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## Booklover--Not Nobel But Noteworthy

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**Questions & Answers**  
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*the content are these protected by copyright?*

**ANSWER:** Works published by the U.S. government are not protected by copyright according to section 105 of the *Copyright Act*. So, the only material that can be protected in a work that incorporates works of the federal government is any new material added such as a preface, editorial comments, explanations, etc.

The notice section of the *Act* provides that a copyright owner may place a notice of copyright on works, and that notice includes the name of the copyright owner, the date of publication and the symbol ©, the word “copyright” or the abbreviation “copr.” Section 401(d) states that the good faith defense is not available to a defendant in a copyright infringement suit if the work in question contained the notice of copyright. Section 403 says that the good faith defense is available to alleged infringers if the work in question consists predominately of one or more works of the U.S. government unless the notice of copyright does not contain a statement, either affirmatively or negatively, identifies those portions embodying any work protected by copyright. In other words, the work would need to specify that the preface, editorial comments, etc., are protected by copyright or that no copyright is claimed in the portion comprised of a government publication. One seldom sees this done, however. 🐼

**Cases of Note**  
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Then the court did agree the infringement fell closer to the willful end than the innocent end of \$750 to \$30,000 and set the damages at \$20,000 x 24 infringements.

On appeal, **TAT** argued that the \$480,000 was grossly disproportionate to any actual damages suffered by **Tattoo Art**.

*Which while true, is interesting given that TAT was pretty clearly willful and should have been up in the \$150,000-each range.*

The 4th Circuit held that **TAT** was arguing that the Congressional authorization under the *Copyright Act* was “constitutionally excessive” and found this an “unavailing argument.” 🐼

# Booklover — Not Nobel But Noteworthy

Column Editor: **Donna Jacobs** (Retired, Medical University of South Carolina, Charleston, SC 29425)  
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**Disclaimer:** *This Booklover column is not about a Nobel Laureate.*

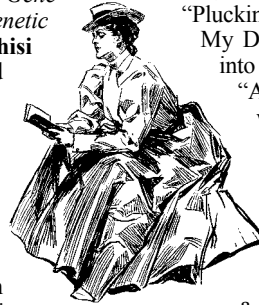
Exploring Nobel literature is an ongoing bucket list process that periodically takes a turn down other literary roads. Four books have recently caught the attention of this booklover: **Bruce Chadwick’s** *I Am Murdered: George Wythe, Thomas Jefferson, and the Killing That Shocked a Nation*; **Jessica Wapner’s** *The Philadelphia Chromosome: A Mutant Gene and the Quest to Cure Cancer at the Genetic Level*, and the two books by **Ta-Nehisi Coates:** *The Beautiful Struggle* and *Between the World and Me*. History, scientific research, and race relations — welcome to my world.

What makes Nobel literature words different from bestseller words, narrative words, or just the words of a well-told story that you just want to read again and again? This is an unresolved question for me and requires constant pondering — which is okay because the only way to hopefully answer it is to continue reading. Not a bad solution to the problem.

There have already been two passes through **Chadwick’s** book. Each time I am intrigued. The glorious illustration of the founding fathers and the beginnings of this experiment called democracy is not what you get. You get a piece of history told in three parts and only 240 pages in such a real, gritty and densely rich way that you feel you are walking the streets of either Colonial Williamsburg or Richmond Virginia investigating a murder. Part One of the book is a description of “The Murder.” Part Two details “The Investigation.” Part Three transcribes “The Trial.” **George Wythe** was one of this country’s founding fathers. He was the first law professor, signed the Declaration of Independence and represented Virginia at the Constitutional Convention. He was held in high esteem in the early community of our nation. Thus it was a shock when **Wythe**, on his deathbed, accused his young hooligan grandnephew of poisoning him for his money. Of the many interesting details, nuances of the period and vignettes of day-to-day life in the 1800s, the one that left me really thinking was the reasoning behind the decision of the two lawyers who came to the grandnephew’s defense. Politics makes for strange bedfellows. Pick up the book and find out.

From a capsule of our Nation’s history to the historical timeline of a de novo scientific discovery that lead to a drug to manage chronic myelogenous leukemia (also referred to as CML) is not such a stretch. “The First Clue” has the reader “hovering” over a microscope with **David Hungerford** in 1959 when he realizes that one of the chromosomes, in a sample prepared from a patient with CML, is too short. This short chromosome that **Hungerford** observed would be known by many names, one of which is “The

Philadelphia Chromosome.” **Hungerford** had a passion for photography as well as science. The new camera-equipped microscope, where he spent his time staring at the black and white squiggles called chromosomes, was located at a cancer center in Philadelphia. Geography was the influence for the name of the aberrant chromosome that is formed by a translocation between chromosome 9 and 22 in patients with CML. With 38 chapters, some of which are entitled “Right Number, Wrong Place,” “Where the Kinase Hangs the Keys,” “Plucking the Low-Hanging Fruit,” “Not Over My Dead Body Will This Compound Go into Man,” “Buzz in the Chat Rooms,” and “A Gleevec for Every Cancer,” **Wapner** writes in a way to honor the science and appeal to the layman. It is a gift. She excels at it.



Threading the two previous books’ themes to race relations might be a difficult weave, but the crafting of words to explain a perspective is one where **Coates’** genius shines. The power in his two books is so great that it leaps from the page. You want to memorize it so you can quote it, because just telling someone what the book is about doesn’t do it justice. And justice is one of the things that **Coates** is looking for. His first book *The Beautiful Struggle* tells his story of growing up in Baltimore. His second book *Between the World and Me* is written to his son as a guide for what it means to be a black man growing up in America.

I leave you with a piece of **Coates’** knowledge from *The Beautiful Struggle*:

“The Knowledge was taught from our lives’ beginnings, whether we realized it or not. Street professors presided over invisible corner podiums, and the Knowledge was dispensed. Their faces were smoke and obscured by the tilt of their Kangols. They lectured from sacred texts like Basic Game, Applied Cool, Barbershop 101. Their leather-gloved hands thumbed through chapters, like ‘The Subtle and Misunderstood Art of Dap.’ There was the geometry of cocking a baseball cap, working theories on what jokes to laugh at and exactly how loud; and entire volumes devoted to crossover dribble. **Bill (Coates’ brother)** inhaled the Knowledge and departed in a sheepskin cap and gown. I cut class, slept through lectures, and emerged awkward and wrong. My first day at Lemmel (middle school where **Coates** attended school), I was a monument to unknowledge. I walked to school alone, a severe violation of the natural order of things. ...Everyone moved as though the same song were playing in their heads. It was a song I’d never heard. I shrugged my backpack a little tighter on my shoulder and made my way.

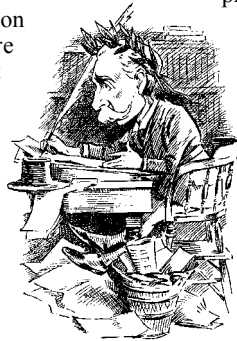
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# The Scholarly Publishing Scene — Q and A with Jon Baumgarten

Column Editor: **Myer Kutz** (President, Myer Kutz Associates, Inc.) <myerkutz@aol.com>

**J**on Baumgarten has been one of the country's most esteemed intellectual property lawyers for decades. I first got to know him nearly 30 years ago when he was counsel to the **Association of American Publisher's (AAP)** copyright committee and I was chairman. One of the big issues for the committee in those days was whether **AAP** would support U.S. adoption of the **Berne Convention**, the international copyright regime in effect most everywhere else since 1886. Major U.S. publishing, motion picture and other copyright industries had come to view **Berne** adherence as an important component of American leadership in international copyright affairs and in efforts to counter increasing foreign copyright piracy. At the same time, these U.S. copyright industries were concerned with possible disruptive effects of certain convention guarantees of so-called "moral rights" whereby authors have rights to continued "integrity" of their works, have the right to object to changes made in their works and even to contractually authorize new versions and adaptations of their works, and have the right to withdraw their works after publication. Committee discussions were enlivened by a **Time Inc.** lawyer's consternation about whether moral rights would prohibit *Time's* practice of cutting writers' submissions to fit allocated spaces on the magazine's pages or, more devilishly, to make the words fit the company's editorial slant.

**Jon** was acting for a combination of publishing and motion picture companies and other copyright entities plus serving on a small expert committee dealing with the question. He crafted submissions to **Congress** and developed legislative report language demonstrating the risks of new moral rights protections to copyright industries' contracts, business models and practices as well as providing assurance that those



author interests were adequately protected already by a variety of state laws and required no amendments to the copyright act. These arguments won the day, and many publishers and other copyright entities supported **Berne** adoption, which passed **Congress** in 1989. (*Time* survived, of course, although it's much slimmer now than it was back then.)

**Jon** went onto bigger stages for the next 20-plus years until his retirement from active law practice a few years ago. He and his wife **Jodi**, an accomplished pianist who is a leading light on the local arts scene, live on an island off the Carolina coast, which is heavily populated by birds, deer, alligators, and bobcats. The magnificent beach is 11 miles long, but **Jon** also enjoys sports played on grass and other non-sand surfaces, such as golf (providing you stay out of the bunkers), tennis, and pickleball, which **Jon** introduced to the island. (Never heard of it? It's a turducken of tennis, badminton and ping-pong, played with paddles and plastic balls on indoor and outdoor courts by around two and a half million people in the U.S.) Recently, he's taken up "sporting clays," a shotgun sport akin to skeet shooting. As I tell him, he's clearly making up for all those years sitting indoors while pouring over briefs and law tomes.

**Jon's** still invited to address audiences worldwide on the current state of intellectual property law and what judges who are ruling on copyright cases are up to these days. A couple of months ago, he emailed me a copy of a speech on fair use that he gave to a conference in Australia last year. After I read the speech, which I found engrossing, (it's published in the December 2015 issue of *Copyright Reporter – Journal of the Copyright Society of Australia*) I thought it would be worthwhile to get **Jon's** views on what he sees happening in the

copyright arena that he knows so well. Here are my questions and his answers.

*You're living far away from the legal hurly-burly, but you still follow the ups and downs of copyright law. You'd have to say that it's in your blood, right?*

Yes, after almost forty years of law practice, government service, litigation, legislative effort, commercial, policy and technological negotiation, and other activities affecting copyright law, I'd have to say it has left an indelible mark — mostly good — on my psyche. Importantly, it has left wonderful memories, both of issues faced and in many cases resolved, and of many good, smart, ethical, intellectually honest and trustworthy people, both allies and adversaries.

*Can you describe some of the issues you refer to?*

I was fortunate over my career to have regularly been on the front lines of copyright law's repeated, tension filled encounters with new and developing technologies. Take photocopying: today it is viewed as a quaint, rather prosaic technology. Beginning in the 60s, however, and continuing for many years, there were very grave and well founded concerns in the publishing community worldwide, in both the commercial and not-for-profit publishing sectors such as university presses and learned societies, particularly in STM, reference and professional, and college publishing, over the impact of unbridled photocopying going on in scholarly institutions and among research-intensive and other commercial businesses. Indeed, photocopying or "reprography," more precisely the advent of new and increasingly cheap and widely available copying devices, marked the first dramatic emergence of a number of hallmarks that have continued as prominent characteristics of all copyright law/technology tensions, including those of the digital and Internet eras. These include *decentralized* copying arising from decisions by large numbers of individuals and organizations to make their own copies and compilations of copies (such as course packs); inexpensive and readily accessible copying *outside a pressing facility* or other industrial plant; very simple reproduction of extensive portions of copyrighted works and of *entire* copyrighted works; "private" copying having the cumulative effects of *mass* copying; the treatment of *intermediaries* who might be held legally responsible for end user copying (such as libraries and document delivery services then and Internet service providers now) or found suitable to facilitate resolution or at least diminishing of tensions (such as the **Copyright Clearance Center** and other collective licensing "reprographic rights" organizations); and more. In other

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## Booklover from page 51

Later I'd understand that the subaudible beat was the Knowledge, that it kept you ready, prepared for anyone to start swinging, to start shooting. Back then, I had no context, no great wall against fear. I felt it but couldn't say it."

And a few of **Coates'** words to his son about the choice for his name from *Between the World and Me*:

"The Struggle is in your name, **Samori** — you were named for **Samori Touré**,

who struggled against French colonizers for the right to his own black body. He died in captivity, but the profits of that struggle and others like it are ours, even when the object of our struggle, as is so often true, escapes our grasp. I learned this living among a people whom I would never have chosen, because the privileges of being black are not always self-evident. We are, as **Derrick Bell** once wrote, the 'faces at the bottom of the well.' But there really is wisdom down here, and that wisdom accounts for much of the good in my life. And my life down here accounts for you." 🐼