

LAW AND BUSINESS OF THE ENTERTAINMENT INDUSTRIES

Fifth Edition

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May 2006
The Authors

DEDICATION TO DON BIEDERMAN

My father died on August 8, 2002. In the days after he died, time seemed elastic. Big chunks seemed to fly by in an instant. In other moments, time slowed, sounds seemed muffled, and we seemed to be walking under water. I remember being amazed that the world went on in its normal rhythm, when it had so fundamentally changed. One of the first concrete things I remember doing after coming back from the hospital was calling Suzanne Staszak-Silva, our publisher's editor, to tell her Dad had died, and that our family wanted this book to continue.

My father had reason to be proud of this book and his other successes, although they seemed almost commonplace to me growing up, viewed against the backdrop of family history: My great grandfather Benjamin and his brother, as very young boys, made their way from Hungary, across Europe, and across the sea to New York. He made a life here, a world away from home, not knowing the language. Benjamin's son, William, was the first child of that generation to live beyond the age of five. Benjamin died young, leaving William's mother to raise William, and his younger siblings, Jeannie and Martin.

William earned a scholarship to Cornell University. While there, he ran cross-country, rowed crew, and was Phi Beta Kappa, while working two jobs and helping to support his mother, brother, and sister back home. William earned a Ph.D. in chemical engineering and became a professor at Columbia University. When the Great Depression began, William left Columbia and became an orthodontist, a better paying career that helped him support his growing family. He remained an academic at heart, inventing and patenting a number of orthodontic instruments.

My father, in his turn, won a New York State Regents scholarship, attended Cornell, and graduated from Harvard Law School. His early

career was spent in the JAG Corps in the Army, as a staff attorney for the City of New York, and then in private practice in a small firm in Queens. As family lore tells it, late one morning, one of the name partners in my father's firm came into his office and asked if my dad could cover a deal for him. My father agreed and the partner handed over a thick document. "What is this?" My father asked. "It's a record deal. You need to be in the City this afternoon to negotiate it." "We do record deals?" My dad asked, skeptically. The partner replied that there was nothing to worry about, that my dad could read it on the train into the City. Apparently that negotiation went well, as a few months later, my father was offered a position as General Attorney at CBS Records. He worked in the music business for the next twenty-eight years.

Many years later, after he had moved on from CBS to be Vice President at ABC Records, a partner at Mitchell, Silberberg, & Knupp, and for the last 17 years of his career, Executive Vice President for Legal and Business Affairs and General Counsel for Warner/Chappel Music, I saw him speak to a group of law students. Following his talk, a student asked him, "How come you've never been the number one guy at the companies you work for? Don't you want to be the number one guy?" My dad laughed. [This talk took place during the successful run of the great Buffalo Bills teams of the early '90s.] He replied that the question was quintessentially American: Why is it that in this country we assume being number one is everything and anything less nothing? Marv Levy was a great coach, and the Bills were one of the great teams in history. The fact they hadn't been able to win "The Big One" didn't erase the fact that they had been the dominant NFL team for many years. Then he smiled, paused and said, "You know, I don't think anyone would look at my career and say it was B+; and I certainly don't feel that way. . . . I wouldn't change a single thing about my life. Not a thing. You know, the Number One Guy never makes it to a dance recital or a Little League game."

By the time the first edition of this book came out, William Biederman had died. One of the very few regrets my father ever verbalized to me was that his father had not lived to see it. My grandfather and my dad were close, but my grandfather did not fully understand why my father did not have the same singularity of purpose that he did. To my grandfather's old-world sensibilities, the fact that my dad played in a band and played and loved sports was strange and a distraction from *Work*.

My father was proud of his career, but always said his greatest achievement was his family. My grandfather would have been immensely proud of his son authoring this book and being recognized as a leader in his chosen field. Now it is my turn to try to fill William's son's very big shoes. Don Biederman is gone, but I have been given the privilege of contributing to this fifth edition of this work.

I have two sons of my own—Will and Alex. I will share with them the stories of Benjamin and William Biederman's struggles to launch this family in this country—a level of energy and effort that was always held

up to me as heroic. But I think I will emphasize more the lessons that William's son taught to me: that one's greatest achievement is one's family, that one's relationships are the measure of the man, that being a hero is more than dramatic achievements, that sometimes it's the guy who just puts on his pants in the morning and goes to work who is the true hero. Every day I live, that lesson makes more sense.

"Ever the best of friends, Pip"

—*Charles Dickens' Great Expectations*

Charles J. Biederman
Santa Monica, California
March, 2006

DON BIEDERMAN REMEMBERED AND MISSED

The entertainment law community lost a great friend, mentor, and legend with the passing of Donald Biederman on August 8, 2002.

Don's law practice, writings, teachings, and reputation touched hundreds of entertainment law practitioners. For many of us he set the standard and model that one aspires to in an entertainment law practice.

Don was Executive Vice President and General Counsel of Warner/Chappell Music, Inc., where he worked for over seventeen years. He was also the Director of Southwestern Law School's National Entertainment and Media Law Institute (which later changed its name to the Donald E. Biederman Entertainment and Media Law Institute in honor of Don). He was the initial and lead co-author of every prior edition of this casebook as well as the editor of another book entitled, *Legal & Business Problems of the Music Industry*.

As we reflect back on his rich life, the common theme, recalled by those of us who had the pleasure to know and work with him, is that Don Biederman was a man of absolute integrity, a man whose word could be relied upon and who would always do what was right, fair, and just. In addition, his legal skills and intellect were unparalleled. No one could write a letter as pithy, clever, powerful, or inspired as Don. When it came to drafting contracts, Don became respected and recognized for his ability to take the long, complex, unreadable agreement and reduce it to a short and concise agreement that would state exactly what the parties intended in a way all could understand.

Don was a friend to many and his generosity was boundless. He was always incredibly generous with his time. He helped lawyers, students, musicians, and songwriters in countless ways: making recommendations when one was out of work, helping a student understand a concept after hours, helping the struggling musician or songwriter pay the

rent. Scores of entertainment lawyers (this author included) can and will forever state and remember, “I would not have my job today were it not for Don Biederman.”

The first Music Chair of the American Bar Association’s Forum Committee on the Entertainment and Sports Industries (from 1980–1983) was Don Biederman. In that role he helped many of us learn about music law and helped us to become involved in his committee. At the time he was a partner in the Los Angeles law firm of Mitchell Silberberg & Knupp. Prior to that, he was vice president of legal affairs and administration for ABC Records, Inc. from 1977–1979 and entered the field of entertainment law as a general attorney for CBS Records Group in 1972.

As if his role as a great lawyer, executive, author, teacher, and father were not enough to secure his legacy and the respect of his peers, Don Biederman’s six year battle with cancer showed us dignity, courage and bravery that was nothing short of miraculous.

We shall always miss Don: his humor, his friendship, his intellect, his heart and his inspiration.

May we all find some of that inspiration he had and shared in the students that he taught, the lawyers he mentored, the writings he left, the reputation he still has, and the standard he has set.

Ed Pierson

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