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Memorial to Barbara Ringer

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GOODBYE, CINCINNATUS

by PETER JASZI*

The story goes that in 439 BC the retired consul Cincinnatus was summoned from the plow by the Senate and people of Rome. One more time, he saw the Republic through a time of particular peril, resigning office immediately afterwards to return to his rural retirement — to be transmuted into a timeless emblem of selfless probity. Episodes of this kind are even rarer in the annals of the U.S. civil service than in the Roman history. But I had the good fortune to be a witness to one such — Barbara Ringer's return to the Library of Congress in 1993 to co-chair the Advisory Committee on Copyright Registration and Deposit (ACCORD).¹

Before describing that privileged occasion, I should say a bit more about what I then did — and didn't — know about Barbara Ringer. For one thing, we weren't personally acquainted. I had begun practicing in the field at about the time that she first assumed the position of Register, and there was no way that someone clinging to very first rung of the copyright ladder would have known someone whose demonstrated brilliance and sheer grit had brought her to the very top. But I admired her from afar.

To explain why, I need to salute another of the dear departed — my first copyright client, Paul Killiam, who passed in 1998. Twenty-five years earlier, when I was a very green young lawyer indeed, Paul entrusted to me (perhaps unwisely) a series of matters that involved some exquisitely fine points of interpretation under the 1909 Act, especially where the arcana of renewal were concerned. I knew just enough to know that I needed help in a big way, and to recognize that the usual sources didn't yield much in the way of granular detail. (As I write this, I'm looking at a 1975 edition of *Nimmer on Copyright*, boasting a grand total of fifty-three pages on "Duration and Renewal of Copyright" — a useful basic outline but no more!)

So, in those days before ELR, I was more than a little desperate for guidance. I found it, of course, in Barbara Ringer's magisterial (for there is no other word) Copyright Revision Study No. 31, *Renewal of Copy-*

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¹ And, thereafter, Acting Register of Copyrights. I learned recently that the "Report of the Co-Chairs" in which the ACCORD Effort culminated, published by the Library of Congress in September 1993, is something of a fugitive document — at least in the sense that it is currently not available anywhere in electronic format. The Copyright Office would do us a service by scanning and posting it.

right,² an essay that (to paraphrase James Thurber) told me even more than I wanted to know about this vexed and vexing topic. I could hardly have been in better hands, for the study provided (and provides) a subtle, comprehensive and persuasive review of the subject by a writer with a great natural gift for legal history. It also afforded me a wealth of indirect practice pointers, which I was able to deploy to good advantage. And it helped to teach me a lesson that I've gone on learning ever since — that no work of scholarship, however complete and authoritative, can fail to reflect the values of the scholar.

In *Renewal of Copyright*, as in all her writings, Barbara Ringer set her scholarly course by the beacon of her commitment to the cause of authors' rights, in the purest and simplest sense of that term sometimes misused term. She assessed doctrinal twists and turns with reference to what was for her the only real question: Whether, as renewal had evolved, it actually functioned to provide creative men and women with meaningful second chances for the exploitation of their artistic productions. With time I came to question this singleness of focus, on both ideological and historical grounds. But on first reading Study No. 31, I was dazzled — and rightly so — by the clarity and consistency of her vision.

It wouldn't be until twenty years later that I learned that Barbara Ringer had another, perhaps secondary, but nonetheless powerful value-based professional commitment: to the survival and flourishing of the system she had labored so hard to help build, and that of its most visible objective manifestation, the Copyright Office itself. For the challenge to which the convening of ACCORD responded was — in fact — a systemic one, in that a conclusive renunciation of even the vestigial formalities of deposit and registration would have deprived the Office of much of its historic reason for being. Her solicitousness of the Copyright Office and its functions was, of course, partly a matter of personal and institutional loyalty — not the worst of motivators! But it was more than that, too, proceeding as it did from her instincts as a historian and her fundamental belief that building the public record of creativity is essential to the fulfillment of the copyright's purposes.

The membership of ACCORD was — to say to least — diverse: In no sense was the Committee packed to assure or promote a preordained outcome, and its final recommendations (very much a compromise) were under active discussion until the very final stages of the process. In fact, it was an advisory body in the best sense, encapsulating a full range of opin-

² Reprinted in LIBRARY OF CONGRESS, COPYRIGHT OFFICE. COPYRIGHT LAW REVISION: STUDIES PREPARED FOR THE SUBCOMMITTEE ON PATENTS, TRADEMARKS, AND COPYRIGHTS OF THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE, EIGHTY-SIXTH CONGRESS, FIRST [-SECOND] SESSION 220 (G.P.O. 1961).

ions (sometimes diametrically opposed) on the utility of copyright formalities in the contemporary environment. Looking back on this experience after service in the bruising “copyright wars” of the 1990s is akin to recalling a vanished golden age of civilized discourse based on reasoned argumentation — one that will not come again. ACCORD’s internal discussions (of which the final report provides a strong flavor) were sometimes hot and heavy. But they were ably and professionally moderated by Barbara Ringer and librarian extraordinaire Robert Wedgeworth, Jr. Thanks to both co-chairs, an atmosphere of mutual courtesy and even collegiality prevailed. But it was Barbara Ringer, by virtue of her prodigious knowledge and the universal respect she commanded, who had the ability (and authority) to bring out the best — personally and intellectually — in all of us. And our limited regime of copyright formalities survived — and survives — as a direct result. Taken altogether, it wasn’t a bad encore!

So, *Ave atque vale*, Barbara, from an old comrade-in-arms, however briefly! You will be missed.