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## Book Review: *Adventures of a Jazz Age Lawyer: Nathan Burkan and the Making of American Popular Culture*

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Gary A. Rosen. *Adventures of a Jazz Age Lawyer: Nathan Burkan and the Making of American Popular Culture*. Oakland: University of California Press, 2020. 408 pp.

In his first book, *Unfair to Genius* (2012), Gary Rosen chronicled the life of Ira B. Arnstein, a relatively unknown musician and composer whose copyright infringement lawsuits against more successful composers had a profound effect on the development of American music copyright litigation.<sup>1</sup> Rosen's second book, *Adventures of a Jazz Age Lawyer* (2020) illuminates the life of another influential but rarely discussed figure in early twentieth-century American popular culture: attorney Nathan Burkan. Rosen's book provides a detailed examination of Burkan's life and cases, including the substantial effect of his work on the music industry. From libel suits and copyright infringement allegations to contract negotiations, censorship cases, and custody disputes, Burkan handled the legal affairs of some of the Jazz Age's most famous celebrities, including Florence Ziegfeld, Charlie Chaplin, Mae West, and Gloria Morgan Vanderbilt.

Though not a musician himself, Burkan's work forever changed the way musicians and music publishers are compensated for their work. Perhaps his most important contribution was helping to found the American Society of Composers, Authors, and Publishers (ASCAP) in 1914 in response to technological developments that altered the way music was consumed by the public. As the modern music industry continues to grapple with the effects of streaming and digital music consumption, *Adventures of a Jazz Age Lawyer* provides a timely history of performing rights and mechanical royalties in the United States.

*Adventures of a Jazz Age Lawyer* presents a chronological history of Nathan Burkan's life and career, interspersed with background on the other key players of each case. For the purposes of this review, however, I will summarize Burkan's cases by subject matter, beginning with his work in the music industry. One of Burkan's first cases involved representing celebrated cellist, composer, and bandleader Victor Herbert in a libel suit against *The Musical Courier's* Marc Blumenberg. Blumenberg had published an editorial claiming that "[e]verything written by Herbert is copied" (20). Though this case dealt primarily with Blumenberg's assault on Herbert's reputation, Burkan's defense

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1. Gary A. Rosen, *Unfair to Genius: The Strange and Litigious Career of Ira B. Arnstein* (New York: Oxford University Press, 2012)

addressed questions of originality and the value of popular music that recur throughout the twentieth century and, I would argue, are still relevant to contemporary music copyright disputes.

After a victory in the Herbert case, Burkan went on to represent the publishers of Tin Pan Alley in their successful suit against Garrett Couchois's sale of counterfeit sheet music in 1905. Later that same year, Burkan became the general counsel for the Music Publishers Association (MPA). At this time, the MPA was working with Congress to modernize existing copyright law. Of particular concern was making sure that copyright holders benefitted from mechanical reproductions ("copies") of their work. On behalf of the MPA and prominent composers, including Herbert and John Philip Sousa, Burkan went before Congress to argue that aural reproductions of musical works should be considered copies of a musical composition. This led Congress to include a compulsory license for mechanical reproductions of musical compositions in the Copyright Act of 1909. While sound recordings were not considered protectable under this act, composers could collect royalties for recordings and live performances of their music.

Though it was fairly straightforward for composers to collect mechanical royalties for recordings of their work, the logistics of collecting royalties for public performances proved difficult. Inspired by the French Société d'Auteurs, Compositeurs et Éditeurs de Musique (SACEM), a centralized organization that sold licenses for a number of compositions and distributed the royalties to the copyright holders, Burkan worked with music publishing executive George Maxwell and composer Raymond Hubbell to found ASCAP. Convincing performance venues, particularly restaurants and movie theatres, to pay to license music that they were accustomed to getting for free presented a challenge to the new organization. Burkan addressed this matter through litigation in *Victor Herbert v. The Shanley Company*, in which the Supreme Court determined that such venues were required to pay licensing fees for the music performed there. Throughout his career, Burkan fought to protect and expand ASCAP. Several times, he came up against antitrust lawsuits alleging that the society constituted a monopoly. He also faced opposition to his efforts to monetize radio performances and movie soundtracks for the members of ASCAP. Despite these challenges, Burkan succeeded in keeping ASCAP going and established the model for collective copyright enforcement in the United States.

In addition to his work in the music industry, Nathan Burkan represented a number of actors. Perhaps the most famous of these was Charlie Chaplin, whom Burkan represented in numerous contract disputes, trademark issues, the founding of his own studio, and two divorces, among other things. Burkan also represented actress and playwright Mae West in a case alleging that her 1928 play *The Pleasure Man* violated New York's Wales Padlock Act through its indecency. The case resulted in a hung jury, which Burkan considered a victory against censorship (though he did have to sue West in order to collect outstanding fees at the end of the trial).

Nathan Burkan also handled many cases outside of the performing arts, including several prominent divorce cases, the defense of a rumrunner, and the infamous custody battle over "Little Gloria" Vanderbilt, which he lost approximately one year before his death at the age of forty-two. Outside of his legal work, Burkan played an important role

in New York City politics as a leader in Tammany Hall and a member of the Triborough Bridge Authority.

Rosen's book gives a rich and detailed history of an important moment in the development of American popular culture through a legal lens. Though the density of detail can at times be overwhelming, the resulting account is well worth the read, particularly for those interested in American copyright law. The chronological organization of the book may prove frustrating for readers who are interested in a specific aspect of Burkan's broad legal practice, particularly because the chapter titles do not always clearly identify their contents. For those interested in Burkan's musical practice, chapters 1-7, 12-15, 17, and 27 are most relevant, while chapters 9-11, 16, 19-20, 22, and 24 deal more with his stage and screen clients. The remaining chapters address Burkan's involvement in New York politics, the liquor smuggling case, prominent divorce cases, and the Gloria Vanderbilt trial. While this book can certainly be read and taught by topic, a cover-to-cover reading produces a comprehensive understanding of an understudied figure in American popular culture. ■

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