RECENT CASES

Spelling-Goldberg Productions recovers damages for unauthorized use of the names and likenesses of "Starsky & Hutch" and "Charlie's Angels"

A Federal District Court in New Jersey has awarded Spelling-Goldberg Productions, producer of the television shows "Starsky & Hutch" and "Charlie's Angels," damages and injunctive relief against the unauthorized manufacture and sale of certain iron-on decals known as "heat transfers." The transfers depicted the names of the shows and the likenesses of their stars.

The court found that Spelling-Goldberg had registered the names of the shows and owned all rights to the service marks and "all rights of publicity of the stars of the shows as the characters they play."

The court pointed out that the rights in the marks and the rights of publicity had become very valuable. Eighteen manufacturers had been licensed by Spelling-Goldberg to merchandise products using the name "Starsky & Hutch" and the likenesses of its stars, David Soul and Paul Michael Glaser. Spelling-Goldberg had also received more than $1,800,000 for licensing the merchandising of products using the name "Charlie's Angels" and the likenesses of that show's stars. Spelling-Goldberg had granted one of its licensees an exclusive license to manufacture heat transfers.

Accordingly, the court held that the defendants' use of the heat transfers without a license infringed Spelling-Goldberg's trademarks and rights of publicity and constituted unfair competition under the Lanham Act. The court therefore awarded Spelling-Goldberg injunctive relief and damages of $14,400, based on Spelling-Goldberg's contention that the defendants had sold a minimum of 120,000 of the unauthorized transfers at a profit of cb per transfer. The court refused to treble those damages or award attorneys' fees.

The court also held that Coleman Schneider, who was an officer and stockholder of the two corporate defendants, was jointly and severally liable along with those defendants. According to the court, Schneider, who had substantial managerial duties, "authorized and approved the selling of the transfers" knowing that such sales were in violation of Spelling-Goldberg's rights.

Spelling-Goldberg Productions v. Schneider, Civil No. 78-1907 (D.N.J. 1979) [ELR 1:8:1]

FCC refuses to grant exclusivity protection for television station s broadcast of the Phil Donahue Show

FCC rules grant television stations the exclusive right to broadcast syndicated programs in their viewing area. Syndicated programs are programs sold, licensed, distributed, or offered to television stations in more than one market within the United States for non-network television broadcast exhibition, not including live presentations.

Characterizing the "Phil Donahue Show," an Emmy Award-winning interview program as a "live presentation," the FCC has denied a Petition for Special Relief requesting syndicated exclusivity protection for the show. The Petition was filed by Manhattan Cable Television, Inc., the licensee of television broadcast station WOTV. WOTV stated that it had been granted the exclusive right by Multimedia Program Productions, Inc., the owner of syndication rights to the Donahue show, to carry the show on a tape-delayed basis in the Grand

Rapids, Michigan television market. The Donahue show is produced and broadcast live by WGN-TV in Chicago; the broadcasts are recorded and distributed to other television stations, including WOTV.

Two cable television systems serving the Grand Rapids market began carrying WGN's broadcasts of the Donahue show via satellite. The cable presentations of the shows appeared several days before WOTV's broadcasts of the same shows. The cable operators refused WOTV's requests for exclusivity protection. In opposition to the Petition, the cable operators referred to the "live programming exception," and also claimed that it was in the public interest to give their subscribers the opportunity to participate in the call-in portion of the Donahue show.

The petitioner argued that the type of "live" programming the FCC had "intended to exclude from its nonduplication provisions . . . included such things as missile shots and Presidential addesses . . . which depend for their significance upon their timeliness . . .” Multimedia asserted that in the absence of exclusivity protection it might be forced to eliminate the call-in portion of the show and tape the entire production, thereby damaging the program’s marketability.

The FCC ruled that WOTV and Multimedia had not presented evidence specifically showing that economic harm would result upon denial of their Petition. Concluding that the requested syndicated exclusivity protection was not consistent with the public interest, the FCC denied the Petition.

A concurring statement by Commissioner James H. Quello expressed concern over the impact of the order on the “superstation” situation. (Superstations retransmit television signals via satellite beyond a station’s normal service area.) Commissioner Quello pointed out that at the time the definition of syndicated programs was formulated, "the Commission most assuredly did not contemplate the distribution of a syndicated program at the time of its original production via satellite retransmission." And the Commissioner pointed out that the issues presented in this decision would arise again in connection with the FCC's examination of the possibility of abolishing syndicated exclusivity rules. (See ELR 1:3:5)

A dissenting statement by Commissioner Abbott Washburn also noted the possibility that WGN's signal might be broadcast into "scores of markets." And Commissioner Washburn pointed out the discouraging effect on diversity of programming if Multimedia discontinued live broadcasts of the Donahue show on WGN as a result of the FCC's decision.

In re Manhattan Cable Television, Inc., FCC 79428 (1979) [ELR 1:8:2]

Federal District Court dismisses suit against Columbia Records filed by heirs of singer Bessie Smith

A variety of claims against Columbia Records filed by the executor of the estate of the husband of singer Bessie Smith, and by her adopted son, have been dismissed by a Federal District Court in Pennsylvania. The complaint filed by the plaintiffs was based on Columbia's dealings with Smith when she was an exclusive recording artist for the company during the 1920s and 1930s and on Columbia's posthumous re-recording and release of Smith's songs in the early 1950s and 1970s.

In a thoughtful 50-page opinion, the court held that the age of the claims barred recovery in most instances, and that in other instances, the plaintiffs were not the real parties in interest, and hence not entitled to bring suit.

The plaintiffs first contended that the agreements violated the Civil Rights Act of 1966 and 1870 (42 U.S.C. Section 1981) which give all persons the same right to make and enforce contracts "as is enjoyed by white citizens." According to the plaintiffs, during the 1920s and 1930s, Columbia "discriminated against all black performers by fraudulently signing them to contracts with low payment terms and no royalty provisions, while at the same time signing white performers to contracts for much greater sums, including royalty provisions."

The court held that the plaintiffs did not have standing to assert alleged violations of Smith's Civil Rights. The court also rejected the plaintiffs' contention that their own rights had been violated, finding that the discrimination allegedly suffered by Smith was not a "continuing wrong" to the plaintiffs. In any event, the court concluded that the Civil Rights claims were conclusively barred by the statute of limitations, and it rejected the plaintiffs' contention that the statute of limitations would be tolled (i.e., suspended) due to fraud in the Smith-Columbia transactions or due to any breach of fiduciary or agency duty owed to Smith by Columbia or its executives.

The court also dismissed the claim that a recent statement by a Columbia executive noting the disparity between the sum paid to contemporary recording artists and the payments to artists 40 to 50 years ago in some way "revived" or served to acknowledge a debt to Smith, because the statement did not refer to any debt that was "clear, distinct or unequivocal."

The court also rejected the claim that any contracts entered into by Smith were invalid due to unconscionability, since unconscionability "cannot under any theory be the basis for tolling the statute of limitations."

The court then pointed out that the statement in the complaint that "Bessie Smith, sometime before her death in 1937, composed and authored songs" was insufficient to state a claim for copyright infringement. A claim of infringement must allege which specific original work is the subject of the copyright claim, that the plaintiff owns the copyright, that the work in question has been registered, and by what acts and during what time the defendant infringed the copyright. The complaint in this case was insufficient because it did not refer to any specific copyrights in which Smith retained a legally-protected right; the plaintiffs had failed to set forth their present ownership; and no specific acts of infringement by Columbia were set forth. The complaint failed to identify even a single copyrighted song at issue, and the court therefore dismissed the plaintiffs' copyright infringement claims.

The plaintiffs further claimed that Columbia had infringed their property rights in Smith's artistic performances during both her recording sessions with Columbia and the records issued as a result of those sessions. These rights were allegedly acquired between 1923 and 1933 but not breached until the early 1950s and then again in the early 1970s when the re-recordings of Smith's songs were issued. However, it was not shown that Smith had reserved any performance rights to herself as a contractual matter. And the court refused to imply such property rights, holding that the claim "was not cognizable under any federal law existing at the relevant time (1923-1933)."

The plaintiffs also alleged that due to Columbia's failure to pay Smith for certain songs recorded in 1930 and 1931, title to the recordings of these songs never passed to Columbia, and that Columbia had misappropriated property belonging to Smith's estate by using these songs. The court refused to grant summary judgment for the plaintiffs on this issue, since there was insufficient evidence to show that Smith had not received the agreed upon payment, and again, no facts had been shown that would justify tolling the statute of limitations. The re-recording of Smith's songs using new technology also did not constitute a misappropriation of property, since no suggestion had been made that the re-recordings were intended to defame Smith or misrepresent her artistic performances.

In concluding, the court dismissed the cause of action alleging "misappropriation of property interests in name, personality, likeness and publicity rights of Bessie Smith," since this cause of action was dependent on the other four counts.

Gee v. CBS, Inc., 471 F.Supp. 600, CCH Copyright Law Reports, Para. 25,066 (E.D.Pa. 1979) [ELR 1:8:2]

Validity of search warrants resulting in seizure of allegedly counterfeit record albums and tapes upheld

John La Monte and House of Sounds, Inc. were charged with racketeering, wire fraud and copyright infringement in connection with the unauthorized manufacture and sale of certain allegedly counterfeit albums and tapes including, among others, the album “Runt” by Todd Rundgren. FBI agents seized a trailer truck carryinq suspect records and subsequently searched the trailer, the HOS warehouse and two other business premises pursuant to warrants. A Federal District Court in Pennsylvania has denied the defendants’ pretrial motions to suppress evidence obtained as a result of the searches.

The court first held that there was probable cause to seize the trailer based on corroborated information that the defendants were engaged in a massive record counterfeiting operation. At the time of the seizure, the trailer was en route to the HOS warehouse. The court found that the possibility that the FBI might lose control over the trailer and its contents and that evidence might be disposed of, combined with the existence of probable cause, constituted "exigent circumstances" justifying the initial warrantless seizure.

However, the government's contention that the existence of exigent circumstances would support a warrantless search of the trailer conducted more than 10 days after the seizure was rejected by the court. Nevertheless, a warrant obtained by the government for the search was found to be valid because it was based on affidavits submitted by reliable individuals stating that the defendants did not have the authority to produce or distribute the five albums named in the warrant. Evidence from informants and from FBI surveillance also established probable cause for the issuance of the warrant to search the trailer. Further, according to the court, the warrant described with sufficient particularity the items to be seized, as required by the Fourth Amendment. The warrant named specific titles of suspected counterfeit albums; and the manner by which counterfeit and legitimate records could easily be distinguished had been demonstrated before the magistrate who issued the warrant.

The court also found that the descriptions of the premises to be searched and items to be seized were sufficient in the warrants covering the searches of the HOS warehouse and two other offices controlled by, HOS where promotional material and album covers were seized.

The court rejected the defendants' argument that the seizure of 160,000 albums at the HOS warehouse was excessive because one album would have been sufficient to prove copyright infringement. The court pointed out that under copyright law, all infringing copies of copyrighted works were subject to forfeiture and destruction. And, in any event, the albums seized comprised less than 1% of the albums stored in the HOS warehouse.

U.S. v. John La Monte, CCH Copyright Law Reports, Para. 25,065 (E.D.Pa. 1978) [ELR 1:8:3]

Federal Court of Appeals reviews extent to which FCC must investigate minority employment practices of radio and television stations before renewing their broadcast licenses

The Federal Communications Commission renews broadcast licenses if it finds that renewal will serve the "public interest, convenience, and necessity." Although the FCC is not the Equal Employment Opportunity

Commission, and although a license renewal proceeding is not a Title VII lawsuit, the FCC has long taken the position that the public interest is not served by licensees who engage in intentional employment discrimination. Accordingly, the FCC analyzes the employment practices of radio and television stations at license renewal time, but only "to the extent those practices affect the obligation of the licensee to provide programming that `fairly reflects the tastes and the viewpoints of minority groups,' and to the extent those practices raise questions about the character qualifications of the licensee."

In a recently published opinion concerning the renewal of the licenses of radio stations KCBS in San Francisco and KONO in San Antonio, the Federal Court of Appeals in Washington, D.C., recapitulated what it described as the legal principles that will govern employment practice issues in license renewal cases in the future.

According to the court, the FCC must conduct a hearing when a petition to deny renewal raises "substantial and material questions of fact," or when the FCC for any reason is unable to find that license renewal will serve the public interest, convenience and necessity. In most cases, evidence of actual discriminatory conduct will present a substantial and material question of fact warranting a renewal hearing, the court said. On the other hand, evidence of minor statistical disparities between the available minority workforce and a station's employment, standing alone, will not warrant a hearing, in most cases. Where there is no evidence of actual discrimination, but where the statistical disparity is substantial, the court held that the FCC should be on notice that more information is required before the station's license is renewed. Substantial statistical disparity is shown by evidence that a licensee's minority employment is outside the "zone of reasonableness" (a flexible concept that compares a station's minority employment percentage with the availability of minorities in the station's area, but which also considers the station's minority recruitment policies).

If more information is required, because of a substantial statistical disparity, the FCC may gather such information by any method it chooses. Generally, the FCC has elected to conduct its own inquiries, rather than permitting petitioners to conduct discovery of their own.

In this case, renewal of the license for KONO was objected to by the Bilingual Bicultural Coalition on Mass Media. It contended that an FCC inquiry alone could never be wholly adequate, and that the Coalition should have been permitted to conduct its own discovery in order to test the veracity of KONO's representations. The Court of Appeals held, however, that discovery by petitioners such as the Coalition was not a legal necessity, because the FCC considers more than 3,000 license renewal applications each year, and to require its Administrative Law Judges to pass on the propriety of proposed discovery by objecting petitioners "would create a regulatory nightmare."

On the other hand, the Court of Appeals agreed with the Coalition that the FCC had abused its discretion in renewing KONO's license. The FCC itself had found that KONO's employment of Mexican-Americans was outside the zone of reasonableness, that the percentage of Mexican-Americans in its workforce had remained static for years, and that its affirmative action program was "passive." These findings, said the court, created a question as to whether KONO had engaged in intentional discrimination. Accordingly, the FCC should have made a further inquiry, either by conducting its own investigation, or, if it could not or did not wish to do so itself, by permitting the Coalition to conduct discovery. Since the FCC did neither of these things, but instead renewed KONO's license subject only to future reporting requirements, the court reversed the license renewal and remanded the case to the FCC for further proceedings.

In the case of KCBS, the petition of Chinese for Affirmative Action showed evidence of a substantial underemployment of Asians, a significant minority group in KCBS' area. Accordingly, the FCC was obliged to conduct its own further inquiry, or to permit discovery by Chinese for Affirmative Action. In this case, the FCC did conduct its own further inquiry and learned that KCBS had employed a substantial number of Asian-Americans during the years in question, that its employment of minorities in general fell within the zone of reasonableness, and that its affirmative action program had been effective. Accordingly, the court held that no material question of fact had been raised requiring a hearing; and it affirmed the FCC's renewal of KCBS'license.

Bilingual Bicultural Coalition on Mass Media v. Federal Communications Commission, 595 F.2d 621 (D.C.Cir.1978) [ELR 1:8:4]

United States Supreme Court rules that suspension of a New York harness racing trainer was unconstitutional

Trainer John, Barchi was suspended in July of 1976, when a post-race urinalysis of a harness race horse he had trained revealed the presence of a stimulant drug in the animal's system.

Under New York State Racing and Wagering Board Rules, a horse cannot be administered any drug within 48 hours of a race, and the trainer is responsible for the condition and soundness of all horses he races. Further, these rules impose a duty on trainers to guard against the drugging of their horses prior to a race. If a post-race test for drugs is positive, Board Rules provide for an evidentiary presumption, subject to rebuttal, that the drug was administered by the trainer or resulted from his negligence in failing to adequately protect against the drugging.

Barchi claimed he was innocent and submitted to two lie detector tests which supported his lack of knowledge of the drugging. However, the track steward, relying on the trainer's responsibility rules and on the evidentiary presumption, suspended Barchi for 15 days without holding a hearing.

Under Section 8022 of the New York Unconsolidated Laws, Barchi was entitled to a post-suspension hearing. But the section specifies no time in which the hearing must be held, and a final order can be issued as much as 30 days after the hearing. Meanwhile, pending the hearing and final determination, the Board's license suspension remains in effect. Thus, Barchi, without waiting for a final hearing, brought suit in the U.S. District Court.

The District Court agreed with Barchi's contention that his license was protected by the Due Process Clause of the Constitution and that Section 8022 of the New York Law was unconstitutional, because it permitted a license to be suspended without providing for a pre-suspension or a prompt postsuspension hearing. Barchi also challenged the rule permitting the Board to presume from the drugging of a horse that its trainer was responsible. But the District Court upheld the evidentiary presumption, concluding that "the duty of a trainer to oversee his horses is sufficiently connected to the occurrence of tampering to support the presumption." The District Court also agreed with Barchi's claim that Section 8022 denied him Equal Protection of the law, because in thoroughbred racing, suspensions can be stayed pending appeal, while in harness racing they cannot.

In reviewing the decision, the U.S. Supreme Court ruled that Due Process was not violated when Barchi's suspension was ordered under Section 8022 without a pre-suspension hearing. The Court found that New York's interest in assuring the integrity of harness racing carried on under its auspices was great enough to permit interim suspension upon evidence of wrongdoing. But the Court found Section 8022 to be unconstitutional, because of its failure to provide for a prompt judicial or administrative hearing after license suspension.

The Supreme Court also agreed that the Board's rebuttable presumption was permissible, in light of a trainer's responsibility under the New York Law. The Supreme Court found New York's pre-suspension procedures were adequate to establish probable cause for interim suspension. But once his license was suspended, Barchi should have had a prompt post-suspension hearing.

Finally, the Supreme Court overturned the District Court's ruling that Section 8022 violated the Equal Protection Clause of the Constitution. The Supreme Court noted that the New York Legislature believed that stricter regulation of the harness racing industry was necessary because of a widespread pattern of abuse which at one time existed in that sport.

In an unrelated harness racing case, a New York state court held that a rational basis did not exist for the State Racing Board's decision to suspend a driver for racing in a "manner inconsistent with an attempt to win" because of the driver's unexpected change in driving tactics. In reaching its decision, the court noted that the horse involved had a reputation for being wild and unpredictable, and also that the horse was physically tired because of a race three days earlier.

Barry v. Barchi, 39 (CCH) S.Ct.Bull. at B3575 (1979); Rolla v. Barry, 416 N.Y.S.2d 429 (1979) [ELR 1:8:5]

Supreme Court declares West Virginia statute prohibiting the publication of lawfully obtained information unconstitutional; Kansas court upholds narrow interpretation of similar statute

The U.S. Supreme Court has held unconstitutional a West Virginia statute making it a crime for a newspaper to publish, without the written approval of the juvenile court, the name of any youth charged as a juvenile offender. The Court found that the State's interest in the statute was not sufficient to justify the application of a criminal penalty to the defendant newspapers.

The incident reported by the newspapers involved the killing of a student, allegedly by a 14-year-old classmate. Two Charleston newspapers obtained the name of the alleged assailant from witnesses. One newspaper decided not to publish the name of the alleged assailant because of the statutory prohibition; a second newspaper and three radio stations announced the name of the juvenile. Subsequently the other newspaper also published the juvenile's name.

An indictment was returned against the newspapers, but the West Virginia Supreme Court issued a writ prohibiting any further action on the indictment, holding that the statute violated the First and Fourteenth Amendments of the United States Constitution. In affirming the judgment of the West Virginia court, the U.S. Supreme Court held that the statute could not satisfy constitutional standards whether it operated as a prior restraint or as a penal sanction for publishing lawfully obtained, truthful information. In accordance with its previously decided cases in the area, the Court pointed out that "state action to punish the publication of truthful information seldom can satisfy constitutional standards." In this case the state interest asserted was the protection of the anonymity of the juvenile offender in order to further his rehabilitation (one concern being that publication of the juvenile's name might cause him to lose future employment). The Court found that this interest was not of "the highest order."

The Court also noted that by restricting the publication of the names of the juvenile offenders only in newspapers and not in other media, the statute would not accomplish its stated purpose. The Court pointed out that 45 states have found methods other than the imposition of criminal penalties to protect the confidentiality of juvenile proceedings.

By giving a narrow interpretation to a Kansas statute, the Supreme Court of Kansas has upheld its constitutionality. The statute at issue imposed criminal sanctions for the publication of information, taken from public records, concerning the issuance of arrest warrants, before the warrants were executed and returned to the court. During a murder investigation, a newspaper reporter obtained, from a court docket open to the public, the names of two individuals for whom arrest warrants had been issued. The names were published by the reporter's newspaper.

On appeal, the newspaper contended that its conviction for violation of the statute was constitutionally impermissible under the Kansas Constitution and the First Amendment of the United States Constitution.

The court held that the information published by the newspaper had been properly obtained from public records and the statute therefore could not be applied to the newspaper. But the court rejected the newspaper's contentions that the statute was unconstitutionally vague and overbroad. The court determined that the language of the statute clearly set forth the conduct proscribed. And the court found that the statute could be restricted to apply only to conduct that was not constitutionally protected. The court suggested that if confidential information about government functions had been temporarily protected and such information was obtained by illegal means, the statute could be constitutionally applied.

Smith v. Daily Mail Publishing Co., Docket No. 78482, June 26, 1979; State v. Stauffer Communications, Inc., 592 P. 2d 891 (Kan. 1979) [ELR 1:8:6]

Bell Telephone s refusal to allow multiple cable television attachments to its telephone poles found not to violate antitrust laws

TV Signal Company of Aberdeen, a cable television company, brought suit against Northwestern Bell and its parent company, AT&T, alleging violation of federal antitrust laws based on Bell's refusal to allow cable attachments to its telephone poles.

In 1969, TV Signal Company was preparing to construct a cable television system in Aberdeen, South Dakota, and it sought to enter into a pole attachment agreement with Northwestern Bell. However, at that time, Bell had a one-per-pole policy which restricted attachments to the first cable television company that obtained necessary public authorization and requested a pole attachment agreement. Bell had earlier entered into such an agreement with another cable television company, and thus Bell denied TV Signal Company's request for an attachment agreement.

Bell's refusal to allow pole attachments by TV Signal Company required TV Signal to build a more costly underground cable distribution system. TV Signal had completed approximately 60% of its underground system when Bell rescinded its one-per-pole policy and decided to permit multiple pole attachments. TV Signal took advantage of Bell's change in policy and completed its system with overhead attachments.

TV Signal Company filed suit in 1970 alleging, among other things, violations of sections I and 2 of the Sherman Antitrust Act. TV Signal Company alleged that Bell's one-per-pole policy was an attempt to restrict the development of traditional cable television operators in Aberdeen, because it was possible they could become competitors of Bell in the area of "broadband services" such as meter reading, two-way data services, medical alerts, security and fire alarm service, information retrieval, and the like.

Early in the case, TV Signal's complaint was dis missed for failure to state a claim. That dismissal was reversed on appeal, however. TV Signal Co. v. AT&T, 426 F.2d 1256 (8th Cir. 1972). And the case was sent back to federal District Court for trial.

After trial, a federal District Court in South Dakota again entered judgment for Bell and AT&T. It found that TV Signal had failed to prove the existence of a "relevant market"; that is, it had failed to prove that both companies were involved in the same geographic and product market. The court also found that TV Signal had failed to satisfy the "standing" requirement of antitrust law, because it failed to show that while both companies were competing within the same relevant market, TV

Signal suffered actual damages as a result of conduct by Bell which is prohibited by antitrust laws.

The court rejected TV Signal's contention that there was a "relevant market," because the court found that no competition occurred between the parties. TV Signal was engaged in supplying traditional cable television services, while Bell provided only telephone service. Although TV Signal produced documents showing that Bell perceived traditional cable television operators as potential competitors, the court ruled that a relevant market cannot be based on projected services which in fact have never materialized.

The court also ruled that TV Signal was not economically injured by Bell's refusal to allow pole attachments. Bell's refusal had not prevented TV Signal from expanding its operations to broadband services, because such services have yet to become economically feasible, and because TV Signal was undercapitalized to undertake them. Also, even though TV Signal partially constructed an underground system, and even though the underground system was more costly than pole attachments, the court found that these higher building costs were offset by lower maintenance costs, no pole leasing fees, and an earlier startup date.

TV Signal Co. of Aberdeen v. American Telephone & Telegraph Co., 465 F.Supp. 1084 (D.S.D. 1979) [ELR 1:8:6]

Georgia Court of Appeals holds that inaccurate newspaper report of criminal charge did not libel mayor in absence of actual malice

The Court of Appeals of Georgia has found that a newspaper did not libel the mayor of a Georgia community by erroneously reporting that the mayor had been arrested and charged with criminal trespass and cattle rustling. The correct charge was trespassing on private property and shooting at cattle (with a tranquilizer gun). The newspaper had received a telephone report of the arrest from an individual identifying himself as a deputy sheriff. The deputy so identified later testified that another individual using his name had given the "tip" to the newspaper about the arrest and he denied any knowledge of the nature of the charges against the mayor.

The court held that the mayor would have to demonstrate "actual malice" in order to recover on his claim. The mayor was a public official and the court noted that "the news that a mayor has wilfully violated state law, albeit in the conduct of his private affairs, bears a close connection to his fitness for public office."

The court therefore reversed the lower court's decision, holding that the evidence did not show that the newspaper "entertained serious doubts as to the truth of [its] publication" or a "high degree of awareness of . . . probable falsity" and did not establish clear and convincing proof of actual malice on the part of the newspaper.

Savannah News-Press v. Whetsell 254 S.E.2d 151 (1979) [ELR 1:8:7]

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