LEGAL AFFAIRS

Throwing the Book at Sports Agents

by Lionel S. Sobel

Last year was not a good one for player agents. Individual agents did well for their clients and for themselves, of course. But the reputation of the profession as a whole - already dim to begin with - was tarnished even further, to the point of virtual corrosion.

The biggest and sorriest story of 1987 was the one about player agents Norby Walters and his partner Lloyd Bloom. Walters, who began his agenting career as a booking agent for bands and other performers, decided to expand his practice into professional sports - and to start at the top with early round draft choices. While their legal and ethical judgments have since been questioned, Walters and Bloom apparently had good eyes for athletic talent. At least one of their very first clients, football player Ronnie Harmon, was selected by the Buffalo Bills in the first round of the 1986 NFL draft.

The Ronnie Harmon Case

Unfortunately for them - as well as other player agents the way Walters and Bloom got Harmon as a client will become at least an unsavory footnote, and perhaps much more, in sports law history. They signed him to a post-dated representation agreement while he was still a junior at the University of Iowa, long before Harmon's NCAA eligibility had expired. On top of that, they lent and gave him more than $50,000 in cash and airline and concert tickets, to induce him to sign with them.

Ronnie Harmon was not the only top prospect Walters and Bloom signed as a client during their start-up phase. But, as all agents know, getting a client and keeping a client are two different things. And Walters and Bloom lost Harmon and some of their other clients, before those exclients signed with the sports teams that had drafted them.

Walters and Bloom did not get where they used to be in life by sitting idly by, and when players they had signed to representation agreements left them, they took action. The actions Walters and Bloom allegedly took in some cases are now reportedly the subject of a confidential grand jury investigation. In Harmon's case, however, Walters and Bloom filed suit, thus creating a judicial record that could be described in these pages. (See ELR 9:6:9 and ELR 9:8:9.)

Adverse Publicity

The tribulations of Walters and Bloom became the subject of a Special Report in Sports Illustrated ("Agents of Turmoil" by Craig Neff, in the August 3, 1987 issue), as well as news articles in the daily press. And they sparked a follow-up Special Report, again in Sports Illustrated, examining once again the "abuses" of player agents and the need for "reform." ("Agents: What's the Deal?", in the October 19, 1987 issue.)

Walters and Bloom were not, of course, the first player agents to be thrust into the harsh light of adverse publicity. Nor were they the last, even for 1987. That dubious honor went to agent Jim Abernethy who chose the month of December to reveal that he already had signed representation agreements with several college football players, some of whom were still to play in upcoming bowl games. Following this disclosure, at least three of the players were declared ineligible to play in those bowl games.

New Laws

Adverse publicity was not the only indignity suffered by the player agent profession in 1987. Last year also saw three states - Texas, Alabama and Louisiana - heed the call for "reform" by adopting statutes that regulate player agents. (See ELR 9:8:7 and 9:8:8.) These three states thus join California, which enacted the first player agent statute in 1981, and Oklahoma, which put a player agent statute on its books in 1985. (Cal. Lab. Code sec. 1500-1547 and Cal. Bus. & Prof. Code sec. 6106.7; 70 Okl. Stats. sec. 821.61-821.70; discussed in "The Regulation of Player Agents" at ELR 5:10:3, and "The Regulation of Player Agents (Revisited)" at ELR 8:2:3.)

Regulation of player agents is unlikely to end with these five states. Seven more states now have agent-regulation bills before their legislatures (Arizona, Michigan, Mississippi, Nebraska, New York, Ohio and

Washington), and four more states are "considering" such legislation (Florida, Iowa, Kentucky and Oregon). (Sports inc. magazine, November 16, 1987 Premier issue.)

Moreover, agent regulation is not solely in the hands of the states. The National Football League Players Association has been regulating agents since 1983. The National Basketball Players Association has been since 1986. And the Major League Baseball Players Association reportedly has an agent regulation plan in the works as well. Finally, the Sports Lawyers Association and others have proposed federal statutes, though thus far, the concept of federal regulation has generated little enthusiasm in Washington where most lawmakers have spent the last seven years in a "deregulatory" frame of mind.

The regulation of player agents is an idea whose time has come. Reports about the activities of Norby

Walters, Lloyd Bloom and Jim Abernathy, are simply the latest in too long a line of stories - at least some of which have been proved true - about agent abuses in several separate areas. Anecdotal though these stories may be, they have left an indelible impression that a dangerous number of agents have been guilty of: mismanagement of their clients' income; charging excessive fees; conflicts of interest; incompetence; and overly-aggressive client recruitment practices.

As a result, it was inevitable that the statute book would be thrown at player agents. Yet, it is still necessary to ask: how many statutes should be thrown, by whom, and for what?

Who Should Regulate?

In the abstract, it may seem completely logical for states to regulate agents. States do regulate lawyers, accountants, and innumerable other occupations. However, most stateregulated professions and occupations have a local focus that is entirely absent from the business of sports. Player agents - especially those who are competent, ethical and successful - represent athletes nationally, not just locally. And the problems that regulation ought to prevent are problems that are not unique to individual states; they too are national.

Despite the national nature of the profession to be regulated and the problems to be prevented, the five state statutes enacted thus far reveal little or no consensus about which activities ought to be controlled, or about the manner in which such control ought to be exercised. Tulane law professor Gary Roberts already has noted that because agent regulation laws differ from state to state, they threaten to "Balkanize the business and will make the cost of representing athletes in various states very high." ("Protecting the College Athlete from Unscrupulous Agents," 5 The Sports Lawyer 8 (Fall 1987).) Indeed, Professor Roberts has concluded that "[w]hatever small protection such a regime provides, the cure may well be worse than the disease." And I agree.

Expense and Ambiguity

The expense that agents incur simply in registering in several states can be enormous, and will increase with each new state that joins the ranks of those that regulate agents. The problem of expense is attributable, at least in part, to the inefficiency of agent regulation at the state level. The number of player agents in this country is very small compared, for example, to the number of lawyers or accountants. Thus, so long as states consider agent-regulation to be a separate activity from the regulation of other businesses and professions, the cost of regulating agents will be high when calculated on a per-agent basis.

It also is possible that agent registration fees are imposed by some states for the very purpose of discouraging agents from doing business in those states. This possibility is suggested by a comparison of Oklahoma's $1,000 per year fee with Louisiana's $100 per year fee, both of which are intended merely to cover their costs of administration. (70 Okl. Stats. sec. 821.62(E); 4 La.Rev.Stats.sec. 422E.) There may be some reason why the cost of regulating agents is ten times greater per agent in Oklahoma than in Louisiana; but if so, the reason is far from obvious.

The difficulty that ethical agents will have in complying with numerous state statutes goes beyond mere expense. Most existing agent regulation plans are rife with ambiguities that leave law-abiding agents in the dark about their obligations, and that jeopardize the enforceability of those statutes even against the "bad apples."

Incompetence and Mismanagement

Moreover, one of the critical problems that led to the demand for agent regulation in the first place - player agent incompetence - is ignored completely by every one of the existing state statutes. Only the two player association plans make any effort to assure that agents will have some exposure to the information they need to do an adequate job for their clients. (They do so by requiring agents to attend continuing education programs sponsored or approved by the player associations themselves.)

A second critical problem - income mismanagement - is still better addressed by laws of general applicability dealing with incompetence, fraud and embezzlement than it is by any of the agent regulation plans now in effect. This is hardly surprising, though, because no regulatory legislation can assure wisdom or honesty.

Conflicts of Interest

Yet another unfortunate consequence of state regulation is illustrated by some legislative efforts to prohibit conflicts of interest. Such conflicts are of course deplorable. However, identifying those circumstances that give rise to conflicting interests is, in some cases, a matter of opinion about which reasonable and honest people disagree. For example, California and Alabama prohibit, as a matter of state statute, player association employees from representing athletes individually as their agents. (Cal. Lab. Code sec. 1539(c); 1987 Ala. Act sec. 34(c).) In the opinions of the former executive directors of the baseball and football players' associations, this was a wise thing for California and Alabama to have done. However, in the opinions of the executive directors of the basketball and hockey players' associations, no conflict exists when they represent athletes individually. If these last two are correct, California and Alabama have acted foolishly, in a manner that may deprive some California and Alabama athletes of the ability to retain the agents of their choice.

Two questions are thus presented by these provisions of the California and Alabama statutes. The first is whether the California and Alabama legislatures are in a better position than professional basketball and hockey players to know whether a conflict would exist if any of them were represented by employees of their player associations. The second is whether basketball and hockey players could do anything to prevent such a conflict, if they determined that one did exist.

The answer to the first question is that state legislatures are not in a better position than players to know whether a conflict would exist. Even if the possibility of such a conflict would not have occurred to players spontaneously, agents who are not employees of players associations can be expected to point out to clients and potential clients, as persuasively as possible, the advantages of being represented by agents who are independent of the association. The answer to the second question is that basketball and hockey players can do two things if they decide that association employees have a conflict. They can hire independent agents for themselves. And, if a simple majority of the players agree, they can adopt player association rules prohibiting association employees from representing members individually.

In short, on this conflict of interest question, California and Alabama have gone beyond being protective. They have enacted legislation that is unnecessary and unwise and may cause harm to some of the very athletes they set out to protect.

NCAA Eligibility Rules

The wisdom of another provision found in four state statutes also is open to debate. Oklahoma, Louisiana, Alabama and Texas all prohibit agents from entering into representation agreements with college athletes, until their college eligibility has expired. (70 Okl.Stats. sec. 821.64(8); 4 La. Rev.Stats.sec.424(8); 1987 Ala. Act sec.7(a)(4); Tex.Rev.Civ. Stat. art.8871 sec. 6(b)(5).) These provisions clearly are for the benefit of NCAA colleges, because NCAA rules make players ineligible as soon as they agree to be represented by an agent. (NCAA Const., Art. 3 sec. l(c).)

However, when colleges suffer from the loss of an ineligible player, they suffer from a self-inflicted wound. There is nothing inherently unethical or improper about an athlete retaining an agent while still participating in college sports. It has been made "improper" only by the votes of NCAA colleges themselves, and only because the NCAA insists on retaining 19th century views of what "amateur" athletes should be. Moreover, these views have such a disproportionate impact on financially underprivileged college athletes, many of whom are Black, that these views can fairly be considered "elitist." Yet, four states have uncritically accepted the NCAA's views of what it takes to remain an "amateur," and have written those views into law.

Defining an Amateur

The proper definition of an amateur college athlete is a subject that colleges will have to address some day. When they do, they will find that many thoughtful people - including those who are not agents - are critical of the way college athletes now are treated by their own schools and by the NCAA. Tulane's Professor Roberts has observed that NCAA rules require athletes "to live by utopian standards." And Wall Street Journal columnist Frederick Klein has written that the NCAA requires players to "take a kind of vow of poverty when they accept college [athletic] scholarships." ("College Football: Keeping 'em Barefoot," The Wall Street Journal, Sept. 4, 1987.) According to Klein, the current state of affairs is the product of a "decades-long gentlemen's agreement between the NFL and the college powers-that-be that has kept all but a handful of football-playing collegians from turning pro before their four-year use to their schools is exhausted." And the reason this is done has nothing to do with protecting college athletes. Rather, it is done so "[t]he pros get a free farm system that supplies them with well-trained, much-publicized employees" while "[t]he colleges get to keep their players the equivalent of barefoot and pregnant."

Now the laws of Oklahoma, Louisiana, Alabama and Texas codify the notion that football and basketball players should stay in college - with nothing but a scholarship to sustain them - until their NCAA eligibility expires. Yet this notion has no counterpart anywhere else in higher education, nor even elsewhere in college athletic departments. When a sophomore drama or music student drops out of college to accept a paid performing opportunity, or when a second year law student drops out of school to go into business, it is not considered a scandal and school officials do not demand legislation preventing it from happening again. Moreover, when a college tennis player or golfer decides to turn professional before exhausting his or her NCAA eligibility, legislatures do not convene hearings or propose bills to prevent other tennis players or golfers from following a similar course. Indeed, even baseball players are permitted to turn professional, if they wish to do so, right out of high school or after some time in college, and neither they nor their advisers or agents are rebuked as a consequence.

Square Pegs

Only football and basketball players are expected to stay in college as long as their colleges want them, without regard to their own needs or wishes, and on financial terms that deprive many of them of the ability to do things that their wealthier classmates consider part and parcel of the proverbial college experience. There is an irony here that has not gone unnoticed. Duke law professor John Weistart has written, "In what must surely be one of the great nonsequiturs of our society, we tell promising athletes in the two most popular high school sports that to get further physical training they must also embrace our most advanced form of post-high-school degree." ("College Sports Reform: Where Are the Faculty?," 73/4 Academe 12 (July-Aug. 1987).)

Given a choice, it is virtually certain that many of those who aspire to careers in professional football and basketball would develop their skills outside of the college setting. Based on decisions that have been made by graduating high school baseball players, who have a choice between college and the minor leagues, Professor Weistart has estimated that "perhaps as many as one-half of present college athletes in football and basketball would not choose the collegiate option if good alternatives were available." Today, however, there are no alternatives for football and basketball players. "Thus'"

Professor Weistart concludes, "educationally it appears that we may be forcing square pegs into round holes." And the laws of Oklahoma, Louisiana, Alabama and Texas contribute to this process by prohibiting agents from agreeing to represent NCAA athletes - except on terms dictated by the NCAA itself.

The Player Association Alternative

While agent regulation is necessary, regulation at the state level is neither helpful nor desirable and may even prove to be counterproductive. The alternatives to state regulation are regulation by player associations and by the federal government.

Player association regulation has much to recommend it. It is national, uniform in each sport throughout the country, and efficiently administered. Player association regulations are adopted by association personnel, including representatives of the players themselves, who are well informed about the needs of the athletes who participate in particular sports and leagues. At this time, only two associations, the NFLPA and NBPA, have adopted agent regulation plans. The Major League Baseball Players Association reportedly has had an agent regulation plan of its own under consideration for some time, though it has not been adopted yet. The National Hockey League Players Association has not given public consideration to adopting an agent regulation plan.

But even if the hockey and baseball players' associations choose not to adopt agent regulation plans of their own, this is not a matter for concern and does not compel the conclusion that state regulation is necessary. If the hockey and baseball players' associations decide not to regulate agents, that will show that the players in those sports do not feel a need for protection from agents. And if players do not, there is no reason for state legislatures to feel otherwise.

The Federal Alternative

Federal regulation too has much to recommend it, namely national uniformity and efficient administration. Moreover, there is legislative precedent for federal regulation of agents, because Congress has enacted statutes that provide for federal regulation of farm labor contractors and stock brokers. (7 U.S.C. sec. 2041 et seq.; 15 U.S.C. sec. 78a et seq.)

However, the benefits of federal regulation will not be realized if it simply adds another layer of regulation to those that already exist. Its benefits would be achieved only if a federal statute preempted state regulation. And only state regulation needs to be or should be preempted. Compatibility between federal and player association regulation could be achieved quite easily, if federal legislation deferred, by its own terms, to any agent regulation plans that exist or are adopted by player associations. Such legislation might encourage the hockey and aseball players' associations to adopt agent regulation plans of their own, which could be as strict or as lenient as they feel appropriate. Providing protection for those athletes who are not members of a players association (such as minor league baseball players and individual sport athletes) would have to be considered, and then expressly incorporated into or excluded from any federal legislative scheme.

Though the regulation of player agents is an idea whose time has come, individual states are providing too much of what might have been a good thing, and they are not doing it well. In 1976, the House Select Committee on Professional Sports concluded that "[t]he role of the player agent is ... a matter of Federal concern."

(Inquiry Into Professional Sports: Final Report of the Select Committee on Professional Sports, H.R. Rep. No. 94, 94th Cong., 2d Sess. 78 (1977).) Congress did nothing to act on that concern then or since. But it may have to soon, for it now appears that Congress is the only body that can bring rationality to this new area of the law.

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[ELR 9:8:3]

NEW LEGISLATION AND REGULATIONS

Texas adopts legislation requiring registration of player agents and imposing liability on agents who violate NCAA rules

The state of Texas has adopted two statutes for the regulation of player agents. One requires agents to register with the Texas Secretary of State, and the other imposes potential damage liability on agents who induce college athletes to violate rules of the NCAA.

The registration statute applies to agents who represent athletes in the negotiation of employment agreements with professional teams, and also to those who provide financial services for athletes. However, the statute does not apply to agents whose clients are individual sport athletes, such as tennis players and golfers, or to agents whose clients all are veteran players. Geographically, the statute applies only to agents whose clients reside in Texas and who have played for a Texas college. Moreover, it appears that even these agents may escape regulation, if they contact potential clients only outside the state of Texas. The registration statute applies to lawyers as well as non-lawyers, though Texas lawyers are not required to list the names of all of the members of their firms, as non-lawyers must.

The registration statute also requires representation agreements between agents and players to be on a form approved by the Secretary of State. And the statute limits the fee that an agent may charge for negotiating a multiyear professional sports services contract. In such cases, an agent may not collect, in any 12-month period, a fee that is greater than the amount the athlete will receive under that contract during those 12 months. (This provision appears to have been drafted with high school baseball players in mind, in order to prevent agents from charging a fee based on the player's signing bonus that exceeds the amount the player actually receives.) The statute also requires agents to file, with the Secretary of State, copies of all contracts entered into with athletes; and if the athlete is a student at a Texas college, the contract must be filed with the college's athletic director as well.

Perhaps the most significant provision of the registration statute is one that prohibits agents from entering into representation agreements with college athletes "until after the completion of the athlete's last intercollegiate contest, including postseason games." Indeed, the law even prohibits agents from "directly" contacting college athletes (in Texas), except under circumstances specified in the statute. On the other hand, the Texas legislature has taken a novel and progressive approach to the agent "recruitment" problem by requiring Texas colleges to sponsor on-campus agent interviews, to which registered agents will be invited if they give their addresses to athletic directors.

Violation of the Texas registration statute can result in civil and even criminal penalties. In addition, however, a separate statute also imposes potential damage liability on certain agents. This statute is intended to cover agents, lawyers, and some others (such as boosters) who violate NCAA rules or cause NCAA athletes to do so. This law creates a cause of action against those who violate NCAA rules (though not against student-athletes themselves), in favor of the Southwest Athletic Conference and colleges that are members of the NCAA, for the recovery of damages suffered by them due to such things as lost television revenues and ticket sales, resulting from disciplinary action taken by the NCAA.

Regulation of Athlete Agents Act, S. B. No. 20, Chapter 13, 70th Legis., 2d Sess. (1987), Vernon's Tex. Ann.Civ. St. art. 8971 sec. 1-13; Cause of action for Violation of Collegiate Athletic Association Rules, S.B.No. 1065, 70th Legis., Reg. Sess. (1987), Vernon's Tex. Civ. Prac.& Rem. Code sec. 131.001-131.008. [ELR 9:8:7]

Louisiana enacts statute regulating player agents

The state of Louisiana has enacted a statute regulating the activities of agents who represent athletes in the negotiation of employment agreements with professional teams. The law does not apply to agents whose clients all partici pate in individual sports, such as tennis and golf. Nor does it apply to agents whose clients all are veteran players.

Geographically, the statute reaches only those agents whose clients are actual residents of Louisiana or who are enrolled in NCAA colleges in that state. Furthermore, it applies only to those agents who contact their clients in Louisiana, or who contact them outside that state if the athlete's transportation was provided or paid for by the agent.

The law requires agents to register with the Louisiana Secretary of State. And it requires agents to file copies of their athlete agent contract forms with the Secretary of State. While the law expressly covers lawyers as well as nonlawyer agents, Louisiana lawyers are not required to register, though they are required to notify the Louisiana State Bar of their intention to act as athlete agents. Nor are Louisiana lawyers required to file copies of their athlete agent contract forms. For some reason not explained in the law, agents are required to use the contract form they file with the Secretary of State only when signing "non-NCAA athletes" as clients. When signing NCAA athletes, it appears that agents may use any form they like, as far as Louisiana is concerned. (Perhaps most "non-NCAA" athletes in Louisiana are high school baseball players, and the legislature determined that high school students need more protection than NCAA athletes.)

The Louisiana law contains what appears at first to be a fee limitation, but on closer inspection, it is apparent that this provision is not very restrictive at all. The limit applies only to agents who represent rookies who reside in Louisiana and who have not attended an NCAA college in that state. Furthermore, the limit applies only when an agent has negotiated a multi-year contract with a professional sports team. In these cases, an agent may not collect, in any 12-month period, a fee that is greater than the amount the athlete will receive under that contract during those 12 months. (Apparently, this provision was drafted with high school baseball players in mind, and was designed to prevent agents from collecting a fee based on the player's signing bonus that exceeds the amount the player actually receives.)

The Louisiana law requires agents to file, with the Secretary of State, contracts entered into with rookies who are Louisiana residents who have not attended NCAA schools; and if the athlete is a student at a non-NCAA college in Louisiana, the contract must be filed with that college's athletic director as well. Apparently, however, if the athlete attends an NCAA school, the contract need not be filed with anyone. (This is a puzzling "exemption," if it is assumed that one purpose of the Louisiana law is to prohibit and punish the signing of NCAA athletes before their eligibility expires.)

A representation agreement between an athlete and an agent who has "failed to comply" with the Louisiana law "is void." And an agent who violates the Louisiana law must refund any fees the agent may have been paid by the athlete. Agents who violate the Louisiana law also forfeit the right to be repaid anything given to NCAA athletes to induce them to enter into representation agreements prior to their last NCAA game. The violation of the Louisiana law also is a crime.

Louisiana Athlete Agents Act, House Bill No. 1404, Reg. Sess. (1987), 4 Louisiana Revised Statutes sec. 421-430 [ELR 9:8:7]

Alabama creates Athlete Agent Regulatory Commission

The state of Alabama has enacted a statute creating a new administrative agency to be known as the Athlete Agent Regulatory Commission. As its name implies, the Commission will regulate sports agents who represent athletes in contract negotiations or in connection with seeking professional athletic employment. The law covers agents who represent rookies as well as veterans, and it applies to agents for professional athletes in all sports, including individual, non-team sports such as tennis and golf. On the other hand, the Alabama law does not cover agents who merely provide legal, tax or financial planning advice, or who merely manage an athlete's money. And the law is ambiguous about whether it covers agents who merely seek endorsement opportunities and negotiate endorsement contracts, but who do not negotiate contracts with teams or tournament sponsors. The law expressly applies to lawyers "when advising athlete clients and when attempting to negotiate a professional sports services contract."

The law requires agents to register with the Commission, but requires registration only by those who "engage in or carry on the occupation of an athlete agent either within the state or with a resident of the state" of Alabama. The law also requires contracts between agents and athletes to be on a form approved by the Commission. And the law limits the fee an agent may collect, in any calendar year, for negotiating a "professional sports services contract" to 10% of the compensation received by the athlete under such a contract during that year.

The Alabama law prohibits agents (including lawyers) from owning a financial interest in "any entity which is directly involved in the same sport" as their clients. And the law makes agents ineligible for registration, if they engage in conduct that violates, or causes student-athletes to violate, NCAA rules governing the relationship between athletes and agents.

If an agent fails to register, any contracts entered into with players are "void and unenforceable." And the violation of the registration and or other provisions of the law is a felony.

Alabama Athlete Agents Regulatory Act of 1987, H. 667 (not yet codified) [Jan. 1988] [ELR 9:8:8]

RECENT CASES

Arbitrator voids contract between NFL player Ronnie Harmon and agents Norby Walters & Lloyd Bloom, because agents gave Harmon money to persuade him to hire them; arbitrator also rules that Harmon does not have to repay most of the money given to him by agents, because there was no written evidence that it was a "loan" rather than a "gratuity"

Player agents Norby Walters and Lloyd Bloom have lost most of the second round in their fee dispute with NFL player Ronnie Harmon, and appear to be more than $50,000 poorer as a result. Walters and Bloom had signed Harmon to an agent-player representation agreement in March of 1985 when Harmon was only a junior at the University of Iowa, though the agreement was post-dated to January of 1986, by which time he would have played his last NCAA football game. Harmon was drafted by the Buffalo Bills in the first round of the 1986 draft, and eventually signed a $1.4 million dollar contract with that team. However, by the time Harmon signed with the Bills, he had discharged Walters and Bloom and had hired another agent in their place, New York lawyer Martin Rauch. Harmon refused to pay Walters and Bloom, and a lawsuit followed.

The first issue in the case was whether the fee dispute should be arbitrated under regulations established by the NFL Players Association, as provided in the standard "Contract Adviser Agreement" Bloom and Walters had used to sign Harmon. New York Supreme Court Justice Myriam Altman ruled that the dispute should be arbitrated, even though Harmon was not an NFLPA member at the time he signed the agreement. (ELR 9:6:9.) The case therefore was heard and has been decided by arbitrator John C. Culver (of the Washington, D.C., firm of Arent, Fox, Kintner, Plotkin & Kahn).

Harmon sought to void his contract with Walters and Bloom on the grounds that it was against public policy because he had signed it before his NCAA eligibility had expired. The arbitrator rejected this contention, however, saying that although Harmon's signing the agreement when he did may have violated NCAA rules, it did not violate any "public laws," nor did the post-dating of the agreement make it illegal or in violation of any NFLPA regulations. The arbitrator found it "deplorable" that "both parties" violated NCAA rules, but he ruled that he did not have jurisdiction to enforce those rules.

On the other hand, the arbitrator found that Walters and Bloom had violated NFLPA regulations by lending Harmon $2,500 in cash and by giving him more than $50,000 in additional cash and airline and concert tickets. This violated an NFLPA Regulation that prohibits agents from giving or offering "anything of significant value to a player" in order to become his agent. NFLPA regulations do not state what the consequence should be if this regulation is violated. But the arbitrator had no difficulty concluding that "the correct remedy is to render the Agreement [between agent and player] null and void," and this is exactly what the arbitrator did. As a result, Walters and Bloom were not entitled to the fee set forth in their agreement with Har mon (a fee that would have been a percentage of Harmon's $1.4 million in earnings).

Walters and Bloom did not lose entirely, however. Although their contract with Harmon was nullified, the arbitrator found that they had provided "valuable negotiating services" to Harmon "from which he benefited," when they negotiated a $1.3 million offer from the Bills (up from the Bills' initial offer of $950,000), before Harmon hired Rauch. The arbitrator found that Harmon had been a "willing participant" in the "scheme" with Walters and Bloom, and that therefore he "should not be able to get the benefit of those services without paying ... for their fair value." This much of the opinion must have pleased the two agents, but the arbitrator's calculation of the actual value of their services turned out not to be very valuable. The arbitrator determined the fair value of those services by calculating the number of hours Walters and Bloom had devoted to Harmon's negotiations and compensating them at the rate of $125 per hour. The arbitrator also determined that they were entitled to be reimbursed for their long distance phone and travel expenses. But the total of these fees and expenses came to less than $3,500.

Walters and Bloom did just as poorly on the issue of whether they were entitled to be repaid the more than $50,000 in cash and tickets they had "advanced" to

Harmon from the time they signed him until he discharged them more than a year later. Of this total, $2,500 was reflected by a written, interest-free promissory note, and the arbitrator did rule that they were entitled to be repaid this amount. The balance, however, was not evidenced by anything in writing, and Harmon claimed there was no agreement that he would be required to repay these amounts. On this point, the arbitrator noted that Harmon's position was supported by the fact that he had been asked to sign a note for the first $2,500 but not for the balance. And the arbitrator ruled that if the agents "wanted to ensure" that they would be repaid, they "should have secured Mr. Harmon's express agreement that he would do so." Since they had failed to satisfy their burden of proving that the undocumented payments were "loans" rather than "gratuities," the arbitrator ruled that they were not entitled to reimbursement of those amounts.

In the Matter of Bloom and Walters v. Harmon, NFLPA Arbitration Case No. 11059-014 (Oct. 28, 1987) [ELR 9:8:9]

Indianapolis Colts were not entitled to recover attorneys fees from season ticket applicants who unsuccessfully challenged football club's ticket allocation plan

The Supreme Court of Indiana has held that a state appellate court abused its discretion in awarding punitive appellate attorneys fees to the Indianapolis Colts in an action seeking to challenge the validity of the football team's ticket allocation plan.

In response to the Colts' public solicitation for season ticket buyers, R.W. Lesher sent the team a check for $1,136; Lesher received the tickets for which he applied. Stephen Dillon sent the Colts a check for $155. Dillon did not receive any tickets, but was sent a refund.

Lesher and Dillon claimed that the season ticket allocation plan constituted a lottery in violation of state law.

The trial court's decision granting summary judgment on behalf of the Colts was affirmed by the appellate court on the ground that there was no prize involved in the ticket distribution plan. According to the court, a prize is "something of more value than the amount invested" In this case, since the price paid for the tickets got nothing of greater value than those who received refunds.

Also upheld were the trial court's rulings that the Colts did not violate the state's deceptive practices act, did not commit civil theft, and were not obligated to pay interest on the funds held by the club pending the ticket allocation.

The appellate court concluded by declaring its annoyance "at having to devote our time and energy to an absolutely meritless claim for unnegotiated interest," and by ordering Lesher and Dillon to pay the Colts' appellate attorneys fees and expenses in the amount of $3,997.30; this order now has been vacated by the Supreme Court of Indiana.

Chief Justice Shepard dissented from the Supreme Court's opinion. In stating that he would have allowed the order of fees to stand, Judge Shepard characterized Lesher and Dillon's claims as implausible, and that he believed that it was an appropriate exercise of discretion by the appellate court to order that the Colts be compensated for responding to the claims.

Lesher v. Baltimore Football Club, 512 N.E.2d 156 (Ind. 1987); 496 N.E.2d 785 (Ind.App. 1986) [ELR 9:8:10]

Disappearance of thoroughbred stallion rendered breeding contract impossible of performance, rules Federal District Court in Kentucky, in dismissing action by owner of mare

In a decision issued in August 1986 but only recently published, a Federal District Court in Kentucky has granted summary judgment to several participants in a syndicate owning the Irish thoroughbred stallion Shergar in a breach of contract action brought by Linda Green, the owner of a mare named Foreign Missile. In 1981, the parties entered a contract arranging for the breeding of the two horses. The 1982 breeding season produced a foal, which, under the contract, belonged to the syndicate; the foal ultimately sold for $850,000. Before the 1983 breeding season began, Shergar was kidnapped and was never recovered. The parties agreed to breed Foreign Missile to another horse, but Foreign Missile lost the foal from this breeding.

Green eventually sued three owners of shares in the Shergar syndicate seeking an accounting for the benefits to the parties from the Shergar/Foreign Missile colt, or, in the alternative, damages of $500,000. According to Green, the parties intended their contract to be a "live foal" contract, rather than a "no guarantee" contract.

Federal District Court Judge Wilhoit, in rejecting Green's claims, cited the well established principle that when the performance of a contract is based on subject matter, the continuing existence of which is the basis of the contract, performance of the contract is excused when the subject matter of the contract is destroyed or becomes unavailable. Since the disappearance of Shergar was "legally tantamount" to the destruction of the subject matter of the parties' contract, the syndicate members incurred no liability to Green.

And while agreeing that it was unfortunate that Shergar disappeared before Green could receive a Shergar/Foreign Missile foal, the "inopportune" disappearance did not mean that the syndicate members were unjustly enriched at Green's expense, stated Judge Wilhoit.

Green v. McGrath, 662 F.Supp.337 (E.D.Ky. 1986) [ELR 9:8:10]

United States Supreme Court lets stand Federal Court of Appeals decision upholding school board's termination of Kentucky public high school teacher who arranged classroom showing of R-rated movie "Pink Floyd-The Wall"

In July 1984, the Board of Education of Lincoln County, Kentucky discharged tenured public school teacher Jacqueline Fowler for insubordination and conduct unbecoming a teacher; the basis for the discharge was that Fowler had an "R" rated movie, "Pink Floyd-The Wall," shown to her high school students on the last day of the 1983-1984 school year.

Fowler sued the Board and various school officials, and a Federal District Court ordered her reinstatement and the payment of damages on the ground that the termination of employment violated Fowler's First Amendment rights.

A Federal Court of Appeals vacated the judgment of the District Court and dismissed Fowler's action; the United States Supreme Court has let stand the Court of Appeals' ruling.

In reviewing Fowler's claims, Federal Court of Appeals Judge Milburn noted that the video store clerk who rented the tape to Fowler mentioned that there was some nudity in the movie. Fowler did not preview the movie, but did instruct a fifteen year old student (who had seen the movie) to edit out any parts that were unsuitable for viewing at school. The editing apparently did not extend to offensive language used throughout the movie, to several sexually suggestive animated sequences, or to scenes portraying brutality and violence.

Judge Milburn concluded that Fowler's conduct in having the movie shown under the circumstances set forth, in part, above, did not constitute expression protected by the First Amendment. The movie was shown on a noninstructional day to students ranging in age from fourteen through seventeen, and Fowler did not attempt to explain the meaning of the movie or to use it as an educational aid. While recognizing that certain forms of expressive conduct are protected by the First Amendment right of free speech, Judge Milburn stated that Fowler's conduct was not expressive or communicative.

The Court of Appeals also rejected Fowler's argument that a Kentucky statute proscribing "conduct unbecoming a teacher" was unconstitutionally vague as applied to her because the statute did not give Fowler notice that her conduct would result in discipline. Fowler's actions, although not illegal, constituted "serious misconduct," declared the court; there was a direct connection between the misconduct and Fowler's work as a teacher, and having the movie shown under the circumstances involved demonstrated a "blatant lack of judgment."

In a concurring opinion, Senior Court of Appeals Judge John W. Peck expressed the view that the court should not have offered an "advisory opinion" as to what might constitute an intent to communicate, and questioned whether an explanation from Fowler was necessary before the class was likely to understand the themes of the movie. Judge Peck stated that the school board's termination of Fowler was based on its valid objections to a movie the board thought inappropriate for classroom viewing.

Judge Merritt, in dissent, first commented that "federal judges and local school boards do not make good movie critics or good censors of movie content." In Judge Merritt's view, "The Wall" contained a message "similar to that expounded by Dr. Spock ... that unloving, overly rigid and authoritarian parents, teachers, judges and officials create disturbed individuals and societies ... This lack of love is the figurative 'wall' shown in the movie." Fowler was discharged because the school board did not like the content of the movie, declared Judge Merritt, in disagreeing with Judge Milburn's distinction between instruction and entertainment. Judge Merritt would have affirmed the District Court's finding that the school board had failed to negate the testimony of its own members that the determinative causative factor in terminating Fowler's employment was her decision to allow "anti-education, antifamily, antijudiciary, and antipolice" views to be expressed in her classroom.

Fowler v. Board of Education of Lincoln County, Kentucky, 819 F.2d 657 (6th Cir. 1987) [ELR 9:8:10]

United States Supreme Court upholds, by equally divided court, convictions of former Wall Street Journal columnist R. Foster Winans and stockbroker associate under the securities laws; convictions for violating federal mail and wire fraud statutes also are affirmed

The United States Supreme Court by a 4-4 vote, has upheld the convictions of journalist R. Foster Winans and broker Kenneth P. Felis on charges of violating section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5.

Winans was one of the two writers of a daily column in the Wall Street Journal. The well-respected column, entitled "Heard on the Street," evaluated stock investment opportunities, and in some cases affected the market prices of the stocks reviewed.

The Wall Street Journal's policy was that prior to publication, the columns were the newspaper's confidential information. However, in October 1983, Winans arranged to provide Felis and Peter Brant, both connected with the Kidder Peabody brokerage firm in New York City, with advance information concerning the timing and contents of the column. Brant, Felis, and David Clark, a client of Brant, then bought or sold stocks based on the probable impact of the column on the market, according to Justice White. The parties agreed to share the profits from these stock transactions.

Over a four month period, the brokers made a net profit of about $690,000 from prepublication trades based on information provided by Winans about the contents of the columns.

After inquiries by Kidder Peabody and by the Securities and Exchange Commission, Winans and his roommate David Carpenter revealed the scheme.

A Federal District Court found that Winans knowingly breached a duty of confidentiality by misappropriating prepublication information gained in the course of his employment under the understanding that such information would not be so revealed. A Federal Court of Appeals agreed with this finding, and with the District Court's further holding that the deliberate breach of Winans' duty of confidentiality and his concealment of the scheme was a fraud and deceit on the Journal. Although the Journal was not a buyer or seller of the stocks traded in, or a "market participant," the scheme was considered to be "in connection with" a purchase or sale of securities within the meaning of section 10-b and Rule 10b-5. It was observed that the sole purpose of the Winans parties was to buy and sell stock at a profit based on advance knowledge of the information contained in the columns.

Since the Supreme Court was evenly divided with respect to the convictions of Felis and Winans under the securities laws, the judgment of the Court of Appeals will stand on those counts.

Felis and Winans also were found guilty of violating federal mail and wire fraud statutes; the Court of Appeals upheld the convictions, and the Supreme Court has affirmed the judgment unanimously.

Winans argued that the newspaper's interest in prepublication confidentiality for the columns was an intangible consideration outside the reach of the federal mail and wire fraud statutes. However, the object of the scheme, noted Justice White, was to take the Journal's confidential business information, i.e.; the contents and timing of the "Heard" column; the "intangible" nature of the material did not make it any less "property" protected by the mail and wire fraud statutes.

Justice White emphasized that the confidential information at issue "was generated from the business and the business had a right to decide how to use it prior to disclosing it to the public... it is sufficient that the Journal has been deprived of its right to exclusive use of the information, for exclusivity is an important aspect of confidential business information..." Also rejected was Winans' argument that revealing the information in the columns may have violated a workplace rule, but did not amount to proscribed fraudulent activity. The Court noted that the relevant statutes reach any scheme to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises. And the use of the wires and the mail to print and send the Journal to its customers satisfied the requirement that those mediums be used to execute the scheme at issue because the circulation of the "Heard" column was an "essential" part of the scheme.

Carpenter's conviction for aiding and abetting also was affirmed.

Carpenter v. United States, Case No.86-422 (United States Supreme Court, Nov. 16, 1987) [ELR 9:8:11]

Dismissal of trial court judge's action for false light invasion of privacy arising from American Broadcasting Corporation's "20/20" broadcast is affirmed

A Federal District Court in Ohio has affirmed the dismissal of an action brought by trial court judge John L. Angelotta against American Broadcasting Corporation on the ground that Ohio does not recognize a cause of action for false light invasion of privacy.

Judge Angelotta's claim arose out of the September 27, 1984 broadcast of an ABC News "20/20" report entitled "To Catch A Rapist." Geraldo Rivera was the correspondent for the report which focused on convicted rapist Raymond Ferguson; Judge Angelotta had presided over Ferguson's rape trial. During an interview conducted by Rivera, Judge Angelotta commented on the possible differences in the perception of credibility on the part of "a nice girl who gets raped" and "a bad girl who gets raped..." Rivera and Barbara Walters, who participated in the broadcast, discussed the judge's comments; Walters declared that she was "appalled," and Rivera characterized the judge's remarks as reflecting a "dinosaur attitude."

Judge Angelotta claimed that he was falsely portrayed by the broadcast as a "macho trial judge who discriminated against women rape victims in favor of their assailants," and that this portrayal was offensive and harmful to his reputation.

Federal Court of Appeals Judge Wellford agreed with the District Court that the Ohio Supreme Court has declined to adopt a false light invasion of privacy cause of action. Judge Wellford noted that in Morgan v. Hustler Magazine (ELR 9:8:12), a Federal District Court in Ohio asserted that Ohio courts would adopt a false light theory of invasion of privacy in an appropriate case. But

Judge Wellford stated that Morgan was "unpersuasive" and speculative.

In all, the "20/20" parties "may have taken a cheap shot at Judge Angelotta, but they had the right, under the law of Ohio and under the Constitution of the United States, to express their opinion of the 'attitude' reflected in what they chose to believe the judge was saying."

Angelotta v. American Broadcasting Corporation, 820 F.2d 806 (6th Cir. 1987) [ELR 9:8:12]

Fashion model's libel and invasion of privacy claims against Hustler Magazine were barred by statute of limitations, rules Federal District Court in Ohio

In Morgan v. Hustler Magazine (cited by the court in Angelotta, ELR 9:8:12), model Donda R. Morgan claimed that her photograph was used without permission on the front cover of the December 1975 issue of Hustler. Morgan, stating that she first became aware of the publication in January 1984, claimed that the publication of her photograph constituted libel and false light invasion of privacy.

Judge Krenzler first found that Morgan's cause of action for libel and invasion of privacy accrued in December 1975, when the magazine with the allegedly offensive cover was published and first distributed; the model's action therefore was not timely filed.

The court went on to find that a photographer's release signed by Morgan in 1973 was clear and unambiguous and that summary judgment on behalf of Hustler with respect to this issue was proper.

Judge Krenzler then noted that although Ohio has not officially adopted an invasion of privacy/false light theory, some state courts, in a few reported cases, have indicated that they would consider adopting such a theory in an appropriate case. In Judge Krenzler's view, if summary judgment had not been available to the Hustler parties on other grounds, and if Morgan had presented a timely false light cause of action, the court would have concluded that the false light theory was appropriate for use in Ohio; this comment was rejected by the court in Angelotta.

Morgan v. Hustler Magazine, Inc., 653 F.Supp. 711 (N.D.Ohio 1987)
[ELR 9:8:12]

Hustler Magazine obtains certification to New Hampshire Supreme Court of questions concerning damages available to Kathy Keeton in libel action against magazine

In 1986, a Federal District Court jury in New Hampshire awarded Penthouse magazine executive Kathy Keeton $2 million in her libel action against Hustler magazine (ELR 8:4:20). Keeton had claimed that her reputation was damaged by the publication, in certain 1975 and 1976 issues of Hustler, of a cartoon that suggested that Robert Guccione, Keeton's common-law husband, infected her with a venereal disease. The libel action, which was filed in 1979, also challenged Hustler's publication of a nude centerfold of a model who was identified as Keeton.

After lengthy litigation, including a United States Supreme Court opinion (ELR 5:12:10) supporting the exercise of jurisdiction over Hustler, a Federal Court of Appeals has concluded that several threshold venue and choice of law issues remain in the case.

Chief Judge Levin H. Campbell noted that Hustler's only significant contact with the state was in sending several thousand issues of the magazine (about one percent of its total circulation) into New Hampshire each month. At the time Keeton filed her action, the relevant statute of limitations period had expired in every state but New Hampshire. Judge Campbell stated that the District Court and the Court of Appeals had assumed that New Hampshire would apply its single publication rule in the case, thereby allowing Keeton to recover for harm allegedly suffered in every other state despite the almost nationwide limitations bar. Based, in part, on this assumption, the courts had refused to assert personal jurisdiction over the Hustler parties. After the Supreme Court ruling, the case was returned to the District Court; the $2 million jury verdict apparently represented harm suffered by Keeton both inside and outside New Hampshire.

Judge Campbell announced that on the appeal of the jury verdict, a question of first impression arose as to whether venue was proper in the federal court in New Hampshire. Another question of first impression was a constitutional choice of law issue, which, according to Judge Campbell, the United States Supreme Court had left open.

Before considering these questions, however, the court expressed uncertainty about whether or not New Hampshire would apply its statute of limitations in this case so as to allow Keeton to recover for damages caused outside New Hampshire. Judge Campbell's careful review of the case law, and his deference to "the practical desirability of not extending this litigation unnecessarily, as well as the ... traditional reluctance to render unnecessary constitutional decisions," resulted in the certification to the New Hampshire Supreme Court of the following questions:

1. Does New Hampshire follow an interstate single publication rule in libel cases?;

2. If so, does New Hampshire permit a plaintiff to recover for distribution of a libel in jurisdictions whose own statutes of limitations would bar recovery, where neither party is a New Hampshire resident, where the only factual connection with New Hampshire is the distribution there of one percent or less of the total circulation of the material, and where the relevant statute of limitations has expired in every jurisdiction but New Hampshire?

Watch this space for further developments.

Keeton v. Hustler Magazine, Inc., 828 F.2d 64 (1st Cir. 1987) [ELR 9:8:13]

Richard Serra was not entitled to prevent General Services Administration from relocating his "Tilted Arc" sculpture

In 1979, the United States General Services Administration purchased a piece of outdoor sculpture designed by Richard Serra. The sculpture, entitled "Tilted Arc," consisted of a 120 foot long piece of steel, 12 feet tall and weighing 73 tons; the work which cost $175,000, was installed in the Federal Plaza in lower Manhattan in July 1981. The contract between Serra and the GSA provided that all designs, sketches, models and the work itself would be the property of the United States.

Tilted Arc soon became a controversial topic among Plaza users and, after a public hearing, during which there was "robust and spirited debate," the Government decided to relocate the sculpture, primarily to regain the openness of the Plaza.

Serra challenged the Government's decision, claiming that the sculpture was "site specific," and that he had entered an oral contract with the GSA for the permanent display of the work in Federal Plaza. The artist, alleging causes of action for breach of contract, copyright and trademark violation, and the violation of his First and Fifth Amendment rights, sought a permanent injunction against any relocation and demanded at least $30 million in damages.

Senior Federal District Court Judge Milton Pollack found that the court lacked jurisdiction to determine Serra's contract, copyright, trademark and state law claims because the United States did not waive its sovereign immunity. Furthermore the powers of the GSA officials, and the manner in which they were exercised, did not violate Serra's constitutional rights.

In reviewing Serra's attempts to find a waiver of sovereign immunity with respect to his breach of contract claim, Judge Pollack noted that the contract between the artist and the GSA explicitly provided for dispute resolution under the Contract Disputes Act, and that a waiver provision of the Administrative Procedure Act did not apply to either the breach of contract or copyright infringement claim.

In considering the trademark infringement claim, the court commented that the Government's proposed relocation of Tilted Arc did not threaten Serra's identification with the work; the artist was not entitled to claim "trademark rights in the surroundings of the Plaza."

Under New York law, a work of art may not be displayed "in an altered, defaced, mutilated or modified form ... without the artist's consent." However, in the absence of federal jurisdiction, the court declined to hear the state claim.

Judge Pollack concluded by affirming the GSA's broad authority to acquire, maintain, and manage federal property. The relocation decision did not involve the aesthetics or content of Tilted Arc, stated the court and, even assuming that the sculpture was expression protected "to some extent" by the First Amendment, the GSA did not violate Serra's constitutionally protected rights. It was pointed out that the GSA owned Tilted Arc, and thereby obtained a significant degree of control over the work, particularly when such control was exercised in the public interest. And the GSA's relocation efforts, including retaining the work in the Plaza during the relocation search, and asking Serra to participate in the relocation, "were all designed to conserve and foster the free expression of the sculptor and the sculpture." It was the sheer size of Tilted Arc, apart from any message, that obstructed the Plaza and denied the public access to an open space, access that the GSA sought to restore.

Serra v. United States General Services Administration, 667 F.Supp. 1042 (S.D.N.Y. 1987) [ELR 9:8:13]

Art dealer may proceed with action seeking commissions from sculptor on the basis of an alleged oral agreement, rules New York trial court, rejecting argument that statute of frauds required dismissal of claim

In an action seeking to recover commissions allegedly due from sculptor Richard Friedberg, art dealer Alexander Milliken claimed that in 1978, he agreed to act as Friedberg's exclusive sales agent and dealer. The oral agreement purportedly set a commission rate of 50% on existing works sold and 33 1/3% on sales of new works created by Friedberg for third parties. Milliken claimed that Friedberg failed to pay the specified commissions, including a commission which would have arisen when Prudential Insurance Company commissioned Friedberg to create original works of art.

Friedberg denied entering into an exclusive agreement with Milliken; stated that any commissions due to the art dealer were discussed on a sculpture-by-sculpture basis; noted that in an April 1983 letter, he had terminated his relationship with the Milliken Gallery; and argued that the alleged oral agreement violated the state's statute of frauds.

A New York trial court has refused to grant summary judgment to Friedberg as to Milliken's causes of action for breach of contract (or alternately, for unjust enrichment or quantum meruit).

Judge Ciparick pointed out that the parties apparently understood that the alleged agreement was terminable at will; contracts terminable at will fall under an exception to the statute of frauds in that such contracts may possibly be fully performed within one year. Factual issues which were raised as to whether the alleged agreement was within the stated exception precluded summary judgment.

Friedberg also argued that the statute of frauds barred Milliken's action because the alleged oral agreement involved commissions on the negotiation of the sale of a business opportunity (i.e., Friedberg's art works) and such agreements are required to be in writing. However, the court adverted to Milliken's sustained efforts on behalf of the sculptor - the business at issue was not the type of discrete, complex transaction anticipated by the statute. And it was pointed out that artist - dealer relationships come within the state's Arts and Cultural Affairs Law which apparently does not require a writing for situations involving the consignment of a work of art to a dealer. According to Judge Ciparick, the alleged agreement, insofar as it provided for an artist-dealer relationship, thus was not covered by the cited provision of the statute of frauds.

Summary judgment was available to Friedberg with respect to Milliken's claim for a partnership accounting, and to Prudential with respect to the art dealer's cause of action for tortious interference with contractual relations.

Alexander Milliken, Inc. v. Friedberg, N.Y. Law Journal, p.6, col.4 (N.Y.Cnty., Nov. 6, 1987) [ELR 9:8:14]

Television station's termination of network affiliation with NBC did not result in deductible loss

The Hearst Corporation was not entitled to claim a deductible loss in connection with the termination of the affiliation between Dayton, Ohio television station

WDTN and the National Broadcasting Company, the United States Claims Court has ruled, since the asset in question was the station's ability to affiliate, rather than the affiliation with NBC per se.

Hearst was the successor by merger to Grinnell Communications Corporation. In June 1979, Grinnell announced that it would become affiliated with ABC. In January 1980, the company terminated its affiliation with NBC, and subsequently sought a refund for the tax years 1976 through 1980, claiming that because of the termination of the affiliation, Grinnell was entitled to deduct on its 1980 income tax return the $3.6 million attributed to the affiliation as part of the total purchase price which the company had paid to acquire the assets of WDTN in 1976.

In finding that Hearst's predecessor did not incur a deductible loss, Judge Bruggink cited the following factors as supporting the conclusion that the $3.6 million asset value did not depend on the fact that the affiliation was with NBC: WDTN was a VHF station with a low dial position in a balanced market, i.e., three stations competed for three networks. The station "did not, in any meaningful sense, have an asset that could be lost short of closing the station or entrance into the market of a new VHF station,' declared Judge Bruggink.

Hearst Corporation v. United States, 87-2 U.S.T.C. para.9491 (U.S. Claims Ct. 1987) [ELR 9:8:14]

Three year statute of limitations period restricted damage award to French composer in copyright infringement action involving the song "Feelings"

The Entertainment Law Reporter (9:3:19) noted that a Federal District Court jury in New York awarded composer Louis Gaste about $500,000 in damages in his copyright infringement action involving the song "Feelings," written in the 1970s by Morris Kaiserman, known as Morris Albert. The damage award to Gaste, the composer of the song "Pour Toi," published in 1956, represented eighty percent of the earnings derived from Albert's composition during the years 1983 to 1986.

The damage award was restricted to earnings which accrued within the three year period immediately preceding the filing of the lawsuit; this restriction was based on an opinion by Federal District Court Judge William C. Conner. Judge Conner's opinion, which was issued in May 1987, but only recently published, granted partial summary judgment to Morris. The court determined that the three year statute of limitations set forth in the Copyright Act barred Gaste from recovering damages for any infringement which occurred prior to July 21, 1983.

Gaste v. Kaiserman, 669 F.Supp. 583 (S.D.N.Y. 1987) [ELR 9:8:15]

Publisher of black history magazines obtains recalculated award of over $220,000 in statutory damages in copyright infringement action arising from unauthorized reprinting of magazines

Fitzgerald Publishing Co., the publisher of the Golden Legacy Illustrated Magazine, a multi-volume publication featuring the history of prominent black people in a comic book format, was entitled to statutory damages of $220,870 in the company's copyright infringement action against Baylor Publishing Co., Inc. and World Color Press, Inc., a Federal District Court has ruled. The damage award was recalculated by the court in a remanded proceeding ordered by a Federal Court of Appeals (ELR 9:2:18); the Court of Appeals ruled that the initial trial court decision incorrectly awarded Fitzgerald statutory damages of over $550,000 against Baylor, and ordered the recalculation of statutory damages to reflect a single award against both Baylor and World Color Press.

In the remanded proceeding, Judge Bartels recalled the following determinations reached by Chief Judge Weinstein in the original trial: Baylor acted without authorization in directing World Color Press to change Fitzgerald's copyright notice on the series' plates to a copyright notice provided by Baylor; Baylor defrauded World Color Press as well as Fitzgerald, thereby causing the printer a substantial financial loss on its contract with Baylor for the reprinting; Fitzgerald produced no evidence indicating that he would have or could have reprinted the Golden Legacy series himself were it not for the contract signed, albeit soon terminated, with Baylor.

Judge Bartels first found that Fitzgerald did not present evidence sufficient to alter the original ruling that Fitzgerald did not show that he suffered actual damages caused by the infringement itself-Fitzgerald did not prove that he was in direct competition with Baylor or that Baylor sold all of the copies of Golden Legacy delivered to him by World Color Press. Even if the court assumed that every infringing copy sold was a sale lost to Fitzgerald, the damages were too speculative to calculate, stated Judge Bartels. Fitzgerald produced no proof of his prior revenues or profits from the series or of Baylor's gross revenue, and the court stated that it required "credible evidence of the volume of diminished sales during or after the infringement, profit per unit

Fitzgerald or Baylor in order to estimate actual damages.

Fitzgerald was entitled to statutory damages, but only with respect to the first eleven volumes of the series since the copyrights for the last five volumes were not timely registered. In setting the statutory damages, Judge Bartels noted the willful nature of the infringement in the instant case, and the fact that Baylor's failure to appear before the court contributed to the lack of evidence available to Fitzgerald. And while World Color Press was not "as culpable" as Baylor in the damage done to Fitzgerald, the Court of Appeals had ruled it to be jointly and severally as a willful infringer. Judge Bartels proceeded to compute statutory damages by estimating the gross revenue produced by the infringing copies of the first eleven volumes and then subtracting the cost of producing the magazines (in order to approximate the profit which Fitzgerald would have made by selling the infringing works himself). An invoice showed that a total of 566,250 copies of the magazines were printed and shipped to Baylor by World Color Press. Most of the magazines were sold by Baylor for fifty cents per copy, thus generating $283,125 in revenue. World Color Press charged Baylor about $62,255, reflecting costs of printing plus overhead and expected profit. The court, accordingly, awarded statutory damages to Fitzgerald of $220,870 against Baylor and World Color Press, and also awarded Fitzgerald actual damages of $866.50 against Baylor.

Fitzgerald Publishing Co., Inc. v. Baylor Publishing Co., Inc., 670 F.Supp. 1133 (E.D.N.Y. 1987) [ELR 9:8:15]

Coca-Cola Company's action alleging false advertising and misrepresentation of quality by rival orange juice producer was cognizable under section 43(a) of the Lanham Act despite failure to allege product confusion or "passing off"

The issue of whether Proctor & Gamble's advertising theme for its Citrus Hill Select orange juice involved a false representation under section 43(a) of the Lanham Act has been remanded to a Federal District Court for a ruling on the merits.

The Coca-Cola Company, which produces Minute Maid orange juice, claimed that Procter & Gamble's commercials, which were based on a "heart of the orange" theme, implied that the Citrus Hill juice was made only from the "heart," i.e., the cubed center, of the orange, and that Citrus Hill juice therefore was sweeter or better tasting than other juices. According to Coca-Cola, Procter & Gamble's production process was similar to the processes of its competitors in using the entire interior portion of the orange.

A Federal District Court granted Procter & Gamble's motion to dismiss the action on the ground that Coca-Cola did not allege product confusion or "passing off."

Federal Court of Appeals Judge Wellford adverted to the statutory phrase "any false description or representation" (emphasis added by the court), and found that the meaning of the phrase "clearly encompasses a false description or misrepresentation about the characteristics or qualities of overall quality of a product," and is not limited to claims of passing off a product. In addition to the language of the statute, and case law supporting a "common sense application," the court noted that protecting consumers from false or misleading advertising is an important goal of section 43(a). A private cause of action under section 43(a) allows interested parties, such as competitors, to enforce the statute and thereby further public policy.

The Coca-Cola Company v. The Proctor & Gamble Company, 822 F.2d 28 (6th Cir. 1987) [ELR 9:8:15]

Brown & Williamson Tobacco Company was entitled to recover $1 million in compensatory damages and $2.05 million in punitive damages from CBS and Chicago newscaster in libel action arising from report on cigarette advertising practices

A Federal Court of Appeals has upheld a jury verdict ordering CBS, Inc. and WBBM-TV newscast co-anchor Walter Jacobson to pay damages to Brown & Williamson Tobacco Corporation; the court reduced the jury's compensatory damage award of $3 million to $1 million (a Federal District Court had reduced the compensatory damage award to $1), and found that an award of $2.05 million in punitive damages was not excessive.

On November 11, 1981, Jacobson's nightly feature, known as "Walter Jacobson's Perspective," dealt with the marketing practices of the cigarette industry. As described by Chief Judge Bauer, Jacobson, in part, indicated that the strategy for selling Viceroy (a cigarette produced by Brown & Williamson) involved attracting young smokers by presenting the cigarette " 'as an illicit pleasure, a basic symbol of the growing-up maturing process. An attempt should be made,' says the Viceroy slicksters, 'to relate the cigarette to pot, wine, beer, and sex. Do not communicate health or healthrelated points' That's the strategy of the cigarette-slicksters, the cigarette business which is insisting in public ... we are not selling cigarettes to children. They're not slicksters. They're liars."

The court, in undertaking a thorough review of all aspects of the case, first rejected CBS and Jacobson's contention that the broadcast was an expression of editorial opinion protected by the First Amendment. The introduction to the report and the station's promotional advertisements appeared to lead reasonable viewers to believe that they would be hearing a news report by Jacobson. And the fact that Jacobson may have delivered the report in a caustic tone did not turn statements of fact into statements of opinion, stated the court.

Judge Bauer also rejected CBS' argument that Brown & Williamson actually conducted an advertising campaign following the strategy described in Jacobson's report.

It was next found that Brown & Williamson had proved by clear and convincing evidence that CBS and Jacobson either knew that the Perspective was false or in fact entertained serious doubts as to its truth.

Jacobson's researcher apparently intentionally destroyed critical documents while the litigation was pending, noted the court; Jacobson's testimony indicated that he intended to create the impression that the " 'pot,' wine, beer, and sex" statement was made by Viceroy (the comment actually appeared in a document prepared by a marketing and research firm); and the plain language of the broadcast undermined Jacobson's testimony that he did not intend to make a statement about Viceroy's then-current advertising practices.

The compensatory damage award was supported by evidence presented by Brown & Williamson, stated Judge Bauer, and the District Court incorrectly relied on the company's failure to prove any actual damages such as lost sales. Brown & Williamson was entitled to forego any proof of special damages and seek to recover compensatory damages under the doctrine of presumed damages because Jacobson's Perspective was libelous per se. Another significant factor for the court was the "extraordinarily powerful" nature of Jacobson's message, a power enhanced because of the medium through which it was delivered.

With respect to punitive damages, the court noted that the award of $50,000 against Jacobson was modest, considering the newscaster's net worth of over $5 million, and thus "might provide some deterrent value without being destructive" The $2 million award against CBS also was found to be a reasonable, but not unmanageable, deterrent.

Judge Bauer concluded by stating that even after granting CBS and Jacobson the fullest possible review, clear and convincing evidence required a finding that a local television journalist acted with actual malice when he made false statements about Brown & Williamson Tobacco Corporation, and that such statements were not protected by the First Amendment.

Brown & Williamson Tobacco Corporation v. Jacobson, 827 F.2d 1119 (7th Cir. 1987) [ELR 9:8:16]

Warner-Lambert is permanently enjoined from using certain facially false advertising claims for New E.P.T. Plus Pregnancy test kit

Warner-Lambert Company's claim that its "New E.P.T. Plus" pregnancy test kit provided an accurate result in ten minutes on Day 1 was false and misleading, as were claims that the procedure involved only one step and was the fastest test on the market, a Federal District Court in New York has found.

Judge Miriam Goldman Cedarbaum concluded that Warner-Lambert's proposed disclaimers or modifications to the advertisements would not adequately correct the false claims, and granted a motion for a permanent injunction sought by Tambrands, Inc., the producer of "First Response," a competing pregnancy test kit.

However, Tambrands' projections of sales and market share were found insufficient to show that the company lost revenue due to Warner-Lambert's advertising of New E.P.T. Plus.

The court rejected Warner-Lambert's counterclaims alleging that Tambrands engaged in false advertising. And while stating that Tambrands was entitled to costs, Judge Cedarbaum declined to award attorneys' fees, for "each of the parties made calculated efforts to advertise their products at the outer limits of their supportable qualities, as competitively and as close to the edge as the law permits." Wamer-Lambert may have "overstepped the bounds of permissible competition," but did not do so in bad faith so as to justify imposing attorneys' fees.

Tambrands, Inc. v. Wamer-Lambert Company, Case No. 86 Civ. 7122 (S.D.N.Y., June 29, 1987) [ELR 9:8:16]

Philadelphia trial court judge's defamation claim in connection with television station news broadcast did not establish actual malice, rules Federal Court of Appeals in upholding grant of summary judgment on behalf of Group W station

A Federal Court of Appeals has affirmed a District Court decision granting summary judgment to Philadelphia television station KYW, a division of Group W, Westinghouse Broadcasting and Cable, Inc., in a libel action brought by the Honorable Norman A. Jenkins, of the Court of Common Pleas of Philadelphia County.

Judge Jenkins alleged that KYW defamed him in the course of a television broadcast entitled "Hard Crime/Soft Time (The Case of Clayton Hewlett)", which aired on February 1, 1984. According to Judge Jenkins, the broadcast implied that he was directly responsible for the death of a nine year old girl murdered by Hewlett because the judge had sentenced Hewlett to probation, and apparently allowed him to remain on probation despite various purported violations of this status, thereby leaving Hewlett at large instead of in prison at the time when the girl was murdered. Judge Jenkins claimed that Hewlett had been continued on probation on the joint recommendation of an Assistant District Attorney and a Public Defender.

The District Court found that the statements in the broadcast were substantially true, and concluded that there was no evidence of actual malice to support Judge Jenkins' claim.

On appeal, Judge Mansmann described the news broadcast in detail, and stated that the court was willing to assume, for purposes of argument, that the broadcast was capable of a defamatory meaning. Nevertheless, the District Court did not err in granting summary judgment, declared Judge Mansmann, because no evidence was presented, which, by a clear and convincing standard, would show that KYW had serious doubts about the truthfulness of the broadcast. Furthermore, many of the allegedly defamatory statements were clearly opinions, and the opinions, "however biting," were protected by the First Amendment.

Jenkins v. KYW A Division of Group W, 829 F.2d 403 (3d Cir. 1987) [ELR 9:8:17]

BRIEFLY NOTED:

Copyright/Commercial Announcer.

A Federal Court of Appeals has affirmed the dismissal of announcer Larry Moran's copyright infringement action (ELR 8:11:20) against several record companies and music publishers in connection with the use of Moran's voice in a song entitled "Junk." A recording of Moran's voiceover narration was used in a commercial for Kibbles 'N Bits dog food; the members of a musical group known as Bronski Beat subsequently incorporated Moran's performance into their song. Judge Manion agreed with the District Court that Moran did not have standing to sue as a beneficial owner of the copyright in the commercial (the court, however, rejected any implication by the District Court that beneficial ownership necessarily depends on having been part of the copyright's legal chain of title). It was found that Moran's performance was a work made for hire, and that Quaker

Oats, his employer, was the author of, and owned all the rights comprised in, the commercial's copyright.

Moran v. London Records, Ltd., 827 F.2d 180 (7th Cir. 1987) [ELR 9:8:17]

Copyright Infringement/Music.

A Federal District Court in Illinois has found Tadeusz Kowalczyk liable for infringing seven copyrighted musical compositions, including "Chances Are," "Charade," and "Dear Heart." Kowalczyk used a radio receiver connected to eight remote speakers to provide music in his Chicago restaurant. In denying Kowalczyk's claim that he was exempt from liability under section 110(5) of the Copyright Act, the court credited an expert's testimony that the radio receiver was not of a type commonly used in private homes; found that the unauthorized performances were "further transmitted to the public," and observed that the restaurant was not the type of small commercial establishment protected by the exemption - the restaurant had sufficient space and generated enough revenue to justify the use of a commercial background music service. The court permanently enjoined Kowalczyk from engaging in the unlicensed public performance of the copyrighted works, and awarded the copyright owners statutory damages of $10,500, attorney's fees of about $21,500 and costs of about $1,700.

International Korwin Corp. v. Kowalczyk, 665 F.Supp. 652 (N.D.Ill. 1987) [ELR 9:8:17]

IN THE NEWS

Gore Vidal obtains ruling requiring Writers Guild of America to disclose identity of arbitrators involved in resolving credit dispute over "The Sicilian"

The Writers Guild of America must identify the arbitrators involved in denying Gore Vidal's claim for screenplay credit for "The Sicilian;' a Los Angeles trial court judge has ruled.

A Guild arbitration panel granted writing credit to Steve Shagan for adapting the screenplay from a novel by Mario Puzo. Vidal claimed that the Guild's method of determining writing credits was improper. The Writers Guild has announced that it will challenge Superior Court Judge Miriam Vogel's decision. [Jan. 1988] [ELR 9:8:18]

Writers Guild must hold new arbitration concerning story credit for the film "Beverly Hills Cop II" rules Los Angeles trial court

The Writers Guild of America must hold a new arbitration to determine the story credit for the film "Beverly Hills Cop II," a Los Angeles trial court judge has ruled.

Writers Bud Shrake and Dan Jenkins claimed that the Guild violated its own rules in denying them story credit. Although Judge Ricardo Torres upheld the arbitrators' ruling granting screenplay credit to Larry Ferguson and Warren Skaaren, the ruling awarding story credit to Robert Wachs and Eddie Murphy was set aside. [Jan. 1988] [ELR 9:8:18]

Paramount Music Corp. is awarded damages of $58,000 in copyright infringement action involving "Thanks for the Memories"

Federal District Court Judge Manuel Real has awarded Paramount Music Corp damages of $58,000 in the company's copyright infringement action against Robert Kovoloff. Kovoloff who used the song "Thanks for the Memories" in a newspaper advertisement without authorization from Paramount, also was enjoined from engaging in any future infringement of the work. [Jan. 1988] [ELR 9:8:18]

Television advertising salesman obtains jury verdict of $256,000 in wrongful termination action against Orange County broadcaster

An Orange County trial court jury has awarded Steve Conobre, formerly employed as a KDOC-TV advertising salesman, damages of $256,000 in his wrongful termination action against the station.

Conobre claimed that his employment was terminated, in part, because he refused to misrepresent allegedly false ratings to potential advertisers.

The jury awarded Conobre $181,000 in compensatory damages and $75,000 in punitive damages; the punitive damage award was allocated among Golden Orange Broadcasting Co., a company director, a former station manager, and KDOC talk show host Wally George. [Jan. 1988] [ELR 9:8:18]

David Letterman obtains dismissal of entertainer Martha Raye's $10 million libel action

A Los Angeles trial court judge has dismissed entertainer Martha Raye's $10 million lawsuit against talk show host David Letterman.

In an opening monologue during the March 5, 1987 broadcast of his show, Letterman commented on a purportedly "terrifying commercial on television last night, featuring Martha Raye: actress, condom user" Raye claimed that the remark was defamatory in stating that she used condoms and implying that she was sexually promiscuous. Raye also claimed that Letterman's retraction of the statement was insufficient because it was read in an arrogant manner and accompanied by comedic sound effects.

Los Angeles Superior Court Judge Norman Epstein ruled that the remark and the retraction could not be reasonably understood in a defamatory sense. According to news reports, Judge Epstein noted that the remark would be understood as a joke or a parody of Raye's denture cleaner commercials, and would not be taken as a statement that Raye actually used condoms, that she was promiscuous, that she actually made a condom commercial or any other statement as fact. And because the original remark was not defamatory, neither was the later retraction, particularly since Letterman expressly said that the March 5th statement was a joke and was not meant to be taken seriously. [Jan. 1988] [ELR 9:8:18]

Federal District Court in Los Angeles denies interview subject's request to restrain broadcast of "60 Minutes" report on dental clinics

A Federal District Court in Los Angeles has refused dentist Howard M. Stein's request for a temporary restraining order seeking to prevent CBS from broadcasting a "60 Minutes" segment featuring an interview with Stein conducted by reporter Diane Sawyer.

The segment, entitled "Drilling for Dollars," reported on high volume dental clinics. During the challenged interview, Sawyer confronted Stein with accusations of malpractice and fraudulent billing. Stein claimed that he was advised by the segment producer that the interview would not be a "hatchet job;' and that CBS' deceptive conduct in obtaining the interview therefore constituted trespass or invasion of privacy, rather than raising any First Amendment issues.

Judge Terry J. Hatter, Jr., however, in rejecting Stein's request, stated that the dispute involved a prior restraint, that Stein was aware of the program's reputation for hostile questions, and that it was not likely that Stein would succeed in his claims. [Jan. 1988] [ELR 9:8:18]

Los Angeles trial court judge reduces jury's $1 million punitive damage-award to stuntwoman in wrongful termination action against Spelling Goldberg Productions

A Los Angeles trial court judge has reduced to $333,000 a jury award of $1 million in punitive damages to stuntwoman Julie Johnson in her wrongful termination lawsuit against Spelling Goldberg Productions (ELR 9:5:20). According to news reports, Superior Court Judge Leon Savitch found that the award of $1 million in punitive damages was excessive, and not sufficiently supported by the evidence. However, the court let stand

$111,000 in compensatory damages, resulting in a total award to Johnson of $444,000.

Johnson had claimed that Spelling Goldberg did not renew her contract to act as the stunt coordinator for the television show "Charlie's Angels" after Johnson complained about safety conditions on the production and about alleged drug use by crew members. In 1979, Johnson and another stuntwoman were injured while working on the show.

Spelling Goldberg had argued that the quality of Johnson's work resulted in the decision not to renew her contract. [Jan. 1988] [ELR 9:8:19]

Update: "Platoon"/"Hoosiers" Video Dispute

As reported in ELR 9:5:19, Hemdale Film Corp. and Vestron Video are engaged in a dispute concerning the home video rights to the films "Platoon" and "Hoosiers."

In November 1987, Federal District Court Judge David Kenyon granted Vestron's request for a preliminary injunction to prevent the pending release of videocassettes of "Platoon" by Home Box Office. Home Box Office obtained the video distribution rights to "Platoon" and "Hoosiers" from Hemdale after the contract dispute arose between Hemdale and Vestron. Judge Kenyon, according to news reports, stated that Vestron was likely to prevail on its copyright infringement claims.

Home Box Office has sought a clarification of the court's order requiring the company to notify video dealers that all tapes of "Hoosiers" (which was released in September) must be returned and to provide the court with an accounting of the tapes and with an estimate of when all accounts receivable might be collected. And

Vestron, although indicating its intent to do so, apparently has not yet posted the $25 million cash bond required for the court's order to go into effect. [Jan. 1988] [ELR 9:8:19]

California Public Utilities Commission issues rulings concerning telephone message services

The California Public Utilities Commission, apparently acting in response to complaints from parents about telephone message services such as "dial-a-porn," has ordered the state's telephone companies to allow their customers to block 976-prefix calls. Residential customers may obtain central office blocking of dial-a-message calls by paying a fee of $2 by February 1988.

Pacific Bell, which handles the majority of 976 service in California, estimates that it will cost $20 for each household requesting blocking: the remainder of the cost not covered by the $2 charge to customers will be imposed on the 976 message providers, according to the Commission order.

The Commission also ruled that talk-lines, a 976 program linking callers, often teenagers, with up to eight other callers, violate state regulations limiting 976 calls to recorded information or interactive service, i.e., using telephones for home shopping or banking. Pacific Bell therefore was entitled to refuse to provide 976 service to Carlin Communications for Carlin's talk-line service. [Jan. 1988] [ELR 9:8:19]

DEPARTMENTS

In the Law Reviews:

Columbia-Volunteer Lawyers for the Arts Journal of Law & the Arts has published Volume 4, Number 11 with the following articles:

Libel in Fiction: The Sylvia Plath Case and Its Aftermath by Robert Callagy, Irwin Karp, Victor A. Kovner, Charles Rembar and Judith Rosaner, 11 Columbia-VLA Journal of Law & the Arts 473 (1987)

Recent Developments in the Law of Parallel Imports: Nothing is Black and White in the Gray Market by Christopher C. Larkin, 11 Columbia-VLA Journal of Law & the Arts 505 (1987)

Making Secrets: The Costs of Defining as Inside Information the Editorial Decisions of a News Organization by Tobia Frankel & Anne E. Cohen, 11 Columbia-VLA Journal of Law & the Arts 531 (1987)

Imperatives for Enforcing Authors' Rights by John M. Kernochan, 11 Columbia-VLA Journal of Law & the Arts 587 (1987)

Misapplication of the Misappropriation Doctrine to Merchandising by David J. Meyer, 11 Columbia-VLA Journal of Law & the Arts 601 (1987)

The Reform of Notice Omission: Crumb v. A. A. Sales, Inc. as a Paradigm by Richard W. Stim, 11 Columbia-VLA Journal of Law & the Arts 635 (1987)

Book Review: Copyright Law in the United Kingdom and the Rights of Performers, Authors and Composers in Europe by J.A.L. Sterling & M.C.L. Carpenter, reviewed by Barbara Ringer, 11 Columbia-VLA Journal of Law & the Arts 665 (1987)

1987 Entertainment, Publishing and the Arts Handbook, edited by Robert Thorne and John David Viera, has been published by the Clark Boardman Company, Ltd., New York with the following articles:

Electronic Media and the Economics of the First Sale Doctrine by David Waterman, 1987 Entertainment, Publishing and the Arts Handbook 3 (1987)

Sufficiently Supervised Commissioned Workers: Mythical Beasts Sculpted from Old Law by Alex Lambrous, 1987 Entertainment, Publishing and the Arts Handbook 15 (1987)

Defamation Under the Uniform Single Publication Act: How Many Counts Per Complaint? by John L. Geiger, 1987 Entertainment, Publishing and the Arts Handbook 39 (1987)

The Many Costs of Libel by Martin Garbus, 1987 Entertainment, Publishing and the Arts Handbook 45 (1987)

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Protecting Celebrity Reputational Interests After Philadelphia Newspapers v. Hepps by Christian L. Castle, 1987 Entertainment, Publishing and the Arts Handbook 77 (1987)

Coming Soon to a Theater Near You by Robert M. Snider, 1987 Entertainment, Publishing and the Arts Handbook 109 (1987)

Collaboration in Theater: Problems and Copyright Solutions by Susan Keller, 1987 Entertainment, Publishing and the Arts Handbook 119 (1987)

A Coat of Paint on the Past? Impediments to Distribution of Colorized Black and White Motion Pictures by Richard J. Greenstone, 1987 Entertainment, Publishing and the Arts Handbook 163 (1987)

Colorization of Motion Pictures-Another View by Jon A. Baumgarten, 1987 Entertainment, Publishing and the Arts Handbook 183 (1987)

Profit Participation in the Motion Picture Industry by Steven D. Sills and Ivan L. Axelrod, 1987 Entertainment, Publishing and the Arts Handbook 189 (1987)

From Pitch to Profit: An Overview of the Motion Picture Production Process by Frederic N. Gaines and Jonathan David Bader, 1987 Entertainment, Publishing and the Arts Handbook 203 (1987)

The Motion Picture in 1987-A Study in Economic Turmoil by Peter J. Dekom, 1987 Entertainment, Publishing and the Arts Handbook 219 (1987)

Development and Production Agreements by Henry 1. Bushkin and Beth Maloney Jelin, 1987 Entertainment, Publishing and the Arts Handbook 239 (1987)

Subliminal Projection in the Media by John J. Tormey III, 1987 Entertainment, Publishing and the Arts Handbook 259 (1987)

The Section 110(5) Exemption for Radio Play in Commercial Establishments: A Narrowly Construed Music Copyright Haven by Robert Thorne, 1987 Entertainment, Publishing and the Arts Handbook 287 (1987)

"So Long As Time Is Music": When Musical Compositions Are Substantially Similar by David May, 1987 Entertainment, Publishing and the Arts Handbook 313 (1987)

Music That Sells (A Behind-the-Scenes Look at Advertising Music and Broadcast Performance Royalties) by Jeffrey J. Brabec, 1987 Entertainment, Publishing and the Arts Handbook 341 (1987)

Two Factors That Reduce Record Company Profitability by David E. Kronemyer and J. Gregory Sidak, 1987 Entertainment, Publishing and the Arts Handbook 371 (1987)

The Australian Music Industry-A Legal Perspective by Warren Cross, 1987 Entertainment, Publishing and the Arts Handbook 401 (1987)

Photographers' Guide to Privacy by The Reporters Committee for Freedom of the Press, 1987 Entertainment, Publishing and the Arts Handbook 411 (1987)

Protection of Names and Likenesses as Rights of Publicity or Trademarks: A Comparison by J. Thomas McCarthy, 1987 Entertainment, Publishing and the Arts Handbook 425 (1987)

Are California Right of Publicity Statutes Unconstitutional? A Second Look at Some First Amendment Problems by James L. Swanson, 1987 Entertainment, Publishing and the Arts Handbook 437 (1987)

Employing Minors in the Entertainment Industry by Carol Lynn Akiyama, 1987 Entertainment, Publishing and the Arts Handbook 465 (1987)

Comm/Ent, Hastings Journal of Communications and Entertainment Law, has published Volume 9, Number 4 with the following articles:

MFJ: Judicial Overkill-Further Perspective and Response by Robert B. McKenna and Ronald L. Slyter, 9 Comm/Ent 565 (1987)

If It Ain't Broke, Don't Fix It by John R. Worthington, 9 Comm/Ent 583 (1987)

Freeing the Telephone Company Seven: The Justice Department Joins the Chorus by James P. Denvir, 9 Comm/Ent 595 (1987)

Congress and the Federal Communications Commission: The Continuing Contest for Power by Harry M. Shooshan III and Erwin G. Krasnow, 9 Comm/Ent 619 (1987)

United States Regulation of Transborder Speech by Stephen R. Barnett, 9 Comm/Ent 635 (1987)

Cameras in the Courtroom: A First Amendment Right of Access by Richard H. Frank, 9 Comm/Ent 749 (1987)

Communications and the Law, Volume 9, Number 6, has been published by Meckler Corporation, 11 Ferry Lane West, Westport, CT 06880, with the following articles:

Freedom of Expression: The Warren and Burger Courts by F. Dennis Hale, 9 Communications and the Law 3 (1987)

Fact or Opinion: Where to Draw the Line by Robert L. Spellman, 9 Communications and the Law 45 (1987) [ELR 9:8:20]