RECENT CASES

Cher is awarded wore than $650,000 in damages because Forum Magazine's use of an interview without her consent violated her right of publicity, the Lanham Act and several California statutes

Cher's prospects are looking approximately $650,000 sunnier due to her victory in an action against Forum Magazine, Penthouse Magazine and News Group Publications, the publisher of a weekly tabloid entitled the Star.

In 1980, Cher agreed to participate in an interview for an exclusive cover story in US Magazine. Fred Robbins was the interviewer, but when Cher notified US that she did not approve of the Robbins interview, another interview was conducted and published in US. Cher subsequently denied Robbins' request to broadcast, on a radio show, the interview he had conducted. However, Robbins proceeded to use portions of the interview on his show, and to sell the interview to Forum and to the Star.

Robbins was aware that Cher's consent was required for any publications other than in US, but Robbins, Forum and Penthouse (the parent corporation of Forum) never sought authorization to use the interview. Forum published the interview in its March 1981 issue after editing and altering the text so that it appeared that Cher was responding to questions posed by Forum. Penthouse and Forum prepared advertising which included Cher's purported endorsement of Forum. Further, the cover of the issue of the Star in which the interview also appeared stated "My life, my husband, and my many, many men," and suggested that Cher had given the tabloid an "exclusive" interview.

The court first found that a substantial number of readers of Forum and its advertisements would receive the incorrect impression that Cher had participated in an exclusive interview with Forum, and that she recommended the purchase of the magazine. The advertisements traded upon and commercially exploited Cher's public recognition in order to sell Forum and Penthouse, and were a willful, knowing and intentional misappropriation of Cher's name and likeness, ruled Federal District Court Judge Manuel L. Real in issuing his Findings of Fact and Conclusions of Law. The Star also was found to have published its "interview" with knowledge of the falsity of its statements and to have willfully misappropriated Cher's name and likeness with a conscious disregard for her rights. These uses of Cher's name and likeness were commercially exploitive and did not serve to inform the public about a newsworthy event, stated the court.

Judge Real forthrightly announced that a celebrity or other public figure has the right to establish conditions for the use of his or her name and likeness when giving an "exclusive interview" to a publication and "to delineate the conditions and controls over such usage by the publication." Subsequent unconsented-to use of the interview by a publication or a third party that does not respect those conditions and control is "a wrongful appropriation of the commercial value of the celebrity's identity and right of publicity." The conduct of Forum, Penthouse, the Star and Robbins also violated section 3344 of the California Civil Code which prohibits the use of a person's name, photograph or likeness for advertising purposes without consent. Judge Real carefully noted that even if the Forum cover and article had been found lawful, the advertising material itself violated Cher's rights since the advertising, with its false "endorsement," was not "incidental" to the original article.

A Lanham Act violation also occurred, stated the court, although Cher had not alleged that her name was registered as a trademark or service mark. Citing Smith v. Montoro, 648 F.2d 602 (9th Cir. 1981, ELR 3:6:1), the court pointed out that while the names of performers may be registered under the Lanham Act as service marks for entertainment services, such registration is not a prerequisite for recovery under section 43(a). Cher had created substantial public identification of herself as a personality, substantial goodwill and secondary meaning with the public, and substantial commercial value in her name, likeness, personality and endorsement of products. Further, Cher did not have to actually compete with Forum or the Star to claim recovery since the Act ..extends to misrepresentations in advertising as well as labeling of products and services."

Liability for unfair competition under California statutory law also was imposed on the publications and

Robbins. In California, it is an act of unfair competition "to induce the public to purchase a product by making an untrue or misleading statement in any newspaper or other publication." (California Business and Professions Code section 17500)

Cher was not required to establish actual malice despite the fact that her action was brought against media defendants. The entertainer's claim involved the appropriation of her name and likeness for commercial purposes and did not depend on proof of the element of falsity, the court ruled, citing Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977) and National Bank of Commerce v. Shaklee Corp., 503 F.Supp. 553 (W.D. Tex. 1980, ELR 2:21:2). The First Amendment privilege of using a public figure's picture in connection with a newsworthy event does not extend to the commercialization of such an individual's personality. (Lerman v. Chuckleberry Pub., Inc., 496 F.Supp.

1105 (S.D.N.Y. 1980, ELR 2:18:7) Even if the actual malice standard were applicable, Cher had established that the publications and Robbins had actual knowledge of the falsity of their statements or reckless disregard of the truth, noted Judge Real.

General, special and exemplary damages therefore were assessed against the publications and Robbins. Of particular interest was the manner in which the court determined the amount necessary to reasonably compensate Cher for injury due to a false impression in the mind of the public created by the publications and Robbins. The]Figure arrived at was based on the amount necessary to conduct a corrective advertising campaign to inform the public of the wrongful use of Cher's name and likeness and of the true facts. In other cases, an amount representing 25% of the cost of the initial wrongful advertising has been used, and in this case the 25% figure resulted in a $69,117 judgment against Robbins and

Forum. This amount was also assessed against Robbins and the Star. Special damages of $100,000 were ordered against the Star and Robbins, and against Forum, Penthouse, and Robbins. Exemplary damages, recoverable in California for torts "carried on with a conscious disregard for the rights of plaintiff or by means of an intentional misrepresentation or deceit," were found to amount to $100,000 against Forum, $200,000 against the Star and $25,000 against Robbins. Cher, who also was awarded costs of the suit, will now reprise "I Got You, Babe."

Cher v. Forum International, Ltd., Case No. 81-1461 (C.D.Cal., January 15, 1982) [ELR 3:20:1]

Ohio ban on festival seating for rock concerts is declared unconstitutional

The Toledo Sports Arena has won a resounding victory in its action challenging the constitutionality of an Ohio statute which restricted the practice of offering non-reserved seating at live entertainment performances. The statute provided that an exemption from the local police chief would be required if an arena planned to utilize non-reserved seating. Such seating increases the capacity of an arena, and, at the Toledo Sports Arena, it was not financially viable to book major rock groups without the increased seating capacity. The Sports Arena requested exemptions for several rock concerts. The requests were denied, and the Arena brought an action for declaratory and injunctive relief.

The Lucas County Ohio Court of Appeals has reversed a decision of the Court of Common Pleas dismissing the Sports Arena's action, and has ruled that the First Amendment and the Equal Protection clause of the

Fourteenth Amendment were violated by Ohio Revised Code section 2917.40. The First Amendment requires that the regulation of live entertainment performances - which are a protected form of expression - must be content neutral. The statute, however, did not require arenas to obtain exemptions for symphony concerts, even when using non-reserved seating. This distinction was not supported by substantial government interest, stated the court.

The Sports Arena also had argued, and the Court of Appeals agreed, that if the purpose of the statute were crowd control, less restrictive means were available to achieve this end, particularly in view of the fact that the statute has had the effect of ending non-reserved seating concerts at the Sports Arena. When the Chief of the Toledo Police was asked if he "would refuse and will continue to refuse applications for exemptions for rock concerts with festival seating in the Sports Arena in

Toledo," he simply answered "Yes, sir." The statute could have required arenas to adopt safety measures such as those already in use at the Sports Arena. The Arena used a "cattle chute" system which is a series of steel fenced corridors along the outside of the Arena in which concertgoers are required to line up when they arrive to attend a performance. All concertgoers then are searched by off-duty policemen, before entering the Arena, for weapons, bottles and cans. And guards patrol inside the Arena during concerts.

The lower court also erred in failing to consider the statute's lack of procedural safeguards to eliminate the danger of censorship. Further, and perhaps most significantly, the statutory standards for granting exemptions were found to be imprecise and unclear. The standards required consideration of such factors as the size, age and anticipated conduct of the crowd expected to attend the concert, the size and design of the arena, and the ability of the sponsor to manage and control the expected crowd. These guidelines were insufficient to avoid giving "unbridled discretion" to the police chief in ruling on exemption requests. His decisions therefore might amount to a prior restraint on the right of expression, found the Court of Appeals.

A dissenting judge, while agreeing that a rock concert is a form of protected First Amendment expression, "regardless of how obscure the message may be," would have upheld the trial court's decision on the ground that the statute was a crowd control measure and a proper governmental exercise of its police power which had no real and substantive effect on legitimate expression.

Sports Arena, Inc. v. The City of Toledo, Case No. L-81-222 (Ct.App. Lucas Cnty., Ohio, Dec. 24, 1981) [ELR 3:20:2]

North American Soccer League wins injunction prohibiting National Football League from adopting "cross-ownership" ban, because ban violated federal antitrust laws

Though the North American Soccer League has enjoyed little success in the marketplace - at least so far - it has just won a tremendous victory in the courtroom over its older and very successful competitor, the National Football League. A Federal Court of Appeals has just ruled that the National Football League's "cross-ownership" ban is an unreasonable restraint on trade, and as such violates federal antitrust law.

The ban was set forth in a proposed amendment to the NFL Constitution and By-Laws which would have prohibited the owners of majority interests in NFL teams, or any members of their families, from having an interest in another major league team in any sport. The proposed amendment also would have required NFL owners who already own interests in other teams to sell those interests or be subject to substantial fines and possible ouster from the NFL.

The ban was of immediate concern to the North American Soccer League, because at the time it was proposed in 1978, four NASL team owners also owned NFL teams and thus would have been subject to the ban. Among the four were Joe Robbie, owner of the NFL Miami Dolphins as well as the NASL Fort Lauderdale Strikers, and Lamar Hunt, owner of the NFL Kansas City Chiefs and the NASL Dallas Tornado. Robbie and Hunt have been credited with much of the success the NASL has had in attracting investors, because they have worked "tirelessly" to promote professional soccer and because their participation in the NASL created an "aura of stability and credibility for the NASL."

Fearing that it might lose Robbie, Hunt and other owners, the NASL filed an antitrust action against the NFL in which it alleged that the proposed ban constituted an unlawful conspiracy to deprive the NASL of a necessary competitive resource - sports entrepreneurial know-how and capital - by eliminating a fertile source of that resource, namely, NFL team owners. Shortly after the case was filed, the NASL won a preliminary injunction barring the NFL from adopting the proposed ban pending trial. (ELR 1:2:5) Eventually, the case was tried before the same judge who issued the preliminary injunction. But this time, the judge ruled in favor of the NFL. In what appeared at the time to be a very significant victory for the NFL, the trial judge ruled that the NFL is a single economic entity - insofar as the cross-ownership ban was concerned - and thus the proposed ban was not the result of a "conspiracy" at all. The trial judge also rejected the NASL's contention that the ban monopolized the market of potential sports team owners, because, the trial judge said, NFL owners do not constitute the entire market of potential team owners, even though they are a particularly desirable part of it. (ELR 3:4:3)

A Federal Court of Appeals in New York has reversed the trial judge on both counts. It has ruled that characterizing the National Football League as a single economic entity does not exempt it from the antitrust laws. "To tolerate such a loophole would permit league members to escape antitrust responsibility for any restraint entered into by them that would benefit their league or enhance their ability to compete even though the benefit would be outweighed by its anticompetitive effects," the appellate court explained. In so ruling, the court noted that the ban was not proposed simply to protect the NFL as a single entity from competition from the NASL as a league. It also was proposed, the court said, because

Leonard Tose, the owner of the NFL Philadelphia Eagles, had complained about suffering from competition from the NASL Philadelphia Atoms, and because Max Winter, the owner of the NFL Minnesota Vikings, had complained about competition from the NASL Minnesota Kicks.

The NASL argued that the ban was a "group boycott" and a "concerted refusal to deal," and as such, a per se violation of the antitrust laws. The Court of Appeals disagreed, however. It decided that the ban did not meet the "stringent conditions" necessary to be a per se violation, and that it should be judged by the rule of reason instead. Even by that standard, however, the court found that the ban violated the law.

The court explained that because of the economic dependence of team owners on other owners in their league, and because of the requirement that the sale of a team be approved by others in the league, "an owner may in practice sell his franchise only to a relatively narrow group of eligible purchasers, not to any financier." Thus, the market of potential team owners is 14 only a small fraction of the total capital funds market." And the NFL's proposed ban would have barred the NASL from a "significant segment" of that market.

Furthermore, said the court, the NFL failed to prove that less restrictive means would not have achieved such legitimate purposes as preventing the disclosure of confidential NFL information and preventing conflicts of interest.

The Court of Appeals has remanded the case to the trial court with instructions that a permanent injunction be entered prohibiting the ban, and for consideration of the NASL's claims for damages.

North American Soccer League v. National Football League, Docket No. 80-9153 (2d Cir., January 26, 1982) [ELR 3:20:3]

Copyright Royalty Tribunal determines allocation of 1979 cable television royalties among groups of claimants

The Copyright Royalty Tribunal has completed Phase I of the 1979 cable royalty distribution proceeding by determining the allocation of those royalties among the several groups of copyright owners who filed claims for royalty shares. The Tribunal has determined that the 1979 royalties should be allocated as follows:

- 70% to the Motion Picture Association of America and other program syndicators,
- 15% to the Joint Sports Claimants,

- 5.25% to the Public Broadcasting Service,
- 4.5% to U.S. Television Broadcasters,
- 4.25% to the Music Performing Rights Societies,
- 0.75% to Canadian Claimants, and
- 0.25% to National Public Radio.

No award was made to any U.S. or Canadian commercial radio claimant.

The Tribunal again determined that no mathematical formula or theory provided a satisfactory basis for distributing the royalties, just as it did when it ruled on the distribution of cable television royalties for 1978 (ELR 2:7:2). Instead, the Tribunal made its 1979 allocation "on the basis of the entire record." Phase I of the 1979 proceeding is only the first part of what will be a two-part proceeding before the Tribunal. (Further appeals to the courts are possible, and in fact are in progress with respect to the 1978 proceeding.) The Tribunal's Phase I allocation for 1979 is not a "final determination" or a

"Final decision," the Tribunal emphasized. In Phase II, the Tribunal will allocate royalties among individual claimants within each group, unless all claimants within a group are able to agree among themselves on the allocation of their group's share. The Tribunal's final decision will be issued only after Phase II is completed sometime later this year.

Cable Royalty Distribution Proceeding, Copyright Royalty Tribunal, Docket No.80-4, 46 Federal Register 58545 (December 4, 1981); CCH Copyright Law Reports, para. 20,154 [ELR 3:20:4]

Television station's claim that satellite transmission service infringed its broadcast of experimental teletext material is dismissed by Federal District Court

As a result of opportunities created by recent advances in technology, a legal battle is being waged by broadcasters and common carriers over the right to use approximately six lines out of the 525 lines that comprise the television picture on a standard TV set. The six lines are part of a 21-line unit known as the Vertical Blanking Interval (VBI) which is "a period of time and space in the transmission of television signals when the television picture is blank." It occurs just prior to the commencement of an other sequence of line-by line transmission of picture information. A dispute over the use of the VBI arose between WGN in Chicago and United Video, Inc., a telecommunications common carrier which provides a satellite transmission service relaying television signals, including those of WGN, to 1400 cable systems throughout the United States. WGN had obtained experimental authority from the FCC to transmit teletext material on lines 10 through 16 of the VBI of its broadcast signal. Unbeknownst to WGN, United Video had been stripping WGN's VBI and inserting Dow Jones news service reports in the interval.

WGN alleged that United Video's stripping of the VBI infringed WGN's copyright in three news programs during which experimental and program material appeared in the VBI. United Video, on the other hand, asserted that it was a "passive carrier" exempt from copyright liability under Section 111(a)(3) of the Copyright Act of 1976. Section 111(a)(3) states that the retransmission of television programs to cable systems does not constitute copyright infringement if the retransmission is made "by any carrier who has no direct or indirect control over the content or selection of the primary transmission ... and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others."

WGN claimed that United Video was not a passive carrier because its substitution of the Dow Jones news service in the VBI involved the primary transmission of a signal. United Video argued that the primary transmission consisted of WGN's television programs rather than its signal, that the stripping of the VBI had no effect on the broadcast of the programs, that the VBI was not a part of the programs, and that therefore United Video had not controlled or selected the primary transmission.

The court held that the signal and the program of the primary transmission are inseparable and that the "primary transmission," as used in Section 111 (a)(3), means the copyrighted work which is initially broadcast and retransmitted. WGN had registered each news program and the teletext material transmitted during the same time period as a single copyrighted work. But, responded United Video, the teletext program and the news program were not a single audiovisual work and therefore had not been properly copyrighted. The court agreed, pointing out that the teletext transmission simply was not part of the 9:00 o'clock news program, and they were not intended to be viewed together as a single work by the same viewer at the same time. The teletext transmission did not constitute part of the same "series of related" images which made up WGN's regular news program. Thus, because United Video's stripping of the VBI did not affect the transmission of a copyrighted program, United Video was entitled to the benefit of the "passive carrier" exemption.

As an alternative ground of decision, the court found that even if United Video's deletion of the teletext material had been treated as a "selection" of the primary transmission, no infringement of the teletext program would have occurred because United Video did not transmit that program. Copyright liability only occurs if there has been a performance of the copyrighted work, and there had been no such performance in this case, said the court.

United Video also was found to be correct in arguing that it could not be liable as an infringer because it does not transmit to the public, but rather to its cable television system customers which in turn transmit to the public. The cable systems authorized by the FCC to receive and distribute WGN's TV signal pay copyright fees pursuant to a compulsory license system for the right to distribute WGN programming. The transmissions by the cable systems, and not those of the intermediary United Video, are those which reach the public. The court reasoned that if United Video were found liable for copyright infringement, it then would be liable for the payment of license fees, resulting in a double payment to the copyright owner for the performance of his or her work to the same audience.

In granting summary judgment, the court did feel obligated to note that WGN had "an appealing equitable case" based on the fact that without WGN's broadcast, which is taken by United Video without compensation, United would not be transmitting the Dow Jones news service reports. But WGN's equitable and property rights, while not found relevant to the copyright issues discussed, should be relevant to the FCC when it has the opportunity to rule on United's authority to retransmit WGN's signal or to use the VBI of WGN, suggested the court.

WGN Continental Broadcasting Company v. United Video, Inc., 523 F.Supp. 403 (N.D.Ill. 1981) [ELR 3:20:4]

Libel and privacy case against Doubleday is dismissed, but claims against author of book about murder case require trial

The book "Life For Death," which concerns the 1961 murders of the parents of Lee Dresback by his brother Wayne Dresback, has become the subject of a lawsuit by Lee for libel and invasion of privacy against the book's author, Michael Mewshaw, and publisher, Doubleday & Company.

Mewshaw, a slightly older peer of Lee Dresback's, had been a summertime neighbor and personal acquaintance of the Dresbach family before the murders. After the murders, Mewshaw's parents became intensely involved with both Wayne and Lee Dresbach, frequently visiting Wayne in prison, and active in arranging for the appeal of his conviction. Lee lived with the Mewshaws for about three years and had dated Michael Mewshaw's sister.

Mewshaw has described Life For Death as "significantly autobiographical" and based on his personal experience. Lee claimed in his suit that the book exposed private information about him which would be offensive and objectionable to persons of ordinary sensibilities. He also alleged that he had always conducted himself as a private person, and that the events described in the book received no public attention between 1961 and the publication of the book in 1980.

Lee alleged that Mewshaw's book had invaded his privacy in two ways: by making inaccurate statements which placed him in a false light before the public, and by disclosing facts that were true and accurate, but nevertheless of a private nature.

As to the book's disclosure of true, but private facts about Lee, the court granted the author's motion for summary judgment. The court found that "The public has a legitimate interest in the facts about past crimes and their investigation and prosecution, as well as the possible motivating forces in the background of the criminal.... Nor could the Book have been written, with its implication that the circumstances of Wayne's home life drove him to murder, without including private facts about [Lee's] home life, which obviously was intimately bound up with his brother's."

As to the false light invasion of privacy claim, the court, finding some of Lee's allegations too general, denied Mewshaw's motion for summary judgment, but only on condition that, before trial, Lee points to the specific passages which he finds objectionable.

The court treated Lee's libel claim similarly, conditioning the denial of Mewshaw's motion upon a proper showing by Lee of exactly which passages in the book were false and defamatory.

Doubleday & Company has been dismissed from the case entirely. The court granted Doubleday's motion for summary judgment as to the "true" invasion of privacy claim on the same grounds it granted Mewshaw's motion. Both the false light invasion of privacy claim and the libel claim, however, were dismissed because Lee had made no showing of negligence on the part of Doubleday & Company. "Clearly, a publisher is not required to do independent research to verify everything written by a reputable author. Unless there was some circumstance to raise suspicions, Doubleday, pursuing its own careful examination, was entitled to rely upon the efforts of Mewshaw."

The court was "not without compassion for Lee Dresbach's plight." It acknowledged that "The exercise of defendants' First Amendment rights has imposed a heavy burden upon [him]." But "To guard against the possible evils of abuse of power if the criminal justice system were to operate away from the public eye, and of suppression of freedom of thought if writers could not freely explore the causes and handling of past crimes of public interest, Lee Dresbach's right to bury the past must be sacrificed."

Dresbach v. Doubleday & Company, Inc., 518 F.Supp. 1285 (D.D.C. 1981) [ELR 3:20:5]

Zoning ordinance banning adult bookstores and theaters in residential areas is upheld in Arkansas; but Illinois court voids similar zoning ordinance which required adult use establishments to obtain a special use permit

A North Little Rock, Arkansas, "emergency" zoning ordinance prohibiting the operation of adult theaters exhibiting sexually explicit films within 100 yards of church, school or residential area has been upheld by a Federal Court of Appeals as a valid exercise of the city's police power. But an Illinois appellate court, citing, as did the Court of Appeals, the case of Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976), concluded that a similar ordinance passed by Cook County was unconstitutional as a prior restraint of free expression.

The Arkansas ordinance was passed one month before the scheduled opening of the Avalon Cinema, an adult theater and bookstore, at a location which was within 100 yards of a residential area. The ordinance did not eliminate adult movies from North Little Rock, stated the court, because a theater still could operate in a "sizeable swath" of the commercial area of the city without violating the ordinance.

However, Judge Arnold, in dissent, questioned the majority's reliance on Young in reaching its decision. In

Young specific and extensive findings preceded the enactment of an amendment adding "adult establishments" to a 10-year-old Detroit ordinance which regulated properties used as bars, pawnshops and pool halls. In contrast, the North Little Rock ordinance did not cite an "independent basis" for finding that neighborhood decline would result from the nearby presence of a single adult bookstore. Further, the Detroit ordinance did not affect then-existing adult establishments. On the other hand, North Little Rock, by precluding the opening of the Avalon cinema, suppressed public access to sexually oriented (but non-obscene) adult entertainment, stated Judge Arnold, particularly since it did not appear that there were any feasible alternative locations for an adult theater in the commercial downtown area. Judge Arnold would have found the ordinance an unconstitutional content-based regulation of protected speech.

The Cook County zoning ordinance differed from the North Little Rock ordinance in that adult establishments such as bookstores and theaters were required to locate in areas zoned C-3 and to obtain a special use permit. It also was unlawful to locate such an establishment within 1000 feet of an area zoned for residential use. Testimony indicated that all but three of the 40 to 45 C-3 zones in Cook County were within 1000 feet of a residential zone.

The World Wide bookstore was located in a proscribed area and had not obtained a special use permit. Hence, a trial court judge permanently enjoined the operation of the bookstore. In reversing the trial court's decision, the appellate court noted that the ordinance was aimed at preventing a proliferation of adult use establishments in one area. But a special use permit was required regardless of an establishment's proximity to another regulated business. Special use permits were not a feature of the ordinance upheld in Young. In addition, the County Board had the "unbridled discretion" to grant or deny the permit, thereby imposing a significant and unconstitutional burden on the exercise of First Amendment rights, the court ruled.

Avalon Cinema Corp. v. Thompson, 658 F.2d 555 (8th Cir. 1981); County of Cook v. World Wide News Agency, 424 N.E.2d 1173 (Ill.App. 1981) [ELR 3:20:6]

Briefly Noted:

Copyright.

A restaurant owner could not escape liability for copyright infringement by asserting that he hired a disc jockey to play records at the restaurant, and that he assumed that any required copyright fees would be paid by the disc jockey himself, a Federal District Court in New York has ruled in a case brought by BMI. Accordingly, the court granted BMI's motion for summary judgment. However, the court found that the restaurant owner's infringement was not "willful," because he was not aware that his acts constituted an infringement, and because his use of a disc jockey in his restaurant had been "sporadic at most." For this reason, the court awarded BMI reduced statutory damages of $150 for each of five infringements. And the court award BMI only $750 in attorneys' fees, rather than the $1,500 it had requested.

BMI v. Coco's Development Corp., CCH Copyright Law Reports, para. 25,273 (N.D.N.Y. 1981) [ELR 3:20:7]

Libel.

A Federal District Court in New York City has denied a motion for summary judgment made by Russell Warren Howe, the author of a nonfiction book entitled "The Power Peddlers," in a libel suit filed against him by Father Sean McManus, a Roman Catholic priest. McManus alleges that he was libeled by a statement in Howe's book which recites that "Father McManus' Irish Embassy file bears the mention 'homicidal tendencies.'" In context, the statement was one of fact, not privileged opinion, the court ruled. The court also ruled that although Father McManus is a public figure, a jury could find that Howe had serious doubts about the truth of the statement and thus published it with "actual malice." On the other hand, the court did dismiss the case against Howe's co-author and his publisher, Doubleday & Company. They both insisted that they had no reason to doubt the truth of the statement and said that they had relied on Howe's reputation. Howe had extensive experience as a foreign correspondent for five major newspapers and had published seven books. For this and other reasons the court ruled that the co-author and Doubleday were "entitled as a matter of law to rely on Howe's proven reportorial ability."

McManus v. Doubleday, 7 Media Law Reporter 1475 (S.D.N.Y. 1981) [ELR 3:20:7]

Obscenity.

The New York Court of Appeals has held that a New York statute prohibiting the promotion of sexual performances by a child violates the First Amendment, because the statute discriminated against films of nonobscene adolescent sex solely on the basis of their content and legislative distaste for such portrayals. A strongly worded dissent disagreed with the majority's conclusion that the state's interest in preventing emotional and psychological damage to children resulting from such sexual exploitation is outweighed by the First Amendment.

People v. Ferber, 439 N.Y.S.2d 863, 422 N.E.2d 523 (N.Y. 1981) [ELR 3:20:7]

Previously Reported:

On February 9, 1982, the California Court of Appeal filed its "Opinion on Rehearing" in connection with Mann v. Columbia Pictures, the case in which it was held that Warren Beatty and Robert Towne did not take ideas for their movie "Shampoo" from an outline written by a retired manicurist. (ELR 3:14:1) The court did not actually hear any further oral argument in the matter, and its February 9, 1982 opinion appears identical to the opinion it filed last November.

DEPARTMENTS

Book Note:

"Ninth Annual Communications Law Institute"

Last fall, the Practicing Law Institute sponsored a two-day seminar on recent developments in media law. It was the ninth in a series of such seminars which PLI conducts annually under the "Communications Law Institute" title. Chaired by James Goodale, the program's topics are as broad and as varied as its title suggests. Last fall's seminar was accompanied by a two-volume set of outlines and other materials which together run some 1300 pages. The books include extensive outlines on developments in the law of libel, privacy and reporter's privilege. They also include a lengthy and detailed review of the law of commercial speech and advertising, and another on principles of antitrust law applicable to the media, especially to newspapers. Some space is devoted to FCC regulation of broadcasting, cablecasting, satellite communications and common carriers. Also included are discus sions of media access to government proceedings and information, and a summary of several cases involving prior restraints. The two-volume set is available at a cost of $25 directly from the Practicing Law Institute, 81O Seventh Avenue, New York, N.Y. 10019. They are course handbooks number 139 and 140 in the PLI series. [ELR 3:20:7]

In the Law Reviews:

Direct Broadcast Satellites: Protecting Rights of Contributing Artists and Broadcasting Organizations by Jo-Ann Lucanik , 12 California Western International Law Journal 204 (1982)

Projecting Artists' Moral Rights: A Critique of the California Art preservation Act as a Model for Statutory Reform by Karen Gantz, 49 George Washington Law Review 873 (1981)

The Content Distinction in First Amendment Analysis by Martin H. Redish, Stanford Law Review 113 (November 1981)

The Sources of Income from International Uses and Dispositions of Intellectual Property by Lawrence Lokken, 36 Tax Law Review 233 (1981)

Removal of Public School Library Books: The First Amendment Versus the Local School Board by Augusta Maria Salem, 34 Vanderbilt Law Review 1407 (1981)

Strict Liability Versus Negligence: An Economic Analysis of the Law of Libel, 1981 Brigham Young University Law Review 398 (1981)

Restricting the First Amendment Right to Publish Defamatory Statements, 69 Georgetown Law Journal 1495 (1981)

Broadcast Negligence and the First Amendment: Even Mickey Mouse has Rights!, 33 Mercer Law Review 423 (1981)

The Fine Art of Preemption: Section 301 and the Copyright Act of 1976, 60 Oregon Law Review 287 (1981)

A Critique of the National Football League's "Blackout" Exemption from the Antitrust Laws by Cori Jan Ching, 8 Journal of Legislation 104 (1981)

The California Art Preservation Act: A Safe Hamlet for "Moral Rights" in the U.S., 14 University of California, Davis, Law Review 975 (1981)

Fiction Based on Fact: Writer's Liability for Libel or Invasion of Privacy, 14 University of California, Davis, Law Review 1029 (1981)

Droit De Suite: Only Congress Can Grant Royalty Protection for Artists, 9 Pepperdine Law Review 111 (1981)
[ELR 3:20:7]