

# ASMP Bulletin

January/February 1998

Volume 17, Number 1

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## ASMP AND KODAK REACH AGREEMENT

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Photographers worldwide could benefit from the agreement reached between ASMP and Eastman Kodak following ASMP's bold actions announced in the December BULLETIN.

As members of ASMP, you can feel proud that your Society was willing to take a stand on issues of great importance to photographers, to the point of severing relationships with a major sponsor. And, we can also take pride in the fact the leaders of one of the United States' greatest companies were not only willing to listen to us, but did agree to take steps to resolve our concerns.

As reported in the BULLETIN, and stated in my letter to George Fisher, CEO of Eastman Kodak, ASMP took action because of copyright and unfair competition issues.

Kodak promptly responded, and a meeting at ASMP National on December 3 was a perfect example of frankness and sincerity, and it produced a framework for a resolution of ASMP's grievances against Kodak. A second meeting at Kodak headquarters in Rochester on December 16, resulted in a plan for implementing Kodak's commitments.

Keep in mind that Kodak is a very large company. It will take months until change has been effected and it will be a complex process. However, the benefits, both immediate and long term, for photographers could be enormous. Kodak's proposed course of action and commitment to professional photographers are outlined in Mr. Siewert's letter.

Kodak has agreed to work with ASMP in an effort to secure liberalized copyright registration regulations for photography. For our part, ASMP will work with Kodak to secure reduced liability for those who are held to be innocent infringers, under the existing law.

Kodak also told us they will abandon the occasional practice of seeking work for hire agreements from freelance photographers who are commissioned to do Kodak assignments. Also, Kodak's staff photographers will not compete with freelance photographers in the open marketplace for Kodak assignments. And Kodak also agrees that receiving royalties is a fair objective for any photographer.

We are very pleased with this outcome and have resumed all relationships with Kodak. Chapters, specialty groups and committees are now free to accept whatever sponsorship may have been or may be offered in the future.

— **Les Riess, President, ASMP**

In light of issues brought forth recently by the ASMP, Kodak has held meetings with the ASMP management over the last few weeks towards a resolution of what are shared concerns by both parties. At the same time, Kodak has also implemented a number of initiatives to more clearly and comprehensively align itself with the principles of the professional photography industry as a whole.

The ASMP situation essentially brought to Kodak Professional's attention some actions by Kodak which took place over the last 18 months and may have misled people to believe that the company's principles were not aligned with those of professional photographers. The misunderstandings led to some serious actions by the ASMP and caused a wave amongst many professional photographers who were given pause to question Kodak's commitment to their needs — from copyright to royalties.

Through frank and open discussions, Kodak Professional has come to an agreement with ASMP and other key associations about ways to better articulate its commitment to the professional photography industry. Indeed, Kodak Professional's vision is intrinsically tied to meeting and servicing the needs of professional photographers.

Kodak has committed itself to a series of actions including the following:

- Working with the ASMP and other key photographic associations on changes to copyright legislation.
- Working with the Western New York chapter of ASMP to develop revised hiring practices for Kodak commissioned photography.
- Supporting the principle that a continuing stream of royalties from his or her images is a reasonable objective for any photographer; furthermore, Kodak will work to establish a system of fair and reasonable usage fees for the photographic works it commissions or the stock photography it licenses.
- Providing ongoing education to appropriate departments within Kodak in support of the above principles and objectives.

All Kodak people remain committed to ensuring the success of the professional photographers in these important areas and many others. Warm regards.

— **Patrick Siewert, President, Kodak Professional  
Vice-president, Eastman Kodak Company**

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ASMP was founded in 1944 to promote high professional and artistic standards in photography and to further the professional interests of its membership by disseminating information on a range of subjects and concerns. ASMP has a membership of more than 5,000 of the world's finest photographers.

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## THE PURPOSE OF ASMP

- To protect and promote the interest of photographers whose work is for publication
- To promote high professional standards and ethics
- To cultivate friendship and mutual understanding between photographers

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# Vote! Exercise your right

*The 1998 election is crucial to ASMP's success*

Over the next few weeks, the general members of our organization will be participating in a very important event, the election of five national directors. In my opinion, this and next year's election will be crucial to the success of the growth of our association. As many of you know, we are in the midst of making some changes within ASMP. These will encompass communication (internal and external), increased chapter financial accountability and responsibility, membership, regionalization and additional member services. This is going to require hard-working, dedicated directors.

One of the problems associated with this election, as in past elections, is knowing how to determine whom to vote for. Unlike local or national political elections where there is much media coverage, many candidates for ASMP elections are unknown to the vast majority of our membership. It can present a dilemma when deciding for whom to vote. I urge you to make your best, informed decision.

Soon, you will be receiving election materials. Study each candidate's bio. Who has worked for ASMP and in what capacity? Look at their endorsements. Are they endorsed by people who have first hand knowledge of what the candidates can offer? Call other members you respect and who might know the candidates. Call any of the national board members. Contact your chapter president for their opinion. Call the candidates themselves. Ask questions.

Members deserve a board that is dedicated and willing to roll up their sleeves and get their hands dirty. We need directors who are going to accomplish tasks effectively and in a timely manner. The job we have before us is too important to have

by  
Les Riess



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anything less than committed, forward looking directors.

Regarding the restructure effort, the committee is working on finaliz-

ing its report to present to the board for review prior to the April meeting. It will also be presented to the chapter presidents at their meeting. The board will then vote on the finalized plan at the Aspen meeting. I am encouraged by some of the preliminary work that I have seen as it looks like we will be able to lighten some of the burden that chapters have and increase service to the membership at the same time.

Finally, I would like to wish everyone a happy, healthy, and prosperous new year. ∞

## Candidates for five board seats

The following are the candidates for the five vacant seats for three year terms for the ASMP board of directors.

- Dave Barry
- Paul Bednarski
- Dave Harp
- Greg Kinney
- Don Luce
- Eugene Mopsik
- Margo Taussig Pinkerton
- Jim Scherer
- Martin Trailer

## Legal Action Fund gets a boost

ASMP members and chapters ended 1997 and opened 1998 with a generous array of contributions to the Society's Legal Action Fund.

Typical of the comments which accompanied their contributions was this from Jim Scherer who sent in \$500. "It's probably the best thing you can do to protect your profession. Besides, I'm certain I'll ultimately benefit from this."

And James Housel, of Seattle Northwest chapter, wrote that, "All of us (the chapter board) agree that the fund and the efforts of ASMP National on behalf of photographers' rights are the vital interest of everyone in our profession and represent an excellent investment for our hard earned revenues." The chapter contributed a total of \$647 (\$500 from the chapter and \$147 raised from attendees at two recent meetings).

Among other recent contributions were \$250 from Robert Cavallo; \$100 each from Natalie Fobes, Gregory Plachta, Jerrienne Lowther, Carr Clifton, Tom Gennara, and Barbara Alper.

Other contributions have come from Scott Highton, \$75; Carol Sund, \$60; Steve Gladysz, \$62; Ken Kasper, John Slemple, Jay Asquini, Dick Severino, Jessie Walker, Jay Graham, and Roger Wade, \$50 each; Aneal Vohra and Mike Duhon, \$30 each; George Ranalli, Gerry Goodstein, Eric Crossan, Reis Birdwhistell, Mark Harmel, Aran Kessler, David Schilling, Keith Ball, Richard Bryant, Jim Flynn, \$25 each; Robert Sisson, Gilbert Tanner, Neil Johnson, \$20 each; Sandra Gillard, \$15; Judith Schiller, \$10; Ken Whitmore, \$5.

To support the Legal Action Fund, you can send a check to ASMP National or simply call in with a Visa or MasterCard number. Please specify Legal Action Fund. Thank you for your support.

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# Why I re-joined ASMP

*A veteran photographer tells why "in is better"*

by *Richard Anderson*

I have been in ASMP, and I have been out of ASMP. In is better. When my career began in 1976, Copyright protection was a new concept, particularly for clients. I joined ASMP as an act of solidarity with my fellow photographers on this issue. In those pre-*Photo District News* days, the ASMP BULLETIN was the only way to keep your ear to the ground. I also gained much in the way of business acumen and professionalism through the *Business Practices Book* and the BULLETIN, and through association with other ASMP members.

During the mid-eighties, with business booming and clients routinely asking (and paying) for permission to re-use photos, ASMP seemed distant and contentious, and the need to be involved became less compelling. I joined instead the AIGA (American Institute of Graphic Artists) and went to a number of very interesting AIGA meetings. Although this association broadened my connection to the graphic arts industry, I didn't have the particular sense of solidarity that I had had before.

Then the world changed — I remember shooting a series for Maryland National Bank in which I covered actual internal meetings reportage-style. The mood in these meetings resembled that of a modern Spanish Inquisition. Loan officers were being grilled about loans to developers who were now in Chapter 11. I remember leaving those assignments feeling that what was happening to corporate America was about to happen to me. And it did. Soon day rates were sliding backwards. Invariably I was told, "Look, we just let 10,000 people go, this is what we will pay. Take it or we will go to the next guy in a heartbeat," and all the while

young photographers continued to enter the wrecked landscape of the profession. Under this kind of relentless financial pressure and without the support and guidance of ASMP, it became nearly impossible for anyone to avoid being marginalized. (I define

I have regained that sense of camaraderie and comfort in the knowledge that I am supporting ASMP's effort to educate its members, photo students, clients, and various federal and state legislatures

marginalized as getting calls from a photo supply house about your bill).

The last several years have seen a slow return to prosperity, but I became uneasy about the future. The Internet, stock, particularly of the royalty free variety, and digital photography seem to guarantee that the future will be challenging. Although far from dead, film is in retreat to digital capture, particularly in the studio. I've noticed that the assistants that I used to see regularly emerge from my care to successful careers are having an increasingly difficult time affording the equipment necessary to succeed. And digital

equipment is going to raise that ante ever higher. I began to be more and more persuaded by Dave Harp's arguments for joining ASMP.

Finally, with a Baltimore chapter nearing reality, I felt the time had come to rejoin. ASMP would be here, not all the way over in D.C. As soon as I did, I reaped the many benefits that I had been passing up. I saved more than the yearly dues on my disability insurance. I saved another \$200 on my *Creative Sourcebook* ad. I was able to pick up the phone and call members in other parts of the country for information about talent agencies, locations, even weather reports. And perhaps most important, I have regained that sense of camaraderie and comfort in the knowledge that I am supporting ASMP's efforts to educate its members, photo students, clients, and various federal and state legislatures. Supporting photographers rights before legislative bodies is definitely heavy lifting and nearly impossible for anyone to do alone. It takes the clout of thousands of educated and involved members. Tax issues can be particularly difficult to deal with on your own, as tax collectors often pick on individuals one at a time. It is gratifying to know that you can pick up the phone and call ASMP National with your problem. More often than not you'll find that we are all confronting similar problems, and with each other's mutual support in ASMP there's a real possibility things will get better.

As I said at the beginning, I've been in, and I've been out. I'm delighted to be back in! ∞

— *Richard Anderson, one of the most respected photographers in his area, is the vice president of ASMP Baltimore, ASMP's 39th and newest chapter. This article is reprinted with permission from ASMP Baltimore newsletter, January 1998.*



# Tips from Elyse: call those clients

## *Ten New Year's resolutions for self promotion*

1. Call every client you worked with in 1997 and wish them a "Happy New Year." Then tell them you are looking forward to working with them in 1998.
2. Look through your portfolio and edit out those "filler" images, less is more, keep your strongest pictures in the book.
3. Keep your portfolio looking fresh. Replace those worn mats, damaged laminations and scratched plastic sleeves.
4. Create an identity for yourself. This can be accomplished with a creative logo that best represents your style of photography.
5. Design a new promotion piece. Create a fresh look for your mailer or leave-behind.
6. Plan a promotional strategy for 1998, even if it is on a minimal scale, such as sending a promotional card to all your past clients on a quarterly basis. This will help your clients to remember you.
7. Send out or drop off your book to one new client a week. Be proactive!
8. Make an effort to get more editorial work. The rates are low, but the credit lines are good exposure.
9. Make a wish list. Keep it a manageable size. Choose five new clients with whom you want to work and go after them.
10. Keep a positive attitude. Remember, your talents are both needed and valuable.

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*Elyse Weissberg is a photographers' representative and creative consultant based in New York. She can be reached at 212-227-7272 or visit her web site at [www.elyserep.com].*

## Web sites worth a look

Here are some sites on the Internet that members might find useful. Thanks to Dirck Halstead, Don Luce, and Victor Perlman for these suggestions.

### **The Reporter's Internet Guide**

[<http://www.crl.com/~jshenry/rig.html>]

Run by Scott Henry, photo director and coordinator of computer-assisted reporting at the *San Marin Independent Journal* in San Rafael, Calif., it is a one-stop shopping site for lots of resources that are helpful in day to day work, such as mega-search news archives, news-bot from Wired, a searchable base for news stories, film and video sources, all the major newspaper archives, and stocks, futures, and equities.

### **The Digital Journalist**

[<http://digitaljournalist.org>]

News, articles, product reviews, and general information and commentary. Among excellent features on this site are *Requiem*, a multimedia essay by the photographers who died in

Vietnam and Indochina and a story titled *Mary Fisher-Heroes* a selection of photographs of *Aids* caregivers from her new book *Angels In Our Midst*, along with audio commentaries and video clips. Also featured, is *The story of Dan Eldon* the photojournalist who images alerted the world to the situation in Somalia where Eldon was killed in 1993, aged 22. (Note: A link to the Digital Journalist is provided from the ASMP Photojournalism Specialty site at [[www.asmp.org](http://www.asmp.org)].

### **Mapquest**

[<http://www.mapquest.com>]

The original site for interactive directions to the front door of anyplace in the country. Allows you to plan long trips, and will point out all the stops along the way. Never get lost on assignment again.

### **The Traffic Station**

[<http://www.trafficstation.com>]

Geoff Halstead came up with this interactive site that lets you configure your personal up-to-the-second traffic

reports. At the moment it covers the Pacific coast and the Midwest, but is coming eastward at a brisk clip.

### **Newsies**

[<http://www.newsies.com>]

A new site from Tom Mangen, that works on the idea that just maybe the best original writing on the Web could be done by news people. Besides original material, it has a megabase of links to sites by editors, reporters, photographers.

### **The Copyright Office**

[<http://lcweb.loc.gov/copyright>] — from which can be obtained information, news, and forms.

### **Electronic Freedom Foundation**

[<http://www.eff.org>] — a free speech organization which posts information on intellectual property issues.

### **Northernlights**

[<http://www.northernlight.com>]

A comprehensive search engine with the added advantage of receiving the results of searches organized in folders.

### **LawResearch Newsletter**

[<http://www.lawresearch.com/v10/Volweb.htm>]

A one stop shop for legal information and answers to legal questions.

### **Adobe Systems**

[<http://www.adobe.com>]

A comprehensive resource of not only product information but useful tips on how to make the most of such things as Photoshop, Pagemill, Acrobat.

— Found a useful Web site? E-mail the URL and a brief summary to [Skinner@ASMP.org](mailto:Skinner@ASMP.org) and we will share the information.

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from the ASMP Library [www.asmp.org](http://www.asmp.org)

# Biennial Conference

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## 1998 ASMP Biennial Awards — Call for nominations

Nominations by the membership are requested for the awards listed below. These awards will be presented at the Biennial Conference in San Diego.

Any ASMP member may submit nominations which must include a statement of support for their nominees. Please print and sign your name at the bottom of your nomination. Winners will be chosen by the awards committee.

### **NOMINATIONS MUST BE POSTMARKED NO LATER THAN APRIL 3, 1998**

#### **Mail or fax nominations to:**

ASMP Biennial Awards Committee  
Washington Park, Suite 502  
14 Washington Road  
Princeton Junction, NJ 08550  
Fax: 609-799-2233

### **Awards and Criteria**

**ASMP Honor Award** — Given to an ASMP member who has set a standard for photography, ethics, professionalism and behavior/demeanor in the profession. Someone that could be emulated and serve as a role

model. **Past winners include:** Dorothea Lange, Ernst Haas, Henri Cartier-Bresson, Gordon Parks and Arnold Newman.

**Lifetime Achievement Award** — Given to an ASMP member who has a long history (15 years or longer) of achievement in the profession. **Past winners include:** Irving Penn, Eve Arnold, Ezra Stoller, Andreas Feininger and Jay Maisel.

**Outstanding Achievement Award** — Given to an ASMP member who has exhibited outstanding achievement in editorial work, book production, or an ad campaign. **Past winners include:** Richard Avedon, Jay Maisel, Pete Turner, Sarah Moon and Jodi Cobb.

**Specialty Group Awards** — Given to a member for outstanding achievement in each specialty group (Architectural, Photojournalism, Sports, Stock and Underwater). **Past winners include:** Architectural (Steve Rosenthal), Photojournalism (Wayne Miller), Sports (Ron Vesely). Contact your specialty group for further details.

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# ASMP Project 2000

A millennium photo project offers photographers a one time opportunity to create a body of work that will last and be valuable well beyond our own lifetimes. The year 2000, now almost upon us, will be a benchmark date for centuries, a window through which future generations will examine their collective past as a way to learn something about where they came from.

I have been working on a millennium project for the past year or so, documenting a broad range of everyday aspects of my home town, Marblehead, Massachusetts. I've been taking information-rich photos of the way people live day to day at this juncture in history.

Other photographers could choose any topic that appeals to them: the state of the art of medicine, way of life of an ethnic community, the stuff we own, or an array of other subjects. Each photographer can choose his or her own area of proficiency and interest and do the project with complete creative freedom. Groups of photographers might work together to cover a large city or show a common theme in different parts of the country.

ASMP is distributing a series of guidelines about approaching such a project. The guidelines are directed to photographing a locality, but are broadly applicable to any subject.

**You can receive a copy of the guidelines by writing to:** ASMP Project 2000, ASMP, 14 Washington Rd. Suite 502, Princeton Junction, NJ 08550 or e-mail your request to Peter Skinner at [Skinner@ASMP.org]. Please include your name, address, phone and fax numbers, and an e-mail address if you have one.

While any project of this type is necessarily self-assigned and directed, ASMP might be interested in taking a larger role coordinating such efforts should enough members choose to participate. So if you decide to take on such a project please let Peter Skinner at ASMP know.

A great satisfaction of being a photographer is that each one of us gets to spend a life rendering our unique vision of the world for others to see. A millennium project redoubles the satisfaction by contributing that vision to history.

— Stuart Cohen, ASMP member  
New England Chapter

*A self assignment project on Marblehead, Massachusetts  
by Stuart Cohen who initiated Project 2000*



▲ A creative writing class of sixth graders at the Middle School on Village Street.



▲ Foggy morning on Doak's Lane near the harbor with lobster traps and fishing gear.



▲ High school cheerleaders enthusiastically support the efforts of the Marblehead High football team during a game in October. A crowd of students, parents and friends looks on.

*Honeoye Falls at the Millennium by Forest McMullin emphasizes portraits*



▲ Mary Ann Taylor, Rector, St. John's Episcopal Church  
© 1997 Forest McMullin

I've decided to document my home town through a series of photographs, mostly portraits, which I will eventually donate to both the Village archives and the local historical society. The Village Trustees have enthusiastically endorsed my project which has helped give the project credibility within the community. I plan to shoot in all kinds of environments from the mayor's office to the skateboarders hanging out in the center of town.



▲ Father and son, Steve and David List on their front porch on West Main Street.  
© 1997 Forest McMullin

## Members news and other briefs

News briefs will be featured as space permits in this section of the Bulletin. If you've done something special you think ASMP members might be interested in send the information to: Peter Skinner, Editor, ASMP Bulletin, P.O. Box 652, Anacortes, WA 98221. We cannot guarantee we will be able to publish everything we get.

### For ASMP members: A financial option in time of dire need

ASMP has instituted a new member benefit for all members and their families which could provide a financial safety net for individuals facing a life-threatening illness.

The viatical settlement is a financial resource that enables people facing serious or chronic illness, such as cancer, to sell their current group or individual life insurance policy for a percentage (generally between 50 percent and 85 percent) of the face value. This can provide ready cash to meet or offset immediate financial need. Virtually any life insurance policy, including group, universal, whole, and term policies, can be sold to help a family in such a situation.

The viatical settlement benefit is offered through Viaticus, Inc., a

Chicago-based viatical settlement company and a subsidiary of CNA Insurance Companies.

While ASMP does not expect a large percentage of our members to use this benefit, it is of potential value to every ASMP member and of enormous value to those members and their families who need to take advantage of it. The benefit can be used by ASMP members and their family members.

Full information on this new benefit can be obtained from Viaticus at 1-800-281-2700.

### Correction and update

The Web site for **Kathleen Thormod Carr** was listed incorrectly in the December BULLETIN, Books in Print section in which a short review was done on her book

on Polaroid transfers. Her site's address is: [www.mcn.org/a/kcarr/] and we apologize for any inconvenience.

Anne Laird, of A.Laid Photo Accessories (listed in the *ASMP Business Bible*, Resources chapter 4 - Rainhoods, P.24 and Tripods - Insulated covers and rain covers-P.32 - advises that the supplier has a new address. It is P.O. Box 1250, Red Lodge, MT 59068; Ph: 406-446-2168.

### PACA policy on grievances against new member agencies

The Picture Agency Council of America (PACA) has instituted a policy on admitting new members which allows photographers to file complaints about these agencies. If you have a grievance against any of the new provisional member or pre-provisional member agencies listed here, you can explain why, in writing, to the PACA Ethics and Grievance Committee, PO Box 308, Northfield, MN 55057-0308.

#### Provisional membership:

Allsport Concepts, The Bridgeman Art Library, Digital Stock Corporation, Folio, Laughing Stock, Motion Picture & Television Archive, Michael Ochs Archive, Photo Resource Hawaii, Reflexion, The Stock Connection, The Stock Rep, Weatherstock.

#### Pre-provisional membership:

Viewfinders.

### MIRA's okay by Bill

Just a note to suggest that opponents look again at MIRA/MP©A," suggests Bill Parsons of Little Rock, Ark., who reports that a recent sale netted him almost \$1,200. "I might not have another sale for years - who knows? But this is a great way to market stock photography. The images are up there in

## Travel photographer of the year



David Sanger, a member of ASMP's Northern California chapter, has won the 1998 Photographer of the Year award for excellence in travel photography announced by the Society of American Travel Writers at its 42nd annual convention, held in Bangkok at the end of 1997.

British-born, Sanger is based in Albany in the San Francisco Bay area, and editorial and corporate assignments for clients in the U.S. and Asia take him to locations around the world.

Sanger's winning portfolio, selected from entries from leading travel photographers in the U.S. and Canada, featured images from South Africa, Pakistan, China, India, Germany, Mexico, Belize, and the United States.

Judges for the competition were Bill Garrett, retired editor-in-chief of *National Geographic*; Bill Sumits, retired chief of *LIFE* photography labs; Loreto Aceto, printing and photographic service office, Smithsonian Institute; Mary Panzer, curator of photographs, National Portrait Gallery; and Cathy Sachs, executive director, American Society of Picture Professionals.



MIRA's hands and accessible on the Web, but the film originals are back here with me. I am delighted that MIRA offers the best of all worlds - global marketing, knowledgeable managers, and home-based film archives."

A report from MIRA supports Bill Parsons' confidence in MIRA's marketing system. Sales have increased; registrations by potential clients to use the Internet-based search facility have risen (all sales in the last several months have been handled electronically); a mailing of 52,000 promotional pieces has gone to qualified advertising and graphic design buyers; advertisements are running in several magazines in the printing and graphic arts markets. Still wanted from ASMP/MP©A members: more images to take advantage of the increased sales efforts.

### The perils of gray market film

Kodak is conducting an educational campaign to professional photographers about the perils of gray market film. A recent mailing of 30,000 brochures titled *Do You Know Where Your Film Has Been* shows the world-hopping travels of a roll of made-in-the-U.S. gray market film as it passes through many hands on its way back to U.S. discount dealers. Kodak points out that film that goes out of its controlled distribution system can not only travel a circuitous route before reaching photographers, it might not be stored properly. And that could result in inconsistent or unplanned results. The solution? Buy film through the PRO Products Network of dealers, set up in 1996. Info: 1-800-290-0594.

### Arnold keeps on shooting

At age 80 one could be forgiven for taking it easy. But don't tell that to **Arnold Newman**. The legendary portraitist has been working on some major exhibit and book projects lately and recently his work has been featured in *The New Yorker* and several other leading magazines.



France, when a woman driving a car with no brakes ran him down. Recovery was slow, but Joe said that work for the magazine had to proceed on schedule. And it did, thanks to great teamwork.

### Broken legs didn't stop Joe

Two broken legs didn't stop veteran ASMP member **Joe Rychetnik** (left) of Palm Springs, Calif., from continuing an assignment for *Precision Shooting* magazine, of which he has been a staffer for many years. But he did have to call for help from his old buddy **Lou Jacobs, Jr.** (former ASMP president and board member) who lives in Cathedral City, Calif., for some photographic assistance. And how did Joe break those legs? He was trying to photograph the ancient bridge at Avignon,

Come September he'll be celebrating 60 years in professional photography, a career that began as a \$16 a week portraitist in 1938.

### Nikon offers deal on owning an F5

Photographers are being offered a lease-to-own deal on the Nikon F5 camera by Nikon Inc. The program offers 12 interest-free payments for professional photographers who qualify under the terms of the program. The Nikon flagship camera has won eight international awards since its introduction. For information contact your Nikon dealer, or phone 1-800-NIKON-US. The program offer ends on March 31.

### Hasselblad marks 50th anniversary of its SLR

To celebrate the 50th anniversary of the introduction of the first Hasselblad camera in 1948, the company is presenting a special, commemorative gold edition of the new 503CW named, **The Hasselblad Gold Supreme**. The beautifully crafted camera bears a gold plate engraved with The System, 1948-1998, Victor Hasselblad's signature, and a special limited edition serial number. Hasselblad also has announced its 1998 schedule for the **Hasselblad University on Location** seminar series to be held in 15 cities starting in Dallas on

February 23 and finishing in Sarasota on November 13. And also being offered by Hasselblad is a new value-added deal to promote the company's **501CM camera package** and new CB-Series lenses. Until June 15, purchasers of 501CM/CB lens combinations will be able to choose free products such as free film magazines or prisms. For information on any of these, call 973-227-7320.

### German agent seeks photographers

A German stock agency is looking for talented photographers. In a letter to ASMP, WissFa & Skandinavia Foto, say they are well established and a member of Federal Association for Press Photography and Photo Agencies in Berlin. If you're interested write or fax: Dirk Steinhauer, Etatsratin-Doosstrasse 11, D-25554 Wilster, Germany. Fax: 0049-4823-1878. (Note: This notice is not an ASMP endorsement of the agency.)

### Wanna be in movies?

#### Dwight tells how

The saga is too long to be written here, but if you're interested in Dwight Cendrowski's short-lived career as an extra in the movie business, check The ASMP Library on [www.asmp.org](http://www.asmp.org). Is there money in movies? Sure, trust me!

# ASMP Hotline: newsbreaks and briefs

*These two pages of every BULLETIN will bring you the latest and most important news relative to your business and the industry. This type of information was previously presented in Members Only, but is now being incorporated in these Hotline pages, which are prepared immediately before the BULLETIN goes to press to make the information as current as possible.*

## Chuck Gentile beats Rock Hall in appeal • "A great blow for freedom of expression"

Cleveland, Ohio, photographer Charles Gentile has "struck a great blow for freedom of expression." Those words summed up the reaction from Gentile's attorney J. Michael Murray following the U.S. Court of Appeals' ruling that Gentile's sales of photographic posters depicting the Rock and Roll Hall of Fame and Museum do not infringe the Rock Hall's trademarks.

The Appellate Court for the 6th Circuit in Cincinnati reversed an earlier decision of the U.S. District Court for the Northern District of Ohio (in Cleveland). The higher court vacated a preliminary injunction that had been issued against Gentile. This decision is of great potential importance to photographers and artists everywhere.

ASMP, of which Gentile is a member, had filed an amicus curiae brief supporting Gentile in the appeal.

The decision dissolves a preliminary injunction that blocked Gentile from selling posters showing the Rock Hall at sunset on the shores of Lake Erie. The Rock Hall said Gentile was infringing on its trademark, but the court said his photo seemed nothing more than a depiction of a public site.

"When we view the photograph in Gentile's poster, we do not readily recognize the design of the museum's building as an indicator of source or sponsorship," Judge James L. Ryan said in the court's ruling. "What we see, rather, is a photograph of an accessible, well-known, public landmark."

Gentile's lawyer Murray, said that, "It's ironic that an institution that is supposed to

be dedicated to freedom of artistic expression, the rock industry, tried to trample a young artist. Soon he'll be able to sell his pictures."

Murray said several weeks will pass before the ruling takes effect and the posters actually go on sale. They have been seized and are stored under the Rock Hall's control.

### **Background to dispute**

The dispute dates back to 1996, when U.S. District Judge George W. White in Cleveland granted the preliminary injunction. Gentile had been selling a poster showing a photograph that he had made of the Rock and Roll Hall of Fame building in Cleveland. Under the photograph, the caption read, "Rock 'N' Roll Hall of Fame" and below that, "Cleveland." His signature appeared below the photograph. The owners of the Rock and Roll Hall of Fame and Museum charged that his sales of his poster infringed various trademark and related rights that they claimed to own in the Rock Hall building design and name. They sued for infringement and asked the U.S. District Court in Cleveland for a preliminary injunction, which the court granted, ordering the photographer to turn over his posters.

### **The grounds**

With assistance from ASMP, Gentile appealed. The basic grounds of the appeal included: that Gentile's use of the image and name of the building was not a trademark use; that there was no trademark violation because there was no likelihood of confusion on the part of buyers as to the source of origin of the posters; and that enforcing trademark

rights against Gentile would violate his Constitutional right to freedom of expression.

Gentile was represented in the appeal by a First Amendment specialist, J. Michael Murray and other attorneys from the firm of Berkman, Gordon, Murray and DeVan and by lawyers from the firm of Gallagher, Sharp, Fulton & Norman. ASMP's amicus curiae brief in support of his position was filed by ASMP's general counsel Victor S. Perlman and copyright counsel Charles D. Ossola. The appeal was argued on June 2, 1997. Seven months later, the majority of the 3-judge panel ruled in Gentile's favor, while the third judge filed a dissenting opinion.

### **The decision**

Perlman said the Appellate Court based its decision on trademark grounds without reaching the Constitutional issue. Since the injunction that had been issued by the District Court was a preliminary injunction, there had been minimal testimony and evidence before it. "In such a case, the job of the Court of Appeals is to decide whether the District Court judge had abused his discretion in issuing the preliminary injunction. The test was whether he had relied on clearly erroneous findings of fact, had improperly applied the law, or had used an erroneous legal standard," said Perlman.

The majority opinion that the image of the building in Gentile's poster is simply not a trademark use. The court said, "We do not readily recognize the design of the Museum's building as an indicator of source or sponsorship. What we see, rather, is a photograph

of an accessible, well-known, public landmark. Stated somewhat differently, in Gentile's poster, the Museum's building strikes us not as a separate and distinct mark on the good, but, rather, as the good itself. Thus, the photograph in Gentile's poster does not function as a trademark." The court went on to say that there was no evidence in the record that proved either the Rock Hall's use of the building design as a trademark or the recognition by the public of it as a trademark. The court said, "In the end, then, we believe that the district court abused its discretion by treating the Museum's building design, as a single entity, failing to consider whether and to what extent the Museum's use of its building design served the source-identifying function that is the essence of a trademark. In light of the Museum's irregular use of its building design, then, we believe that it is quite unlikely, on the record before us, that the Museum will prevail on its claims that Gentile's photograph of the Museum is an infringing trademark use of the Museum's building design."

"Similarly, there was no such evidence concerning the legend on the poster, 'Rock 'N' Roll Hall of Fame,' and the court felt that the words might well be just a description of the subject of the photograph, which would be a permissible fair use," said Perlman.

### **It may not be over yet**

Perlman said that Gentile's victory does not mean his war is won. "Although it is impossible to know what decisions the Rock Hall will make and how it will proceed, it is vir-

tually certain that this matter is not over. There are challenges to this ruling that the Rock Hall could pursue, and this ruling controls only the preliminary injunction; there has not yet even been a trial on the Rock Hall's claim for a permanent injunction. Of course, the Appellate Court's final sentence in its analysis is very encouraging if there is a trial on the permanent injunction. This sentence reads, "Indeed, on the record before us, we are left with grave doubts as to the likelihood of the Museum's success on these claims."

Further, Perlman pointed out that even after those matters have been disposed of at the District Court level, there are more appeals possible, potentially including an eventual request that the U.S. Supreme Court hear the case. "This is an important issue affecting many creative artists and many big business interests, and probably will not rest here," he said.

### **A hero**

For the moment though, photographer Chuck Gentile, who is being hailed a hero by photographers and other supporters for taking a stand against a much stronger opponent, is savoring the Appellate Court's ruling. "I feel great; it's a wonderful day. Words can't express it," he said after the decision was given. "Whatever the next phase of my legal battle brings, I know that along with my attorney J. Michael Murray and his excellent legal team, I will have the backing of thousands of my ASMP colleagues. We will continue to fight to preserve our Constitutional right of artistic expression, and to maintain our ability to make a viable livelihood as professional photographers," he said in a letter of thanks to ASMP.

### **Dinosaur Inc.**

Members who have had problems getting paid by Dinosaur Inc., of New York City are asked to contact ASMP National. One member reports that he has been owed money from mid-1997 and communi-

cations to the publishing company have not been returned. The same member advises colleagues interested in the rapid change in the publishing industry to read *The Publishing World: The Impossible Business* in the October 6, 1997 issue of *The New Yorker*.

### **It's tax time!**

Members looking for a list of tax filing dates can find them on the ASMP Web site in the Members Only section under News Digests. The site is also linked to the IRS's Web page which contains everything you need to know about filing taxes.

### **Read that fine print**

Contest organizers continue trying to get photos for free. One such contest brought to ASMP's attention was run by Eastern Mountain Sports in New Hampshire. Included in the fine print was language transferring the copyright of winning images to the contest organizers along with unlimited usage rights. Additionally, all entries became the property of the organizers.

In another contest, organized by the Chicago Federation of Labor, payment for the top four prizes results in the work being sold outright to the contest organizers with the artist having only limited rights for such things as portfolio use. ASMP's advice: be careful when entering your valuable images in contests.

### **Can I use your photos? For free?**

Portland, Ore. photographer Steve Cridland has taken the Illuminating Engineering Society of New York to task for sending two of his copyrighted slides to the author of a book and then requesting permission to use the photographs in that book for free. Cridland had permitted IES to use his slides of architecture in slide presentations at trade shows. However, he was incensed when he received the request for those images to be used royalty free in a book by noted Japanese lighting designer Motoko Ishii. Cridland,

in warning ASMP members about this project, asks how did the author get those slides? Is the book going to be sold for a profit? Is the printing, graphic design, paper, binding, and distribution being provided free? And why wouldn't it be reasonable to expect the photographers to be compensated?

### **Questions about Stock Answers**

Any members who have had dealings with an organization named Stock Answers are asked to notify ASMP National. A company representative responded via e-mail to an inquiry by an ASMP member by saying that correspondence with individual photographers is impossible at this time. The organization claims to be a fast growing stock photo agency with no high commissions and high volume catalog distribution. Their URL is [[www3.sympatico.ca/stock.answers](http://www3.sympatico.ca/stock.answers)].

### **AOL has 11 million subscribers**

America Online said it now has 11 million subscribers. The nation's largest on-line service reached this figure two months after it announced it had reached the 10-million subscriber mark. The company attributed the recent sharp rise to the popularity of sub-\$1,000 computers, most of which come bundled with AOL software.

### **Underwater group meets at DEMA show**

An estimated 120 photographers attended a meeting of the ASMP underwater photographers specialty group held January 29 in conjunction with the annual Diving Equipment Manufacturers Association (DEMA) convention in Anaheim, Calif. Interest in the group's activities was high and its leaders have set a series of goals to help improve conditions in the field. Many of the world's leading practitioners in the field attended the meeting. For information and ASMP•UPSG plans, check the group's site at [[www.asmp.org](http://www.asmp.org)].

### **A-mazing photo opp**

Want to get lost this summer? Or get shots of a maze in a cornfield? Then head for Janesville, Wis., in the southern part of the state where Randy Hughes is planning to mow a 40-acre maze in a corn field. *The Wall Street Journal* reports that from the air the labyrinth will look like a giant farmhouse. Hughes plans to charge maze wanderers \$6 each to work their way through it, and will also sell T-shirts and merchandise. Helicopter rides, to give viewers a bird's-eye view will also be offered. It will take about an hour to get through the maze.

### **ASMP writes appeal brief in Tasini case**

ASMP has filed an amici curiae brief in the U.S. Court of Appeals for the Second Circuit in connection with the appeal of the decision of the U.S. District Court for the Southern District of New York in the case of *Jonathan Tasini et al. v. New York Time et al.* The brief, which ASMP filed on its own behalf and on behalf of some 19 other organizations representing photographers, authors, artists and other creators of copyrighted works, was written in support of the appeal filed by Tasini and the other plaintiffs in the litigation.

The litigation is over the question of whether publishers of newspapers, magazines and other collective works were entitled to convert those works into electronic databases without paying any additional royalties to the authors of the individual works that made up the collective works. The trial judge held that the new, digital versions constituted "revisions" of the collective works under Section 201(c) of the Copyright Act and that, therefore, the publishers did not infringe the copyrights of the authors. The authors, ASMP, and the other organizations joining ASMP in its brief believe that the trial court made a reversible error in that conclusion, resulting in the appeal.

## In Memoriam

### Dan Guravich: founder of Polar Bears Alive

Dan Guravich, 78, died at his home in Greenville, Mississippi, on December 30 of complications arising from brain cancer. He had been bed-ridden for almost a year.

Born in Winnipeg, Manitoba, Dan fought as a captain with the Calgary Tanks in the Italian campaigns of World War II and finished the war leading a combat photography unit in the liberation of the Low Countries of Holland and Belgium. He won a doctor of philosophy in plant genetics in post-war study and moved to Mississippi as a cotton geneticist. After only a few years in science, he resigned to pursue photography as a career.

After doing an apprenticeship in photojournalism through work for agricultural chemical publications, he branched out into adventure photography. During a tour in 1969 as the official photographer on the history-making voyage through the Northwest Passage of the tanker *Manhattan*, he found his niche in life when he encountered his first polar bear. His research revealed that Churchill, Manitoba, would possibly support a tourist industry based on the local bear population and he set up a tour service that absorbed the rest of his days. A very high proportion of commercial polar bear pictures for many decades came from Dan's lenses. In off-bear season, he led trips to the Amazon, many Arctic areas, the Galapagos, the monarch butterfly fields of Mexico, etc. But his heart was in the polar bears and he finally founded Polar Bears Alive, the only conservation unit totally dedicated to protecting the world's largest land carnivore.

Dan will be memorialized at a party in New York for his widely-distributed naturalist and conservationist friends, possibly at the Explorer's Club, and probably in April, though final plans are still pending.

— Bern Keating

### John Durniak: a pioneer of the 35mm in photojournalism

Legendary picture editor John Durniak, 68, died November 3 at his home in Suffern, New York, of complications from diabetes.

Durniak, who was picture editor at *The New York Times* from 1981-84, served in the same role at *TIME* magazine for eight years and had also worked with *Popular Photography*, *Look* magazine, and *Reader's Digest*.

During a career in which he performed a wide range of duties in the magazine industry - from being a photographer's assistant to sports editor, consultant, and picture editor - Durniak inspired many photojournalists with his enthusiasm, tenacity, and demand for high standards. He would spare no effort or energy in obtaining the best coverage of an event and his drive to get the best out of colleagues contributed to his stature in the industry.

Carl Mydans credits him with being one of the first to realize the potential of the 35mm camera for photojournalism. Mydans, one of the first photographers hired by *LIFE*, and who later worked for *TIME*, told the *New York Times* that, "He (Durniak) affected most of us who were photojournalists in how we looked upon reporting with a camera. We were storytellers with a camera, and that was his continual direction to us: "Don't forget what you are. You are reporters, telling stories in pictures."

Durniak won recognition from the National Press Photographers Association which gave him its highest award in 1972 and recently presented him another award for his career achievements.

John Durniak is survived by his wife, Rita; children, Todd and Holly; a brother, Stephen; and four grandchildren.

### Gary Benson: trains were his passion

Gary J. Benson, 42, of Bernardsville, New Jersey, died, December 15, following complications from a failed kidney transplant in September, 1997.

Benson was a graduate of Bridgewater East High School and later studied film-making at the Rochester Institute of Technology.

His first photographic specialty involved several years photographing the drama of urban firefighting in Boston, Detroit, Chicago and New York City. As part of this study he lived in a firehouse in Harlem, New York, for a year. The resulting images were featured in dozens of magazines, most notably: *Geo*, *Smithsonian*, and *Zoom*, and continue to be published as part of his stock collection.

In 1987, while traveling on assignment in the southwest, Benson became interested in photographing railroads. During the next several years, he produced a series of images that led to a book contract with W.W. Norton, New York. In 1991, Benson's first book, *ROLLING THUNDER: A Portrait of North American Railroads*, was released and received critical acclaim. His new specialty and the resulting file of railroading images led to stock and assignment work for advertising, corporate and editorial clients throughout the United States and Canada.

His reputation as a railroad photographer led to his writing and photographing another book on the subject for Kalmbach Publishers, Waukesha, Wis., in 1993. This book, *THE ART OF RAILROAD PHOTOGRAPHY*, offered technical tips and secrets of this specialty. Concurrent with his interest in railroading, Benson also developed a new interest in equestrian photography, and spent several years photographing the world of equestrian competition. This specialty resulted in another photographic book, *IN THE IRONS: Show Jumping, Dressage and Eventing*, which was published by Howell Publishers, New York.

He is survived by his wife, Susan E. Benson, his mother Mrs. Harold Benson, and two brothers, Glenn and Gerald. His family has requested that in lieu of flowers, please send donations to: Morristown Memorial Hospital, CAPD Patient Fund, 100 Madison Avenue, Morristown, NJ 07960. — Loren Fisher

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## ASMP member applicants

The following have applied for membership in ASMP. Any comments, either positive or negative, relating to these applicants should be sent to the Membership Coordinator at ASMP Headquarters. After 20 days, applicants with no unfavorable comments shall be accepted.

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Doug Crouch, GM  
(A. Payne, M. DeCastro)  
Gregg Lansing, AS  
(L. Tucker, A. Payne)  
Mark S. Skalny, GM  
(M. DeCastro, P. Markow)  
Thomas Wiewandt, GM  
(M. Findysz, C. Allen)  
**Atlanta/Southeast**  
Bob Rives, GM  
(K. Hawkins, H. Northcuff)  
Franklin J. Viola, GM Trf  
(K. Hawkins, H. Northcuff)  
Kathy J. Viola, P/S  
(K. Hawkins, H. Northcuff)

### Austin/San Antonio

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(P. Street, R. Bradshaw)  
Phillinda Roy, AF  
(K. Walker, P. Wong)  
**Baltimore**  
Allen Holden, AF  
(T. Guidera, D. Harp)  
Amy Pekala, AS  
(R. Anderson, R. Solomon)  
Peter Whedbee, AF  
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Andrew Z. Glickman, AS  
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Bret Forbes, ST  
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Mark C. Schaible, ST  
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