

February 2012

In Memory -- Donald Grant Stave

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Recommended Citation

Smith, Scott A. (2012) "In Memory -- Donald Grant Stave," *Against the Grain*: Vol. 24: Iss. 1, Article 14.

DOI: <https://doi.org/10.7771/2380-176X.6084>

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Rumors from page 31

Alaska Steve since he lives in Alaska and tells me it's cold up there in the north!

Was talking to the smilingly earnest **Thomas Guignard** (Collection Development and Academic Scientific Information and Libraries Support at the **Ecole Polytechnique Federale de Lausanne**) the other day. He presented a paper in **Charleston** a few years ago and I had breakfast with him at the **13th Fiesole Retreat** in St. Petersburg, Russia, in May of last year. His daughter is almost two and **Thomas** says she truly is the sunshine of his and his wife's lives. The other baby currently on the way, **Thomas** says, is his wife's PhD dissertation! The Fiesole group is still hoping to have a future Retreat in Lausanne. <http://people.epfl.ch/thomas.guignard>

And returning to news of **St. Petersburg**, there is a report about **IFLA** in this issue (see p.51) from **Fred Lynden**, remember him? **Fred** used to be Director of Scholarly Communications (back when that was a very new title) at **Brown** a few years back. Well he has now retired and is married to **Irina Lynden** who is Deputy Director of the **National Library of Russia**. In fact **Irina's** boss **Anton Likhomonov** was our gracious host at the **13th Fiesole Retreat** in St. Petersburg last year. What an experience and what a lovely and historic city. **Fred** and **Irina** are even coming to the **14th Fiesole Retreat** in Fiesole

Against the Grain / February 2012

In Memory — Donald Grant Stave

August 17, 1924 – November 29, 2011

by **Scott A. Smith** (Kent State University) <scott.alan.smith@comcast.net>

Don Stave died November 29th, following surgery for cancer. **Don** was a librarian for fifteen years before joining the pioneering American bookselling firm of **Richard Abel & Company**. Following the acquisition of selected assets of the **Abel Company** by **Blackwell's of Oxford** (which created **Blackwell North America**), **Don** continued his career until retirement.

Don was many things — a devoted husband, a keen enthusiast of music in general and traditional jazz in particular, a wonderful raconteur, a great reader, and fundamentally a kind and gentle man.

Most readers of *ATG* today will likely not have heard of **Don**, because he retired

several years ago. Yet any librarian utilizing an approval plan is benefiting from his remarkable legacy. **Don**, along with the late **Oliver Sitea**, created the modern approval plan in the 1960s while working for

Abel. Many of the basic elements of the approval program sprang from **Don's** thoughtful and creative mind. Throughout his career **Don** continued to refine and enhance the product — today's Web-based vendor portals, such as **OASIS** and **GOBI**, were developed in response to systems **Don** introduced at **Blackwell's**.

Don was patient, thoughtful, considerate, and wise. Those of us who were lucky enough to have known him miss him greatly. 🐾



Italy in April. For more information about the **Retreats** (including many of the papers) visit <http://www.casalini.it/retreat/index.htm>.

Speaking of papers, the **proceedings of the Charleston Conferences** from way back are for sale on **Amazon**. We get a lot of queries and so I like to keep the info out

there! For more info, see this issue, p.67. <http://www.amazon.com>

Exciting news via **Amanda Baker Hirko** and **Beth Bernhardt!** The bam-zowie **Tricia Hudson** has been promoted to the newly created role of **Associate Director of Institutional**

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<<http://www.against-the-grain.com>> 39

Cases of Note from page 42

an attorney arguing his own case, a **National Guard Judge Advocate General**, and an owner of **Severe Records**. He has written and produced hundreds of works.

Sevier wrote music and lyrics for “Better,” recorded it, and pitched it to big deal recording artists. And **Shanna Crooks** is just such an artist.

And being completely divorced from current pop culture, I had to go to the Web and find she is a hot-looking blonde who sang “Alive” in the *Twilight* series.

Despite being a lawyer, **Sevier** fell into the old oral contract trap and that may very well have launched this whole mess. **Crooks** recorded the song and **Sevier** mixed and edited it. **Sevier** said they were to both hold the copyright, and he “planned” to give her half the royalties.

I mean did they really understand this? And what their respective roles were?

The collaboration worked out so well they did a second recording “Watching Me Leave.” **Sevier** wrote the music and the pair wrote the lyrics. **Crooks** peddled the songs to record companies and struck deals with **Rich** of **Richfella Publishing** and **Muzik Mafia**. As part of this, **Crooks** assigned her copyright to **Richfella**.

Meanwhile, **Severe Records** released the songs through **CD Baby**’s online store and told **Crooks** he would account to her for her share of sales. Then, like any hasty marriage, they began to squabble.

Rich emailed **Musik Mafia** and other members of the music community, accusing **Sevier** of “illegally selling music.” **Musik** then got a lawyer to send a cease-and-desist letter accusing **Sevier** of copyright infringement.

It’s an age of email, and soon the emails were flying. **Sevier** said he was a co-author of the songs and had a right to exploit them. And anyhow, **Crooks**’ contribution to “Better” was de minimus.

He’s a lawyer. They use words like that.

They threatened and sassed each other back and forth, and finally **Rich** taunted **Sevier** to go ahead and sue. Make my day.

Getting ready for that, **Sevier** filed copyright on the two songs in his and **Crooks**’ names. **Rich** threatened **CD Baby**, but they wouldn’t knuckle under and kept selling the songs. Meanwhile **Crooks** and **Sevier** were spitting at each other. He told her she had “self-entitlement/narcissistic syndrome,” and she gave him a “you’ll never work in this town again” threat. And **Rich**’s accountant chimed in with the same dire warning.

And on it went. More cease-and-desist letters. Accusations of selling bootleg CDs and unauthorized digital downloads. Counter-accusations of defamation, unjust enrichment, quantum meruit, tortious interference with **Sevier**’s contract with **CD Baby**. **Muzik** said

Sevier had no right to **Crooks**’ picture on **Severe Records** Website; **Sevier** said fair use. Counter-counter accusations of false endorsement under the **Lanham Act** and deceptive business practices under Tennessee law.

Whew. Are you tense and worked up? It goes on.

Sevier switched from **CD Baby** to **IODA** and their licensing agreement with **MySpace** allowed **Sevier** to place digital stores on **MySpace.com** Websites. **Sevier** put a digital store on **Crooks**’ Website.

Certainly a nice “in-your-face” move.

Crooks then posted to all her fans that “a guy named **Chris Sevier**” was up to no good, had been up to no good in the past, and the stuff he was doing was “clearly wrong, unethical, and down right dirty.” And other insults.

15,000 obsessed fans read this, and as obsessed fans will do, they posted insults and threats against **Sevier**. He emailed **Musik**, **Rich**, and **Crooks** ordering a correction and unqualified apology. And said civil action was right around the corner.

Rich shot back calling **Sevier** a bottom feeder with shady business practices and not one to be trusted by the music giants of the town. And rounded it out

with: “Everything about your practices in this town is rather disgusting to us, to be perfectly honest. Keep sending us your humorous emails though, we REALLY enjoy getting those! As always, we wish you the best of luck fighting for your share of the table scraps.”

You know, back when you had to write and address a letter and put a stamp on it, insults did not get so frenzied. People would occasionally pause and think about what they were doing.

Any-hoo, **Crooks** told **Apple**’s **iTunes** music store **Sevier** had no right in the songs, and they were removed. Ditto **IODA** removed the songs from all their digital music store connections and cut off the distribution agreement with **Sevier**.

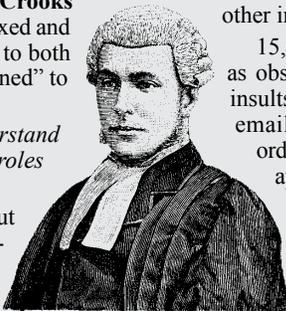
And at last suit was joined. **Sevier** alleged libel, false light, malicious harassment, intentional infliction of emotional distress, interference with contract, and copyright infringement.

Good grief. Emotional distress or “outrage” in legal shorthand requires stress so bad a reasonable person can’t sustain it. And behavior completely outside the bounds of civilized behavior. This seems to be business as usual, and everyone had quite a good time email ranting.

But that aside, the copyright claim was the hook that got **Sevier** into the federal court.

Rich et al. moved for dismissal of the copyright claim because (1) **Sevier** failed to allege any acts of infringement, and (2) you can’t sue a co-owner of copyright or her licensees.

The district court agreed with this and said as that disposed of the federal matter all the other mess of claims should go to state court.



The Appeal

To protect copyright, the legal owner may bring suit for infringement. **Fogerty v. MGM Grp. Holdings Corp.**, 379 F.3d 348, 352 (6th Cir. 2004). So the two big questions are who owns it, and did someone copy it? **Bridgeport Music, Inc. v. UMG Recordings, Inc.**, 585 F.3d 267, 274 (6th Cir. 2009).

There was nothing in the complaint alleging improper copying by **Crooks**. In fact, **Sevier** conceded that no one copied, but rather defendants prevented him from copying. The Sixth Circuit said they “expressly decline” grossly expanding infringement to “any acts that create barriers to a copyright holder’s ability to fully exploit that copyright.”

Declaratory Judgment

Sevier also asked for a declaratory judgment as to who owned what in the songs.

The **Declaratory Judgment Act** provides “the opportunity to clarify rights and ease legal relationships without waiting for an adversary to file suit.” **Fireman’s Fund Ins. Co. v. Ignacio**, 860 F.2d 353, 354 (9th Cir. 1988). It’s at the court’s discretion and not an absolute right of the litigant to be heard in federal court. **Wilton v. Seven Falls Co.**, 515 U.S. 277, 287 (1995). The district court’s refusal to exercise jurisdiction can only be reviewed for abuse of discretion, which is to say the higher court has a real firm conviction that the lower court was wrong. **Paschal v. Flagstar Bank**, 295 F.3d 565, 576-77 (6th Cir. 2002).

i.e. well, whadda ya think?

Sevier wanted a declaratory judgment identifying the authors of “Watching Me Leave” and declaring **Crooks** not an author of “Better.” The district court said **Sevier** and **Crooks** were really fighting over contract rights and not declaration of authorship.

The Sixth Circuit disagreed. **Sevier** brought the action “in reasonable apprehension of litigation” due to all the cease-and-desist letters and the back-and-forth threats. **Rich et al.** repeatedly accused **Sevier** of violation of copyright without regard to his assertion of co-authorship. This makes it a federal question to be determined under the **Copyright Act**.

There is no contract dispute at the heart of the matter. After all the charges of infringement, **Rich et al.** cannot say “But we didn’t really mean it,” upon landing in federal court on a claim of declaration of non-infringement.

Sevier clung to federal court over the question of ownership of the songs. 🐉

Rumors from page 39

Marketing for Oxford University Press. Tricia is now managing the **Global Institutional Marketing Team** for both journals and online products, which focuses on marketing efforts to key regions and library customers around the world. **Tricia** has over fourteen years of experience marketing academic journals, first at **Duke University Press** and then at **OUP** which she joined in 1999.

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Vital Information

◆ Key Products and Services:

75 products, all electronic; the leading vendor of streaming video and audio to libraries. eBook & Audiobook Distribution Services — Products include: Academic Video Online, Music Online, North American Women's Letters and Diaries, Smithsonian Global Sound, Ethnographic Video Online, Women and Social Movements, and American History in Video.

◆ Core Markets/Cientele: Academic and Public Libraries

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◆ Number of Collections Published Annually:

We publish 5-10 landmark online collections per annum. In the past two years, these have totaled collectively more than one million pages of text, 400,000 audio tracks (the equivalent of 33,000 CDs) and more than 6,000 video titles.

History and Brief Description of Publishing Program

Alexander Street Press publishes award-winning, online collections for scholarly research, teaching, and learning. Our collections are available to library and educational institutions through annual subscription or a one-time purchase of perpetual rights. We specialize in humanities and social sciences, but have recently begun publishing video collections in science, technology, and medicine.

The company was founded in 2000 in Alexandria Virginia by **Stephen Rhind-Tutt**, **Eileen Lawrence**, and others to bring together the skills of traditional publishing, librarianship, and software development to create quality electronic collections.

We believe that an electronic publication should:

- Be carefully crafted by expert editors around a specific subject or discipline.
- Detail all materials relevant to the subject, whatever their original form or ownership.
- Contain as many of these materials as possible, in multiple formats if necessary.
- Be indexed with controlled vocabularies for precise, exhaustive searching.
- Provide unique ways of searching, viewing, exploring, and analyzing the material.
- Facilitate contributions from scholars and librarians.
- Be priced to enable unlimited exploration by users.

Alexander Street has now expanded to more than 100 staff based in the U.S., UK, Australia, New Zealand, Brazil, China, and Malaysia. And we love what we do! 🌱

Rumors

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Just got a great email from **Bob Houbeck** (Univ. of Michigan, Flint)! He tells me that there is an article in the *Huffington Post* about the 22 hottest Colleges in the country. The article named **University of Michigan-Ann Arbor** as one of them. They used a picture of the **University of Michigan-Flint** library as the picture for the post — **Bob** says the most gorgeous and best-looking library of all the three U. **Michigan** campuses! Pretty cool! <http://www.huffingtonpost.com/2012/02/27/>

[the-hottest-colleges-in-t_n_1303791.html#728989&title=University_of_Michigan](http://www.huffingtonpost.com/2012/02/27/the-hottest-colleges-in-t_n_1303791.html#728989&title=University_of_Michigan)

This issue of *ATG* has some great stuff in it! I always love the **Collecting to the Core** articles by the *Choice* editors. It brings back memories of a Trustee at the **College of Charleston** who was checking out an ancient computer book from the circulation desk. He implored us to never discard the book because it was a classic. That's what **Collecting to the Core** is about and this time the area is **physics**. This issue, p.60.

There has been lots of discussion and controversy on the Web recently about the

Research Works Act just introduced in the U.S. House of Representatives. The always-on-top-of-things, **Greg Tananbaum** fills us in on p.8, **I Hear the Train A Comin'**.

And, finally, before I run out of room, the **invoices for renewal of your ATG subscription for 2012** (v.24!) are in the mail. If you got an invoice and you attended the **2011 Charleston Conference**, you shouldn't have gotten it. Just drop me a quick email so we can be sure (hopefully) not to bill you again. And please accept my apologies!

Much love, Yr. Ed. 🌱