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I AM GLAD I GOT TO KNOW HIM

David E. Shipley*

I did not take copyright when I was in law school. The course was not even in my school's curriculum when I graduated in 1975. "Legal Regulation of the Competitive Process" was offered, and it covered some aspects of trademark law and unfair competition, but that was it. Intellectual property and the study of patents, trademarks, and copyrights was regarded by my classmates and me as esoteric. My appreciation of intellectual property in general and copyright in particular started when I was a brand new lawyer. The firm I joined represented Brown University and the Rhode Island School of Design. Those clients had some interesting intellectual property issues, and I was the young associate assigned to work on those matters. In doing my research and writing memos on several copyright problems, I saw that Professor L. Ray Patterson was frequently cited and quoted by other copyright scholars and by the courts. I had not heard of Ray Patterson, but I was starting to learn about him.

My first teaching assignment as a Visiting Assistant Professor at the University of South Carolina School of Law in the fall of 1977 included a three-credit survey of intellectual property. Lawyers do not realize how little they know about a particular subject until they have to teach it three times each week through a fourteen week semester. I soon learned that I did not know much about intellectual property, but when I covered the casebook's chapters on copyright, it did not take long for me to learn that this Patterson fellow, then the Dean at Emory, was very influential. I had not met Ray Patterson, but I was learning more about him.

I had the good fortune of teaching copyright or intellectual property almost every year for the next twenty years, and I did some research and writing in the area, including a now outdated casebook on copyright as well as articles on topics like copyright, the fair use defense, and the First Amendment. Intellectual property and copyright became my favorite subjects, and I developed a fuller appreciation of Ray Patterson's impact on the development and shape of copyright in the United States. It was necessary and appropriate for me, in doing my own scholarship, to read, cite, and quote from Ray Patterson's many writings and to discuss some of his positions. His ideas about copyright had been of substantial importance since the publication of his book, *Copyright in Historical Perspective*, in 1968. Ray's writing style was clear and elegant, and his interpretations of the Constitution's copyright and patent clause and our nation's copyright

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statutes were forceful and persuasive. I still had not met Ray, but I was becoming acquainted with him.

My thoughts about copyright were not always the same as Ray Patterson's. For instance, for many years, his interpretation of the scope and applicability of fair use was more expansive than my treatment of the defense. I dare say that most the nation's copyright experts were not as liberal in their application of this important limitation on the copyright owner's exclusive rights as Ray Patterson. Nevertheless, he would never concede the correctness of his position on this and other issues because he always based his arguments on fundamental principles going back well before the ratification of the United States Constitution to the English copyright statute of 1710, the Statute of Anne. Even though we had some differences of opinion, Ray asked me to read, review, edit, and sign my name to several amicus briefs that he prepared and filed in appeals of cases involving issues like fair use and photocopying for educational purposes. Additionally, in 1988 I had the pleasure of working through correspondence and telephone calls with Ray and Professor Peter Jaszi of American University on the Association of American Law Schools Special Committee on Fair Use. We drafted a report titled "Copyright, Fair Use and Educational Practice." I still had not met Ray, but I was getting to know him.

L. Ray Patterson and I finally met in the summer of 1998 when I became Dean of the University of Georgia School of Law. I think quite a few law school deans will say that former deans make good colleagues because they understand the job and appreciate its difficulties. Ray Patterson was a wonderful colleague not only because he had been Emory's Dean, but also because he loved to teach; he loved to do research and writing; he cared deeply for his students; he cared for his colleagues; and he cared about the Law School. Moreover, he was passionate about his favorite subjects, copyright and professional responsibility. He came by my office regularly to talk about what he was writing; we continued to disagree on some copyright issues; he continued to insist that he was right; and he continued to give me drafts to read.

Ray Patterson was remarkably productive, especially when you consider that he was publishing more than people half his age at a stage in his career when almost all of his contemporaries in legal education were retired. I used to joke with him regarding his insistence that the Statute of Anne remains relevant today, but with the passage by Congress of the Sonny Bono Copyright Term Extension Act and the Digital Millennium Copyright Act, it became apparent that Ray's arguments about first principles and the limitations on Congress' copyright power were more powerful and relevant now than ever before. Much of the Eleventh

Circuit's opinion in the *Gone With the Wind* versus *Wind Done Gone* litigation¹ reads like one of his articles. Ray disagreed strongly with the Supreme Court's decision in *Eldred v. Ashcroft*,² upholding the Copyright Term Extension Act, but Justice Breyer's dissent cites several of Ray's works. We will have to wait to see whether his arguments will have an impact on how the DMCA is interpreted by the courts. They need to listen to Ray Patterson.

I feel very fortunate to have become Ray Patterson's colleague and friend. We belonged to the same church in Athens, and I enjoyed seeing Ray and his wife Laura sitting close to the front with their grandchildren. He was a big fan of the Georgia Bulldogs and had high hopes for the football team's success under Coach Mark Richt. I wanted to build on our friendship after I stepped down as Georgia's Dean in the summer of 2003 and moved to an office next to Ray's in Rusk Hall. He always worked with his door open and encouraged people to come in and chat. I could listen to his classical music CDs next door; I knew when he was on the phone; and I could hear him working at the keyboard of his computer. He was the first person I would see at the office every morning.

Ray Patterson was writing and teaching to the very end of his life. He almost died on the job. He coauthored an article with Professor Craig Joyce of the University of Houston that was published in the *Emory Law Journal* a month or so before he died, and another article, coauthored with Christopher Thomas, a 2003 UGA School of Law graduate, came out in the *Journal of the Copyright Society* about a week before his death. His last copyright class in the fall of 2003, which met at 8:30 a.m. on Monday, Wednesday, and Friday, had sixty enthusiastic students. He was with this class for almost a quarter of the semester when he became ill, and then I stepped in to pinch hit for a copyright legend. He had an exemplary career and genuinely was a gentleman and a scholar. I am glad I got to know him, and I will miss him very much.

¹ See *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 60 U.S.P.Q.2d (BNA) 1225 (11th Cir. 2001) (holding that it was unlikely that plaintiff would be able to overcome defendant's fair use defense).

² 123 S. Ct. 769 (2002), *reb'g denied*, 123 S. Ct. 1505 (Mar. 10, 2003).

