WASHINGTON MONITOR

Supreme Court Hears Oral Argument in New York "Son of Sam" Case

by Michael R. Klipper

On October 15, 1991, the United States Supreme Court heard oral argument in Simon & Schuster, Inc. v. Members of the New York State Crime Victims Board. Simon & Schuster involves an appeal from a 2-1 decision by the United States Court of Appeals for the Second Circuit sustaining the constitutionality of New York's so-called "Son of Sam" statute.

Background

In general, the New York law requires a "criminal" to pay over to the New York State Crime Victims Board any monies that he receives for the retelling by way of a book, movie, magazine, radio, or television presentation, of a crime that he perpetrated. The Victims Board then deposits the funds in an escrow account for, among things, payment to satisfy any judgments later recovered by the victims of the crime. To gain access to the escrowed funds, a victim must recover a money judgment against the "criminal" within five years of the creation of the escrow account. For purposes of the Act, the term "criminal" encompasses anyone accused or convicted of a crime, anyone acquitted of a crime by reason of insanity, or anyone who admits to having committed a crime.

In 1986, Simon & Schuster published the book Wiseguy which detailed the criminal activities engaged in by Henry Hill during Hill's years as a hoodlum. Wiseguy was later adapted for the screen as the highly acclaimed

motion picture Goodfellas. In 1987 the New York State Crime Victims Board determined that the book Wiseguy fell within the purview of the "Son-of-Sam" statute and ordered all payments to Hill or his representatives to be turned over to the Board and held in escrow.

Simon & Schuster brought suit in federal court arguing that the statute was unconstitutional both on its face and as applied to the payments to Henry Hill. Presented with cross motions for summary judgment, the district court ruled for defendants, concluding that "[t]he state's interest in compensating crime victims is unrelated to the suppression of free expression and any burden on free expression is merely incidental."

A divided panel of the Second Circuit upheld the constitutionality of the New York law, albeit on different grounds. Unlike the district court, the Appeals Court ruled that because the statute imposed a direct, not incidental, burden on free expression, it could only be

sustained if it met the "strict scrutiny" test employed by the Supreme Court in such sensitive First Amendment cases. Under this test, a law must be both necessary to serve a compelling state interest and narrowly tailored to satisfy that state interest. Applying this test, the Second Circuit sustained the law; it found that the Act is narrowly tailored to serve the compelling state interest of "denying criminals any gain from the stories of their crimes until the victims of those crimes are fully compensated for all losses arising out of their victimization."

On February 19, 1991 the Supreme Court granted Simon & Schuster's petition for certiorari.

Supreme Court Briefs

In its initial and reply briefs, Simon & Schuster argues that the New York law must be tested under the Court's strict scrutiny test and that the statute fails to meet this

tough standard. In petitioner's view, the strict scrutiny test is the appropriate standard because the New York law:

-- is a direct burden on speech: it has caused and will continue to cause some books not to be written and other books to be altered so as to excise any portions that would cause the work to fall within the reach of the statute;

-- singles out those engaged in expressive activity for differential treatment: it "deprives only those engaged in expressive activity from receiving agreed-on payments for lawful activity, prohibits only the media from making payments for lawful activity, and subjects only the media's contracts to the inspection and regulation of the Board"; and

-- is a "content-based" regulation of speech: it permits payments to be made for all speech except for speech that discusses wrongful activity.

According to Simon & Schuster, the New York law falls woefully short of satisfying this heightened standard -- a standard that is so strict that it is "virtually unprecedented" for a statute to survive this exacting review. This is so, petitioner avers, because "[t]he interests said to be advanced by the statute [e.g., meaningful victim compensation] could be served by generally applicable [crime victim] legislation; none of those interests requires the burdens of the statute to be borne only by the specified speech."

In contrast, the Board argues that the law affects speech in an indirect and insubstantial manner and thus does not raise First Amendment difficulties. According to the Board, this is true for a variety of reasons. First, the statute does not stop a criminal from speaking about the crime; it merely precludes him from profiting from such reenactment, at least prior to the time that the victims are compensated for their injury and suffering. In

the same vein, respondent asserts that the statute does not:

-- prevent a publisher from publishing the criminal's story;

-- compel a publisher to delete a crime discussion from a work; or

-- force a publisher to forgo the profits from a book.

In sum, it is the Board's position that the criminal can tell his story and the publisher can publish it; all that is affected is the criminal's ability to profit from the reenactment before the victim is compensated.

Finally, the Board asserts that the law is a victims' compensation statute. The state's interest in ensuring that victims are compensated prior to a criminal's profiting from retelling his story is sufficient to insulate the law from constitutional challenge, irrespective of whether the law is judged under a "strict scrutiny" or "incidental speech" standard.

The significant First Amendment issues raised by Simon & Schuster prompted the filing of a number of "friend of the court" briefs with the High Court.

Among those submitting briefs in support of Simon & Schuster were the Association of American Publishers ("AAP") and the Motion Picture Association of America ("MPAA").

In its brief, AAP underscores the fact that "writings about crime are a staple of our literary heritage," and that the New York law would restrict "the creation of works dealing with crime." According to AAP, its members regularly publish "crime-related" books, including not only works depicting the lives of well-known criminals, but biographies and autobiographies which do not focus on criminal wrongdoing, but include discussions of "youthful transgressions, use of illegal drugs, wife beatings, and the like." In AAP's view, in these instances, the statute may cause these types of works

"never [to] be published or, if published, . . . [to] be radically altered as to content."

Similarly, in its submission MPAA asserts that "[t]he `true crime story' film genre and the film biography in which depiction or discussion of crime is critical to the development of the subject's life have been mainstays of the movie industry from the silent era of the early twentieth century to the present time." MPAA points out that these films generally require the involvement of the criminal and that such assistance is not forthcoming unless the criminal is paid. MPAA argues that the constraints on such payments by the New York statute, and similar ones elsewhere, seriously burden the production of films:

"A film-maker who wants to present the experience and outlook of the person who knows better than anyone else how and why the crime was committed is left with the unsatisfactory recourse of telling a different

story, using a different approach, or resorting to fiction. These laws have thereby distorted and truncated the content of films."

Among those urging the High Court to sustain the constitutionality of the law are the attorneys general from more than 30 of the 42 states that have enacted a "Son of Sam"-type law, representatives from state, local and municipal governments, and groups representing the interests of crime victims.

For their part, the state attorneys general take the position that the New York law "does not directly burden free speech"; instead, the New York law "regulates the contract that permits a criminal to profit through exploitation of his crime." According to the States, when a publisher and a criminal enter into a contract relating to the retelling of the latter's wrongful behavior, the victim becomes a third-party beneficiary to the agreement and thus can turn to the criminal for compensation.

In addition, a victims' rights clinic filed in support of the Board urging the Court to create a new category of unprotected speech -- "pernicious profiting." According to this entity, adoption of such a new category would preclude criminals from commercially exploiting their crimes and would be premised on the determination that this form of speech should be treated in the same manner as obscenity, "fighting words," and other types of speech deemed to be outside the First Amendment.

One of the most interesting of the amicus briefs was submitted by the United States. Apparently, an unstated purpose of the Government's brief is to try to insulate the federal "Son of Sam" law from a possible decision invalidating the New York statute. To this end, the Government (1) tells the Justices that the New York statute differs in several key respects from the U.S. "Son of Sam" law (and several state acts), and (2) urges the Court to "resolve the case before it on grounds that do

not unnecessarily call into question statutes that differ from the New York statute in relevant respects." In support of its position, the Government emphasizes, among other things, that the federal law does not apply until a person has been convicted, and even then it is triggered only by specified offenses against the United States, i.e., the crime of delivering sensitive information to a foreign government and crimes that cause physical harm to individuals.

October 15th Oral Argument

A wide array of matters was touched upon at the October 15th oral argument, including the purposes underlying the New York law, whether a legislature could pass a law that would make all income of a convicted criminal subject to escrow to pay victims of his or her crimes,

and whether the New York statute poses a direct or incidental burden on protected speech.

One issue took up a significant portion of the oral argument: whether the New York law sweeps too broadly. Basically, this issue arose in two contexts: first, with regard to the Act's expansive definition of "criminal," and second, with respect to the fact that the law applies to proceeds flowing from a "criminal's" recounting of any non-victimless state or federal crimes committed -- irrespective of whether the wrongful act in question was violent or non-violent, or serious or minor, and regardless of whether the discussion of the wrongful behavior took up only a small portion of the work. A few examples will help illustrate how the issue came up during oral argument.

First, counsel for Simon & Schuster was asked whether the law would reach a book in which the author admitted that he or she had stolen a pack of cigarettes

twenty years earlier. Counsel responded that the New York statute would "absolutely" cover such a situation. In part, counsel argued that this was true because the New York law covered not only proceeds to be paid to convicted criminals, but also those monies due to individuals who are determined by the New York State Crime Victims Board to have admitted to crimes in their books.

Second, during a discussion of the type of proceeds subject to the law, counsel for the Board acknowledged that the law would clearly reach all proceeds from the Confessions of St. Augustine, given that the book alludes to St. Augustine's theft of an apple. One Justice termed this result "ridiculous!"

Third, Simon & Schuster's counsel noted that the Act has been found to reach all of Jean Harris' proceeds from her book depicting prison conditions in a New York penal facility. This was so, Simon & Schuster

pointed out, despite the fact that Harris discussed her criminal behavior in only two of the book's fourteen chapters.

Finally, counsel for Simon & Schuster made the point that the law was so broad that it would ensnare such significant works as The Autobiography of Malcolm X, and would also inhibit the production of works on an array of important issues. Counsel indicated that this latter category included books by those accused or convicted of crimes relating to their (1) participating in abortion protests, (2) assisting terminally ill patients in committing suicide, and (3) responding violently to those who have physically abused them (e.g., "battered women").

Conclusion

Predicting the outcome of a Supreme Court case is a risky business. It is especially dicey to make a

prediction based on the comments made by the Justices during oral argument. Rather than predict the outcome, I will suggest one possible approach that the Justices might embrace.

It is conceivable that the Court will follow the suggestion of the U.S. Solicitor General and sidestep issuing a broad decision that addresses directly the constitutionality of all laws that attempt to restrict the ability of a "criminal" to receive proceeds for retelling his wrongful acts. The Court could then go on to void the New York law, stating that it sweeps too broadly through a sensitive First Amendment area. Such an approach would void what is apparently the most far-reaching of the "Son of Sam" laws without necessarily invalidating other, less sweeping ones, including the federal act. In any event, we should know the real answer sometime after the new year.

Mr. Klipper is of counsel to the Washington, D.C. law firm of Leventhal, Senter & Lerman. Prior to his current employment he served as counsel for both the United States Judiciary Committee and the Motion Picture Association of America, Inc.
[ELR 13:6:3]

RECENT CASES

Novelist prevails in infringement claim against author of play about Thomas Jefferson's purported relationship with slave

Fawn M. Brodie's 1974 biography of Thomas Jefferson included a discussion of an 1802 newspaper account of the purported liaison between Jefferson and a slave "concubine" named Sally Hemings. In 1979, Barbara

Chase-Riboud wrote the book "Sally Hemings: A Novel." In 1982, Granville Burgess wrote a play entitled "Dusky Sally;" a Philadelphia theater planned to present the play in 1988. When Chase-Riboud claimed that the play infringed her copyrighted novel, Burgess decided not to authorize any further productions of "Dusky Sally."

Burgess, arguing that the novelist's actions ruined the marketability of his play, sought a declaratory judgment that the play did not infringe Chase-Riboud's work and also alleged causes of action for trade libel, commercial disparagement and disparagement of title, intentional interference with contract, misrepresentation, and unfair competition.

Federal District Court Judge Robert F. Kelly noted the "sheer number of similarities in the fictional details" of the two works, and the fact that the similarities did not derive from any historical record. Many of the

secondary features of various scenes in the novel and the play were the same, observed the court, particularly "the single most glaring instance of 'creative similarity...'" - an imagined slave auction.

After comparing other incidents and characters in the two works, Judge Kelly concluded that the similarities were "so obvious, and so unapologetic that an ordinary observer can only conclude that Burgess felt he was justified in copying 'Sally Hemings,' or at least that there was no legal impediment to doing so, assuming a few modifications were made." In a footnote comment, Judge Kelly pointed out that the similarities were not of a general nature, as in the cases cited by Burgess: Hoehling v. Universal City Studios, Inc., 618 F.2d 972 (9th Cir. 1980; ELR 1:24:4); Alexander v. Haley, 460 F.Supp. 40(S.D.N.Y. 1978); and Walker v.Time Life Films, 784 F.2d 44(2d Cir.1986; ELR 7:9:9).

The court granted Chase-Riboud's motion for summary judgment and entered a permanent injunction barring Burgess from distributing or producing his play prior to entering a license agreement with Chase-Riboud for the use of substantial elements of her novel.

Burgess v. Chase-Riboud, 765 F.Supp. 233 (E.D.Pa. 1991) [ELR 13:6:6]

Publisher of "The Hunt for Red October" receives $35,000 in damages for breach of contract, but court reverses award of profits

It appears that "The Hunt for Red October" may have ended in a Federal Court of Appeals in New York.

After a series of proceedings, a Federal District Court awarded about $35,000 in damages, $7,800 as profits

wrongfully received, and prejudgment interest of about $15,000 to the United States Naval Institute, the assignee of the author's copyright, in Naval's action against Charter Communications, Inc. and Berkley Publishing Group arising from Berkley's early publication of the paperback edition of the work (ELR 13:1:20; 12:3:18).

Federal Court of Appeals Judge Kearse has found that Naval was not entitled to recover Berkley's profits or attorneys' fees, but has affirmed the award of actual damages and prejudgment interest.

In considering Naval's claim of copyright infringement, the court cited the principle that "an exclusive licensee of any of the rights comprised in the copyright, though it is capable of breaching the contractual obligations imposed on it by the license, cannot be liable for infringing the copyright rights conveyed to it." Naval had granted Berkley the exclusive right to publish and distribute English language paperback editions of "The Hunt for

Red October" in the United States and certain other areas. The court found that according to the provisions of the parties' agreement, Berkley, in September 1984, became the owner of the right to publish the paperback edition of the book and remained the owner of that right for at least five years after its first publication of that edition in 1985. Berkley's publication of the paperback in 1985 therefore could not have constituted copyright infringement, found Judge Kearse.

Judge Kearse emphasized that the court, in an earlier ruling in the case, had found that Berkley was liable to Naval for breach of contract, but was not liable for copyright infringement; the District Court's award of relief under the Copyright Act was set aside accordingly.

With respect to contract damages, the court noted that the District Court based the award on the premise that, but for the breach by Berkley, Naval would have sold in September the same number of hardcover copies it sold

in August. It was observed that the record showed that although there was a declining trend of hardcover sales of the book from March through August 1985, Naval continued to sell hardcover copies through the end of 1985, averaging about 3,000 copies a month. It was not erroneous for the District Court to find that Berkley's early shipment of about 1.4 million copies of the paperback edition caused Naval to lose some hardcover sales prior to October 1985, or for the court to look to sales during August 1985 rather than the first half of September in calculating damages.

United States Naval Institute v. Charter Communications, Inc., 936 F.2d 692 (2d Cir. 1991) [ELR 13:6:6]

California appellate court reinstates former NAACP official's libel action against Arsenio Hall

In early 1990, a Los Angeles trial court granted Arsenio Hall's motion for summary judgment in a libel action brought by Willis Edwards, the former president of the Beverly Hills/Hollywood chapter of the NAACP (ELR 12:11:19).

The parties' dispute arose following a November 1988 meeting between Hall and Edwards concerning the employment of black writers and producers by "The Arsenio Hall Show." After the premiere of the show in early 1989, an article in The Los Angeles Sentinel quoted Edwards as stating: "Once again, we are being utilized as a viewing audience and as on-camera talent, but ignored in the key positions such as directors, producers or writers."

Hall, in an interview with The Sentinel, first stated that the television show employed a significant number of blacks, and then purportedly claimed that Edwards had asked Hall's manager for a $40,000 donation to the NAACP. The Sentinel published an article discussing the interview with Hall under the headline "Hall: NAACP President 'An Extortionist.'"

During a mid-January radio program, Hall repeated his comments about the request for the $40,000 donation. Edwards sued Hall for libel and slander, and intentional infliction of emotional distress.

Hall, in a declaration filed in support of his motion for summary judgment, stated that he did not use the word "extort" or accuse Edwards of committing a crime. The trial court found that Hall's statements were opinions, that the context of the statements could not reasonably be interpreted by a factfinder as charging Edwards with a crime, and that Edwards failed to produce clear and

convincing evidence that, at the time Hall made the statements, he did so with knowledge of their falsity or reckless disregard of whether they were false.

Judge Devich, citing Milkovich v. Lorain Journal Company, 110 S.Ct. 2695 (1990; ELR 12:2:8), disagreed with the trial court's finding that Hall's comments were nondefamatory statements of opinion. It appeared to Judge Devich that the context of Hall's surrounding statements served to reinforce, rather than negate the impression that Hall seriously maintained Edwards was an extortionist. The Sentinel interview portrayed Hall as "completely serious in his accusations." And the question of whether Edwards wrongfully demanded $40,000 either to refrain from creating an unfounded controversy or to "look the other way" was "sufficiently factual to be susceptible of being proved true or false," stated Judge Devich.

Hall's argument that his statements were protected under the California Constitution was rejected, as was the argument that Edwards would not be able to prove constitutional malice by clear and convincing evidence. Contrasting versions were presented of the events at the November meeting of the parties, and, since conflicting inferences might reasonably be drawn from the evidence, the court concluded that triable issues of material fact existed.

It has been reported that the appellate court denied Hall's request for a rehearing.

Edwards v. Hall, Case No. B050513 (Ca.Ct.App., Sept. 26, 1991) [ELR 13:6:7]

Talk show host Howard Stern obtains dismissal of claims arising from "Halloween skit"

When Howard Stern, accompanied by members of his staff and television crew, went "trick or treating" in Bayside, Queens on October 31, 1990, the group encountered Susan Glickman. Glickman and a friend agreed to give rub-downs to Stern and the other "trick or treaters" at Glickman's home. At one point, a wedding photo of Susan and Mark Glickman was held up to a television camera, and Stern commented: "Mark's a lucky dude, swear to God; you're a good-looking girl; swear to God; poor Mark."

During his November 1st radio show, Stern discussed the preceding night's events and reminded listeners "don't forget, you know, it can only go so far 'cause there's a camera rollin' and I'm a married..." (emphasis added by court).

Susan and Mark Glickman called Stern during the show. Mark joked about his intention to sue his wife, Stern reassured Mark, and Mark announced, "I'm cool."

On November 3rd, the Howard Stern television show was broadcast on WWOR-TV. During the "Glickman skit," Robin Quivers, Stern's co-host, commented: "At first I thought, well this is interesting, she is saying, `My husband bought this for me and I'm going to cheat on him, with all these guys in it.'"

Mark Glickman subsequently sued Stern and other parties associated with the radio and television broadcasts, claiming that the Halloween skit and various statements of the parties caused people to view Glickman as a "loser" or a "wimp."

A New York trial court has granted Stern's motion for summary judgment on Glickman's causes of action for defamation, because the complained-of words constituted either opinion or humor. Judge Ciparick found that

a reasonable reading of the statements revealed no defamatory meaning. Rather, according to the court, the statements, when taken in context, "could not be understood to be reasonably considered by viewers and listeners of the Stern show as anything more than purely nonsensical entertainment."

The court also granted a motion for summary judgment dismissing Glickman's claims under sections 50/51 of the New York Civil Rights Law. It was noted that the mere fact that a telecast is commercially sponsored does not make the use of a party's name or likeness a use for advertising purposes if there is no connection between the alleged use and the commercial. The Halloween segment, "certainly presented a situation of interest to the public," noted the court and Susan Glickman invited this public attention and consented to it. The reference to Mark Glickman's first name and the brief display of the

wedding photo were reasonably related to the subject matter of the "skit."

Furthermore, the "fleeting glimpse" of the wedding photo was incidental and thus not actionable, and the duration and quality of the videotape obscured any clear view of Mark Glickman's face, rendering the image unrecognizable.

It also was observed that Mark had identified himself to radio listeners and volunteered other information about himself; in all, the use of Mark Glickman's name and likeness was protected under the newsworthiness exception, and was too incidental to be actionable.

The court also dismissed the cause of action for intentional infliction of emotional distress; the conduct was within the scope of the libel causes of action, and Glickman therefore could not seek recovery under a separate emotional distress claim.

Glickman v. Stern, New York Law Journal, p. 30, col. 3 (N.Y.Cnty., Oct. 15, 1991) [ELR 13:6:7]

Musicians are entitled to payments from Jackie Gleason estate for television exhibition of "The Lost Honeymooners" skits

In 1954, as described in a Memorandum decision of a New York appellate court, a trust agreement was executed by various film producers and distributors, including the Columbia Broadcasting System and Jackie Gleason Enterprises. The agreement governed performances by instrumental musicians belonging to the American Federation of Musicians. Each producer agreed to pay a portion of the revenues derived from the broadcast of films containing performances by instrumental musicians rendered between February 1, 1954 and January

31, 1959 whenever such films were exhibited on television broadcasts by the producers or their assignees.

In 1958, Jackie Gleason Enterprises was dissolved; the assets of the corporation were distributed to its sole shareowner, Jackie Gleason. The assets included a collection of kinescope recordings of the entertainer's one hour variety show. Certain skits, originally performed live during the show, have been called "The Lost Honeymooners;" Jackie Gleason granted distribution rights to the skits to Viacom International in 1985.

Kenneth E. Raine filed a lawsuit in 1985 seeking payment under the trust agreement from Marilyn Gleason and from Viacom, which was incorporated as a wholly owned subsidiary of CBS in 1970; the company spun off as an independent corporation in 1981.

A trial court granted Gleason's motion for summary judgment dismissing the complaint. A New York appellate court has agreed that Viacom was not bound by any

obligation originally assumed by CBS under the trust agreement. Viacom's right to use the material was not acquired through CBS, but from Jackie Gleason. And it was not shown that Viacom derived any right or incurred any obligation under the trust agreement to warrant the conclusion that Viacom was a successor in interest to rights granted to CBS by the agreement.

However, Jackie Gleason "clearly" was a successor to Enterprises under the trust agreement. Marilyn Gleason therefore was obligated, upon Viacom's exhibition of the designated Honeymooners material, to comply with the terms of the agreement. The trial court's order was modified to the extent of reinstating so much of the complaint against Marilyn Gleason as sought payment for the specified musical performances.

Raine v. Gleason, 571 N.Y.S.2d 474 (N.Y.App. 1991) [ELR 13:6:8]

Royalty collection service prevails in breach of contract action against members of the "Coasters"

The Artists Rights Enforcement Corp. agreed to use its best efforts to investigate and collect royalty fees for the members of the musical group known as the "Coasters." The contracts provided that the collection service would receive fifty percent of the gross receipts collected, and that each former group member would receive the balance remaining after out-of-pocket expenses were deducted from the gross receipts. The collection service was responsible for paying accounting service and legal fees out of its share of the proceeds recovered.

Artists Rights obtained an initial payment from Atlantic Records of $60,000; the total fees recovered from Atlantic amounted to more than $400,000.

In 1988, the group members entered new contingency contracts, with terms substantially identical to the prior contracts. Subsequently, the performers unsuccessfully sought to negotiate a lower percentage for the collection service.

In response to Artists Rights' lawsuit, the performers claimed that the collection service was entitled only to a percentage of contested matters.

A New York trial court noted that the contracts in issue applied to all royalty fees recovered, that the percentage received by the collection service included legal and accounting expenses, and that the performers accepted the benefits of the contracts for more than six years. The court granted Artists Rights' motion for summary judgment on the company's breach of contract claim, and also granted Atlantic Records' motion to dismiss the complaint against Atlantic given the lack of privity between the company and Artists Rights.

Artists Rights Enforcement Corp. v. Gardner, New York Law Journal, p. 22, col. 1 (N.Y. Cnty., Oct. 8, 1991) [ELR 13:6:9]

General Mills may license cable television rights to "Rocky and Bullwinkle" cartoon series, but does not hold videocassette or videodisc rights

In March 1959, Producers Associates of TV conveyed to General Mills the ownership of Producers' copyrighted cartoon series known as "Rocky and His Friends" (later renamed "The Bullwinkle Show"). General Mills obtained the "exclusive right in perpetuity to all exhibition rights (television and theatrical) in the United States, Alaska and Hawaii." A February 1960 letter agreement reaffirmed General Mills' exclusive

exhibition rights in "each of the programs and any element, segment or part thereof on television and in theatres without limitation..."

In 1990, General Mills attempted to license the Rocky and Bullwinkle series to the Comedy Channel, a cable television service. But Producers claimed that General Mills did not have cable rights in the series, and granted videocassette rights, according to news reports, to Walt Disney's Buena Vista Home Video division.

In response to General Mills' action for declaratory relief, a New York trial court has ruled that the contract encompassed cable television rights to the series, and that cable television rights also were within the "penumbra" of uses under the contract.

However, Judge Irma Vidal Santaella, citing Tele-Pac Inc. v. Video-Cinema Films Inc., 168 A.D.2d 11 (reported as Tele-Pac, Inc. v. Grainger, 570 N.Y.S.2d 521; ELR 13:4:10) found that General Mills did not possess

the right to distribute videocassettes of the series. It was noted that the terms "exhibit" and "use" connoted some element of control and that "if General Mills' grant allows it to make the subject cartoon series available on videocassettes to the general public, [General Mills] would lose its control over the series exhibition rights inasmuch as said rights would then be controlled by purchases [sic] of these individual videocassette tapes." Judge Santaella further found that the term "on television without limitation" referred to the use of a television set as an "instrumentality" as well as a means of broadcasting; playing a videocassette requires only a monitor capable of displaying the program material on a magnetized tape, and does not necessarily require a standard television set.

Producers raised a laches claim based on the fact that General Mills did not attempt to license cable television rights in the series until 1990 and therefore forfeited the

right to do so. The court rejected the claim, noting that the contract granted General Mills exclusive rights in perpetuity and did not require the company to exercise those rights at any particular time.

General Mills, Inc. v. Filmtel International Corp., New York Law Journal, p. 25, col. 4 (N.Y. Cnty., Oct. 10, 1991) [ELR 13:6:9]

Arbitrator rules that Lea Salonga may appear as "Kim" in then forthcoming Broadway production of "Miss Saigon"

Arbitrator Daniel G. Collins has ruled that Lea Salonga would be permitted to play the role of Kim in Cameron Mackintosh's then forthcoming Broadway production of "Miss Saigon."

Arbitrator Collins, in reviewing the background of the matter, noted that in August 1990, Actors' Equity Association had argued that the role of the Engineer, an Eurasian in the play, should be portrayed in the Broadway production by an Asian American actor. Equity eventually agreed that Jonathan Pryce, a Caucasian actor who originated the role of the Engineer in the London production, would repeat the role on Broadway as a "star" under Rule 3(B)(1) of the Agreement and Rules Governing Employment under the Production Contract for 1990 to 1992 between Equity and the League of American Theatres and Producers, Inc. Mackintosh agreed to assist Equity in increasing theatrical opportunities for Asian American Actors; Equity recognized the producer's "creative responsibilities."

Mackintosh engaged in extensive efforts to find Asian Americans for the part of Kim, but eventually asked Equity for permission for Salonga, a Philippine actress

who originated the role in the London production of the play, to appear in that part in the Broadway production. Equity denied Mackintosh's request.

Mackintosh argued that Salonga was a "star" of international distinction within the meaning of Rule 3(B)(1), and would provide, under Rule 3(B)(2), "unique services" which could not be performed by any resident American or American domiciled alien actress.

Arbitrator Collins, in considering whether Salonga's services in the Broadway production of Miss Saigon would be unique, pointed out that the part of Kim was an "Asian racially specific part;" that the pool of Asian American and non-American Asian actors with professional stage experience was very limited; that the part presented "extraordinary vocal and physical demands;" and that the part required considerable acting ability and "emotional suitability." The arbitrator observed that an extensive casting search discovered no Equity member,

United States citizen or resident alien who had, in addition to the vocal and physical capacity to perform the part, any significant professional experience, particularly in opening a major Broadway production.

Arbitrator Collins concluded that Salonga provided unique services within the meaning of Rule 3(b)(2) and would be permitted to play the role of Kim in the Broadway production of Miss Saigon.

In the Matter of the Arbitration between Cameron Mackintosh and Actor's Equity Association, Re Miss Saigon - Lea Salonga (Jan. 15, 1991) [ELR 13:6:9]

Orion Pictures loses effort to challenge arbitrator's initial jurisdictional rulings in dispute with Writers Guild

Orion Pictures Corporation acquired the rights to, and distributed, several unidentified films from production companies that were signatories to the Writers Guild collective bargaining agreement. Orion, a nonsignatory, refused to pay Guild members the collective bargaining agreement royalty rates.

When the Writers Guild sought arbitration under the agreement, Orion sought a dismissal, or, in the alternative, a stay of the arbitration pending a judicial determination on the arbitrability of the dispute. The arbitrator ruled that he had the authority to decide whether or not Orion was bound to arbitrate the instant matter, but suspended the proceedings to allow Orion to seek a judicial ruling on arbitrability.

A Federal District Court granted Orion's motion for summary judgment and vacated the arbitrator's decision that he was authorized to decide the issue of arbitrability; the court stated that the arbitrator exceeded his

authority in ruling that he had jurisdiction to determine whether Orion was a proper party to the arbitration proceeding.

A Federal Court of Appeals has vacated the District Court's order, first finding that the court lacked jurisdiction, under section 301 of the Labor Management Relations Act, to vacate the arbitrator's ruling. Judge Kozinski stated that once an arbitrator has asserted jurisdiction over a dispute, "even limited to ruling that he has jurisdiction to determine his own jurisdiction," a District Court generally may not review the arbitrator's ruling under the federal statute until there is a final award.

Judge Kozinski also found that the District Court was precluded by the Declaratory Judgment Act from considering the jurisdiction of the arbitrator. A court may not resolve questions about the jurisdiction of an arbitrator "at the behest of a party which has submitted the

question of arbitrability to the arbitrator for decision." In the instant matter, stated Judge Kozinski, Orion "has gone too far down the slippery slope in submitting its dispute to arbitration," and thereby waived its right to seek a de novo judicial determination of arbitrability.

Orion Pictures Corporation v. Writers Guild of America, West, Inc., Case No. 89-56004 (9th Cir., Oct. 15, 1991) [ELR 13:6:10]

Daughter of Hank Williams, Sr. loses claim for share of renewal term copyrights in late singer's works

Cathy Yvonne Stone, in litigating her claim to an interest in the estate of Hank Williams, Sr., obtained an Alabama Supreme Court ruling that members of the late singer's family and several music companies had (as

described by a Federal District Court in New York) "intentionally, willfully and fraudulently concealed [Stone's] identity, existence, claim and rights as a natural child of Hank Williams, Sr." The Alabama Supreme Court decision set aside 1967 and 1968 Alabama state court decrees that Stone was not an heir to Williams, Sr.'s estate, holding that the Williams parties' fraud excused Stone's delay in asserting her claim.

Stone also had filed a lawsuit in a Federal District Court in New York seeking an interest in the renewal term of the copyrights to the works of Williams, Sr. A Federal District Court granted, on the basis of the doctrine of laches, the Williams parties' motion for summary judgment. A Federal Court of Appeals affirmed the District Court decision.

After the Alabama Supreme Court decision, the Federal Court of Appeals granted Stone's motion for a rehearing; the court vacated its earlier decision, reversed

the District Court's dismissal on the basis of laches, and remanded the case for further proceedings (ELR 11:12:10).

On remand, Federal District Court Judge John F. Keenan first considered the effect of the Alabama Supreme Court's decision. Judge Keenan noted that Hank Williams, Jr., Wesley Rose and Roy Acuff had filed a lawsuit in Alabama seeking a declaratory judgment that Stone was barred from establishing that she was the natural daughter of Williams, Sr., and from asserting any claim to his estate. Stone counterclaimed against Williams, Jr. to establish her status as Williams, Sr.'s child. Stone also filed a third party complaint against the sister of Williams, Sr., the lawyer for the late singer's estate, and the insurance companies serving as sureties for the estate. The third party action involved Stone's effort to have the estate reopened and to recover punitive damages. An Alabama trial court granted summary

judgment to Williams, Jr., Acuff and Rose, holding that Williams, Jr. was the only heir of Williams, Sr. The court acknowledged that Stone was the biological daughter of Williams, Sr.; held that she was not entitled to inherit from his estate; and granted summary judgment to the parties named in the third party complaint.

Stone appealed only the decision granting summary judgment to the parties named in the third party complaint. However, according to Judge Keenan, the Alabama Supreme Court, in issuing the ruling described above, decided issues not placed before the court directly by Stone's appeal.

Williams, Jr., noting that the court's decision affected his rights in the estate of his father and that he had not been a party to the appeal, sought leave to appear to seek an order to vacate and modify the opinion. The court denied Williams, Jr.'s application, stating that the

third party action was an action in rem and that the court possessed jurisdiction over the estate.

Judge Keenan declared that Williams, Jr. was not given a "full and fair" opportunity to litigate the issues decided by the Alabama Supreme Court, and found that it would be "inappropriate and unfair" to grant preclusive effect to the court's decision.

It was observed that the Williams, Jr. parties did not have either a sufficiently close relationship or an identity of interest with the individuals named in Stone's third party action to be in privity with them, and therefore bound by the Alabama Supreme Court decision. The court pointed out that Williams, Jr., Acuff and Rose had not attempted to protect their interests before the Alabama Supreme Court because they had no reason to become involved in the appeal of a third party action to which they were not parties.

Judge Keenan proceeded to reject Stone's claim that she was entitled to an undivided one-third interest in the renewal copyrights to all musical works composed by Williams, Sr. and renewed under the Copyright Act of 1909 or the Copyright Act of 1976. The court found that the three year statute of limitations of the Copyright Act applied to Stone's claim, and that Stone's cause of action accrued on October 17, 1979. On that date, Stone met with Alabama authorities and acknowledged that her adoptive mother had told her that Williams, Sr. might be her father, that she knew her "identity," and that she did not want anyone to link her with Williams, Sr. Although Stone claimed that the Williams family parties withheld significant information from her, it was "clear," stated Judge Keenan, that by October 17, 1979, Stone, who was twenty-six years old at the time, had sufficient information to suggest that she could pursue a claim.

The court rejected Stone's contention that the Williams, Jr. parties were precluded from using the defense of the statute of limitations because of their participation in an allegedly fradulent scheme to deprive her of her copyright interests, and granted the William, Jr. parties' motion for summary judgment.

Stone also claimed that several music companies conspired with Irene Smith (the sister of Williams, Sr.) and Robert B. Stewart to deprive Stone of her renewal rights even though they owed a fiduciary duty to her. Smith, in 1955, became the administratrix of Williams, Sr.'s estate; Stewart served as the attorney for the estate from 1953 to 1975, and took over as administrator in 1969.

According to Stone, the music companies conspired with Smith and Steward (who were not named defendants) to withhold information from various parties concerning Stone's existence and paternity in order to prevent Stone from asserting her claims to benefits from

the estate of Williams, Sr. or to an interest in the renewal term of the copyrights in the singer's works.

Judge Keenan noted that Alabama recognizes a cause of action for fraudulent suppression of a material fact. But Stone presented no facts to support the assertion that the music companies and the estate parties had a fiduciary duty to her, and did not allege that the parties took any action to further the purposes of the alleged conspiracy. In the absence of a duty that would make their silence wrongful, the music company parties could not have participated in a conspiracy to advance the estate parties' purported goals simply by remaining silent. The court therefore granted the music and estate parties' motion for summary judgment.

Stone v. Williams, 766 F.Supp. 158 (S.D.N.Y. 1991) [ELR 13:6:11]

California appellate court upholds constitutionality of statute requiring disclosure of origin of recordings

A California appellate court has affirmed an order granting probation to Cletus Robert Anderson on condition he serve 180 days in the county jail for violating Penal Code section 653w by possessing for sale about 4500 audio tapes identified as "pirate recordings."

At the time of Anderson's arrest, the statute provided, in pertinent part, that "(a) A person is guilty of failure to disclose the origin of a recording...when, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells,...or possesses for these purposes, any recording or audiovisual work, the outside cover box or jacket of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer

thereof and the name of the actual author, artist, performer, producer, programer [sic] or group."

Judge Cooper, stating that the constitutionality of the disclosure requirements of section 653w was an issue of first impression, noted that the state's interest in enacting the statute was "to protect the public in general, and the many employees of the vast entertainment industry in particular, from the hundreds of millions of dollars in losses suffered as a result of the 'piracy and bootlegging' of the industry's products." The statute was narrowly and specifically drawn to meet its objectives, the state had a compelling interest in protecting the public from being victimized by false and deceptive commercial practices, and the statute proscribed only commercial speech - the state needed only show a reasonable relationship between the statute and the state's interest in preventing consumer deception, observed the court in

ruling that section 653w did not violate the First Amendment.

Judge Cooper then found that Anderson did not have standing to raise the issue of the statute's alleged over-breadth, and therefore did not reach that issue.

The court also rejected Anderson's argument that the statute was preempted by Federal copyright laws.

People v. Anderson, Case No.B057289 (Ca.Ct.App., Oct. 23, 1991) [ELR 13:6:12]

Ralph Andrews is not liable for arbitration award obtained by screenwriter, but producer's wholly owned corporations must pay amounts due under contract and under Guild agreement

When Harold Gast wrote a television film about the political developments in the Philippines, the screen-writer expected to be paid $120,000, pursuant to a pay or play contract, for his script and rewrites, plus another $13,800 in Writers Guild pension and health benefits. Two corporations in which Ralph Andrews was the sole officer and shareholder, paid Gast $30,000. But the television film was not completed, and Gast received no further payments.

The Writers Guild and Gast initiated arbitration with the two corporations and also named Andrews, in his individual capacity, as a party to the arbitration. The arbitrator ruled that the companies were alter egos of Andrews and that Andrews was liable for paying Gast the remainder of the compensation due under the contract.

Andrews and the corporations petitioned a Federal District Court to vacate the arbitrator's award. The court

granted summary judgment for the Guild confirming the arbitrator's findings.

Federal Court of Appeals Judge Beezer first pointed out that Andrews, who was not a party to the employment contract with Gast and was not a party to the collective bargaining agreement, had not voluntarily submitted the alter ego issue to the arbitrator and did not waive the right to an "independent judicial examination" of the issue. Judge Beezer therefore vacated the award to the extent it was against Andrews individually, and remanded the matter to the District Court.

The Andrews parties argued that under the collective bargaining agreement, the arbitrator lacked jurisdiction to award compensation exceeding the amount of $100,000. The arbitrator, after deducting the $30,000 already paid to the screenwriter, awarded Gast the $90,000 balance due under the contract, plus interest,

and the full amount of pension and health plan contributions.

In affirming the amount of the award, Judge Beezer stated that although the arbitrator may have erred by treating the plan contributions as "something other than 'compensation or payment'" under the agreement, the finding that "compensation or payment" referred only to the amount due in the employment contract, and not additional amounts due under the collective bargaining agreement was "at least plausible."

Ralph Andrews Productions, Inc. v. Writers Guild of America, West, Case No.90-55403 (9th Cir., July 2, 1991) [ELR 13:6:12]

Limited partnerships obtain partial summary judgment in breach of contract action against Dino DeLaurentiis Corporation

Seven New York limited partnerships, formed during the years 1979 through 1984 for the purpose of investing in films produced and distributed by Dino DeLaurentiis Corporation (now known as Paradise Films Inc.) each entered into purchase and license back agreements with Paradise. The agreements gave the partnerships ownership rights in one or more films in exchange for an initial cash payment and the execution of both recourse and nonrecourse promissory notes which matured in about ten years. The distribution agreements granted Paradise licenses to distribute particular films; Paradise agreed to pay a percentage of the distribution proceeds generated by the film to the limited partnership on a semiannual basis as earned. The parties agreed that another portion

of the proceeds would be used to satisfy the limited partnerships' obligations on the promissory notes.

The partnerships claimed that Paradise breached the distribution agreements by failing to make payments of distribution proceeds when due, failing to account, and failing to apply proceeds as prepayment toward promissory note obligations.

Paradise claimed that two general partners of the seven limited partnerships formed the partnerships and entered into the various agreements as a tax evasion scheme to generate unlawful tax benefits for the limited partners, and that the partnerships never intended to make payments on the promissory notes when payment became due.

A New York trial court found no evidence that the limited partnerships were fraudulent. Although the Tax Court had disallowed certain tax deductions for one of the individual investors, this did not invalidate the

parties' purchase and license back agreements, stated Judge Burton S. Sherman. Furthermore, even assuming there was a tax scheme, the agreements could be legally performed. It was noted that the Tax Court had found that while the purchase and license back agreements did not give one of the limited partnerships an ownership right to a film for tax purposes, the agreement did grant a contingent interest to participation in the distributable gross receipts of the films. And Paradise was barred from alleging that the agreements were void as against public policy as the company accepted and retained the benefits of the agreements.

Judge Sherman declined to determine the respective rights of the parties to ownership of the motion pictures "especially in light of [Paradise's] failure to account for distribution proceeds."

The court found that the limited partnerships did not repudiate the agreements, that Paradise breached the

agreements prior to any alleged repudiation, dismissed the defenses of fraud and unclean hands, granted the limited partnerships' motion for partial summary judgment, and ordered discovery on the issues of damages and ownership rights in the (unidentified) films.

Amityville Associates v. Paradise Film Inc., New York Law Journal, p. 22, col. 6 (N.Y.Cnty., July 8, 1991) [ELR 13:6:13]

NFL may not claim nonstatutory labor exemption defense in football players' antitrust action

In his most recent ruling in the ongoing action brought by various individual professional football players against the National Football League and its member teams, Judge David Doty has declared the end of the

league's nonstatutory labor exemption from the antitrust laws.

Freeman McNeil and seven other players signed contracts with their NFL employers; the contracts expired on February 1, 1990. McNeil alleged that the NFL parties violated section 1 of the Sherman Act as a result of illegal restraints under Plan B during the 1990-1991 NFL season. According to McNeil, the nonstatutory labor exemption defense no longer barred the antitrust claims, given the National Football League Players Association's action in 1989 (as described above).

The league contended that genuine issues of material fact existed regarding the effectiveness of the association's attempt to disclaim its status as a labor union, and regarding the association's "motive, credibility and good faith," and that the National Labor Relations Board had to decertify the association before it ceased to be a labor organization.

After reviewing the circumstances of the players' decision to terminate their union representation, Judge Doty held that the players no longer were part of an "ongoing collective bargaining relationship" with the league parties, and, accordingly, granted the players' motion for partial summary judgment striking the league's labor exemption defenses.

The court next denied the league's motion to consolidate the action brought by McNeil with the action filed by Marvin Powell and other player. Judge Doty observed that the McNeil parties had brought a narrow claim under section 1, and that before the McNeil parties filed suit, the association had renounced its collective bargaining rights.

In contrast, the Powell litigation was a class action challenging player restraints as far back as 1987, including allegations of abuse of monopoly power under

section 2 of the Sherman Act, a challenge to the uniform player contract and other issues absent from McNeil.

Powell v. National Football League; McNeil v. National Football League, 764 F.Supp. 1351 (D.Minn. 1991) [ELR 13:6:13]

Dispute between football players and teams over preseason compensation must be heard by neutral arbitrator, not NFL Commissioner Tagliabue

Mickey Shuler and Joe Morris signed one year standard players contracts with the New York Jets and New York Giants, respectively, for the 1990 season. The contracts each provided that any dispute between the player and the club "involving the interpretation or

application of any provision of this contract will be submitted to final and binding arbitration in accordance with the procedure called for in [the then effective collective bargaining agreement]." If there was no collective bargaining agreement in effect, the players agreed to submit disputes, with certain specified exceptions, to the League Commissioner "for final and binding arbitration."

In September 1990, after providing preseason services in accordance with their contracts, the players were released and their contracts terminated. The players claimed that they were entitled to compensation for their preseason services equal to ten percent of the contract amount which would have been due for the whole season. The teams claimed that they were liable for a per diem payment. Shuler per diem payment amounted to about $2700; the contractual sum allegedly due was $75,000.

Shuler and Morris sued the teams for breach of contract and stated a derivative claim against Paul Tagliabue and the National Football League for tortious interference with contract.

The teams argued that the underlying dispute was subject to arbitration under the 1982 collective bargaining agreement between the National Football League Players Association, which then acted as the players' union, and the National Football League Management Council. The agreement expired in 1987, but the teams contended that the agreement's broad arbitration clause extended to Shuler and Morris' claims.

In November 1989, the Players Association notified the Management Council that the association was relinquishing its role as the players' collective bargaining representative. In December 1989, the association adopted new by-laws which expressly prohibited it from

ever again serving as a collective bargaining representative for National Football League players.

On the basis of the above-noted conduct by the association, the court in McNeil (a companion case to Powell v. National Football League, see ELR 13:6:13), held that the players were no longer part of an ongoing collective bargaining relationship with the teams. New York trial Judge Herman Cahn agreed with McNeil that the expired collective bargaining agreement had no continuing effect, and that the players' post-expiration grievances were not subject to arbitration under the agreement.

The players then attempted to argue that the arbitration clauses were part of unenforceable adhesion contracts. Judge Cahn, however, observed that the players were "highly paid, sophisticated professional athletes, who possessed considerable bargaining power over the terms of their contracts." It also was noted that the players

were represented by experienced agents during the negotiation of the contracts, and that there was no evidence that the players sought to delete or bargain over the arbitration clause. The clause was "clearly prominently set forth, and [was] not a trap for the unwary." And there was no claim made that the players felt that the contracts were presented on a "take-it-or-leave-it" basis. The clause was not by itself unreasonably favorable to the teams, and the players therefore were bound to resolve disputes relating to the contracts by arbitration.

Judge Cahn agreed with Shuler and Morris that a neutral arbitrator should be substituted for the Commissioner in order to insure a fair and impartial hearing. The court took into account the fact that Tagliabue, prior to becoming commissioner - the chief executive officer of the league - was the chief outside counsel for the league and its member teams, and frequently represented

league owners in disputes with players, advocating the positions of the owners. In particular, Tagliabue, in Powell v. National Football League, 888 F.2d 559 (8th Cir. 1989; ELR 12:9:5), argued on behalf of the league owners that the terms of the collective bargaining agreement had continuing legal effect after its expiration - the very issue, observed Judge Cahn, that Tagliabue would have to decide in the instant matter.

The teams stated that the Commissioner would not be arbitrating the players' action against the league, but only the breach of contract claims alleged against the Jets and the Giants; resolving said claims would have no direct financial impact on the league, argued the teams.

The court found that Tagliabue's position as Commissioner, "together with his past advocacy of a position in opposition to [the players'] position herein, deprive him of the necessary neutrality to arbitrate these claims...Further, the determination of [the players']

claims may have a major financial impact on various NFL teams which pay their players on a per-diem basis for preseason services. All of these factors dictate that the Commissioner can not be a neutral arbitrator herein."

Judge Cahn concluded by declaring that the collective bargaining agreement labor arbitrators would be potentially biased "inasmuch as the viability of these labor arbitrators' employment is dependent on whether the 1982 CBA is found to be in existence..." The court therefore announced that it would appoint a neutral and impartial arbitrator.

Morris v. New York Football Giants, Inc., New York Law Journal, p. 28, col. 5 (N.Y.Cnty., Oct. 24, 1991) [ELR 13:6:14]

Court refuses to enjoin National Hockey League Players Association from terminating contract with licensing agent, but orders parties to appoint agent to hold licensing payments during litigation

The Licensing Corporation of America has represented the National Hockey League Players Association since 1968 as the association's exclusive agent in connection with the merchandising of the association's name, logo, and insignia, as well as the photographs and signatures of the association's players. The parties' most recent five year contract, signed in 1987, provided that the licensing agent would receive forty percent of the revenue generated by the agent's negotiations, and that the association would receive the balance of the revenue.

In January 1991, the association stated that the agent's simultaneous representation of the National Hockey League was a conflict of interest and sought to terminate

the contract. The association also claimed that the agent failed to obtain the largest revenues possible for the association; that the agent included the league in many deals and insisted that the league receive an equal percentage of royalties; that the agent did not advise the association of all available licensing opportunities; and that the agent breached its fiduciary duty by failing to hold the association's funds in a separate account in trust and by failing to transmit interest earned on the association's funds.

The agent sought declaratory relief, but in September 1991, the association declared that the contract was terminated "for cause," and, among other actions, notified many licensees to send all further payments and other documents to the association.

A New York trial court has denied the agent's motion for a preliminary injunction, finding that the association had the power to terminate the agency relationship at

will; the agent might seek a remedy in damages for any revenue lost during the remaining eight months of the contract. Judge Cahn found that granting an injunction would not preserve the status quo, as argued by the agent, because during the remainder of the contract term, the agent might negotiate new licenses on behalf of the association. And the balance of equities favored the association, which, in the court's view, was "entitled to determine its own direction and best interests, although it may be forced to pay damages for such a choice."

The court issued a partial injunction ordering the parties to agree to the appointment of an agent to receive licensing payments.

Licensing Corporation of America v. National Hockey League Players Association, New York Law Journal, p. 25, col. 6 (N.Y.Cnty., Oct. 10, 1991) [ELR 13:6:15]

Professional hockey players prevail in tax dispute involving deductions for pension plan contributions made by their personal service corporations

Gary A. Sargent and Steven M. Christoff were hockey players with the Minnesota North Stars Hockey Club. The players' personal service corporations contracted with the club to provide each player's service to the club as a hockey player; Sargent also provided consulting services to the club. The North Stars paid each corporation for the use of the player's services. The corporations, in turn, paid each player a salary and contributed the remainder to each corporation's qualified pension plan.

The Internal Revenue Service proposed to disallow the pension deductions and to tax the players on the entire

amount paid by the club to the personal service corporations.

In 1988, the Tax Court found that the teams possessed the requisite control over the players, for purposes of taxation, and upheld the government's position.

A Federal Court of Appeals has reversed the decision of the Tax Court, holding that the players were employees of their respective personal service corporations, and were not subject to taxation on the amounts deducted by the corporations as pension contributions.

Senior District Judge Andrew W. Bogue, sitting by designation, noted that during the tax years in issue, the club paid the corporations the amounts that the club otherwise would have contributed to the National Hockey League Players' Pension Plan on behalf of the players. Contrary to the District Court's position, the fact that the players were members of a "team" was not dispositive. The players had contractual arrangements with their

respective personal service corporations, and each corporation also had a contractual relationship with the North Stars - the contracts satisfied the requisite elements of control so that the players were considered employees of the corporations, and not of the team.

It was further noted that the corporations were legitimate corporate entities, that the players were contractually-bound employees of the corporations, and that the employment contracts were recognized by the North Stars, the National Hockey League and Minnesota state authorities. The court therefore found that the players were improperly taxed on the entire amount paid by the teams to the corporations.

Judge Arnold, in dissent, expressed the view that the District Court's holding was not clearly erroneous, noting that the coach of the North Stars had the right to control, and actually did control, the conduct of the players on the ice. For Judge Arnold, "the idea that the

coach issued orders to Sargent and Christoff in their capacity as corporate officers, which orders they then relayed to themselves as corporate employees, [was] fanciful."

Sargent v. Commissioner of Internal Revenue, 929 F.2d 1252 (8th Cir. 1991) [ELR 13:6:16]

Cincinnati Reds pitcher is entitled to income tax credit for Florida preseason training and exhibition games, rules Ohio Supreme Court, although nonresident player received no salary until beginning of regular season

Thomas H. Hume, Jr. signed a contract to play for the Cincinnati Reds in the 1983 through 1986 seasons for $800,000 per season. The contract stated, in part, that

Hume would provide his services during the club's training season, exhibition games, playing season, and, if necessary, the League Championship Series and the World Series. The team agreed to pay Hume's salary, upon the beginning of the playing season, in semimonthly installments.

In his Ohio state income tax returns, nonresident Hume claimed a credit for the number of days he attended spring training, participated in exhibition games, and participated in regular season away games. The Tax Commissioner, upon finding that the team paid Hume only for the playing season, allowed credit only for the player's participation in regular season away games.

The Ohio Supreme Court has reversed the Board of Tax Appeals' decision affirming the commissioner's order. It was noted that Hume was compensated for the training season and exhibition games, despite the fact that he received payment only during the playing season

- payment was delayed because the Reds, apparently along with other major league teams, claim not to have enough money to pay players prior to the regular season. The court remanded the matter for a redetermination of the disputed credit to take into account the time Hume participated in the training season and exhibition games in Florida.

Hume v. Limbach, 575 N.E.2d 150 (Ohio 1991) [ELR 13:6:16]

Tax Court recalculates general partner's tax liability in connection with investment in limited partnerships involved in producing films with religious themes

The United States Tax Court has upheld the Commissioner of Internal Revenue's determination that Russell

S. Doughten, Jr., Gertrude S. Doughten and the corporations Mark IV Pictures, Inc. and Heartland Productions, Inc. were liable for federal income tax deficiencies for the years 1979 through 1982.

The Doughten parties, who were involved in forming limited partnerships for the purpose of producing, distributing and exhibiting films with religious themes, argued that the general partners had assigned film rights and goodwill to their respective limited partnerships in exchange for general partnership interests, and that no gain or loss would be recognized to the partnership, or to any of its partners.

The Tax Court found that there was no evidence to support the Doughten parties' claim with respect to the contribution of goodwill, noting, in part, that the offering circulars prepared for potential investors allowed the general partners to compete with their partnerships in producing films with religious themes. Even if the court

accepted as fact that the general partners contributed goodwill, no proof was offered of its value.

In turning to the question of whether the Doughten parties' film rights were contributed in exchange for their general partnership interest, the court pointed out that there was no written contract between the Doughten parties and their limited partnerships governing the production of the films; the amounts paid by the limited partnerships were based on what the Doughten parties believed was a reasonable charge for the productions. The court, stating that no basis was provided for establishing a value for the film rights, upheld the Commissioner's determination that the general partnership interests were received entirely in exchange for services.

The court then found that the general partnership interests were capital interests in their respective limited partnerships - the general partners had the right to receive a specified share of the partnerships' liquidation

proceeds. In deciding whether the capital interests had determinable market values, the Commissioner had calculated the value of the capital interests by adding together the total capital contributions made by the limited partners, and the value of the film rights transferred by the Doughten parties and multiplying that amount by each general partner's ownership percentage. The court agreed that the value of the capital interest was determinable, but found that the Commissioner erred in calculating the value of the capital interests. The income of the Doughten parties, who had received property "in connection with the performance of services" for each of the taxable years in issue, would be calculated with reference to the year the limited partnership interests were actually sold. And, taking into account the contribution made by the general partners in acquiring their limited partnership interest, the court recalculated the amount of the parties' tax liability.

Mark IV Pictures, Inc. v. Commissioner of Internal Revenue, T.C.Memo 1990-571; 1990 Tax Ct. Memo LEXIS 643 (1990) [ELR 13:6:17]

Kinko's Graphics agrees to pay $1.9 million to textbook publishers to settle copyright infringement dispute after court holds that company's unauthorized compilations violate Copyright Act

A Federal District Court in New York has ruled that Kinko's Graphics Corporation violated the Copyright Act by copying excerpts of copyrighted works without permission and compiling the excerpts into course "packets" for sale to college students. The court awarded eight textbook publishers injunctive relief,

statutory damages in the amount of $510,000, attorneys fees and costs.

It has been reported that in October 1991, Kinko's agreed to pay the publishers $1.9 million in damages and court costs to resolve the parties' dispute, and agreed not to photocopy the textbook compilations without obtaining written permission for all copyrighted material.

Judge Constance Baker Motley's 57 page ruling noted that the excerpts in issue ranged in length from 14 to 110 pages, and that Kinko's had not sought nor obtained permission to copy any of the material. In discussing the fair use defense raised by Kinko's, the court observed that the copying was conducted by a commercial enterprise and did not interpret or add any value to the material copied, but was "a mere repackaging" - Kinko's made no literary effort "to expand upon or contextualize the materials copied."

Judge Motley then pointed out that although the books infringed were factual in nature, the portions copied by Kinko's "were critical parts of the books copied, since that is the likely reason the college professors used them in their classes." Thus, the excerpts, in addition to being quantitatively substantial were qualitatively significant.

It was further found that Kinko's copying, conducted via the company's "Professor Publishing" service, harmed the potential markets for or value of the copyrighted works; and that Kinko's activities resulted in the "complete frustration of the intent of the copyright law..."

The court then determined that Kinko's violated the "Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions;" the guidelines were part of the legislative history of the Copyright Act. Judge Motley concluded that even if Kinko's copying warranted review under the Classroom Guidelines, the

copying was excessive and in violation of Guideline requirements.

Kinko's argued that the publishers engaged in copyright misuse through the violation of the antitrust laws. Judge Motley noted that such a defense generally has been held not to exist, or if, recognized, not upheld. In any event, the court held that the facts did not support a finding of copyright abuse; the publishers acted reasonably and "not collusively for some illegal, monopolistic purpose."

In issuing injunctive relief, Judge Motley found that the publishers were entitled to an injunction against future infringement of the works in issue, as well as an injunction barring the future anthologizing and copying of the publishers' works without permission and prepayment of fees; the injunction extended to similar works not currently existing but which may in the future be owned by the publishers and as to which the publishers had not

granted Kinko's permission to copy. The court declined to enjoin all unconsented anthologizing since some compilations may be within fair use requirements.

The publishers sought a declaratory judgment as to any and all instances of copying or anthologizing without the author's permission, but Judge Motley found that a declaratory judgment would be inappropriate by precluding fair use analysis of any excerpt included in an anthology. "If Congress meant for anthologizing to nullify a fair use analysis, it would have expressly said so," commented Judge Motley.

With respect to damages, the court concluded that Kinko's was not an innocent infringer, and stated that the damage award was not based on the financial loss to the publishers, but was imposed to deter Kinko's from future infringing copying.

Judge Motley rejected Kinko's argument that it was acting as the agent of various educational institutions when it copied the excerpts in issue.

Basic Books, Inc. v. Kinko's Graphics Corporation, 758 F.Supp. 1522 (S.D.N.Y. 1991) [ELR 13:6:17]

Jury's $2.3 million verdict to antique dealer in defamation action against San Francisco television station is upheld

In February and March 1984, KGO-TV in San Francisco presented a series of broadcasts concerning the origin and value of two rare silver candelabra purchased by the M.H. deYoung Memorial Museum from antique dealer Michael Weller. Weller claimed that the KGO parties incorrectly accused him of overcharging the

museum. A trial court jury awarded Weller damages totalling $2.3 million.

A California Court of Appeal has upheld the judgment entered on the jury verdict.

Judge William D. Stein reviewed the background of the transaction, noting that when the museum purchased the candelabra for $65,000, Weller advised the museum of certain defects in the work. The KGO series, according to Weller, implied, in part, that the dealer sold stolen candelabra to the museum at a grossly inflated price, and that Weller purportedly misrepresented the maker, condition, origin and provenance of the pieces.

The jury awarded Weller and his partner general damages in the amount of $1 million for mental suffering, $500,000 for proven injury to reputation, and $500,000 for presumed damages to reputation; there was no punitive damages award. Weller's company, Argentum

Antiques, received damages of $300,000 for proven injury to reputation.

Judge Stein, applying the standards set forth in Milkovich v. Lorain Journal Co., 110 S.Ct. 2695 (1990; ELR 12:2:8), stated that there was no question that the news reports in issue could have been understood as implying that Weller had, at worst, knowingly sold stolen property to the museum and, at best, had lied about the origin of the works and sold them at a "grossly inflated price."

The court rejected the argument that the broadcaster's use of "interrogative language" would entitle the challenged statements to constitutional protection where, as in the instant case, "they otherwise can be understood as implying defamatory facts." The various hyperbolic comments cited by KGO were "isolated phrases taken out of context" and were insufficient to overcome "the

overwhelming impression that the reports implied actual facts," declared the court.

Judge Stein found no abuse of discretion in the trial court's decision to admit the expert testimony of a professor of linguistics concerning how the average viewer was likely to understand the broadcasts concerning the origin and value of the candelabra; rejected KGO's claims of instructional error; and determined that Weller introduced substantial and competent evidence of injury to reputation, and that the amount of damages "was not so out of proportion with the evidence to suggest that the jury was influenced by passion or prejudice."

Weller v. American Broadcasting Companies, Inc., 283 Cal.Rptr. 644 (Cal.Ct.App. 1991) [ELR 13:6:18]

Promoter of Picasso art masters tax shelter prevails on purchaser's fraud action, but court affirms damage award for civil RICO claim

In 1979, Jackie Fine Arts, a company controlled by tax shelter promoter Herman Finesod, sold Jiles Lynch a Picasso "art master," a copy of a famous painting from which prints and posters can be made. Lynch, who also bought the rights to make various reproductions from the work, paid $100,000 down and signed a note for an additional $450,000; the note was not due until 1994. Jackie Fine Arts sold over 2,000 other art masters to other investors, at an average price of $225,000 to $250,000.

The art masters, according to Federal Court of Appeals Judge K.K.Hall, were worth only a fraction of the prices paid by the investors. Jackie Fine Arts paid about $10,000 apiece for them. The company provided

investors with two "supposedly independent" appraisals of each art master. Lynch's work was appraised at $750,000 by one appraiser, and at $700,000 by a second appraiser. The appraisers, who were paid by Jackie Fine Arts, prepared about 2,500 appraisals for the company.

Judge Hall noted that "a similarly tainted opinion" was provided to investors about the tax consequences of an art master purchase. The Internal Revenue Service disallowed the use of the art masters as tax shelters.

After Jiles Lynch's death in 1985, his administratrix, Phyllis Faircloth sued Jackie Fine Arts, Finesod and other parties asserting claims for fraud, violations of the securities laws, unfair trade practices and RICO. A Federal District Court held that the art masters were not "securities" and that actions under the South Carolina Unfair Trade Practices Act did not survive the victim of the challenged practices. However, the court denied the Finesod parties' motion for summary judgment on the

fraud and RICO claims. The case proceeded to trial, but the Finesod parties did not appear.

The District Court directed a verdict for Faircloth, and the jury awarded her compensatory damages of about $470,000 for fraud and civil conspiracy and about $1.4 million treble damages on the RICO claim (three times the amount of the compensatory damage award). The jury assessed punitive damages of $5 million against Jackie Fine Arts, $2.5 million against Finesod, and $500,000 against one of the appraisers. The court permanently enjoined the Finesod parties from attempting to collect on the $450,000 promissory note when it matured, and Faircloth was awarded attorney's fees.

On appeal, Judge Hall, contrary to the District Court, found that the South Carolina survival statute did not violate the Equal Protection clause of the Fourteenth Amendment; the court therefore reversed the judgment on Faircloth's common law claims.

Judge Hall then declared that civil RICO claims do not abate upon the death of the injured party and affirmed the RICO judgment. But the District Court's judgment with respect to the award of compensatory and punitive damages for state law fraud and civil conspiracy was reversed.

Faircloth v. Finesod, 938 F.2d 513 (4th Cir. 1991) [ELR 13:6:19]

Briefly Noted:

"Milli Vanilli" Class Action Venue.

Danielle Jeffrey, through her guardian John W. Jeffrey, filed a class action in San Diego County on behalf of purchasers of "Milli Vanilli" products; the action named

performers Rob Pilatus and Fabrice Morvan, manager Sandy Gallin, and various producers, distributors and recording companies. Jeffrey, alleging that the Milli Vanilli parties covered up the fact that neither Pilatus or Morvan performed any vocals on the Milli Vanilli products or sang at the group's concerts, stated causes of action for fraud, negligent misrepresentation, unfair competition, deceptive consumer practices and breach of contract.

The trial court denied Gallin's motion to transfer venue to Los Angeles County, but a California appellate court has issued a peremptory writ directing the trial court to vacate its order denying the motion to transfer venue and to enter a new order granting the motion.

Gallin v. Superior Court, 281 Cal.Rptr. 304 (Ct.App. 1991) [ELR 13:6:19]

Copyright/Jurisdiction.

Irwin Shaw, now deceased, granted motion picture rights to his novel "Nightwork" to a company known as Cinema Seven. CBS Theatrical Films agreed to finance and produce the first film based on the work. When CBS abandoned the project, Cinema Seven failed to find an acceptable substitute producer within twenty-four months. Shaw's widow claimed that the contract with Cinema Seven provided that the rights would revert if the first film was not produced within a six year period, and that, after two extensions, the rights reverted in May 1987.

Shaw's widow eventually sought a declaratory judgment that the rights had reverted.

Judge Fingerhood, denying Cinema Seven's motion to dismiss, noted that Mrs. Shaw did not allege copyright infringement; that no construction of the Copyright Act

was required for resolving the parties' dispute; and that state, rather than federal principles controlled the interpretation of the contract in issue. The lawsuit, declared the court, "does not turn into one for copyright infringement because there is a request for an injunction..." After noting the background of the action, the court awarded Mrs. Shaw attorneys' fees incurred in defending that part of the motion to dismiss which raised objections to subject matter jurisdiction.

Shaw v. Kastner, New York Law Journal, p. 24, col. 3 (N.Y.Cnty., Aug. 5, 1991) [ELR 13:6:19]

Copyright Infringement/Betting Charts.

Victor Lalli Enterprises, the distributor of a "betting sheet" containing a lucky number chart known as "Val's

Original Genuine Black Cat Weekly Card," brought a copyright infringement action against Big Red Apple, Inc., a competing compilation of information obtained from horse racing statistics. A Federal District Court in New York found that Lalli's publication was not entitled to copyright protection.

A Federal Court of Appeals has affirmed the District Court decision. The court noted that all publishers of the charts in issue used the exact same format, that the information in the charts was identical, and that the charts were compilations of preexisting facts. Citing Feist Publications, Inc. v. Rural Telephone Service Co., 111 S.Ct. 1282 (1991; ELR 12:12:17), the court found that the District Court did not err in determining that Lalli's charts failed to meet the minimum standards of originality required for copyright protection. Lalli was neither selective with respect to the information reported, nor creative in presenting the report. The fact that Lalli

provided the labor to compile the charts was "irrelevant to the central question of whether his work displayed some modicum of originality entitling it to copyright protection," concluded the court, and Lalli could not prevent other betting sheets from using the same charts.

Victor Lalli Enterprises, Inc. v. Big Red Apple, Inc., 936 F.2d 671 (2d Cir. 1991) [ELR 13:6:20]

Previously Reported:

The following cases, which were reported in previous issues of the Entertainment Law Reporter, have been published: Buchan v. United States Cycling Federation, Inc., 277 Cal.Rptr. 887 (13:2:11); Coleman v. ESPN, Inc., 764 F.Supp. 290 (13:3:17); Winter v. G.P.Putnam's Sons, 938 F.2d 1033 (13:3:13).

The United States Supreme Court has let stand a Federal Court of Appeals decision reversing a judgment awarding over $5 million to entertainer Wayne Newton in his libel action against NBC (13:3:19; 12:10:18; 12:4:10).

In April 1991, a Federal District Court jury in Detroit considered the refund claim brought by television station WXON-TV against A.C. Nielsen Company (the court had disallowed the station's other claims). As reported at WXON-TV, Inc. v. A.C. Nielsen Company (12:8:15), WXON argued that the ratings data service had underestimated the station's market share, resulting in a loss of advertising revenue. The jury, according to Thomas F. Ryan, attorney for the A.C. Nielson Company, returned a verdict for Nielsen, and against WXON, on all counts. The jury apparently found that Nielsen fulfilled its contract with the station by, as described by Mr. Ryan, making "all reasonable efforts to provide ratings

estimates of the highest quality practicable," and concluded that WXON breached the contract by failing to make payments to Nielsen from the date of the station's "purported termination" of Nielsen service through the end of the agreed minimum term of the contract. As a result of the verdict, WXON, which did not appeal, paid Nielsen $2,075,000 (the total amount of the company's counterclaim, plus interest and costs).
[ELR 13:6:20]

DEPARTMENTS

In the Law Reviews:

Hastings Communications and Entertainment Law Journal Comm/Ent has published Volume 13, Number 4 with the following articles:

The Art Auctioneer: Duties and Assumptions by Jorge Contreras, 13 Comm/Ent 717 (1991)

Maximizing the Benefits of Tax Certificates in Broadcast and Cable Ventures by Erwin G. Krasnow, William E. Kennard, and Susan O'Hearn Temkin, 13 Comm/Ent 753 (1991)

Don't Stop That Funky Beat: The Essentiality of Digital Sampling to Rap Music by Jason H. Marcus, 13 Comm/Ent 767 (1991)

Music Law and Business: Comprehensive Bibliography, 1982-1991 by Gail I. Winson and Janine S. Natter, 13 Comm/Ent 811 (1991)

Columbia-Volunteer Lawyers for the Arts Journal for Law & the Arts has published Volume 15, Number 1 with the following articles:

The Samuel Rubin Forum-Arts Funding and Censorship: The Helms Amendment and Beyond by Beverly M. Wolff, Richard Epstein, and Kathleen Sullivan, 15 Columbia-VLA Journal of Law & the Arts 23 (1991)

Government Funding of the Arts: Content-Based Regulations and Unconsitutional Conditions by Beverly M. Wolff, 15 Columbia-VLA Journal of Law & the Arts 47 (1991)

The Nature of Neighboring Rights of Performing Artists, Phonogram Producers and Broadcasting Organizations by Herman Cohen Jehoram, 15 Columbia-VLA Journal of Law & the Arts 75 (1991)

With Malice Toward All: The Political Cartoon and the Law of Libel by Gregory R. Naron, 15 Columbia-VLA Journal of Law & the Arts 93 (1991)

Obscenity, Indecency, and the Rehnquist Court by John L. Huffman and Denise M. Trauth, 13 Communications and the Law 3 (1991) (published by Fred B. Rothman & Co., 10368 W. Centennial Road, Littleton, CO 80127)

The Right to a Reputation after Death by Richard P. Mandel and Renee Hobbs, 13 Communications and the Law 25 (1991) (for address, see above)

"Complain, If You Dare": Tort Suits That Discourage the Exercise of First Amendment Rights by Sharlene McEvoy, 13 Communications and the Law 47 (1991) (for address, see above)

Miramax Films Corp. v. Motion Picture Ass'n of America, Inc. The Ratings System Survives, for Now by David Greenspan, 9 The Entertainment and Sports Lawyer 1 (1991) (published by the American Bar Association Forum on the Entertainment and Sports Industries)

Record Lyrics and Labelling: Report of the ABA Young Lawyers Division, 9 The Entertainment and Sports Lawyer 3 (1991) (published by the ABA Forum on Entertainment and Sports Industries)

"Son of Sam" Terrorizes Publishing Industry: The Protection of Creative Speech Under the First Amendment by Nicholas C. Katsoris, 9 The Entertainment and Sports Lawyer 13 (1991) (published by the ABA Forum on Entertainment and Sprots)

Un-Ban the Banned Band: A First Amendment Perspective on Banning Concerts by Jeanine Natter, 9 The Entertainment and Sports Lawyer 17 (1991) (published by the ABA Forum on Entertainment and Sports)

Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934 by Stephen F. Sewell, 43 Federal Communications Law Journal 277 (1991)

Defending the "Time Culture": The Public and Private Interests of Media Corporations by Shelby D. Green, 43 Federal Communications Law Journal 391 (1991)

Austin v. Michigan Chamber of Commerce: The Supreme Court Takes a "Less Speech, Sounds Great" Approach to Corporate Political Expression by Douglas M.

Ramier, 9 Federal Communications Law Journal 419 (1991)

Target: Prime Time: Advocacy Groups and the Struggle Over Entertainment Television, by Kathryn C. Montgomery, reviewed by Anthony R. Klein, 9 Federal Communications Law Journal 451 (1991)

Unauthorized Digital Sound Sampling, the Taking of a Constitutional Right by Marsha A. Willis, 17 Southern University Law Review 309 (1990)

A Comparison of International Intellectual Property Licensing Guidelines in the United States and Japan by Roger D. Taylor, C. Larry O'Rourke, and Chris Marchese, 9 UCLA Pacific Basin Law Journal 104 (1991)

A Comparison of Responses to the Record Rental Industry Under Japanese and U.S. Copyright Law by Robert Adachi and Michael Fedrick, 9 UCLA Pacific Basin Law Journal 210 (1991)

Milkovich vs. Lorain-Journal Co.: Is the Supreme Court "Holding the Balance True" in Defamation Actions? by Sheila Noonan, 24 Akron Law Review 461 (1990)

Milkovich v. Lorain Journal Co.: This Opinion May Stifle Yours, 20 Capital University Law Review 497 (1991)
Milkovich v. Lorain Journal Co.-Demise of the Opinion Privilege in Defamation, 36 Villanova Law Review 647 (1991)

RICO Claims by Celebrities Against the Tabloid Media for Publication of Purloined Material by Morton G.

Rosen, 15 American Journal of Trial Advocacy 47 (1991)

The Regulation, Control, and Protection of Athlete Agents by W. Jack Grosse and Eric Warren, 19 Northern Kentucky Law Review 49 (1991)

The Property Right of Publicity and the First Amendment: Popular Culture and the Commercial Persona by Barbara A. Burnett, 3 Hofstra Property Law Journal 171 (1990)

They Know It When They See It: Copyright and Aesthetics in the Second Circuit by James H. Carter, 65 St. John's Law Review 773 (1991)

Shouldn't the Constitution Be Color Blind? Metro Broadcasting, Inc. v. FCC Transmits a Surprising

Message on Racial Preferences, 40 Catholic University Law Review 403 (1991)

Transfrontier Television and Europe 1992: A Common Position? by N.C.M. Peck, 4 Temple International and Comparative Law Journal 307 (1990)

The Futile Search for Alternative Media in Symbolic Speech Cases by William E. Lee, 8 Constitutional Commentary 451 (1991)

"Over" Due Process: The Saga of the NCAA, its Members and Their Representatives by Barry W. Ponticello, 20 Lincoln Law Review 43 (1991)

Technical Foul: The Legality and Wisdom of NCAA Academic Requirements by Chad Baruch with Edward O. Cassidy, Jr., 20 Lincoln Law Review 71 (1991)

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 25 Copyright Bulletin 13 (1991)

Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, 25 Copyright Bulletin 19 (1991)

Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties and Additional Protocol, 25 Copyright Bulletin 31 (1991)

Sports Agents and College Athletics by Anton R. Valukas, 25 International Society of Barristers Quarterly 431 (1990)

College Football and the Pro Agents as Viewed by a College Athletic Director by Robert Devaney, 25 International Society of Barristers Quarterly 445 (1990)

Law Notes: Reporter's Breach of Confidentiality Agreement by Clarance E. Hagglund and Britton D. Weimer, 25 International Society of Barristers Quarterly 448 (1990)
[ELR 13:6:21]