

## RECENT CASES

### **ABC's "Greatest American Hero" does not infringe Superman copyrights**

Superman is one of the greatest heroes in American fiction. Throughout his career of more than forty years, he has battled the forces of evil in comic books, cartoons, television programs and motion pictures, always successfully. Last spring, however, Superman's owners - actually, the owners of the Superman copyrights - did legal battle with another American Hero. And this time, Superman came up the loser.

Superman's adversary in this legal battle was the fictional character "Ralph Hinkley," known as the "Greatest American Hero" on an ABC television series of the same name. Hinkley, like Superman, performed feats of

strength while garbed in a caped costume. And according to Superman's owners, Hinkley infringed Superman's copyrights.

In March of 1981, two days before the scheduled premier of ABC's "Greatest American Hero," Superman's owners filed suit against the network seeking to enjoin the broadcast. Judge Motley, of the Federal District Court in New York City, denied their motion for a preliminary injunction on the grounds that Superman and Hinkley were not substantially similar, and even if they were, Hinkley was a parody and therefore protected under the fair use doctrine. Judge Motley's decision has just been affirmed by the Court of Appeals.

This is not the first time Superman has been involved in copyright litigation with other fictional characters. Back in 1940, Superman's owner successfully asserted that Wonderman infringed Superman's copyrights. In that case, the court concluded that the defendants had

used more than the ideas embodied in the Superman character. It found that the "only real difference between them is that 'Superman' wears a blue uniform and 'Wonderman' a red one." Thus, in that case, the defendants had actually appropriated the pictorial and literary details embodied in the Superman copyrights. *Detective Comics, Inc. v. Bruns Publications, Inc.*, 111 F.2d 432 (2d Cir. 1940).

The "Greatest American Hero" presented a different set of circumstances, however. Judge Motley found that a "comparison of the characters Ralph Hinkley and Superman and their respective stories reveals ... that they are so dissimilar as to preclude a finding of substantial similarity." The Court of Appeals agreed. Superman's owners offered an extensive list of the similarities between Superman and Hinkley. For example, both perform feats of miraculous strength; both wear tight acrobatic costumes; both battle villains; both fly with

arms extended in front and capes billowing behind; both are impervious to bullets; both have X-ray vision; and both lead double lives. But, said the Court of Appeals, close examination of these items revealed "the fallacy" in Superman's position. In each case, the Court of Appeals found that the similarities were in theme or general idea only, while the expression of those ideas was substantially different. Thus, Hinkley's strength came from his magic suit, while Superman's strength was a natural attribute. Their garb was alike only in that both wear tightfitting, acrobatic costumes common to the superhero genre but dissimilar in their particulars. Likewise, several superheroes fly with arms extended and capes behind. But Superman flies with grace while Hinkley is terrified while flying and crash-lands every time. Although both lead double lives, Superman never reveals his true identity while Hinkley discloses his superhero status to his girlfriend.

Furthermore, the court found that the "total concept and feel" of the two characters differ greatly. Superman works portray a benevolent superhuman who seeks to achieve noble goals while trying to maintain the secrecy of his true identity. Hinkley on the other hand was said to be the "mirror image" of Superman. Hinkley is a typical, young American man with common everyday problems who attempts to cope with the impact his superhuman powers has had on his life. For these reasons the court found that there is no substantial similarity between Superman and ABC's "Greatest American Hero."

Warner Bros., Inc. v. American Broadcasting Companies, Inc., CCH Copyright Law Reports, Para. 25,239 (S.D.N.Y. 1981), affirmed, Docket No. 81-7192 (2d Cir., July 17, 1981) [ELR 3:7:1]

## **Creator of "Scared Straight" prison-project did not have common law copyright in Academy Award winning documentary**

The juvenile awareness program at the Rahway, New Jersey state prison received considerable public attention as the subject of both an Academy Award winning "Scared Straight" documentary created by Golden West Television and by a television dramatization aired on CBS. The prison's program arranged forthright encounters between the inmates of the prison and crime-bound juvenile visitors. The inmate creator of the prison program has contended, unsuccessfully, that he possessed a common law copyright in the documentary and was entitled to share in its profits.

Richard Rowe alleged that he developed the idea of the confrontation sessions and had instructed and rehearsed inmates for their talks with young people. But a Superior

Court judge in New Jersey has reaffirmed the principle that "[t]here is no common law copyright recognized for an idea, no matter how original that idea may be." Rowe had not written a script, the inmates did not speak his lines, and his concept was never sufficiently fixed or frozen so as to constitute a tangible product protected by common law copyright, the court held in an unpublished letter opinion.

Rowe v. Golden West Television Productions, Docket C-2278-79 (N.J. Superior Court, June 8, 1981) [ELR 3:7:2]

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**Infringement judgment against Universal is reversed by appellate court because facts in non-fiction book are not copyrightable**

In an opinion of interest to all who write or produce docu-dramas, a Federal Court of Appeals in Atlanta has reversed a copyright infringement judgment entered against Universal City Studios by a trial court in Florida in 1978. The judgment, which came to more than \$215,000, was based on a jury verdict in favor of Gene Miller, the author of a non-fiction book entitled 83 Hours Till Dawn. The jury found that Universal's television movie of the week *The Longest Night* infringed the copyright to Miller's book. Though the appellate court agreed that there had been sufficient (though undescribed) evidence to support the jury's verdict, it reversed because the jury was erroneously instructed that Miller's research labors were themselves protected by copyright.

Miller's book recounted the story of a college student who was kidnapped in 1968 and buried alive in a plywood and fiberglass capsule until she was rescued five



days later. A Universal producer read the book and thought it would make a good television movie. The producer gave the book to a screenwriter who immediately began work on a screenplay. In the meantime, Universal negotiated for the movie rights to Miller's book, but no agreement with Miller ever was reached. Eventually, the screenwriter was told that use of the book in completing the screenplay was "verboden." The evidence at trial was conflicting on whether the screenwriter had relied almost entirely on the book or whether he had ar-

event, the movie was completed and was broadcast on ABC.

The trial judge instructed the jury that if an author conducts research, "his research is copyrightable." This instruction was given at the urging of Miller's lawyer who had argued "That's the heart of the case." Universal had strenuously objected to the instruction. And the Court of

Appeals agreed with Universal that it should not have been given. It was "at best confusing," and "at worst wrong," the appellate court noted, because "It is well settled that copyright protection extends only to an author's expression of facts and not to the facts themselves."

In support of its decision, the Court of Appeals cited another docu-drama case won by Universal last year, *Hoehling v. Universal City Studios*, 618 F.2d 972 (2d Cir. 1980) (ELR 1:24:4, 1:11:2). In that earlier case, a Federal Court of Appeals in New York held that Universal's movie *The Hindenburg*, and the book on which it was based, did not infringe the copyright to a non-fiction book on the same subject entitled "Who Destroyed the Hindenburg?"

*Miller v. Universal City Studios, Inc.*, No. 78-3772 (5th Cir., July 23, 1981) [ELR 3:7:2]

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**Newsweek magazine article about John Wayne did not infringe book about war movies though letters and interviews were quoted from book without attribution**

An article about the life of John Wayne which was published in Newsweek magazine contained excerpts from letters written by Wayne and Jack Valenti, and brief quotations from interviews with Michael Wayne and director William Wellman. Lawrence Suid claimed that the material used by Newsweek closely resembled passages in his book "Guts and Glory Great American War Movies." Suid did not claim copyrights in the letters. Rather, he contended that Newsweek was not entitled to "freely reap the benefit of the industry of another in reporting and researching facts or other public domain

material." This view has been repudiated by the Second Circuit in *Hoehling v. Universal Studios, Inc.*, 618 F.2d 972 (ELR 1:24:4) on the ground that the Copyright Act requires originality as a condition of copyrightability and does not protect facts uncovered by research. The Federal District Court in the District of Columbia, in granting summary judgment to Newsweek, chose to adopt the Second Circuit's position.

With respect to the quotations, the court pointed out that "the author of a factual work may not, without an assignment of copyright, claim copyright in statements made by others and reported in the work since the author may not claim originality as to those statements." Suid had obtained a release for publication from Michael Wayne but this was not equivalent to a copyright interest. Wellman's heirs had assigned their copyright interest in his interview to Suid. However, the assignment was not registered prior to the institution of the action

and the 16 word quotation used by Newsweek was ruled a fair use in any event. The court observed that the Wellman interview was intended for scholarly rather than commercial use, and the single quotation used by Newsweek was an insubstantial amount of the entire Wellman interview. When viewed on the whole, all of the material used by Newsweek amounted to a very small part of Suid's book.

Suid also alleged that he was damaged by Newsweek's failure to give him proper attribution and that this claim was not preempted by federal copyright law, as was Suid's unfair competition claim. The court found, however, that a common law action for failure to attribute was a "non-existent doctrine."

Suid v. Newsweek Magazine, 503 F.Supp. 146, CCH Copyright Law Reports, Para. 25,205 (D.D.C. 1980) [ELR 3:7:3]

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## **ESPN enjoined from broadcasting highlights of Boston Red Sox and Bruins games**

The ESPN cable network has been enjoined from broadcasting highlights of Boston Bruin and Boston Red Sox games by a Federal District Court in that city. The highlights, which ESPN had been broadcasting as part of its "Sportscenter" program without the consent of either team, generally were shorter than 2 minutes in length. ESPN took the position that its use of those excerpts was a "fair use" under the Copyright Act, rather than an infringement. The court has disagreed, however.

ESPN acquired tapes of Red Sox and Bruin games by videotaping them off the air whenever they were broadcast by WSBK-TV. ESPN, in turn, broadcast the

excerpts by satellite to cable systems throughout the country.

WSBK-TV offered to authorize ESPN's use of game highlights in exchange for a fee. But ESPN rejected the offer. Instead, ESPN contended that its use was a fair use, because it described its broadcasts as a de minimis use for news purposes only - a use which ESPN said should be protected in order to assure the public's right to newsworthy information. The court disagreed. It ruled that the public's right to newsworthy information is sufficiently protected by ESPN's simple reporting of the underlying facts which the game tapes recorded. The fair use doctrine does not permit ESPN to appropriate the expression of that information by copying the games themselves, the court held.

The court also rejected the argument that ESPN's use of the excerpts was de minimis. The court noted that "it is the quality of the use rather than its quantity which is

determinative." The excerpts used by ESPN, although relatively short in duration, were the "highlights" of each game broadcast, and thus their use was "substantial," the court said.

ESPN also argued that its use of excerpts had not had any effect on the market for Red Sox and Bruin highlights, because the teams had made no effort to sell excerpts to cable networks. The court was not persuaded by this contention, however. It ruled that it was for the Red Sox and the Bruins to decide when and how to exploit their copyrights. Furthermore, both teams do sell highlights of their games to the three major television networks, and though their income from these networks had not diminished because of ESPN's broadcasts, the court concluded that the networks' payments showed that people were willing to pay for highlights.



New Boston Television, Inc. v. Entertainment Sports Programming Network, Inc., Civil Action No. 81-1010-Z (D.Mass., August 3, 1981) [ELR 3:7:3]

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**Omission of copyright notice on promotional record of "Here Comes The Sun," written by George Harrison, did not place the song in the public domain**

Richard Ruskin, who recorded the song "Here Comes The Sun" which was written by George Harrison, sued Sunrise Management and Owen Advertising for the unauthorized use of the song in radio and television advertisements. Sunrise and Owen argued that copies of the record were distributed in 1974 without the required statutory copyright notice, thereby placing the work in the public domain.

A Federal District Court in Colorado has agreed with Ruskin that the 1974 distribution of the record was only a limited publication and thus copyright protection for it was not lost. Only a small number of promotional copies, clearly marked as such, were sent to radio stations. And those copies were not for resale, commercial use or for general publication.

Moreover, the court ruled that there were sufficient questions of fact as to whether the infringement was innocent (due to the omission of notice on the 1974 record) to deny Sunrise and Owen's motion for summary judgment.

Ruskin v. Sunrise Management, Inc., 506 F.Supp. 1284 (D.Colo. 1981) [ELR 3:7:4]

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## **Radio play of copyrighted songs by Casual Corner shoe stores constitutes infringement**

A Federal District Court in Los Angeles has granted BMI a summary judgment in a copyright infringement suit it filed against the Casual Corner shoe store chain. At least three of the stores were equipped with Bogen receivers and speakers. The speakers were recessed in the ceilings of the stores over their selling areas. The radios were tuned to stations that played songs, the public performance rights to which were licensed to BMI, including "The Things We Do for Love," "Rocket Man," "When Will I Be Loved" and "My Way." The shoe store chain did not have a license from BMI, however.

At issue in the case was the meaning of Section 110(5) of the Copyright Act which exempts radio play of copyrighted music under certain circumstances. In order to qualify for the exemption, the radio has to be the kind

commonly used in homes, no direct charge may be made for listening, and the transmissions may not be retransmitted. According to a House Committee report explaining the exemption, it is intended to exempt small commercial establishments whose owners merely play standard radios for their customers' enjoyment. It does not protect, however, the use of commercial sound systems or standard radios that have been converted or augmented into the equivalent of commercial systems.

In the Casual Corner case, the court found that the Bogen systems used in the stores were not the kind of equipment commonly used in private homes. Furthermore, the court ruled that the shoe store chain did not qualify for the exemption because its stores were not small commercial establishments and were large enough so that they could afford to use commercial background music systems. As a result, Casual Corners was enjoined from playing any more BMI songs without a

license. BMI also was awarded statutory damages, and its attorneys fees and costs.

Several members of ASCAP recently obtained a preliminary injunction against The Gap clothing stores in a separate case quite similar to this one. (ELR 3:2:4)

BMI v. United States Shoe Corp., CCH Copyright Law Reports, Para. 25,241 (C.D.Cal. 1980) [ELR 3:7:4]

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### **North American Soccer League Players Association wins right to rescind certain provisions of NASL player contracts**

Another chapter has been written in the continuing saga of the unionization of North American Soccer League players. Last year, a Federal Court of Appeals ordered the NASL to collectively bargain with the

NASL Players Association, after the players had voted, 271 to 94, to be represented by it. (ELR 2:6:3) Between the time of the vote, which took place in 1978, and the time of that order, the League made several changes in its player contracts without first bargaining about such changes with the Players Association as required by law.

The League required its players to obtain permission from their clubs before wearing brands of footwear other than that selected by the clubs. It initiated plans for a new winter indoor soccer season and required the players to play during the new season. It increased the length of the summer season. It reduced the size of the maximum roster. And it by-passed the Players Association and entered into contracts directly with individual players.

The League contended that it had the right to do all of these things without bargaining with the Players

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Association, because the League had been appealing the National Labor Relations Board's certification of the Players Association as the players' bargaining representative.

However, Judge Motley of the Federal District Court in New York City ruled that the League became legally obligated to bargain with the Players Association the moment it was certified by the NLRB, even though the League was exercising its right to appeal. And the Court of Appeals has affirmed that decision. The Court of Appeals also affirmed Judge Motley's order that the Players Association could rescind the unilaterally imposed provisions of the player contracts. It did so, because it found that there had been reasonable cause to believe that the League had committed "particularly flagrant unfair labor practices," and thus the remedy ordered by Judge Motley was "just and proper."

Morio v. North American Soccer League, 501 F.Supp. 633 (S.D.N.Y. 1980), affirmed, 632 F.2d 217 (2d Cir. 1980) [ELR 3:7:4]

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## **San Diego's ban on billboard advertising is ruled unconstitutional by United States Supreme Court**

Banning the display of all noncommercial as well as commercial messages (with certain limited exceptions) rendered San Diego's billboard ordinance unconstitutional, the United States Supreme Court has declared. Five members of the court wrote opinions in the first High Court decision to consider the First Amendment aspects of billboard regulation. The court's 7-2 decision reversed the California Supreme Court's conclusion (ELR 1:24:7) that San Diego's interests in traffic safety



and aesthetic improvement were sufficient grounds for upholding the ordinance.

The ordinance, while otherwise banning billboard advertising, permitted the display of on-site signs which identified the owner or occupant of the premises upon which the sign was located or which advertised the goods manufactured, or services rendered, on the premises. Also excepted from the overall ban were signs in 12 categories including government signs, commemorative historical plaques; religious symbols and temporary political campaign signs.

Justice White concluded that while San Diego was entitled to categorize and impose restrictions upon certain forms of commercial speech, the city did not have the same right to regulate noncommercial speech. The ordinance "reache[d] too far into the realm of protected speech" and was unconstitutional on its face, stated Justice White for the plurality.

In a concurring opinion, Justice Brennan (joined by Justice Blackmun) noted that the practical effect of the San Diego ordinance was to eliminate billboards as an effective medium of communication. An advertiser's billboard message appeared to be foreclosed unless the advertiser leased premises in the city or unless the message fell within an excepted category. Citing the Supreme Court's recent decision in *Schad v. Borough of Mt. Ephraim* (ELR 3:4:4) Justice Brennan suggested that a less intrusive means could have been found to accomplish San Diego's asserted governmental interests. Further, the city had not shown that billboards directly impaired traffic safety, and the aesthetic goal did not seem sufficiently substantial to warrant the restrictions contained in the ordinance since billboards generally were located in commercial and industrial areas. However, Justice Brennan questioned the plurality's view that an ordinance totally banning commercial billboards but

allowing noncommercial billboard messages would be constitutional. City officials might then be in the unacceptable position of determining whether proposed messages were commercial or noncommercial.

Justice Stevens, although dissenting, agreed that San Diego was entitled to distinguish between on-site and off-site commercial signs. Indeed, he asserted that the city could ban entirely a medium of communication. He noted, however, that there was no evidence that on-site signs in the city were ever used for the display of non-commercial messages. And in Justice Stevens' opinion, the regulation of permanent signs in commercial and industrial areas was the only issue before the court. The right of a property owner to display a noncommercial on-site message was solely a hypothetical matter and should not have been considered.

Chief Justice Burger's dissent characterized Justice White's opinion as an "extraordinary - even a bizarre

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step." The Chief Justice would have deferred to the local government's authority to protect its citizen's interests in traffic safety and the environment. In the Chief Justice's view, the First Amendment might permit a city to take an "all-or-nothing" approach in regulating noncommercial speech while providing "selective exceptions" for commercial speech.

Justice Rehnquist, in dissent, would have found that the aesthetic justification alone was a sufficient ground for sustaining a total prohibition of billboards in a community, that such a determination is best left to a city or county, and that the limited exceptions in the San Diego ordinance did not render it unconstitutional.

Metromedia, Inc. v. City of San Diego, Case No. 80-195 (U.S.Sup.Ct., July 2, 1981) [ELR 3:7:5]

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## **Right of publicity of Martin Luther King, Jr. did not survive his death**

A Federal District Court in Atlanta has refused to enjoin the unauthorized manufacture and sale of plastic busts of Dr. Martin Luther King, Jr., because his right of publicity did not survive his death.

The suit was brought against the manufacturer of the busts, American Heritage Products, Inc., by the administratrix of Dr. King's estate and by the Martin Luther King, Jr. Center for Social Change. Although the court ruled against them, it rejected a contention that Dr. King had waived his right of publicity because he was a public figure. "Any waiver that may be implied when a person seeks public acclaim applies essentially only to newsworthy public comment or disclosures of legitimate public interest," the court noted. On the other hand, the court also noted that earlier right of publicity cases

generally agree that the right survives its owner's death only if the right had been exploited during the owner's lifetime. This is why Dr. King's right of publicity did not survive.

Although Dr. King exploited his name and likeness to advance the cause of civil rights, he did not engage in commercial exploitation. Such "exploitation," as defined in *Hicks v. Casablanca*, 464 F.Supp. at 429 (ELR 1:1:5) involves action by the decedent "in such a way as to evidence his or her own recognition of the extrinsic commercial value of his or her name or likeness, and manifest that recognition in some overt manner." Dr. King received modest honorariums for public appearances and writings, and he sold his copyrights in several speeches to Motown Records. But this was "far from the commercial exploitation contemplated by the cases," stated the court. There was no showing that Dr. King intended to capitalize on the commercial value of his name

and likeness. He did not endorse products or sell merchandise bearing his name or image so as "to establish his personality as a commercial commodity." Therefore, his right of publicity did not descend to his estate on his death.

The estate argued that public policy mandated that his heirs control his right of publicity in order to preserve the symbolic value of Dr. King's image. But the court concluded that public policy actually required that the name and likeness of Dr. King enter the public domain since "his image is part of our national heritage." To remove completely his likeness from public use "would be more detrimental than the few vulgarities or improprieties that may occur from its accessibility."

Motown asserted a copyright infringement claim against American Heritage based on its use of Dr. King's speeches in booklets distributed with the bust. American Heritage claimed that it use of excerpts from Dr. King's

copyrighted speeches, such as "I Have a Dream" and "The Nobel Peace Prize Acceptance Speech," in connection with its sales of the bust was fair use. The court disagreed, because substantial excerpts were used, because American Heritage was motivated only by financial gain, and because the excerpts were used to convey the impression that the Center approved of the product. Thus further distribution of the booklets was enjoined.

The Center's contention that American Heritage's actions violated the Georgia Deceptive Trade Practices Act was denied. The court ruled that enjoining the deceptive use of the Center's name and any further infringement of the copyrighted material would provide adequate relief. Future advertisements for the King bust will be required to disclaim any connection to the Center.

Jurisdiction over American Heritage, an Ohio corporation was based on the Georgia long-arm statute which



applies when an alleged injury occurs in the state. Advertisements for the plastic busts were seen or distributed in the state. American Heritage had entered the state in an attempt to obtain the Center's endorsement of its product, contracted with a Georgia corporation to receive telephone orders and made sales to Georgia residents. All were purposeful acts committed in the state, and these contacts with Georgia were related to the tortious acts complained of.

Martin Luther King, Jr. Center for Social Change, Inc.  
v. American Heritage Products, 508 F.Supp 854  
(N.D.Ga. 1981) [ELR 3:7:5]

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## **Briefly Noted:**

### **Copyright.**

Although videotaping motion picture without authorization may constitute criminal copyright infringement, it does not constitute a "theft" of the movie itself, a Massachusetts Superior Court has held. Accordingly, the court dismissed an indictment charging several defendants with "receiving stolen property." The "property" described in the indictment was not the videotapes themselves, but merely the "intellectual property" which the tapes contained.

Commonwealth of Massachusetts v. Rozzuto, CCH Copyright Law Reports, Para. 25,233 (Mass.Supr.Ct. 1980) [ELR 3:7:6]

## Copyright.

A breach of contract action against banjo player Earl Scruggs did not "arise under" the Copyright Act, a Federal District Court in New York City has ruled. Thus, the court dismissed the action for lack of jurisdiction, though it did so "without prejudice" to the plaintiff's right to refile the case in state court. The suit was filed by a Scruggs admirer who alleged that he and Scruggs had entered into an oral contract by which the admirer was to have assisted Scruggs in the preparation of a banjo instruction book and record album in exchange for a share of the royalties and profits. Such a book and album were eventually published.

Keith v. Scruggs, CCH Copyright Law Reports, Para. 25,234 (S.D.N.Y. 1981) [ELR 3:7:7]

## **Cable Television.**

UA-Columbia Cablevision of New Jersey and Suburban Cablevision have lost their bid to overturn an order of the New Jersey Board of Public Utilities granting approval to Meadowlands Communications to construct and operate a cable system in seven Bergen and Hudson County, New Jersey communities. UA-Columbia and Suburban argued that, as proven cable television companies, they rather than Meadowlands, who had not yet received the financial or technical support needed to construct a cable system - were entitled to the franchise, and the municipalities involved, as well as the Board, acted arbitrarily in awarding it to Meadowland. The court held that the decisions to select Meadowlands were not arbitrary. The municipalities appeared to have decided that a local company run by local citizens was a better choice than an established company. "Subsequent

events have shown that this decision was probably not a wise one, but an unwise decision is not necessarily an arbitrary decision."

In *Re Meadowlands Communications Systems, Inc.*,  
417 A.2d 575 (N.J.App.Div. 1980) [ELR 3:7:7]

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### **Gambling.**

Gambling winnings derived from a husband's use of community property funds after his separation from his wife, were entirely community property, a California Court of Appeal has held. The husband's separate property contribution was "the minimal skill and effort required at games of chance, an inconsiderable factor compared to the community property contribution of \$10,000.) The husband's attempt to assert the illegality

of gambling as a defense to the division of the winnings was rejected since the financial gain was an accomplished fact and did not involve an expectancy or enforcement problem.

Shelton v. Shelton, Cal.Ct.App., 3 Civ. 19592 (May 1981) [ELR 3:7:7]

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## **Libel.**

A physician working in a state mental institution is a "public official" for purposes of libel, held a North Carolina Court of Appeals, thus requiring a doctor, in his action against the Winston-Salem Journal-Sentinel for publishing an article concerning the commitment of a man to the State mental hospital under questionable circumstances, to prove "actual malice." "While a doctor

as a medical examiner may not be very high in the hierarchy of government, he holds a position with the potential for great social harm if abused. Thus, independent interest in and comment on the qualifications and performance of a person holding that position is to be encouraged."

Hall v. Piedmont Publishing Co., 266 S.E.2d 397  
(N.C.App. 1980) [ELR 3:7:7]

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## **Libel.**

Eric Waldbaum, former president and chief executive officer of Greenbelt Consumer Services, a diversified consumer cooperative, is a "public figure" for limited purposes, held a Federal Court of Appeals, which affirmed a judgment against Waldbaum because he

admitted he could not prove "actual malice" on the part of the publisher. Waldbaum had brought an action against Supermarket News for running a five sentence article concerning his dismissal from Greenbelt, which stated Greenbelt "has been losing money the last year and retrenching." During Waldbaum's tenure, Greenbelt ranked as the second largest cooperative in the country. Waldbaum's vigorous role in setting policies and standards at Greenbelt and within the industry, advocating unit pricing and holding press conferences on topics varying from supermarket practices to energy legislation, generated considerable comment in trade journals and general interest publications.

Waldbaum v. Fairchild Publications, Inc., 627 F.2d 1287 (D.C.Cir. 1980) [ELR 3:7:7]

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## **Invasion of Privacy.**

The torts of "false light" and "true" invasion of privacy are now recognized in Oklahoma, declared the Oklahoma Supreme Court, in an action by a man based on a local newspaper's publication of his criminal record. The Sunday Oklahoman, a newspaper with a weekly circulation of over 300,000 referred to the man as a one-time gambler and illegal casino operator and cited his Justice Department "rap" sheet containing arrests ranging from forgery and swindling to gambling and liquor violations between the years 1934 and 1957. Though the court recognized the right of privacy, it affirmed the trial court's dismissal of the case, because there was no allegation that the facts were private and not of public record. "An action granted on right of privacy does not lie when 'public records' (U.S. Justice Department's list of organized crime) are used," said the court.

McCormack v. Oklahoma Publishing Company, 613 P.2d 737 (Okla. 1980) [ELR 3:7:7]

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### **Invasion of Privacy.**

A newspaper story quoting a Sheriff's department statement that a teenage girl had been seen "streaking" while "high on drugs" near her residence, when in fact she had been running home to her parents wearing only her panties and bra, crying and disheveled after a late evening with her boyfriend, was privileged as against an invasion of privacy claim by the girl's parents, held a Washington Court of Appeals. The media may publish reports of any official action or proceeding of public concern relating to a private person when "the publisher is acting reasonably to insure the report is accurate and complete or a fair abridgement." The Sheriff's

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department statement came a year after the incident had occurred and just shortly after the girl's body was found lying nude alongside a road near her home. The disclosure of the prior incident was a potential explanation for the bizarre circumstances of her death, and the newspaper acted reasonably, relying upon information supplied by the Sheriff's department, identifying its source, and acting within the limited deadlines characteristic of a metropolitan newspaper to report an event of immediate public concern.

Maloney v. Tribune Pub. Co., 613 P.2d 1179  
(Wash.App. 1980) [ELR 3:7:8]

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## DEPARTMENTS

### **Book Note:**

### **"A Tax Guide for Artists and Arts Organizations" edited by Herrick K. Lidstone**

Many years ago, the Volunteer Lawyers for the Arts published a book entitled "The Visual Artist and the Law." The book was one of the first of its kind and was well received. So in 1974, the VLA decided to publish a companion volume on taxes for artists, and work was begun on it. A draft was finished in 1975, by which time it was apparent that the then-pending Tax Reform Bill would have a significant impact on what had been written. Nevertheless, the VLA did publish the early version of several chapters. And when the Tax Reform Act of 1976 was signed into law, the manuscript was revised

and expanded into this book (which was originally published by Lexington Books in 1979). As is so often the case in the law - and especially in tax law - subsequent developments may have dated some specific observations made in this book. But it will nevertheless remain valuable for some time to come, because of its excellent organization and approach to the subject of taxes for the artist. Its contents include, Books, Records and Accounting; Hobby Losses; Partnerships and Corporations; Exempt Organizations; Federal Estate and Gift Taxes; and Payroll, State and Local Taxes. The book is available from Lexington Books, D.C. Heath and Company, 125 Spring Street, Lexington, Massachusetts 02173; phone (800) 428-8071. [ELR 3:7:6]

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**In the Law Reviews:**

Emerging International Copyright Laws on Off-the-Air Home and Educational Videorecording: An Analysis by Jeffrey S. Glover, 28 Bulletin of the Copyright Society of the U.S.A. 475 (1981)

Tax Aspects of Baseball Player Contracts and Planning Opportunities by Philip J. Harmelink and David W. Vignes, 59 Taxes - The Tax Magazine 535 (1981)

Defamation in Fiction: The Case for Absolute First Amendment Protection, 29 American University Law Review 571 (1980)

The Judicial Role in the FCC Decision-Making Process: A Perspective on the Court-Agency Partnership in the

Entertainment Format Cases, 21 Boston College Law Review 1067 (1980)

Obscenity: In the Matter or in the Mind?, 46 Brooklyn Law Review 695 (1980)

Forward to Communications Regulation Symposium by David L. Bazelon, 69 California Law Review 442 (1981)

Introduction to Communications Regulation Symposium by Lionel Van Deerlin, 69 California Law Review 446 (1981)

The Proposed Deregulation of Domestic Common Carrier Telecommunications by Thomas J. Hutton, 69 California Law Review 455 (1981)

The Application of Antitrust Law to Telecommunications by Gail Hillebrand, 69 California Law Review 497 (1981)

Regulatory, Versus Property, Rights Solutions for the Cable Television Problem by Gillis L. Heller, 69 California Law Review 527 (1981)

The Future of Content Regulation in Broadcasting by David M. Coyne, 69 California Law Review 555 (1981)

The Deregulation of Cable Television by Stanley M. Besen and Robert W. Crandall, 44 Law and Contemporary Problems 77 (1981) [ELR 3:7:8]