

RECENT CASES

Warren Beatty and Robert Towne did not take ideas for "Shampoo" from outline written by retired manicurist, Court of Appeal rules

Ideas are Hollywood's stock in trade, and it is commonly believed that writers and producers steal ideas from their competitors - and especially from newcomers - whenever they have the chance. Two years ago, a Los Angeles jury confirmed this belief when it returned a \$185,000 verdict in favor of a 68-year-old retired manicurist named Bernice Mann against Warren Beatty, screenwriter Robert Towne and Columbia Pictures. The jury concluded that the defendants' movie "Shampoo" had been based on ideas contained in a 29-page outline Mann had written from her experiences as a beauty

salon employee. The outline, which Mann entitled "Women Plus," contained brief descriptions of a half-dozen principal characters in a beauty salon setting, and a short narration for a number of scenes.

When the verdict was returned, the press had what was later described as a "field day." Bernice Mann, the heroine, had defeated the "big shots" of Hollywood to win her just compensation and recognition. About a month later, however, another event occurred in the case - one that was given much smaller headlines. The judge who had presided over the trial set aside the jury's verdict and entered judgment for the defendants. He did so, he explained, because he found that Robert Towne's script had been independently created and was not in fact based on Mrs. Mann's outline at all.

Mann appealed, but the California Court of Appeal has affirmed the trial judge's ruling. In a lengthy opinion which reviews the facts of the case in unusual detail, the

appellate court concluded that there was absolutely no evidence that Beatty or Towne had ever seen "Women Plus" before Mann's lawsuit was filed, and that such similarities as did exist between "Women Plus" and "Shampoo" were not sufficient, by themselves, to prove that Mann had submitted her outline to Columbia or that Towne and Beatty had access to the outline or had used any of the ideas in it.

Though the appellate court's decision is as complete a vindication of Beatty, Towne and Columbia as they could have wished for, it is not difficult to see why Mrs. Mann suspected them of stealing her ideas. Mrs. Mann registered her outline with the Writers Guild in 1969. In 1971, she gave a copy to a friend, who gave it to a neighbor, who gave it to a friend who was a production manager for a company that was then based at Columbia. He gave it to a story editor employed by his own company, and it was never returned. "Shampoo" was

released in 1975 and contained a number of elements that also were contained in "Women Plus." Both included beauty salon settings, homosexual hairdressers, a hairdresser's sexual exploits, motherdaughter competition involving sexual accusations, a shampoo girl, and a scene in which a hairdresser is interrupted while working on a woman involved in a political gathering that evening. Given these facts, how many would not feel their ideas had been taken?

There were facts on the defendants' side of the case too, however. The story editor who was given Mrs. Mann's outline did not work for Columbia. He worked for an independent production company. Columbia never received a copy of "Women Plus." Neither Beatty nor Towne had ever met or talked with the story editor before Mann's lawsuit was filed. Towne first began working on the script for "Shampoo" in 1965 and finally

submitted it to Columbia in 1970 - a full year before "Women Plus" was given to the story editor.

Though Mann was unable to contradict any of the evidence introduced on behalf of the defendants with direct evidence of her own, she argued that the jury could have properly inferred that the defendants had access to, and took from, her outline simply because of the similarities between it and "Shampoo." The Court of Appeal agreed that there was support for the jury's determination that the two were similar. "But any similarities between the two works in this case are without legal significance," it said. Though access and use may be inferred from similarity, in this case the inference "was rebutted by clear, positive and uncontradicted evidence." Similarities alone were not enough to support the jury's verdict, the court ruled. To support her theory that the defendants had impliedly agreed to pay her the fair value of her ideas, she would have had to prove (among other things) that she

actually submitted her ideas to them, that they received them, and that in writing the script for "Shampoo" they made actual use of her ideas rather than their own. When all was said and done, Mrs. Mann failed to prove any of these things.

Although this case turned on its particular facts, and does not articulate any new or novel principles of law, it is apt to be one that is cited frequently in the future. This is so because the opinion quotes with approval the jury instruction used by the trial court to explain the elements that must be proved by a plaintiff in an implied-in-fact contract case against a movie or television producer. In addition to proving submission, receipt and use of an idea, the jury instruction recited that a plaintiff must prove that the disclosure of the idea was clearly conditioned on the defendant's agreement to pay for it if the idea were used; that the defendant knew this condition before the idea was disclosed that the defendant

accepted submission of the idea on those terms; and that ideas used by the defendant had value. Each of these requirements has appeared in earlier cases, but this is the first case to approve an actual jury instruction into which all these requirements have been grouped.

Mann v. Columbia Pictures, Inc., Cal.Ct.App., 2d Civ. No. 60482 (Nov. 25, 1981) [ELR 3:14:1]

Jane Fonda's movie "Coming Home" not copied from book entitled "Concomitant Soldier," Federal District Court rules

Jane Fonda's motion picture "Coming Home" was not copied from a book entitled "Concomitant Soldier - Woman and War," a Federal District Court in Los Angeles has ruled. The case is similar (though otherwise

unrelated) to the one which found that Warren Beatty and Robert Towne did not copy a retired manicurist's outline when they wrote their movie "Shampoo." (ELR 3:14:1) "Concomitant Soldier" was written, over a span of some 20 years, by a woman named Sonya Jason, and was published in April of 1974. The first printing, which Jason financed herself, was approximately 1,100 copies. Half were sold by "a representative" in New Jersey. Another 100 or so were sold by Jason's church. And, according to Jason, some 200 to 700 copies were sold by Southern California booksellers. In addition, Jason testified that she submitted a copy of her book to United Artists, the company that released "Coming Home," to NBC, the network that broadcast the film, and to a man who told her that he gave the book to a Paramount executive who said that he gave it to Nancy Dowd who wrote the initial draft of the "Coming Home" screenplay.

Given these facts, it is not difficult to see why - at first blush - Ms. Jason felt that her book had been copied in the making of "Coming Home," just as the retired manicurist felt that her outline had been copied in the making of "Shampoo." As in the "Shampoo" case, however, there were also facts on the defendants' side in the "Coming Home" case.

All of the defendants, including Fonda, screenwriters Nancy Dowd, Robert Jones and Waldo Salt, and producers Bruce Gilbert and Jerome Hellman, testified that they had never heard of Jason's book prior to her lawsuit. The evidence showed that Fonda and Gilbert conceived the idea for a film about Vietnam in the late sixties or early seventies following their tour of military bases, and that Nancy Dowd began work on the "Coming Home" screenplay in 1972 more than a year before Jason's book was published. Jason's testimony about the Paramount executive who allegedly said he gave a copy

of her book to Dowd was inadmissible hearsay evidence. But even if it had been considered, the court noted, it showed that according to Jason's own version of the facts, the book was not given to Dowd until after Dowd had completed all of her work on the screenplay. Similarly, Jason testified that she submitted her book to United Artists in December of 1977, several months after principal photography for the movie had been completed. Though 200 to 700 copies of the book may have been available in bookstores, that created no more than a "bare possibility" that the defendants may have had access to it. And bare possibilities were not sufficient to overcome the defendants' explicit and uncontradicted denials, the court ruled.

The court also ruled that even if the defendants had read Jason's book before they made "Coming Home," Jason had not shown that the film copied the book. The court explained that to prove copyright infringement, it

must be shown that there is a substantial similarity, both of ideas and their expression, between the copyrighted work and the allegedly infringing work. Ideas include such characteristics as theme, mood and setting, and courts first determine whether these are substantially similar. If they are, courts next determine whether these ideas have been expressed in a substantially similar fashion.

In this case, the court read Jason's book and the continuity for the movie, and it found that the similarities between them were "insubstantial" as a matter of law. Both works did deal generally with such subjects as morality and the effects of war on women, injured veterans and soldiers, the court noted. But "these ideas are not protectible in and of themselves," it ruled. "Indeed," said the court, "they have been the subject of countless works dating back for centuries." Furthermore, there were substantial differences between the book and the

movie in their use of the characters and language through which these ideas were developed. Particular similarities between the two works were held to be nothing more than commonly cited historical facts, sequences which necessarily follow from a common theme, or other unprotectible characteristics. For these reasons, the court granted the defendants' motion for summary judgment and dismissed Jason's lawsuit. Jason has appealed, but the appeal is not expected to be heard for a couple of years.

Jason v. Fonda, U.S.D.C., C.D.Cal. No. CV
79-4723-RJK (Sept. 21, 1981) [ELR 3:14:2]

Loretta Lynn's obligation to pay agency commissions was offset by damage to her career caused by agent's misconduct

An agent often engages in significant but unsung efforts to advance a performer's career. However, the less-than-noteworthy accomplishments and detrimental conduct of the agent for singer Loretta Lynn has resulted in a finding by a Tennessee appellate court that the Wilhelm Agency breached its obligations to Lynn.

Beginning in 1961, Teddy Wilburn, one of the partners in Wilhelm, worked closely with Lynn to obtain a recording contract and to schedule her appearances on national television and in road shows. When Teddy Wilburn moved to California, his brother Doyle acted as Lynn's representative. According to the court, Doyle Wilson was drinking excessive amounts of alcohol at the time and engaged in "almost constant misconduct" in

performing his obligations to Lynn. Instances of such misconduct included: insulting the producer of the Johnny Carson Show while negotiations were being conducted for Lynn's appearance on the show; disturbing Lynn during performances; and being drunk during various business and performing engagements.

In April of 1971, Lynn, on the advice of an attorney who was not connected with the agency, notified Wilhelm that it had breached its contract. The agency brought an action to recover approximately \$178,500 allegedly due under the contract. After several hearings and appeals, the appellate court has ruled that Doyle Wilson's conduct "was entirely inconsistent with the duty he owed the artist under the contract."

Lynn had brought a counterclaim seeking damages for breach of contract, in which she alleged that she was being booked at a fee of \$2500 to \$4000 per appearance while other artists of her stature were drawing \$5000 to

\$7500. Lynn also claimed that she was denied engagements because of Doyle Wilson's conduct, and that subsequent to the termination of her contract with Wilhelm, the agency continued to state that it was her exclusive agent, thereby depriving her of engagements.

The court found that the evidence demonstrated that Lynn was receiving below-average payments for performances. The stress suffered by Lynn due to her concern over Doyle Wilson's conduct also was found to be a recoverable element of damages. And the court noted that the agency had been seriously derelict in connection with Lynn's recording contract with Decca Records. Until 1966, recording companies generally were paying royalties of 90% of sales based on a builtin breakage factor. After 1966, Decca's practice upon renewing or entering into new recording contracts was to provide for a royalty based on 100% of sales on the request of the artist or agent. Lynn was still receiving the 90%-based

rate until 1972 when Decca voluntarily changed her contract to the 100%-based rate. The loss due to this inaction by Wilhelm may have amounted to approximately \$200,000 during the period from 1966 to 1971.

The court stated that Wilhelm nevertheless was entitled to commissions based on part performance of the contract. However, without calculating the exact amount of damages suffered by Lynn as a result of Wilhelm's breaches, the court affirmed the chancellor's finding that Lynn's damages more than offset the amounts claimed by the agency for its part performance under the contract.

Wilhelm Agency v. Lynn, 618 S.W.2d 748 (Tenn.App. 1981) [ELR 3:14:3]

"Split" agreement among movie exhibitors in Charlottesville is not "per se" illegal, Federal District Court rules

The Charlottesville Split, which is neither a dance nor a dessert, also is not a per se violation of the Sherman Act, according to a Federal District Court in Virginia. The "Split" was an agreement among four motion picture exhibitors in the Charlottesville area by which each exhibitor was allocated the initial opportunity to negotiate license agreements with the distributors of certain films. The agreement apparently did not require a distributor to deal only with the exhibitor assigned its films, and each distributor was free to license a picture to any other exhibitor if it chose to do so.

The split lasted from April of 1975 until April of 1977. In April of 1977, the Department of Justice issued a press release declaring that split arrangements by motion

picture exhibitors constitute a per se violation of section 1 of the Sherman Act and that participants in split arrangements would be subject to prosecution.

Greenbrier Cinemas, alleging that the termination of the Charlottesville split due to the Justice Department's threat of prosecution had a detrimental effect on its business, brought a declaratory judgment action seeking to establish that the split was not a per se violation of the Sherman Act and that any enforcement procedures undertaken by the Justice Department would be without a basis in law.

Based on the particular circumstances of the Charlottesville split, the court ruled that the split was not per se illegal. No evidence was presented about the purpose or effect of the split because the government press release suggested that if the existence of a split were determined, it automatically would be illegal under the per se rule. The court, in this instance, disagreed. It was

noted that the Charlottesville split did not impose the type of "stifling" competitive restraints which previously have been identified as per se illegal. The court seemed to find significant the fact that the distributors whose products were being split testified that they could refuse to negotiate with specific exhibitors.

In support of its reluctance to adjudge the split per se illegal in the absence of a demonstrated "pernicious effect on competition," the court cited the case of *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.* 441 U.S. 1 (ELR 1:1:1). In BMI, a blanket license system for the marketing of performing rights to copyrighted music compositions was analyzed and upheld under the rule of reason. The legality of the Charlottesville split should be similarly evaluated, concluded the court.

Interestingly, a Federal District Court in the Eastern District of Virginia also has been considering an action

involving a split agreement among exhibitors in the Norfolk-Virginia Beach market. The action was brought by an exhibitor which allegedly, was excluded from, and thereby harmed by, the split. Most recently, a Federal Court of Appeals has ruled that the exhibitor was entitled to proceed with its action because sufficient evidence has been presented to indicate distributor involvement with the split (ELR 2:17:2).

Greenbrier Cinemas, Inc. v. Attorney General of the United States, 511 F.Supp. 1046 (W.D.Va. 1981) [ELR 3:14:4]

Metromedia fails to prevent use of the term "Rocto-ber" in connection with ABC radio broadcasts

The term "Roctober" has been used since 1974 by several unrelated radio stations throughout the United States and apparently even in Australia as a slogan for rock music broadcast in October. Metromedia's stations WNEW-FM (which broadcasts into New York, New Jersey, Delaware and Maryland) used the term "Roctober" from 1977 through 1979 in connection with advertising, promotion and broadcasts. Metromedia filed a lawsuit in Federal District Court in New York City to prevent ABC and its stations WPLJ-FM and WRQX-FM from similarly using the term "Roctober."

Metromedia sought to enjoin ABC's use of the term on the grounds that it was a service mark in which Metromedia had acquired protectible common law rights. To be protected under federal statute (15 U.S.C. sec. 1053) or under common law, service marks, like trademarks, must do more than merely describe a particular service; they must actually identify the source of

the service. In other words, a descriptive service mark is protectible only if, over time, it acquires a "secondary meaning" by which the consuming public comes to identify the source of a particular service rather than merely the service itself. (Arbitrary or fanciful marks do not need to have acquired secondary meaning to be protectible.)

The court found that the term "Roctober" "falls within the definition of a descriptive mark because it merely sets forth the composition or ingredients of a service" - namely, a month of rock music in October. The court further found that Metromedia's use of the term had "been insufficient to establish in the consuming public's mind that [Metromedia] is the source of the particular service conveyed by the term."

Because Metromedia failed to submit evidence sufficient to convince the court that the term "Roctober" was more than a descriptive term and that it had acquired a

secondary meaning, the court found it unlikely that Metromedia could establish any proprietary right or interest in the term. The court therefore concluded that Metromedia could not, as it must, demonstrate that it would suffer irreparable harm from ABC's use of the term. Metromedia's motion for a preliminary injunction was thus denied.

Metromedia, Inc. v. American Broadcasting Companies, Inc., 210 USPQ 21 (S.D.N.Y. 1980) [ELR 3:14:4]

**Transfer of master sound recordings (prior to 1976)
was subject to California sales or use tax**

The pre-1976 transfer of master sound recordings to California-based record companies was subject to California sales or use taxes, according to a Notice of

Intended Decision issued by a California Superior Court in Sacramento County. The decision was rendered in a case filed by Capitol Records against the Board of Equalization - one of several similar cases now pending.

The central issue in the case was whether agreements between Capitol and its artists were employment agreements, or whether they were agreements for the transfer or fabrication of personal property. Had they been employment agreements, no sales or use taxes would have been due, because such taxes are not charged on personal services. The Board of Equalization ruled that Capitol's artists agreements actually called for the transfer of master recordings, however, thus making the transaction subject to sales tax (if with a California-based artist) or use tax (if with an out-of-state artist).

Capitol argued that even if its artists agreements called for a "transfer" of property, it was entitled to be classified as a "consumer" of master tapes. Had it been so

classified, Capitol would not have had to pay sales or use taxes. Motion picture companies are classified as "consumers" and do not have to pay sales or use taxes in connection with transfers of films. Capitol thus contended that the Board of Equalization had discriminated against record companies by classifying them differently than movie companies.

The court disagreed, however. It held that there was no discrimination against the record industry, because it found there to be a reasonable distinction between record companies and their movie-making counterparts. Said the court, "Motion pictures are not customarily sold but are distributed or leased for exhibition under tax-exempt leases for entertainment, whereas the master tape recordings are sold to record companies for use in manufacturing phonograph records and tapes which are sold to the public."

The court also upheld the Board's determination that payments of license fees and royalties are subject to sales and use taxes because they are payments for transfers of tangible personal property, and not wages.

The court therefore concluded that Capitol was not entitled to a refund of some \$987,000 in taxes it paid from 1968 to 1971.

In 1976, the law applied in this case was changed, and the sale and use of master sound recordings was made exempt from California sales and use taxes. This case remains significant, however, because there are a number of record industry cases still in the courts that challenge the Board of Equalization's practice of assessing sales and use taxes on pre- 1976 transactions. The case is significant not only to record companies, but to artists as well. This is so because the Board considers recording artists to be sellers of master recordings, and under California law, sellers have a legal obligation to collect

sales taxes from their buyers. Thus the Board is attempting to collect from some recording artists personally, as well as from record companies.

Capitol has appealed the decision.

Capitol Records, Inc. v. State Board of Equalization,
No. 255286 (Cal.Super.Ct., Sac.Cnty., July 27, 1981)
[ELR 3:14:5]

Promoter of soccer league was not entitled to recover promotional expenses from franchise investor in the absence of a partnership, joint venture or agency agreement

In May of 1978, Robert Williams and William Putnam, a sports organizer, entered into an oral agreement by which Williams agreed to provide approximately

\$75,000 as "seed money" to start an Atlanta franchise of the Super Soccer League. In return, Williams was to receive a 50% interest in Georgia Soccer, Inc. Williams contributed \$2,500 in expense money but the corporation and the league were never organized. Nevertheless, Putnam claimed that he was entitled to receive approximately \$45,000 from Williams for the debts he incurred while promoting the franchise.

A Federal District Court in Georgia granted summary judgment in favor of Williams and this ruling has been upheld on appeal. Putnam's deposition disclosed that he was not Williams' agent, but rather incurred all expenses on behalf of "the envisioned corporate entity" of Georgia Soccer, Inc. There was no evidence that Williams agreed to reimburse Putnam from his own funds or to incur personal liability for the debts.

Putnam also had alleged that he and Williams were either co-promoters of Georgia Soccer, Inc., or that they

had been members of a joint venture in operating the franchise. However, Williams and Putnam shared responsibility only for initial fund-raising; Williams did not assume any duties on behalf of the proposed corporation. And creditors did not look to Williams for the payment of Georgia Soccer's debts.

The subscription agreement also could not be enforced against Williams, stated the court, because Georgia law requires that a contract for the sale of securities must be signed and in writing.

Putnam v. Williams, 652 F.2d 497 (5th Cir. 1981) [ELR 3:14:5]

Federal appellate courts issue conflicting rulings on media's right to copy tapes admitted in evidence in criminal trials of elected public officials

Federal Courts of Appeal for the District of Columbia and for the Fifth Circuit have handed down conflicting decisions concerning the media's right to access to audio and video tapes admitted into evidence during the criminal trials of elected public officials.

The appellate court in the District of Columbia has held that tapes recorded during the Abscam investigation of former Congressman John Jenrette should have been released to the news media for copying. That court found no basis for the lower court's fear that it would be difficult to empanel a fair and impartial jury if the tapes were televised and a retrial of the case were thereafter required. The appellate court opined that the interest in avoiding the risk of potential prejudice at a hypothetical second trial is seldom of sufficient weight to justify denying access to judicial records that have been displayed in open court.

In so ruling, the D.C. court essentially followed an earlier ruling of the Federal Court of Appeals for the Second Circuit in a case known as *Application of NBC in U.S. v. Myers*, 635 F.2d 945 (2d Cir. 1980) (ELR 2:24:3). There, the Second Circuit approved an order allowing video tapes that had been introduced into evidence in the Abscam trial of former Congressman Michael Myers to be copied the same day they were shown to the jury. On the basis of two recent U.S. Supreme Court rulings - one recognizing a presumption in favor of public access to judicial records, and the other holding that absent an overriding interest the trial of a criminal case must remain open to the public - the Second Circuit declared that there is a strong presumption in favor of public inspection and copying of any items introduced into evidence at a public trial. This presumption is especially strong in cases concerning the actions of public officials, the Second Circuit held.

The District of Columbia appellate court agreed that "there remains 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 ... as well as agents of the Federal Bureau of Investigation." The court did "not believe the public at large must be sanitized, as if they all would become jurors."

Despite these decisions, the Court of Appeals for the Fifth Circuit refused to allow the media to copy tapes that were admitted into evidence at the trial of the speaker of the Texas House of Representatives which resulted from another FBI sting operation known as the "Brilab" investigation. The Fifth Circuit court challenged head-on the conclusions previously reached by the Second Circuit and the District of Columbia Circuit Courts of Appeal. The Fifth Circuit court found no basis for the "overpowering presumption of access" relied upon by

those courts; and it called such a presumption to be a misreading of the Supreme Court's decisions.

Application of NBC, 653 F.2d 609 (D.C.Cir. 1981);
Belo Broadcasting Corp. v. Clark, 654 F.2d 423 (5th
Cir. 1981) [ELR 3:14:6]

Briefly Noted:

Copyright.

Alleged copyright infringers are entitled to a trial by jury under the Seventh Amendment even when copyright owners seek only an injunction and minimum statutory damages, a Federal Court of Appeals has held. Suit was brought by various copyright owners against the owner and operator of a nightclub, alleging copyright

infringement by public performance for profit of their copyrighted songs. A Federal District Court granted the copyright owner's motion to strike the nightclub owner's request for a jury trial, and the nightclub owner appealed. The Court of Appeals for the Fourth Circuit reversed, holding that because Section 504(c) of the Copyright Act is ambiguous regarding the right to a jury trial when only an injunction and statutory damages are sought in lieu of actual damages or the infringer's profits, the Seventh Amendment right to a trial by jury controls.

Gnossos Music v. Mitken, Inc., 653 F.2d 117 (4th Cir. 1981) [ELR 3:14:6]

Copyright.

The Court of Appeals for the Sixth Circuit has reversed a District Court determination that a presumption of prejudice to RCA Records and the Elvis Presley Estate (and others) from a songwriter's inordinate delay in bringing a copyright infringement action entitled RCA to a summary judgment based on the doctrine of laches. Instead, the court held that "any presumption of injury to the defendants would merely shift the burden to the plaintiff to show the absence of prejudice; it would not be a proper basis for a summary judgment."

Hoste v. RCA, 654 F.2d 11 (6th Cir. 1981) [ELR 3:14:7]

Copyright.

A songwriter's claim against his publishing company to establish title to copyright based on the publisher's alleged noncompliance with their contract depends on common law contract principles, not federal copyright law, a Federal District Court in New York has held. The court limited actions "arising under" the federal copyright law to those seeking a remedy expressly granted by the Act, those asserting a claim requiring a construction of the Act, and those where a distinctive policy of the Act requires that federal principles control the disposition of the claim. Since the songwriter's action instead was based on the publisher's alleged noncompliance with the contract, the court ruled that it was without subject matter jurisdiction to resolve his claim.

Rotardier v. Entertainment Co. Music Group, 518 F.Supp. 919 (S.D.N.Y. 1981) [ELR 3:14:7]

Copyright.

A copyrighted poster depicting the likenesses of the stars of the television show "Starsky and Hutch" was infringed by an unauthorized poster which reproduced the print in a smaller size and on inferior paper. Sales of the poster "damaged the name and goodwill" of Spelling-Goldberg Productions, the proprietor of the copyright in the print, and of Bi-Rite Enterprises, Inc., the exclusive licensee for the distribution of the print. In this 1978 decision, which was published only recently, a Federal District Court in Illinois awarded Spelling-Goldberg and Bi-Rite damages based upon their lost market in the print, profits gained by the infringing sales, and

injunctive relief barring the manufacture or sale of copies of the "Starsky & Hutch" print.

Bi-Rite Enterprises, Inc. v. Dan Barrett, Inc., 1981 Copyright Law Reporter, Para. 25,208 (N.D.Ill. 1978) [ELR 3:14:7]

Previously Reported:

Earlier this year (1981), a Federal Court of Appeals ruled that Victoria Price Street, who was the prosecution's chief witness in the "Scottsboro Boys" rape trials of the 1930s, was still a public figure and that NBC had not broadcast the docudrama "Judge Horton and the Scottsboro Boys" with actual malice. Street v. National Broadcasting Co., 7 Media Law Reporter 1001 (6th Cir. 1981), previously reported at ELR 3:8:2. In October, the

United States Supreme Court agreed to hear Street's appeal. Since then, however, Street and NBC settled the case out of court, on terms that have not been disclosed. The Supreme Court thus will not hear the case after all.

The following cases, which were reported in earlier issues of the Entertainment Law Reporter, have been officially published: *Associated Film Distribution Corp. v. Thornburgh*, 520 F.Supp. 971 (3:9:1); *Burroughs v. MetroGoldwyn-Mayer*, 519 F.Supp. 388 (3:10:1); *Bose Corp. v. Consumers Union*, 508 F.Supp. 1249 (3:11:7); *Kamar International, Inc. v. Russ Berrie and Co.*, 657 F.2d 1059 (3:12:7); *American Vitagraph, Inc. v. Levy*, 659 F.2d 1023 (3:13:3).
[ELR 3:14:7]

NEW LEGISLATION AND REGULATIONS

Tax.

The Internal Revenue Service has ruled that a liberal arts college exempt under section 501(c)(3) of the Code will not be subjected to a tax on unrelated business income on account of its operation of a musical theater. The Code provides that the income of an exempt organization is not taxed; however, income derived from an unrelated trade or business is taxable to the exempt organization in the same fashion as if the organization were a regular business. The letter ruling deals with a college which operated a theater where musical shows were presented with professional actors and students. The general public was invited to attend these presentations through advertising in local newspapers. Reg. 1.513-1(d)(4)(iv) Example (2) indicates that income

received by an exempt school sponsoring performances of professional theater companies and symphony orchestras for students, faculty, and members of the general public does not constitute unrelated trade or business. Relying upon this example, the Service ruled that a liberal arts college's sponsorship of the musical theater was not an unrelated trade or business.

Private Letter Ruling 8115025 (January 2, 1981) [ELR 3:14:6]

DEPARTMENTS

Book Notes:

"Book Publishing 1981"

This is an 865-page volume of materials edited by Henry R. Kaufman. In addition to sample forms, the book also contains several unusually valuable outlines. Among them is an extensive case list on book publishing contracts and related matters and a lengthy and detailed outline entitled "Preventing and Resolving Legal Problems in Book Publishing" that could have been published as a separate volume by itself. Also included are materials on copyright, taxation, First Amendment issues, paperback publication, book clubs, movie, television and dramatic rights and current antitrust issues in book publishing. The volume in Handbook Number 136 and is available for \$25. [ELR 3:14:7]

"Antitrust, the Media, and the New Technology"

This is a 560 page collection of materials on the following subjects: Competition in Telecommunications in an Era of Deregulation, Antitrust and Regulatory Attitudes Toward the Media, Electronic Distribution of Information, Joint Ventures and the Implementation of New Technology, Methods of Competition between Newspapers, Newspaper Distribution Systems and Changes in Methods of Distribution, Newspaper Antitrust Litigation, Setting Advertising Rates, and the Development and Implementation of an Antitrust Compliance Program. The book is Handbook Number 137 and costs \$25. [ELR 3:14:7]

"Representing Professional Athletes and Teams 1981"

This book was edited by Philip R. Hochberg and Martin E. Blackman. The 501-page volume includes standard player contracts for baseball, football, basketball, hockey and both outdoor and indoor soccer. Recent cases, proposed regulations, pending bills, and outlines on agent problems, tax considerations, endorsements and licenses, broadcast regulation, cable television royalty distributions, and collective bargaining are also included. This volume is Handbook Number 135 and also is \$25.

All three of these books may be ordered directly from the Practising Law Institute which is located at 810 Seventh Avenue, New York, N.Y.10019; phone (212) 765-5700. [ELR 3:14:7]

In the Law Reviews:

Suing Media for Libel: A Litigation Study by Marc A. Franklin, 1981 American Bar Foundation Research Journal 795 (1981)

The Duty and Standard of Care for Team Physicians by Joseph H. King, Jr., 18 Houston Law Review 657 (1981)

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

The Propriety of Granting Summary Judgment for Defendants in Defamation Suits Involving Actual Malice, 26 Villanova Law Review 470 (1981)

Pinch-Hilling for Baseball's Present System: Impartial Arbitration as a Method of Dispute Resolution by Joel Fischman and Dirk D. Potter, 14 U.C. Davis Law Review 691 (1981)

The Evolution of Title IX: Prospects for Equality in Intercollegiate Athletics by Christina Johnson, II Golden Gate University Law Review 759 (1981)
[ELR 3:14:8]