

RECENT CASES

TV series "Kaz" did not infringe copyright to true story about life of similar character

The line between fact and fiction is often illusive. This is especially so in television dramas, many of which are inspired by actual events. On several occasions, courts have been asked to rule on the extent to which written accounts of actual events are protected by copyright. Last year, in fact, a Federal District Court in Los Angeles was asked to determine whether the television series "Kaz" infringed the copyright to a three-page, autobiographical story about a person whose life was remarkably similar to the life of the series' title character. In a recently published opinion, the court ruled that "Kaz" did not infringe the story's copyright, because the

alleged similarities were not "protectible" under the copyright law.

"Kaz" was about an ex-convict who had studied law and had passed the bar examination while in prison, and who, after his release from prison, joined a conservative law firm and embarked upon a somewhat unorthodox style of practice. The series starred Ron Leibman, who was also one of its creators. And it was produced by Lorimar for broadcast on CBS.

Tom Miller is a real life ex-convict who studied law and obtained a law degree while in prison. In fact, according to the principal of the Folsom Prison Adult School, Miller is the only convict ever to have done so. Miller wrote a three-page story of his prison experiences and submitted it to Universal Television which purchased an option to the story, though it never exercised the option.

When "Kaz" appeared on the air, Miller filed suit, alleging that the copyright to his story was infringed. In their defense, Universal asserted that it had never shown Miller's story to Lorimar, and Lorimar denied that it had ever seen it. Thus, the question of whether Lorimar even had "access" to the Miller story would have been an important issue in the case. However, in response to a motion for summary judgment made by Lorimar and its fellow defendants, the court ruled that even if it assumed that Lorimar had access, Miller's copyright still was not infringed. It was not, the court held, because all of the similarities alleged by Miller fell into the category of "ideas, themes, locale and characters," none of which is protected by the copyright law.

The court reasoned that the common element between Miller's story and "Kaz" was the idea of an ex-convict studying law while in prison. But, the court noted, Miller's autobiography emphasized his life during his

prison term, while "Kaz" emphasized Kaz's life after he was released from prison and became a lawyer. No program dealt with Kaz's life while in prison. Indeed, the only way the series' viewers were informed of Kaz's prison background was during the title sequence when pictures were flashed on the screen depicting his arrest and his studies.

Furthermore, the court noted that many of the similarities between Miller's story- and "Kaz" naturally arose from the idea of a convict studying law in prison. Thus, it was not legally significant that Kaz and Miller both studied law through a correspondence school, both were "jailhouse lawyers," both aided other convicts with sentencing problems, both spent time in solitary confinement, both paid for their own law books, and both completed their law studies while still in prison.

Miller v. Columbia Broadcasting System, Inc., CCH Copyright Law Reports, Para. 25,242 (C.D.Cal. 1980) [ELR 3:8:1]

Though Scottsboro docudrama defamed Victoria Price, NBC wins libel case because Price still a public figure and NBC did not broadcast with actual malice

More than forty years after the famous Scottsboro rape trials, the case is in the courts again. In the 1930s, the rape convictions themselves were considered by the Supreme Court of Alabama no less than three times and by the U.S. Supreme Court twice. Some of the Scottsboro "boys" were released from prison in the late '30s, and the last was paroled in 1950. Interest in the case has never died, however. In 1969, Louisiana State

University Press published a book by historian Daniel Carter entitled "Scottsboro: A Tragedy of the American South." Dr. Carter's book was based on the written decision of an Alabama judge named Horton who concluded that the Scottsboro boys were innocent. The book was also based on the transcript of their trial, on contemporaneous newspaper accounts and on interviews with Judge Horton and others. Several years after the book was published, NBC broadcast a docudrama entitled "Judge Horton and the Scottsboro Boys" which was based almost entirely on Dr. Carter's book.

The movie portrayed Judge Horton as a courageous and tragic figure struggling to do justice in a tense community gripped by racial prejudice and intent on vengeance against nine blacks who had been accused of raping two white women, one of whom was Victoria Price. In the movie, Judge Horton was shown setting aside a jury's guilty verdict, because he believed that

Price had falsely accused the Scottsboro boys of rape. The movie thus portrayed Price in a derogatory light: as a woman who had attempted to send nine innocent blacks to their deaths in the electric chair for a rape they did not commit.

The movie won several awards including the George Poster Peabody Award for playwriting and awards from the Writers Guild of America and the American Bar Association.

When NBC first broadcast the movie, it thought that Victoria Price was dead. Dr. Carter thought so himself and had written as much in his scholarly book. She was not however. And after the broadcast, she wrote NBC a letter informing it that she was alive and that she considered the movie to be libelous. NBC rebroadcast the movie anyway. And Price filed a libel and invasion of privacy lawsuit against it.

Though Price's libel case was tried to a jury in a Federal District Court in Tennessee, the jury never indicated what it thought of her claims. It did not, because at the conclusion of the case, the trial judge directed a verdict in NBC's favor. The trial court ruled that NBC had not negligently broadcast any untruths and therefore could not be held liable.

A Federal Court of Appeals has affirmed NBC's victory, though for different reasons than those expressed by the trial court. The Court of Appeals has ruled that Victoria Price was and is a public figure and that NBC had not broadcast the movie with malice.

Though NBC won, it did so strictly on Constitutional grounds, and even then by a margin of only one vote. One of the three appellate judges who heard the case dissented, indicating he would have sent the case back for consideration by the jury. In fact, the court's decision appears to contain some time bombs which could

resurface to injure other docudrama makers in future cases.

For example, the court made special note that the movie did cast Price in an extremely derogatory light, because it portrayed her as a perjurer, a woman of bad character, and a woman who had falsely accused nine men of rape knowing that the result could have been the electric chair. Although these were the facts found by Judge Horton in his decision in the rape trial, the appellate court ruled that Judge Horton's decision did not settle the question of whether these facts were true. Their truth still remains "an open question," the court said - a question which Price was entitled to present to the jury in her libel suit.

The appellate court also noted that the movie was not a completely accurate report of the rape trial, because witnesses who had corroborated Price's version of the facts were omitted from the movie, while portions of the trial

that showed her as a perjurer and a promiscuous woman were emphasized. The movie accepted the theory presented by the defense and found by Judge Horton, and it rejected the theory of the rape case presented by the state and Price herself. Under these circumstances, the court said, the movie did not qualify for the privilege permitting publication of defamatory material as part of a fair and accurate report of judicial proceedings, because "balance and neutrality" were missing.

NBC's victory rested on the court's conclusion that the Scottsboro trials were a public controversy, and that Price had become a public figure because at the time of the rape trials she had given press interviews and had aggressively promoted her version of the case outside of her courtroom testimony.

Price argued that even if she had been a public figure in the 1930s, she no longer is one now. The court disagreed, however. It held that "once a person becomes a

public figure in connection with a particular controversy, that person remains a public figure thereafter for purposes of later commentary or treatment of that controversy."

Finally, the court ruled that there had been no evidence that NBC had broadcast the movie with knowledge that its portrayal of Victoria Price was false, or that NBC had recklessly disregarded the truth. "The derogatory portrayal of Price in the movie is based in all material respects on the detailed findings of Judge Horton at the trial and Dr. Carter in his book." Then, in words that may give movie makers some comfort after all, the court concluded that "When the truth is uncertain and seems undiscoverable through further investigation, reliance on these two sources is not unreasonable."

Price has petitioned the United States Supreme Court for a hearing.

Street v. National Broadcasting Co., 7 Media Law Reporter 1001 (6th Cir. 1981) [ELR 3:8:2]

Jury must decide whether Barron's defamed lawyer Mickey Rudin by referring to him as Frank Sinatra's "mouthpiece"

Attorney Milton A. "Mickey" Rudin has sued Barron's Business and Financial Weekly for defamation and has overcome a Barron's motion to dismiss the case, before Federal District Judge Lasker in New York City.

On November 27, 1978, in its regular column "Up and Down Wall Street," Barron's commented on the purchase of stock in the Great Lakes Dredge and Dock Company by a group including Rudin, and his client Frank Sinatra. The article observed, "as to why old Blue Eyes et al acquired the block of stock, an executive

declares, 'We've no idea whatsoever'. . . . One thing we do know. Say what you want about Great Lakes Dredge, a fine old company with respectable record, show biz it's not."

Rudin responded in a letter published in Barron's letters to the editor column, "Barron's Mailbag". Said Rudin: "Your article seems to indicate that neither Mr. Sinatra and I, nor the other individuals joining us in filing as 'a group,' have a limited amount of intelligence ... that we can only understand gambling stocks or securities of companies involved in the entertainment industry.... Your reporter, if he completed a sixth grade education, should have been able to note that we are getting a 10% return on our investment.... Because we don't read Barron's I guess we very stupidly invested in this stock, which at present price levels is yielding about 7% per annum and selling at a modest multiple of five times earnings."

Barron's prefaced Rudin's letter, in bold typeface and in all capitals, with the caption "SINATRA'S MOUTHPIECE." Rudin quickly demanded a retraction. On January 29, 1979 the Barron's Mailbag column began: "Milton Rudin, an attorney who represents Frank Sinatra, has objected to our referring to him as 'Sinatra's Mouthpiece' on last week's Mailbag Column. We meant to cast no aspersions on Mr. Rudin. Our dictionary defines 'mouthpiece' as `spokesman.'"

Barron's moved to dismiss Rudin's subsequent lawsuit, which charged Barron's with libel, on the grounds that "mouthpiece" is not reasonably susceptible of defamatory meaning, and, in light of Barron's retraction, no cause of action for libel exists in the absence of special damages under California law.

However, District Judge Lasker has found that the caption "Sinatra's Mouthpiece" is reasonably susceptible of the defamatory meaning ascribed to it by Rudin. "Rudin

has convincingly demonstrated that the term is often used to refer to an attorney for organized crime and that it is understood to refer to someone who does another's bidding without the exercise of independent judgment.... It has been specifically recognized that an attorney who acts merely as his clients' 'mouthpiece' is not fulfilling the ethical requirements of the legal profession," that is, to exercise his independent professional judgment, as affirmatively required by the Code of Professional Responsibility. Because the publication is reasonably susceptible of both innocent and defamatory meaning, said the court, it is up to the jury to decide which meaning was actually conveyed.

Barron's contended that its January 22, 1979 statement constituted an appropriate retraction under California Civil Code Section 48(a), so that Rudin has no claim for libel absent direct proof of pecuniary or "special" damages. Rudin argued that New York law applies, and, in

any event, the California retraction statute is inapplicable because Barron's is not a newspaper - by its terms, the statute applies to newspapers, not to magazines - and, even if Barron's is a newspaper, the sufficiency of Barron's retraction must be decided by a jury too.

The court found the state of the record insufficient to determine whether New York or California law should apply, and called for additional discovery on whether Barron's is a newspaper or a magazine for the purposes of the California retraction statute.

The court commented that Barron's may be a magazine rather than a newspaper, because, as a specialized weekly publication, it might not be "under pressure to disseminate 'news while it is news,'" but rather may "have the advantage of greater leisure in which to ascertain the truth of allegations before publishing them." The court also noted that the recent decision of the California trial court in the Carol Burnett case (ELR 3:2:2), that

the National Enquirer is a magazine rather than a newspaper under Section 48(a), appears to support Rudin's position.

Rudin v. Dow Jones & Co., Inc., 510 F.Supp. 210 (SDNY 1981) [ELR 3:8:3]

Court upholds constitutionality of regulation limiting loudness of music played in public Places

A regulation of the Pennsylvania Liquor Control Board providing that "No [liquor] licensee shall use ... inside or outside of the licensed premises a loudspeaker or similar device whereby the sound of music or other entertainment . . . can be heard on the outside of the licensed premises" has been held to be constitutional by the Commonwealth Court of Pennsylvania.

The owner of "The Light House" tavern was fined \$250 by the Liquor Control Board for violating the music noise level regulation on two occasions, once during the appearance at the tavern of a musical group "perhaps not inappropriately named," "The Extremes." A Board enforcement official testified that, on both occasions, music from inside the tavern after midnight could "clearly and distinctly" be heard from distances of 70, 80, and 180 feet away from the premises, radii within which the nearest residences were located.

The tavern owner contended the regulation violates due process and it is so overbroad it chills freedom of expression guaranteed by the First Amendment, because it does not use the "least drastic means" available to accomplish its purpose.

However, the court ruled that the regulation does not violate due process, because it is "a reasonable means of limiting - not prohibiting - the sound of music and other

entertainment" and "it is reasonably related to the accomplishment of a specific valid state interest: protecting persons outside liquor establishments from interference with a peaceable environment."

The ascertain that the regulation does not use the "least drastic means" to accomplish its purpose, at best, assumes that a total prohibition of external noise is unreasonable, and that a decibel standard should be used to insure that only an excessive degree of noise is condemned, said the court. "Although a decibel scale measurement may be desirable in terms of specificity, it is not essential as a matter of law, particularly in this case, where the actual reach of sound clearly exceeded in fact any degree which might be considered tolerable."

Hude v. Commonwealth, 423 A.2d 15 (Pa. Cmwlth. 1980) [ELR 3:8:4]

Action alleging that "I'll Never Love This Way Again" infringed another copyrighted song is transferred from New York to California

A copyright infringement action against Richard Kerr and Will Jennings, the writers of the song "I'll Never Love This Way Again," and against the song's publishers has been ordered transferred from New York to California.

Judge Goettel of the Federal District Court in New York City observed that transfer of the action "in the interest of justice" under 28 U.S.C. section 1404(a) would be appropriate only if jurisdiction and venue were proper in New York. (Otherwise, the case could have been transferred pursuant to another section of the law, section 1406(a), as a matter of legal right.) Jurisdiction in New York was established in line with the recent case of *Testa v. Janssen*, 482 F.Supp. 1195 (ELR 2:6:2).

In *Testa v. Janssen*, a Federal District Court in Pennsylvania ruled that a copyright holder's licensing agreement with BMI (the performing rights society) together with BMI's foreseeable activities in licensing performances of the copyrighted work in Pennsylvania, constituted a shipment of "merchandise" into the state. This shipment of merchandise sufficed to establish personal jurisdiction over the nonresident copyright holder under Pennsylvania's long-arm statute. Judge Goettel agreed that Will Jennings assignment to BMI of his public performance rights in "I'll Never Love This Way Again" provided personal jurisdiction over Jennings under a similar provision of New York's long-arm statute. Venue in New York also was proper pursuant to 28 U.S.C. section 1400(a) which authorizes copyright actions to be brought "in the district in which the defendant or his agent resides or may be found. A defendant 'may be found' wherever he is amenable to personal jurisdiction,"

said the court (citing *Donner v. Tams-Witmark Music Library, Inc.*, 480 F.Supp. 1229, ELR 2:1:7).

The court then stated that it could not determine from the record whether New York's long-arm statute would also reach Kerr. Although Kerr and Jennings jointly composed "I'll Never Love This Way Again," their property rights differed in that Kerr had licensed his performance rights in the song to a British licensing organization, the Performing Rights Society. And apparently it was less clear than in the case of Jennings' assignment to BMI that the Society had transacted business within the state.

Nevertheless, the record did reveal that only Seth Greenky, the writer of the allegedly infringed work, and his attorney resided in New York. Kerr and Jennings, both California residents, had demonstrated numerous ties to California, such as the presence of key witnesses and documentary evidence regarding alleged access to

and copying of Greenky's work. Therefore, the court ordered the action transferred, provided that Greenky's deposition was held in New York.

Greenky v. Irving Music, Inc., Case No. 80 Civ. 2776
(SDNY, July 13, 1981) [ELR 3:8:4]

National Hockey League did not violate antitrust laws when it expanded to Long Island, New York, despite interest of World Hockey Association in same territory

Attorney Neil T. Shayne took the National Hockey League to court, charging the NHL with violating federal antitrust laws. The NHL did so, Shayne alleged, by granting a franchise to a hockey club to play in Nassau County on Long Island, New York when Shayne himself

was seeking to form his own professional hockey club on Long Island under the aegis of the World Hockey Association. A Federal District Court in New York, after a trial on the merits, has dismissed Shayne's case, holding that the NHL had not attempted to monopolize professional hockey and had not conspired to injure Shayne.

The World Hockey Association was organized in June of 1971. In September of 1971, Shayne obtained an option to acquire the WHA territory extending 100 miles from Columbus Circle in New York City, if he could obtain a suitable facility to accommodate about thirty-five home hockey games. On September 27, 1971, Shayne wrote to officials of Nassau County concerning the availability of the Nassau County Veterans Memorial Coliseum, slated for completion in 1972, for his proposed WHA hockey club. Shayne's letter was received by William Shea - a New York attorney and sports

figure "widely known for his success in bringing National League baseball back to New York" - who had been appointed by the County to serve as an unpaid sports advisor to the Coliseum. On November 8, 1971, the NHL Board of Governors held a special meeting which resulted in the granting of an NHL hockey franchise to Long Island.

Shayne contended that the NHL had no interest in granting a franchise for the Long Island area until he appeared on the scene with his WHA option. He asserted that after Buffalo and Vancouver were granted franchises in 1969, the policy of the NHL was not to consider further expansion before 1974 or 1975. In Shayne's view there was only one explanation for what he termed the NHL's "acceleration of expansion" to Long Island in 1971: to prevent the WHA and Shayne from gaining access to the "extraordinary market place for hockey" the area offered with the advent of the new Coliseum.

After hearing the evidence, the court entered judgment for the NHL, concluding that the facts developed at trial did not support Shayne's "sweeping claims" of an NHL interest to destroy his threatened competition. The court found that negotiations for a Long Island franchise from the NHL were begun long before Shayne or the WHA appeared on the scene and Shayne was informed of this shortly after he made his initial inquiry concerning the availability of the Coliseum. On October 12, 1971 Shea wrote to Shayne that the County has been "working hard for months in an endeavor to obtain a hockey franchise from the NHL" and that he had met with representatives of the WHA and had told them there was no sense in meeting again until the status of the County's NHL application was ascertained. Shea stated his belief that "there is no sufficient financial stability in the World Hockey Association at this time to warrant our giving any real consideration to the league."

The County authorities, said the court, had a legitimate concern in seeking an NHL franchise: to protect a substantial public investment of some \$23 million expended for the construction of the Coliseum. Shea acted in good faith in endeavoring to secure the NHL franchise for the County, and the NHL acted in good faith in granting the franchise upon the inducement and pressure exerted by the County authorities.

Shayne v. National Hockey League, 504 F.Supp. 1023 (EDNY 1980) [ELR 3:8:5]

Literary Guild brochure ad for book entitled "Crazy Love" did not defame couple pictured in accompanying photograph

To illustrate an advertisement for a book entitled "Crazy Love," a photograph of a man and woman shown on a frame of shattered glass was printed in the Literary Guild's 1977 "Selections for Summer" brochure. The depicted couple, husband and wife, had never authorized the use of their photograph for the brochure. In fact, they had submitted pictures of themselves for an advertisement for a diamond company. And their photographer had turned the photos over to an advertising agency which used the pictures in preparing the Literary Guild's brochure.

The text of the ad described the book as the story of a marriage in which the husband goes mad, and as an autobiographical account of marriage and madness. The couple filed suit, claiming that the use of their photograph in the ad clearly implied that they were referred to by the text, and thus were libeled.

The couple's libel claims were dismissed by the trial court, and that dismissal has been affirmed by a New York appellate court on the grounds that the couple failed to establish that the offending publication was "of and concerning" them.

"The article accompanying the photograph in no way implies it is about the [couple], but prominently displays the author's name and clearly states that the book is an autobiographical account of her marriage. The author's name and picture appear on page two of the brochure, accompanying the report of an interview concerning the book, so that it would be unwarranted for the reader to conclude that the article is about the [couple's] marriage," the appellate court explained.

Judge Kupferman dissented. In his view, "The use of their photograph in connection with this story could very well have created an incorrect impression putting the [couple] in a false light."

Gaiimo v. Literary Guild, 434 N.Y.S.2d 419 (App.Div. 1981) [ELR 3:8:5]

Approval of film script was not unreasonably withheld where some factual statements in the script had not been adequately documented

In May of 1974, Aztec Film Productions entered into an agreement with a land developer under which Aztec was to produce a film, as an aid in marketing the developer's land to the public, entitled "Why Arizona." For a price of \$18,750, the film was to be completed within 90 days of the date the land developer approved the shooting script. The agreement also provided that such approval "shall be given expeditiously and not unreasonably withheld." A month later, Aztec submitted a proposed shooting script and shortly thereafter began

filming, without having received approval of the script. In August of 1974, the land developer returned the script with comments indicating that it did not approve the script, because some of the factual statements asserted on the script had not been documented. Aztec sued for breach of contract, but the Supreme Court of Arizona has affirmed a directed verdict in favor of the land developer.

Aztec asserted that the land developer had unreasonably withheld its approval of the shooting script, charging that its complaints about undocumented facts were merely a pretext for avoiding a contract it no longer wanted. The court disagreed, finding the land developer refused to approve the script because it wanted the facts documented to assure accuracy in order to comply with the law in the various states in which it marketed its Arizona land.

Aztec contended that the trial court improperly applied a subjective test of personal satisfaction rather than the objective test and that the script would have satisfied a reasonable person in the land developer's position. The court agreed that the objective test was the proper test to apply, because where it is unclear whether a promise is conditioned upon the promisor's personal satisfaction or satisfaction sufficient to satisfy a reasonable person, the latter interpretation is adopted. But the court found that the facts supported the conclusion under the objective test that the developer's withholding of approval of the script was not unreasonable.

Finally, Aztec asserted the disapproval was unreasonable because the land developer did not give Aztec an opportunity to revise the script. "While the law is to the contrary," said the court, "we need not decide whether this rule is applicable," pointing out that Aztec had two opportunities to revise the script but did not do so.

Aztec Film Productions, Inc. v. Prescott Valley, Inc.,
626 P.2d 132 (Ariz. 1981) [ELR 3:8:6]

Briefly Noted:

Copyright.

A photograph of rock star Mick Jagger was in the public domain, and thus was not infringed by a collage created by artist Peter Max, a Federal District Court in New York City has held. Max created his collage by painting over and using parts of a poster of Jagger. The poster itself was an enlargement of a photograph by Lynn Goldsmith. Although Max's collage was reproduced in a serigraph edition of 350 prints, Goldsmith's underlying photograph had been published (prior to the

effective date of the Copyright Revision Act) in three different versions without a copyright notice. The photograph was published without a proper notice not only in the poster used by Peter Max, but also in a magazine and on throw pillows. The Copyright Act of 1909 required a proper notice to be affixed to publications. Without the required notice, the material entered the public domain, as Lynn's photograph was held to have done in this case.

Goldsmith v. Max, CCH Copyright Law Reports, Para. 25,248 (SDNY 1981) [ELR 3:8:6]

Copyright.

The broadcast of copyrighted music by a commercial radio station constitutes a "performance for profit" of

that music, and thus an infringement of the copyright, unless the broadcast is licensed. Furthermore, commercial radio stations do not obtain performance licenses simply by purchasing or receiving promotional copies of records. Therefore a Federal District Court in New York has stricken the affirmative defense of a radio station that has been sued by BMI in which the station alleged that it had a license merely on account of its purchase or receipt of promotional copies of records from the records' manufacturer or distributor.

BMI v. Regal Broadcasting Corp., CCH Copyright Law Reports, Para. 25,249 (NDNY 1981) [ELR 3:8:6]

Gambling.

A gambler brought an action against a Nevada gambling casino to recover for blackjack losses which he allegedly sustained because of the presence of an extra five of spades in the deck of cards. The casino filed motions to dismiss and for summary judgment because the Nevada Gaming Control Board had found the casino to be free of any wrongdoing. The casino contended the Board's ruling was "res judicata" or "collateral estoppel." A Federal District Court in Nevada has held otherwise, however. The court ruled that the casino was not entitled to a res judicata or collateral estoppel effect because the player and the casino did not have an equal right to review of the Board's determination under Nevada law.

Zaika v. Del E. Webb Corp., 508 F.Supp. 1005 (D.Nev. 1981) [ELR 3:8:6]

Lease.

The Supreme Court of North Dakota has upheld a Circuit Court order enjoining a mall tenant from selling domestic records and tapes in his store. The court found that the injunction, which was sought because of the mall's desire not to upset the mall's "tenant-mix" by having more than one store principally engaged in record and tape sales, was neither unreasonable nor in violation of public policy.

Brookings Mall, Inc. v. Cpt. Ahab's, Ltd., 300 N.W.2d 259 (S.D. 1981) [ELR 3:8:7]

Obscenity.

When the city of Minneapolis sought to enjoin the operation of an adult-only bookstore based on zoning violations, the trial court ruled that an injunction was not the appropriate remedy, because the city's ability to arrest the defendants constituted an adequate remedy at law. The Supreme Court of Minnesota has reversed, however. It has held that repeated prosecutions of the bookstore's owners did not constitute an adequate remedy at law because prosecutions failed to attain compliance with the zoning ordinance and misused the state's judicial resources.

City of Minneapolis v. F and R, Inc., 300 N.W.2d 2 (Minn. 1981) [ELR 3:8:7]

Racing Regulation.

A professional trainer of thoroughbred race horses has brought an action in Federal Court against the Laurel, Bowie, Timonium and Pimlico race tracks, all in the state of Maryland, and against the Maryland Racing Commission, charging he has been prevented from obtaining stall space for his horses. This precludes him from entering his horses in races at these tracks, which, he contends, denies him the ability to pursue his occupation in Maryland in violation of due process and equal protection. The trainer's claims against the race tracks, all private entities, have been dismissed for lack of "state action." The court found, however, that the trainer is entitled to a hearing with respect to actions of the racing commission. The court noted that denying entry to one's horses may be similar to the suspending of one's license, and the Supreme Court, in *Barry v. Barchi*, 443

U.S. 55 (1979) (ELR 1:8:5) held that a licensed horse trainer has a property interest in his license sufficient to invoke the protection of the Due Process clause.

Lemberos v. Laurel Racecourse, 489 F.Supp. 1376 (D.Md. 1980) [ELR 3:8:7]

Previously Reported:

The following cases have been published: Hospital for Sick Children v. Melody Fare Dinner Theater, 209 USPQ 749, CCH Copyright Law Reports, Para. 25,238 (2:6:1); Toho Company v. Sears, Roebuck & Co., 645 F.2d 788 (3:3:4).

The Harvard Law Student who won his copyright infringement case against the Legal Times of Washington (Quinto v. Legal Times, previously reported at ELR

2:23:5) has been awarded \$500 in attorney's fees, even though he represented himself in the lawsuit. *Quinto v. Legal Times*, CCH Copyright Law Reports, Para. 25,244 (D. D.C. 1981).

[ELR 3:8:7]

DEPARTMENTS

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Artist and Creator, Wit or Dimwit by Mary Jacobson, 10 Performing Arts Review 445 (1980)

Review by Joseph Taubman of "Fair Use and Free Inquiry: Copyright Law and the New Media," 10 Performing Arts Review 459 (1980)

Betamax and Fair Use: A Shotgun Marriage by Adrienne J. Marsh, 21 Santa Clara Law Review 49 (1981)

Section 1071: Deferral of Tax on FCC Sanctioned Dispositions of Communications Properties by Richard C. Blake and Matthew M. McKenna, 36 Tax Law Review 101 (1980)

The Conscientious Fair User's Guide to the Copyright Act of 1976: Video Recordation and its Fair Use by William M. Hart, 42 University of Pittsburgh Law Review 317 (1981)

The Battle of the Superstars: Player Restraints in Professional Team Sports, 32 University of Florida Law Review 669 (1980)

Case Note: Antitrust: Blanket Licensing as Employed in the Television Industry Does Not Constitute Price-Fixing, A Per Se Violation of the Sherman Act: Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 20 Santa Clara Law Review 1019 (1980)
[ELR 3:8:7]