Thompson, 506 F.Supp. 526 (E.D.Ark. 1981) [ELR 2:24:7]

Tax.

The Ladies Literary Club of Grand Rapids, Michigan is not entitled to a state property tax exemption, the Supreme Court of Michigan has held, even though the club is a tax-exempt organization for federal income tax purposes. The Club sponsors classes in writing and theater, lectures, bus trips for music festivals and plays, provides a library for public use, and assists with fund raising for a local public television station. Nevertheless, the court held, the Club did not amount to an exempt "educational institution" under Michigan law. Although the burden on the state would be increased were it not for the Club's educational and cultural activities, the Club's programs did not sufficiently relieve the state's educational burden to warrant the institutional exemption, said the court, because it was "essentially a social club which happens to engage in some non-profit activities."

Ladies Literary Club v. City of Grand Rapids, 298 N.W.2d 422 (Mich. 1980) [ELR 2:24:7]

Previously Reported:

The following cases have been published: Aladdin Hotel Corp. v. Nevada Gaming Commission, 637 F.2d 582 (2:6:6); United States v. Hearst, 638 F.2d 1190 (2:14:4); City of Imperial Beach v. Palm Avenue Books, 115 Cal.App.3d 134 (2:20:6); Pringle v. Covina, 115 Cal.App.3d 151 (2:20:6); People v. Mitchell Bros., 114 Cal.App.3d 923 (2:20:6); National Bank of Commerce v. Shaklee, 503 F.Supp. 533 (2:21:2); Rollenhagen v. Orange, 116 Cal.App.3d 414 (2:21:1); MCA v. Franchise Tax Board, 115 Cal.App.3d 185 (2:23:2); Graham v. Scissor Tail, 28 Cal.3d 807 (2:21:3); Quinto v. Legal Times of Washington, 506 F.Supp. 554 (2:23:5);

Twentieth Century-Fox v. Dunnahoo, 637 F.2d 1338 (2:20:3).

The U.S. Supreme Court has granted a petition for certiorari in Community Communications Co. v. City of Boulder (2:20:4).

[ELR 2:24:7]

DEPARTMENTS

New Book:

"Libel, Slander, and Related Problems" by Robert D. Sack

Almost every issue of the Entertainment Law Reporter includes stories about libel decisions. Most often, the offending publication is an article or broadcast about a

news event. But libel lawsuits have been filed against novelists and their publishers (ELR 2:15:2, 2:12:6, 1:4:1) and even against Burt Reynolds (ELR 2:20:1). Recent jury verdicts in favor of Carol Burnett against the National Enquirer, and in favor of Miss Wyoming against Penthouse magazine, are likely to encourage the filing of more such cases in the future.

Prior to the Supreme Court's 1964 decision in New York Times v. Sullivan, the law of libel was merely a subcategory of the law of torts. Since then however, libel has become "Constitutionalized." In Libel, Slander, and Related Problems, Robert D. Sack has successfully organized and analyzed the chaos that "Constitutionalization" has brought with it. Following an introductory chapter that traces the Supreme Court's libel decisions from New York, Times v. Sullivan to Gertz v. Robert Welch, Inc., the book canvasses the elements of the cause of action, the defenses of truth and opinion, the

standard of conduct contemplated by the "actual malice" and lesser tests, and common law privileges. The book then takes up the question of damages, the significance of retractions, related causes of action such as invasion of privacy and injurious falsehood, and problems created by confidential sources. Procedural matters such as jurisdiction and choice of law are covered, as is summary judgment and appeal. A brief chapter is devoted to insurance and the interpretation of insurance agreements. In all, the book runs almost 700 pages.

Sack is a partner in the New York City firm of Patterson, Belknap, Webb & Tyler, and in the Preface to the book, he discloses that he has spent most of his professional life "laboring on the side of the press." Nevertheless, the book is a treatise, not a partisan brief, and it will be equally useful to plaintiffs' and defendants' lawyers alike. It is extremely readable, and contains a

detailed table of contents as well as an index and table of cases.

Libel, Slander and Related Problems is published by the Practicing Law Institute, 810 Seventh Avenue, New York, N.Y. 10019; (212) 785-5700. It sells for $50. [ELR 2:24:7]

In the Law Reviews:

Students at the University of Southern California Law Center have started a new biannual publication dealing exclusively with legal and economic developments in the entertainment and communications industries. It is known as the Entertainment Law Journal, and Volume 1, Number 1, has just been published. It contains the following articles:

The Future of the Entertainment Industry by Art Murphy, 1 Entertainment Law Journal 1-5 (1981)

Compulsory Licensing of Sound Recordings Under the New Act by Mario Gonzales, 1 Entertainment Law Journal 6-24 (1981)

Production Company Remedies for "Star" Breaches by Michael Meyer and Susan Oman, 1 Entertainment Law Journal 25-30 (198 1)

Elvis Presley: The New Twists by Dave Viera, 1 Entertainment Law Journal 31-40 (1981)

Subscriptions to the Entertainment Law Journal are $20 per year, and may be obtained by writing to the Entertainment Law Journal, University of Southern

California, University Park, Student Union Room 202, Los Angeles, CA 90007.

The latest issue of the Beverly Hills Bar Association Journal contains the following entertainment articles.

TV and Motion Picture Production Personnel May Incorporate to Save Taxes: The Brauer Patch Untangled by David W. Hardacre, 15 Beverly Hills Bar Association Journal 458-464 (1981)

A Methodology to their Madness. The First Copyright Royalty Tribunal and Distribution of Cable Royalty Fees by William John Koppany, 15 Beverly Hills Bar Association Journal 466-484 (1981)
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