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BOOK NOTE

CAUGHT IN THE NET

Fatal Subtraction: The Inside Story of Buchwald v. Paramount.
By Pierce O'Donnell and Dennis McDougal with an Introduction by Art Buchwald. Doubleday 1992. 576 pages (including appendixes and index). \$25.00.

This epic tome, written by Kaye, Scholer partner Pierce O'Donnell and *Los Angeles Times* entertainment reporter Dennis McDougal, is a complex and itemized account of how Pulitzer-prizewinning columnist Art Buchwald took on a major motion picture studio and won.

Fatal Subtraction is a forthright and uncommonly damning study of Hollywood and its hidden profits amidst a labyrinth of lucre, desire, and domination. Self-anointed super-lawyer O'Donnell deposes the likes of actor Eddie Murphy, director John Landis, talk-show host Arsenio Hall, and a series of other studio executives including Disney's whiz kid Jeffrey Katzenberg (who gets a spell of good old-fashioned Ronald Reagan forgetfulness). These entertaining but unsettling insights provide the arsenal for Buchwald's case.

The authors again and again refer to *Buchwald v. Paramount* as a true David-and-Goliath story. The book is divided into phases of the litigation. There are engaging (if exhaustive) passages about the intricacies of the studio and the mystique surrounding its decision makers. O'Donnell educates us, as he did himself, about the elaborate world inside Hollywood - a universe governed by star-power.

In his introduction, Art Buchwald explains that he was inspired by the Shah's visit to the White House during which a chaotic gathering of Iranian protestors arose. He asked himself what would happen if the Shah were overthrown at that moment and wound up in a ghetto. The internationally renowned writer and humorist prepared an eight page screen treatment entitled "It's a Crude, Crude World." From this, a similar movie idea in the form

of a two and a half page treatment was sold to Paramount with the help of Buchwald's partner, producer Alain Bernheim. If the story were used, Paramount promised to pay them a total of \$265,000 plus a percentage of the net profit the motion picture "never earned."

After what O'Donnell calls "development hell," the film became *Coming to America*, the story of an African prince who comes to the United States, and through his misadventures takes a wife. Eddie Murphy took credit for this story which he says struck him during a break up with his girlfriend. The book reveals that in fact the story was known to studio executives, and possibly even Murphy himself, as Buchwald's original treatment entitled *King for a Day*.

In the resulting lawsuit of *Buchwald v. Paramount*, Phase I of the court's decision ruled that in the absence of a contractual definition to the contrary, a court will use copyright principles of access and similarity to determine if a film is "based upon" a treatment or other underlying material. As Buchwald says, "the dispute was never a plagiarism suit, but rather a minor breach of contract case which turned into an historic legal battle over the way motion picture studios keep their books and diddle their talent."

Paramount gets caught in the net. The definition of net profit in standard Hollywood profit participation agreements has engendered much discussion and debate. Actors, producers, directors, and writers have criticized the way in which net profit is determined, claiming that the industry's accounting system provides little hope of ever recovering a share of a motion picture's net profit. Buchwald attacked Paramount with great resentment, as gross profit participants like Landis and Murphy, who called net profits "monkey points," were reaping huge sums. The Hollywood creative accounting system has rarely been subjected to extensive judicial scrutiny, but this challenge invalidated the boilerplate language of studio contracts. The court ruled in Phase II that the net profit contracts signed by a producer were non-negotiable contracts of adhesion, and that certain provisions of Paramount's net profit formula were unconscionable. Yet while *Coming to America* continues to profit, grossing over \$350 million, Paramount claims it is still in the red.

Fatal Subtraction covers the studio "funny business" of skimming and squirreling away profits, executive "sales jobs," and coddling of superstars. The authority, power and influence of such persons as Martin S. Davis, Chairman of Gulf and Western, Paramount's parent company, come to light in egoistic games of

Hollywood hardball. There are nuggets concerning the studio's "single biggest, highest paid and most bankable star," Eddie Murphy, who at the height of his fame was described by Paramount Chairman Frank Mancuso as "Our Kellogg's Corn Flakes." For example, Murphy and his entourage managed to ring up a \$235 breakfast at McDonald's which was part of his \$5 million of "overhead" charged to the picture over his \$8 million acting fee and 15 percent share of gross profits. O'Donnell also exposes "The Club," a select few white males whose names are unfamiliar and whose talent lies in making money and deals, not movies. Once a member, "The Club" takes care of its own, even despite falls from grace, so that a member can always find another position. Standard form contracts protect "The Club" and perpetuate a caste system for talent, guaranteeing power and huge income to its members.

This book is not a courtroom drama to rival the fictional *Presumed Innocent* (although there are almost melodramatic descriptions of the trial which read better than transcripts). The testimony of the trial is interesting. Among other things, issues of pre-trial publicity and settlement negotiation are explored. In general the writing is sometimes cluttered or overtelescoped. Repetitions abound. Apart from the frequently absorbing technical discussions of legal and procedural moves, O'Donnell writes with ersatz erudition. However, he is profligate with detail, and his openhandedness and the inherent tensions of his large story should help readers to overlook his equally spacious faults, including the banality of his asides: "Trials are grueling - that's why I had completed a six-week, intensive Pritikin program and lost forty pounds just before the trial began." Considering his co-author was an investigative newspaper reporter, it is a wonder the narrative is not more terse.

Although it is difficult to admire the writing itself, the at-times suspenseful book is admirable for its thoroughness. Pierce O'Donnell takes you from the first phone call to the final stage of trial. Indeed, *Fatal Subtraction* could be used as a novice litigator's guide to taking on a giant studio. Interspersed with colorful episodes are antic glimpses of the comedic Eddie Murphy, Arsenio Hall, and Art Buchwald under oath: "People ask me if I'm bitter about this experience. I was until Paramount executives explained to me that Paramount is a nonprofit organization."

What is lacking in this book is any real discussion of the ramifications of the decision, which seem to be little, if merely symbolic. The little guy won in principle, but have the studios really changed? Has *Buchwald v. Paramount* rendered the net profit

deal obsolete? This year has been hailed as the year of the independent filmmaker. Perhaps in the wake of this decision and the waning of the myth that Hollywood is recession proof, the movie business is taking on a new shape for the first time since the *Paramount* decrees of 1948.

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