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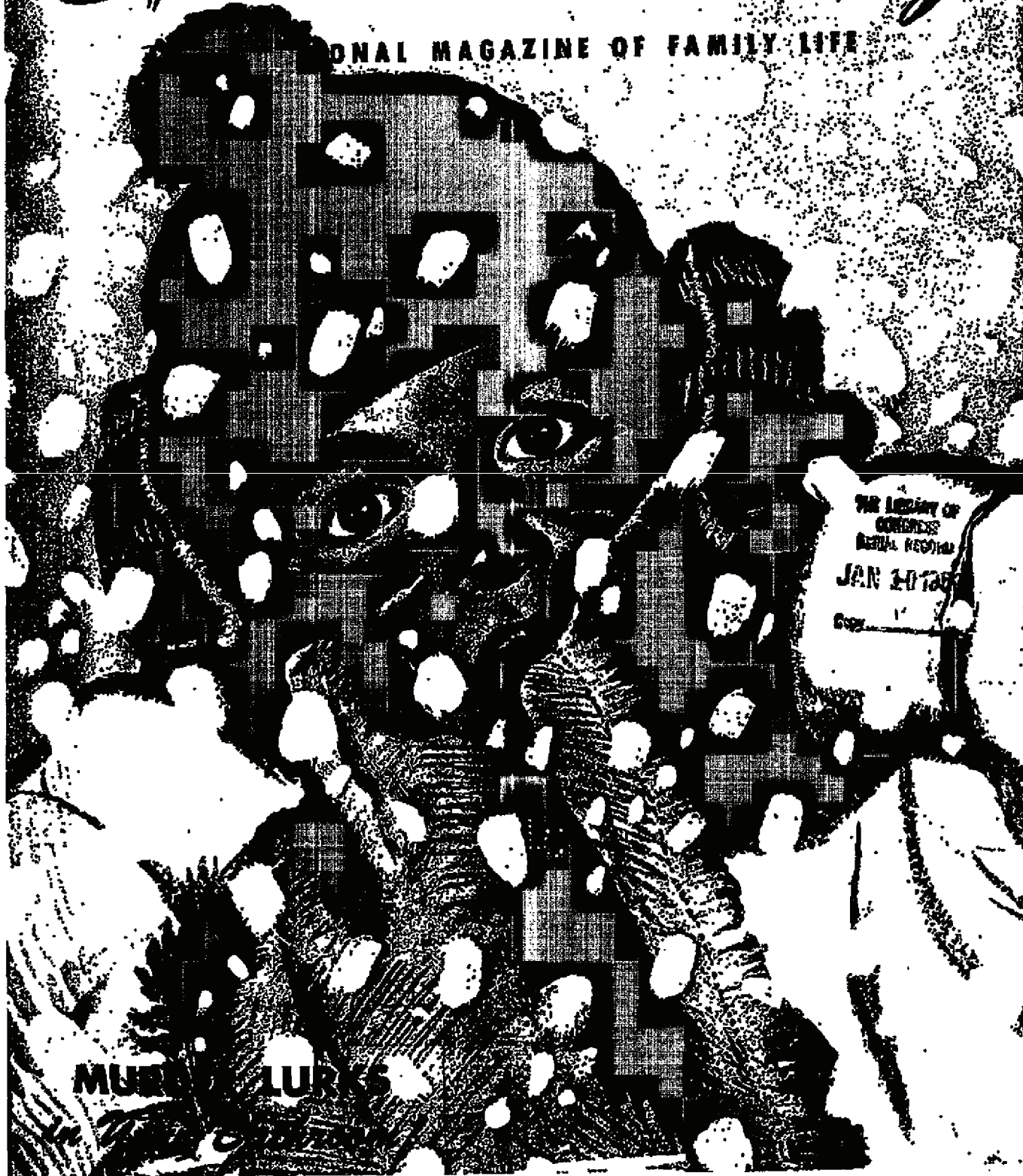
JANUARY, 1950

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The

American Family

MONTHLY MAGAZINE OF FAMILY LIFE



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The American Family

JANUARY, 1950

VOL. 2, NO. 1

NORMAN HOFELD, *Editor*
JAY J. HANSEN, *Art Director*

*Associate Editors: Lois Iida, Dorothy Sparks, Ethel Somers,
Jane Stuart Watson, Emil Jungell, Chester Holway*

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JANUARY, 1950



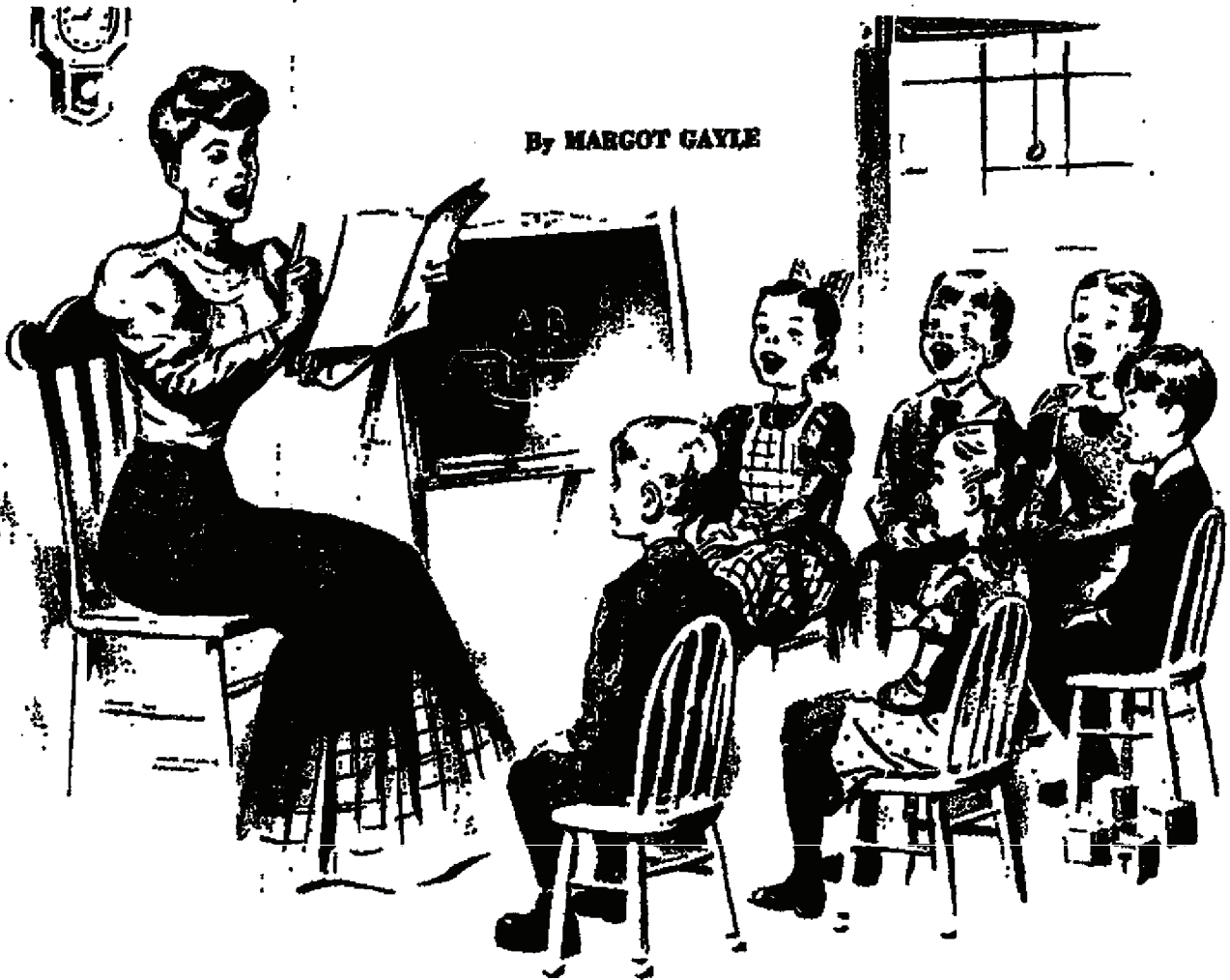
LOCAL BOY MAKING JOOD . . .
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 . . . thanks to perfect care and good,
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 he takes aboard every day is a big,
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 as we like to put it, "It's
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By MARGOT GAYLE

The Birthday Song

Here's the true story of how this simple and beloved song spread from Miss Patty Hill's kindergarten to the nation's homes, movies and night clubs.

IN a Victorian living room, Miss Jessica Hill sat in a faded velvet chair, and told me how she happened to be the first person to sing "Happy Birthday to You." The frail, white-haired woman, now in her mid-seventies, confessed that even to her it has come to seem like a folk song.

The affectionate birthday ditty was written by her two sisters, Fatsy and Mildred Hill, fifty-seven years ago in Louisville, Kentucky. Neither, she says, ever regarded the song as of any importance. Yet today it is sung in nearly every language in the world. And whenever the tune is struck up, whether around a family table, in a night club, at the theater, or over the radio, it immedi-

ately denotes birthday good wishes to someone.

When the song was written, Miss Patty Smith Hill was in her early twenties, and was teaching kindergarten. Her supervisor, Miss Anna E. Bryan, director of the Louisville Free Kindergarten Training School, had recognized Patty's originality and gift for leadership, and given the soft-spoken girl almost free rein in applying her new ideas for teaching young children.

Patty had just graduated from the Training School in 1889 when Miss Bryan put her in charge of its demonstration kindergarten which, like the others in the city at that time, was supported by donations. Many considered Miss Patty's ideas

unsound, not to say downright radical, but Miss Bryan's faith was rewarded when visitors traveled from all parts of the country to observe the revolutionary methods of child teaching and care. As many as three thousand came in 1892, the year that she wrote the Happy Birthday song.

Miss Patty's kindergarten was located in the Helcombe Mansion, a dilapidated columned mansion that stood on Jefferson near Brook Street, not far from the Ohio River. The section was crowded and poor, and Miss Patty's pupils came to her ill-dressed and underfed. She not only taught them, but she saw that they got a square meal and on more than one occasion a bath.

Ex. 60



Pioneer Patty had little patience with the mawkish children's songs of that day. Finding no songs dealing with everyday experiences and adapted to the limitations of childish voices, she enlisted the help of her older sister Mildred, who was a music teacher, in creating a group of brand new songs for little children.

Patty made simple verses for jump-rope songs, weather songs, working songs, and animal songs. She especially wanted a "Good Morning" song with which to begin the day. She wanted one that she could sing to the "morning circle" of black-stockinged youngsters who sat in a ring of tiny chairs waiting expectantly for the day's activities to begin. She hoped it would be a song that they would like to sing back to her. So Patty wrote some childish words, and Miss Mildred took time off from giving music lessons and playing the organ at church to write a simple eight-note tune to go along with them.

THAT is how Happy Birthday, first known as "Good Morning to All," came to be written. Unless you are very young or very old, you are of a generation that daily sang the Good Morning song to your teacher as "Good morning, dear teacher, good morning to you."

When a child in Miss Hill's class had a birthday, she would substitute birthday words to the Good Morning song, and the youngsters would gleefully sing it. Your classmates probably did this same whenever a birthday was celebrated in your schoolroom. The Good Morning song was first published in 1893 in a book of eighty-three children's songs written by the Hill sisters for the use of teachers. It was called *Song Stories for the Kindergarten*, and in its own quiet way was a sheer trail blazer. Teachers of little



children rushed to buy it. Since it cost but a dollar, the little book soon appeared on every well-worn kindergarten piano from coast to coast. It was first copyrighted in 1893 by Clayton F. Summy of Chicago.

After Summy's death, an astute businessman, named Jolin F. Sengstack, came to control the Summy Publishing Company and its properties, one of the most valuable of which was the Good Morning song. Up to this time it had never been published as Happy Birthday although that was the way everyone sang it. In 1935 it was copyrighted as "Happy Birthday to You" and put out as sheet music by the Summy company. Now, for twenty-five cents you can buy "Happy Birthday" as a piano solo in the key of G in three-fourths time, words included. For a nickel more you can have it as a piano solo march, and for forty cents you can take your choice of arrangements for four hands, six hands or two pianos.

The copyright taken on Happy Birthday in 1935 extends for the customary twenty-eight years at the end of which time, according to law, it can be renewed for another twenty-eight years or until 1991.

Although the average person can sing "Happy Birthday" till the cows come home, without paying a cent for the privilege, this copyright is bad news for those who use the traditional birthday song commercially. They will continue to be liable for royalty payments when they perform it for profit.

How the little song, call it what you will, the "Good Morning Song" or "Happy Birthday" ever got out of the kindergarten and into the home, the movies, the stage, the radio and the night club nobody knows. To the Misses Hill it was always a profound mystery.

THE first time Happy Birthday was sung anywhere was on a winter evening in 1892 at the Hill residence. Miss Jessica, the youngest of the Hills, was at that time a bright-



faced girl of eighteen with a clear and pleasing voice. In accordance with their usual custom, she had called the family into the parlor for an after dinner concert.

Their mother had reared her six children in an atmosphere of good music, and they all enjoyed their nightly gathering about the piano.

That chilly evening they all stood around the piano waiting for Patty. She was doing the dinner dishes with faithful Minnie who had been a slave.

"Come on, Patty!" called Jessica. "We're ready to sing the new song."

Patty came into the parlor with its lace curtains and worn red plush sofa. She was untying a blue apron, the same color as her remarkably blue eyes.

"If you mean the 'Good Morning Song,' don't play it too fast, Mildred," she said to her sister seated at the piano of dark glazing wood that Mr. Charlie Dezza of New York had designed expressly to her order a few years earlier. It was the only elegant thing that the family had had since the Civil War when her father's school had been ruined because he refused to take sides in the conflict, and prominent citizens withdrew their children. The piano was Mildred's most cherished possession.

Mildred ran through the simple tune that is now familiar to everyone. Then she played it more slowly as Jessica sang for the first time what is now sung everywhere as "Happy Birthday to You."

MISS JESSICA had a far-away look in her eyes as she described this scene to me. She looks back affectionately on the days in Louisville where her family had been first affluent and then very poor. "We were so poor," she told me, "that Saturday nights one of us would go to the Jefferson Street market, across from Holcombe Mission, and buy the odds and ends of vegetables and meat that the vendors couldn't keep over the week-

(Continued on page 26)

HER NEXT ROLE

(Continued from page 23)

Annette nodded. "I have to be so careful," she apologized, "in this off-the-record appearance."

Then smiling above the roses, feet close together in slender blue pumps, she posed with Thelma and the rest of the committee from the Tuesday Study Club. With the Girl Scout. With the Mayor.

In the Mayor's car she was whisked away to the luncheon in the basement of the church.

THE LADIES Aid served creamed chicken, perfection salad, potato chips and vanilla ice cream.

"I bet this doesn't taste like the Brown Derby," said the Mayor.

"It's much better," said Annette.

The Mayor beamed. "That's mighty nice of you, Miss De Haven. I don't go to picture shows much myself, but I saw you in one fifteen years ago, 'On the Road to Brazil.' I remember it well. I guess everybody in Tunnel Springs want to see you."

"Don't remind me," smiled Annette. "It was such a small part; a bit, really."

"I saw it too," Thelma said. "You sat at a table in a restaurant, as natural as life. 'There's Annie,' I said, the minute you came on. I don't follow your career the way I'd like to, Annie. Our theater raises everything worth seeing and in Indianapolis there's so many shows a body can't keep up with them. What'll your next picture be?"

"I'm not at liberty to say. There's a contract pending and frankly I'm holding out for more money." She

passed her thumb over the soft cushions of her finger tips and smiled. "Hollywood is awfully up-er these days. My next role hasn't been decided definitely."

The Mayor scraped back his folding chair. A lady from the Aid snatched the bottle of blossoms in front of Annette. "Folks can't see Miss De Haven," she whispered.

The Mayor announced the program in honor of "our distinguished guest from Hollywood-Tunnel Springs' own star of stage and screen, Miss Annette De Haven."

A small girl tap danced. A smaller girl sang, "Jesus loves me, That I Know." A boy and girl tap danced. A boy, given a rousing introduction as "the Heifetz of Tunnel Springs," arose and said woodenly, "I failed to bring my violin so I cannot play for you." A tense young girl crashed through a Chopin polonaise on the upright piano and a tenor, hands trembling, moored softly, "Moonlight and Roses."

Like years ago, thought Annette dreamily. She had a strong sense of having lived this before, when she, like the tense girl, had been only a kid, waiting behind scenes, her heart on fire, her hands frozen, before she made an entrance.

Then the Mayor was making another speech. He paused and Annette knew this was the Big Moment, the reason for the roses from Indianapolis, the extra chairs from the undertaker, the flurry, the expectancy. "Folks," said His Honor, "I give you Annette De Haven."

How they clapped. They stood
(Continued on page 31)

BIRTHDAY SONG

(Continued from page 22)

end for lack of refrigeration." Then she added, with a hint of a smile, "Many's the Sunday dinner we built around a fifteen-cent leg of lamb."

Miss Jessica lives in the same apartment near Columbia University that she shared for many years with her sister Patty, who died at the age of seventy-eight in May, 1946.

Miss Jessica, the only surviving member of the Reverend William and Martha Jane Hill's six children, is to a considerable extent supported by the royalties from "Happy Birthday."

As the composer of the "Happy Birthday" tune, Mildred never earned anything from it during her lifetime, except the small royalties on the dollar songbook for teachers, published in 1893. Patty realized that it probably had commercial value after sound movies and radio became important, but she continued to regard the little classic as a trifle, and often said she considered it common property with the public.

SOMEONE who knew her in later life, when she was one of the nation's leaders in childhood education, and a full professor at Columbia University, once showed her the cover of a well-known magazine that bore a scene revolving around her song "Happy Birthday." Miss Hill glanced at it and said, "Oh, that song again. Take it away!"

It was only after her friends and her attorney prodded her to protest Western Union's constant use of "Happy Birthday," the best seller among their singing telegrams, that Miss Hill agreed to seek legal protection against performance of the song for profit, without payment of a fee. A suit was filed against Western Union in 1939, claiming that royalties were owed on over five hundred thousand singing telegrams, of which "Happy Birthday" had been the subject. Because of the extended litigation it would have involved, Patty and Jessica Hill finally dropped the suit.

An earlier suit brought by Miss Jessica in August of 1934 had also failed. It was against Sam Harris, producer of the sensationally successful Broadway revue "As Thousands Cheer." Miss Jessica charged plagiarism of the melody of the Good Morning song in a scene in which the younger Rockefellers of
(Continued on page 44)

EAT QUAKER OATS FOR GROWTH!



LESS THAN



A SERVING FOR THIS DELICIOUS CEREAL

A Giant in Nutrition, Value, Flavor!

BIRTHDAY SONG

(Continued from page 25)

for the then-brand-new Radio City to John D. Rockefeller Sr. (played by Clifton Webb) on his ninety-fourth birthday. *Time* magazine estimated that if Sam Harris paid the penalty of two hundred and fifty dollars for each performance he would have forked over better than \$100,000, or more than one-third of the earning of "As Thousands Cheer". The suit was thrown out on a technicality and the song stayed in the show. So the Hill sisters never found protection in the law suits which they found so distasteful.

THEIR greatest protection against unlicensed commercial use of the song has come from ASCAP. In 1916, the estate of Miss Mildred Hill, as that of the composer, became a member of ASCAP which is the American Society of Composers, Authors, and Publishers, founded to protect the performing rights of its members. ASCAP reports that "Happy Birthday" is very valuable to the ASCAP repertory. By tradition, it fits certain occasions in much the same way as "Auld Lang Syne", "Sweet Adeline", and "Hail, Hail, the Gang's All Here."

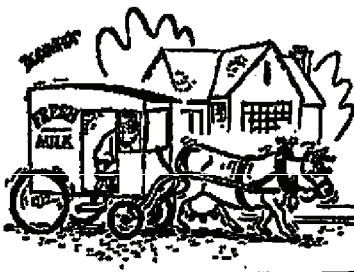
When a radio producer wants to indicate by music that a birthday is at hand what can he play but "Happy Birthday"? Or when a motion picture includes a birthday celebration sequence "Happy Birthday" is about the only thing that seems suitable for the sound track.

A long list of motion picture companies have paid for the use of "Happy Birthday". Fox Films paid two hundred and fifty dollars for using the song both in Shirley Temple's "Baby Takes a Bow" and in a new reel showing President Roosevelt on his fifty-second birthday. That this sum was modest is shown by the fact that eight bars from "Alabama Bound" recently brought seven hundred and fifty dollars, while "Me and My Gal" is reputed to have brought ten thousand dollars, and songs that have provided titles for films have brought as much as twenty-thousand.

In the play "Happy Birthday" which opened early in 1947, starring Helen Hayes, the words of "Happy Birthday to You" were spoken, not sung, when it was discovered that the well-known birthday song was not in the public domain and that it must be paid for when used for profit.

ONE of the most unexpected uses of "Happy Birthday" is the "cake organ." This Swiss music box device, small enough to fit into the palm of a hand, is inserted in a depression scooped from the bottom of a birthday cake. When the cake is cut, the knife trips a lever that sets the tiny music box to tinkling "Happy Birthday". The Cake Master, a famous cake-making concern in New York City, introduced cake organs ten years ago. This company will make you a cake that will sing "Happy Birthday," "Hail, Hail, the Gang's All Here," or the "Wedding March" from Lohengrin. "Happy Birthday," they report, far outsells the other two. Cake organs cost less than five dollars and come from Switzerland. Their makers have never paid royalties to the Hills.

A variation of the cake organ is the cake plate, which costs in the neighborhood of twelve dollars. A circular, metal, white, enamel disc, eleven inches in diameter, fits onto



a music box. The birthday cake is set on the metal disc or plate. When the candles are lighted a simple touch on a hidden lever sets the plate to revolving, and the music box to tinkling "Happy Birthday."

Miss Jessica told me, with amusement, how Patty never failed to be startled when she came across such uses for the little song, which to her was always a kindergarten tune.

Miss Jessica went on, "My sister was the best teacher I ever knew! Her classes at Columbia University were always jammed. And no wonder. She was so stimulating and original. For instance Patty was one of the first to use mental tests in the kindergarten, and to have the youngsters given a daily medical once-over to keep down infection in the classroom. And she surprised everyone by giving the children individual drinking cups and using paper handkerchiefs. Also Patty realized that the tiny play materials designed years before by Froebel, founder of the kindergarten system, were hard for little children to manage. She created larger play

materials including large, rather heavy blocks, such as you find in every kindergarten today."

MISS JESSICA, who herself was an instructor in English at Columbia University until her retirement, warmed to her task of telling me about Professor Patty Hill's attitudes toward childhood education. Her hands played with the folds of the skirt of her dark printed crepe dress as she spoke.

"Patty even let the children 'talk back' to her—give free expression to their opinions and feelings. And sixty years ago, you know, that was unheard of. But Patty knew that children should have a chance for give-and-take with adults as well as with other children. They also needed creative outlets Patty said, so she provided discussions and dramatizations, drawing, painting, and modeling. What kind of a school would it be today that did not do the same thing?" Miss Jessica eyed me challengingly.

Then she hurried on, "Patty used to say that she could tell you at any moment what every kindergarten in Louisville was doing. She hated that sort of standardization.

"Patty came to lecture at Columbia in 1905," said Miss Jessica, "at the invitation of the Dean of Teacher's College, Dr. James E. Russell. She planned to return to Louisville at the end of a year, but she stayed for thirty."

FOR years Miss Patty had been a full professor and Director of the Department of Kindergarten and First Grade Education when she resigned from Teacher's College in 1933. Although she was sixty-seven at the time, she promptly enrolled as a volunteer worker with young children at the Hilltop Community Center in New York City. Professor Hill was one of the few women to receive an honorary degree from Columbia University.

Miss Hill has been called "a pioneer educator of the century", and educators everywhere honor her as a leader in the field of childhood education. Yet of all of this work, the public has singled out for immortality, a kindergarten song that captures the simplicity and good spirits of childhood.

In the same way that brilliant mathematician Lewis Carroll, is best known for "Alice In Wonderland"—so Patty Smith Hill will never be forgotten as long as children and grown-ups all over the world sing "Happy Birthday to You!"

AMERICAN FAMILY

**EXHIBIT 61 -
[ORIGINAL EXHIBIT MANUALLY LODGED
& FILED PURSUANT TO L.R. 11-5.4]**

[Copy of Original Exhibit Attached]

Additional Certificate of Registration of a Claim to Copyright

This is to certify that the statements set forth
in the attached have been made a part of the
records of the Copyright Office with claim
of copyright registered under number

In testimony whereof, the seal of this office
is affixed hereto on



R 90447

June 12 2014

Maria A. Pallante

Register of Copyrights and
Associate Librarian for Copyright Services

C-731 • 06/2011—10,000

6. Name _____ Address _____

Ex. 61

757

P006344

APPLICATION FOR REGISTRATION OF A CLAIM TO THE RENEWAL OF A COPYRIGHT

REGISTRATION NO.

FORM

R 90447

R

DO NOT WRITE HERE

INSTRUCTIONS.—Fill in the applicable items on pages 1 and 1a. Page 1 should be an original copy either printed with pen and ink or typewritten. Page 1a will be returned to you as your Certificate of Registration and therefore should be filled in with care to agree with page 1. Carbon paper may be used for page 1a, but as most carbons will smudge, the Certificate will look neater if typed separately. Mail all pages to the Register of Copyrights, Library of Congress, Washington 25, D. C., together with the registration fee of \$2. Make your remittance payable to the Register of Copyrights. See page 2a for full instructions.

1. NAME OF CLAIMANT OR CLAIMANTS OF THE RENEWAL COPYRIGHT:

The Sunday School Board of the Southern Baptist Convention, 127 Ninth Avenue, N.,
(a) Baptist Convention, Nashville, Tenn.

claiming as Proprietor of the Composite work

(See instructions on page 2a)

(b) _____ (Name) _____ (Address)

claiming as _____

(c) _____ (Name) _____ (Address)

claiming as _____

2. COMPLETE TITLE OF WORK HARVEST HYMNS (for piano)

(Including specific instrumentation in the case of music)

3. NAMES OF ALL AUTHORS OF RENEWABLE MATTER:

Individual songs - authors and copyright owners noted on the
pages (Compiled and edited by Robert H. Coleman)

4. FACTS OF ORIGINAL REGISTRATION:

Original registration number. CLASS A xxc. No. 777586

If registered as published March 4, 1924
(Give date of publication)

If registered as unpublished _____
(Give date)

Original copyright claimant Robert H. Coleman
(Name of claimant in original registration)

5. SEND CERTIFICATE TO: (If refund or other communications are to be sent to another person, give his name in space 6.)

Sunday School Board of Southern Baptist
Name Convention

Address 127 Ninth Avenue, North
(Number and street)
Nashville 3, Tennessee
(City) (Zone) (State)

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FEB 11 1952	
FEE RECEIVED	

16-03890-1

6. Name _____ Address _____

EXHIBIT 62

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION**

CLAYTON P. SUMMY CO., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, hereby certifies as follows:

FIRST: That the Board of Directors of said corporation, at a meeting duly convened and held, adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

RESOLVED that the Certificate of Incorporation of Clayton P. Summy Co. be amended by striking out all of Article First of the Certificate of Incorporation, as amended, and inserting in lieu thereof a new Article First to be and read as follows:

"FIRST: The name of the corporation is Summy Publishing Company."

SECOND: That the said amendment has been consented to and authorized by the holders of all the issued and outstanding stock, entitled to vote, by a written consent given in accordance with the provisions of Section 228 of Title 8 of the Delaware Code of 1953, and filed with the corporation on the 25th day of November, 1955.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of sections 222 and 228 of Title 8 of The Delaware Code of 1953.

IN WITNESS WHEREOF the said CLAYTON P. SUMMY CO. has caused its corporate seal to be hereunto affixed and this certificate to be signed by John P. Songstuck, its President, and David K. Songstuck, its Secretary this 9th day of January, 1956.



CLAYTON P. SUMMY CO.
By John P. Songstuck
By David K. Songstuck

STATE OF New York }
COUNTY OF New York } ss:

BE IT REMEMBERED, That on this 9th day of January, A.D. 1946, personally came before me, Edith M. Williams, a Notary Public in and for the County and State aforesaid, John F. Bengstaek, President of Clayton F. Summy Co., a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said John F. Bengstaek as such President duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said President and of the Secretary of said corporation to the said foregoing certificate are in the handwriting of the said President and Secretary of said corporation respectively and that the seal affixed to said certificate is the common or corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

Edith M. Williams
Notary Public

NOTARY IN NEW YORK
Before 1936, State of New York
In 1936-1937
Qualified in 1938
and with this State in 1938
Commenced 1938 March 21, 1938



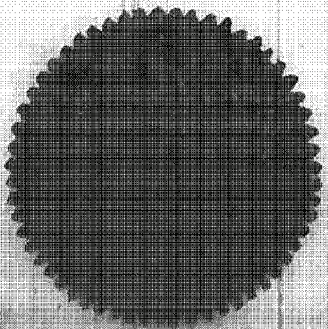
VOL. 1834 PAGE 105

State of DELAWARE

Office of SECRETARY OF STATE

I, Glenn C. Kenton Secretary of State of the State of Delaware,
do hereby certify that the above and foregoing is a true and correct copy of
Certificate of Amendment of the "CLAYTON F. SUMMY CO.", as received and filed in this
office the twenty-third day of January, A.D. 1956, at 9 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand
and official seal at Dover this twenty-ninth day
of February in the year of our Lord
one thousand nine hundred and eighty.



Glenn C. Kenton

Glenn C. Kenton, Secretary of State

Ex. 62

762

EXHIBIT 63

"HAPPY BIRTHDAY TO YOU"

**TWICE 55
COMMUNITY SONGS**

"THE BROWN BOOK"
Revised Edition

ORIGINATED BY
CLARENCE C. BIRCHARD
PETER W. DYKEMA, WILL EARHART
HOLLIS DANN AND OSBOURNE McCONATHY

C. C. BIRCHARD CO.

Sole Selling Agent
SUMMY PUBLISHING COMPANY, EVANSTON, ILLINOIS

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B-5099 PRINTED IN U.S.A.

C/1912

THE C.C. BIRCHARD COMPANY 1957 PRINTING:

15. Happy Birthday to You!

Traditional

Mildred J. Hill

The musical score is written on two staves in G major and 3/4 time. The first staff contains the melody with lyrics: "Hap-py Birth-day to you, Hap-py Birth-day to you, Hap-py". The second staff contains the bass line with lyrics: "Birth-day, dear, Hap-py Birth-day to you!". Chord symbols are placed above the notes: G, D7, G, G, C, C, G, D7, G.

Hap-py Birth-day to you, Hap-py Birth-day to you, Hap-py
Birth-day, dear, Hap-py Birth-day to you!

EXHIBIT 64

In The Matter Of:

GOOD MORNING TO YOU PRODUCTIONS CORP.

v.

WARNER/CHAPPELL MUSIC, INC.

SACHS, Ph.D., JOEL - Vol. 1

September 9, 2014

MERRILL CORPORATION

LegalLink, Inc.

20750 Ventura Boulevard
Suite 205
Woodland Hills, CA 91364
Phone: 818.593.2300
Fax: 818.593.2301

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

-----x

GOOD MORNING TO YOU PRODUCTIONS
CORP.; et al.,

Plaintiffs,
Lead Case No.

-against-

CV 13-04460-GHK

WARNER/CHAPPELL MUSIC, INC.,
et al.,

Defendants.

-----x

September 9, 2014
9:32 a.m.

Videotaped Deposition of JOEL SACHS, Ph.D.
taken by Defendants, pursuant to Notice, at the
offices of Paul, Weiss, Rifkind, Wharton &
Garrison, 1285 Avenue of the Americas, New
York, New York, before William Visconti, a
Shorthand Reporter and Notary Public within and
for the State of New York.

1 A P P E A R A N C E S:

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1	E X H I B I T S	
2	DESCRIPTION	PAGE
3	(Sachs Exhibit 45 for	14
4	identification, Deposition Notice	
5	for Professor Sachs.)	
6	(Sachs Exhibit 46 for	43
7	identification, letter from	
8	Mr. Rifkin to Professor Sachs.)	
9	(Sachs Exhibit 47 for	45
10	identification, Expert report of	
11	Professor Sachs.)	
12	(Sachs Exhibit 48 for	45
13	identification, CV of Professor	
14	Sachs dated November, 2012.)	
15	(Sachs Exhibit 49 for	74
16	identification, Binder.)	
17	(Sachs Exhibit 50 for	110
18	identification, document.)	
19	(Sachs Exhibit 51 for	140
20	identification, document.)	
21	(Sachs Exhibit 52 for	142
22	identification, document reflecting	
23	Irving Berlin's Pretty Girl Is Like	
24	A Melody.)	
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1 IT IS HEREBY STIPULATED AND AGREED
2 by and between the attorneys for the
3 respective parties herein that filing and
4 sealing be and the same are hereby waived.

5 IT IS FURTHER STIPULATED AND AGREED
6 that all objections, except as to the form
7 of the question, shall be reserved to the
8 time of the trial.

9 IT IS FURTHER STIPULATED AND AGREED
10 that the within deposition may be signed
11 and sworn to before any officer authorized
12 to administer an oath with the same force and
13 effect as if signed and sworn to before the
14 Court.

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1 THE VIDEOGRAPHER: This is the 09:32:34
2 video operator speaking, William Pace, for 09:32:38
3 Merrill Court Reporting of Los Angeles. Today 09:32:42
4 is September 9th, 2014 and the time is 9:32 09:32:47
5 a.m. We are at the offices of Paul, Weiss, 09:32:51
6 Rifkind, Wharton & Garrison LLP, 1285 Avenue Of 09:32:52
7 The Americas, New York, New York to take the 09:32:57
8 video deposition of Joel Sachs in the matter of 09:32:59
9 Good Morning To You Productions, et al., versus 09:33:02
10 Warner/Chappell Music Inc. et al. In the 09:33:04
11 United States District Court, Central District 09:33:07
12 of California Western Division. Case number CV 09:33:10
13 1304460. 09:33:13
14 Will counsel please identify 09:33:14
15 yourselves and state whom you represent. 09:33:17
16 MS. LE MOINE: Melinda LeMoine and 09:33:19
17 Adam Kaplan on behalf of Warner/Chappell from 09:33:20
18 Munger, Tolles & Olson. 09:33:23
19 MR. RIFKIN: Marc Rifkin, Wolf 09:33:25
20 Haldenstein on behalf of the Plaintiffs. 09:33:26
21 THE VIDEOGRAPHER: The court 09:33:28
22 reporter today is Bill Visconti for Merrill 09:33:30
23 Court Reporting of Los Angeles, and you may 09:33:32
24 swear in the witness.
25

1 We see evidence and we try to 11:02:17
2 decide what it means. It could mean various 11:02:20
3 things but sometimes it seems so clear what it 11:02:23
4 means that you sort of accept it. You know you 11:02:26
5 don't have the absolute proof of it. We are 11:02:30
6 not alive in 1901 so we don't immediately know 11:02:32
7 that someone sang Happy Birthday. But this 11:02:35
8 certainly suggests very strongly that they did. 11:02:37
9 Q. So the absence of the additional 11:02:41
10 lyrics suggests to you that the lyrics were 11:02:42
11 well known? 11:02:44
12 A. That people knew the words. 11:02:55
13 Q. You didn't survey materials other 11:02:57
14 than what Mr. Rifkin provided you to confirm 11:02:58
15 that belief? 11:03:01
16 A. Frankly it probably would have taken 11:03:05
17 me a couple of years to locate the materials if 11:03:07
18 they even exist. This could be unique. 11:03:09
19 Q. That is not my question. My 11:03:10
20 question is you did not? 11:03:12
21 A. I did not. I did not feel that I 11:03:12
22 could do that. 11:03:19
23 Q. Do you know whether Clayton F. 11:03:24
24 Summy authorized the publication of Good
25 Morning To You lyrics in the Inland Educator

1 Journal here? 11:03:28

2 A. I have no idea. 11:03:30

3 Q. Do you have any idea whether 11:03:33

4 Clayton F. Summy knew that the lyrics were 11:03:34

5 reprinted in this book? 11:03:36

6 A. I don't know. There is no evidence 11:03:37

7 based on what I have. 11:03:39

8 Q. How about the Hill sisters, do you 11:03:43

9 have any evidence that they knew this was 11:03:45

10 printed in the Inland Educator Journal? 11:03:47

11 A. There is no evidence. Since they 11:03:51

12 were both educators and apparently very dedicated 11:03:54

13 educators, I think there is a reasonable possibility 11:03:54

14 that they read this journal. 11:03:56

15 Q. But you don't have any evidence of 11:03:56

16 that? 11:03:57

17 A. I don't have any evidence of that. 11:04:01

18 Q. Do you have any evidence that they 11:04:04

19 authorized the reprinting of the lyrics in this 11:04:04

20 journal? 11:04:05

21 A. Neither that they did or they 11:04:09

22 didn't. But if they authorized the reprint of 11:04:10

23 the Good Morning To You, why would they not 11:04:14

24 have wanted them also to print Happy Birthday

25 To You to be sure that people knew those words.

1 That was the question that I asked myself. 11:04:20

2 Q. You don't know whether they 11:04:20

3 authorized -- 11:04:21

4 A. I don't, no. 11:04:23

5 Q. Do you have a opinion either way as 11:04:25

6 to whether they authorized this printing of 11:04:26

7 Good Morning To You in this journal? 11:04:28

8 A. I don't. There is no way to form 11:04:41

9 an opinion based on what is here. 11:04:42

10 Q. Look at paragraph 18. 11:04:43

11 A. 18 did you say? 11:04:52

12 Q. Yes, sir. Paragraph 18 some of 11:04:54

13 these questions are going to be the same but I 11:04:56

14 want to make sure that your testimony is the 11:04:56

15 same. 11:04:56

16 A. Right. 11:04:59

17 Q. This is with regard to material 11:05:02

18 called "Tell Me A True Story Tales Of Bible 11:05:04

19 Heros For The Children Of To-day" which 11:05:10

20 includes a birthday service. Again, we have 11:05:14

21 here and that is at tab C; correct? 11:05:14

22 A. That's right. 11:05:16

23 Q. If we look at tab C? 11:05:18

24 A. Page 250.

25 Q. Page 250 the last line says "Sing

1 Q. I said C. I'm still at Tell Me A 11:11:32
2 True Story. 11:11:32
3 A. Okay. 11:11:36
4 Q. Do you have any knowledge of 11:11:39
5 whether the Clayton F. Summy Corporation 11:11:46
6 authorized the reprinting of Good-Bye To You? 11:11:47
7 A. There is no evidence in this. 11:11:48
8 Q. Do you have any evidence that the 11:11:51
9 Hill sisters authorized the reprinting of 11:11:53
10 Good-Bye To You? 11:11:54
11 A. There is no evidence. 11:11:58
12 Q. How about whether they knew that it 11:11:59
13 was reprinted in this book? 11:12:00
14 A. There is no evidence. 11:12:02
15 Q. That is true for both the Hill 11:12:04
16 sisters and the Summy Corporation; correct? 11:12:06
17 A. Based on what we have in front of 11:12:19
18 us there is no evidence of any of that. However, 11:12:25
19 sorry to just continue that. I think the same 11:12:29
20 probability exists that as admired apparently 11:12:32
21 and busy educators that this is the kind of 11:12:36
22 volume that they probably would have seen and 11:12:40
23 they might have gotten very angry. So it is 11:12:42
24 possible that they did authorize it.
25 Q. Do you have any basis for that

1 statement? 11:12:47

2 A. No. No, it is just the inference 11:12:50

3 that it seems to be intended for teachers and 11:12:54

4 they were teachers and lots of teachers who are 11:12:57

5 very diligent would keep up on the journals 11:12:59

6 about teaching and try to be abreast of what is 11:13:01

7 going on. So I think it is possible that they 11:13:01

8 saw it. 11:13:03

9 Q. Do you have any evidence that they 11:13:03

10 saw it? 11:13:04

11 A. No. 11:13:07

12 Q. Are you opining today that they did 11:13:07

13 see it? 11:13:09

14 A. I'm opining that they may have seen 11:13:12

15 it. I would not say they did see it because I 11:13:13

16 don't know. I think they might have seen it. 11:13:16

17 It is the kind of thing that might have crossed 11:13:19

18 their vision. 11:13:21

19 Q. What are you relying on for that 11:13:22

20 statement other than the fact that they were 11:13:23

21 teachers? 11:13:24

22 A. That is all and that this is 11:13:26

23 intended for teachers. 11:13:29

24 Q. Did you read any biographies of the

25 Hill sisters in preparation of your report?

1 A. No, I haven't. 11:13:38

2 Q. Have you done any study of what the 11:13:40

3 Hill sisters did or how they prepared or what 11:13:41

4 kind of things they read at all? 11:13:43

5 A. No, I only know the fact that they 11:13:46

6 were educators that had a very good reputation. 11:13:47

7 Q. How do you know that? 11:13:51

8 A. Marc probably informed me of that 11:13:54

9 and it seemed like a reasonable supposition 11:13:57

10 since he seemed to have done his research. I 11:13:58

11 could have duplicated the research, but I think 11:14:00

12 the main point was that I knew they were 11:14:02

13 educators and that was the market. 11:14:04

14 Q. The only fact that you're relying 11:14:06

15 on to conclude that they may have seen this is 11:14:06

16 something that you learned from Mr. Rifkin; is 11:14:11

17 that correct? 11:14:12

18 A. The only thing that led me to this 11:14:15

19 conclusion is that I knew they were educators. 11:14:17

20 That I did know. I looked them up. But I 11:14:20

21 didn't see any elaborate biography and didn't 11:14:22

22 after that. I just needed to know they were 11:14:27

23 composer and a writer pair who were educators. 11:14:30

24 And since I know many educators who

25 routinely read all the journals, it seems to me

1 possible that they did the same. 11:14:37

2 Q. Because you know today that 11:14:40

3 educators read journals you're concluding that 11:14:42

4 it is possible that the Hill sisters read this 11:14:44

5 journal in the early 20th century? 11:14:46

6 A. No, I know that educators in the 11:14:52

7 late 19th early 20th century also read journals. 11:14:52

8 Q. How do you know that? 11:14:55

9 A. From my research into Henry Cowell 11:14:56

10 and his mother. 11:14:57

11 Q. But again, just to be clear, you 11:14:59

12 don't have any evidence, this is speculation? 11:15:07

13 A. This is purely speculation. 11:15:19

14 Q. Go to paragraph 19 which refers to 11:15:33

15 Exhibit D or tab D of Exhibit 47, correct? 11:15:36

16 This is an excerpt from something called 11:15:38

17 Program For Beginners' Department? 11:15:38

18 A. Yes. 11:15:41

19 Q. This does include the lyrics to 11:15:42

20 Happy Birthday as we understand them. 11:15:43

21 A. That's right. 11:15:45

22 Q. And you say that that leads you to 11:15:51

23 conclude that the words were widely known at 11:15:51

24 that time, correct?

25 A. It leads me to conclude that they

1 and the Clayton F. Summy Company since, as Marc 11:28:59
2 pointed out, we don't actually know whether the 11:29:01
3 words to Happy Birthday To You were included in 11:29:03
4 the volume that referred to Song Stories For 11:29:06
5 The Sunday School. We simply don't know that. 11:29:07
6 But something in the text of this 11:29:10
7 program for the Beginner's Department I think 11:29:13
8 clearly provoked the publisher of it to make 11:29:16
9 contact with Summy because Summy is referred to 11:29:17
10 here. 11:29:18
11 Q. Song Stories For The Sunday School 11:29:20
12 is referred to here in note 2? 11:29:21
13 A. Song Stories For The Sunday School 11:29:25
14 and Clayton F. Summy is given as the publisher. No, it isn't 11:29:26
15 actually. 11:29:27
16 Q. It isn't? 11:29:27
17 A. It isn't, yes. 11:29:30
18 Q. So let's try again. Do you have 11:29:33
19 any evidence -- let's start very generally. 11:29:37
20 You pointed me to the note and I want to start -- I'm 11:29:39
21 taking it from the top, very general. 11:29:39
22 A. Okay. 11:29:41
23 Q. Are you aware of any evidence that 11:29:43
24 the Clayton F. Summy Co. authorized the
25 printing of the lyrics to Happy Birthday To You

1 in Program For Beginners' Department? 11:29:48

2 A. No. 11:29:50

3 Q. Are you aware of any evidence that 11:29:55

4 the Hill sisters authorized printing of Happy 11:29:57

5 Birthday To You in Program For Beginners' 11:29:57

6 Department? 11:29:57

7 A. No. 11:29:59

8 Q. Are you aware of any evidence that 11:30:03

9 they are even aware of the printing of Happy 11:30:05

10 Birthday To You in this volume, either the Hill 11:30:07

11 sisters or the Clayton F. Summy Co.? 11:30:08

12 A. There is no direct evidence of 11:30:08

13 that. To that I might add, however, that the 11:30:17

14 confusion in my mind about Song Stories came 11:30:21

15 from Exhibit A which is Song Stories For The 11:30:22

16 Kindergarten Published by Clayton F. Summy 11:30:24

17 Corporation which strikes me as probably 11:30:32

18 related to Song Stories For The Sunday School 11:30:35

19 because the title is the same. 11:30:37

20 So it strongly suggests that it is 11:30:40

21 Clayton F. Summy Company who is referred to in 11:30:43

22 footnote 2. But it does not imply that Happy 11:30:46

23 Birthday is in the collection Song Stories. 11:30:49

24 Q. Nor does it imply, does it, that

25 Clayton F. Summy Co. authorized the printing of

1 Happy Birthday To You in this volume; is that 11:30:54
2 right? 11:30:56

3 A. No, it does imply that Clayton F. 11:30:59
4 Summy may have authorized the publication of 11:31:01
5 something in this volume, but it doesn't refer 11:31:02
6 specifically to Happy Birthday To You. 11:31:04

7 Q. So just to be totally clear, you're 11:31:08
8 not offering any opinion that this is an authorized 11:31:11
9 publication of Happy Birthday To You by Clayton 11:31:14
10 F. Summy Co. or by the Hill sisters; correct? 11:31:27

11 A. Not on the basis of any evidence. 11:31:29

12 Q. Let's talk about paragraph 20. In 11:31:33
13 paragraph 20 and it is referring to tab E, 11:31:38
14 Exhibit E. We are discussing a song book 11:31:45
15 entitled "The 101 Best Songs For Home School 11:31:50
16 And Meeting." And you note that this print has 11:31:59
17 no copyright date, correct? Do you know when 11:32:02
18 this was published, tab E? 11:32:05

19 A. Well, I don't. This was the first 11:32:08
20 of the compositions to provoke me to write 11:32:11
21 Nicholas Bell about the backwards based clef on 11:32:14
22 page 23. Because that struck me as a very old 11:32:17
23 form of musical notation that one almost never 11:32:21
24 sees. And it happened that there was one song
25 in the Julliard Library that was published in

1 experience. You have to be careful about it 11:48:57
2 because you don't want to draw conclusions 11:48:59
3 based on experience that might not prove to be 11:49:00
4 valid. 11:49:02

5 Q. What I'm trying to define is what 11:49:04
6 is it about your experience that you're relying 11:49:06
7 on when you make some of these inferences? 11:49:07

8 A. Exactly, in this case it is from 11:49:10
9 looking at a lot of music that's comes out in 11:49:13
10 multiple editions and having some sense of the 11:49:15
11 time span they covered and therefore some sense 11:49:19
12 of perhaps a publisher's instinct about when it 11:49:21
13 is time to do a new edition. 11:49:27

14 Q. Just to clarify. You haven't done 11:49:30
15 any actual study of how frequent editions were 11:49:32
16 issued of music collections in the early 20th 11:49:33
17 century in America? 11:49:39

18 A. That's correct. 11:49:46

19 Q. In tab E this Good Morning To You 11:49:51
20 printing referred to as number 23 it says under 11:49:54
21 that Good-Bye To You, Happy Birthday To You, my 11:49:56
22 questions are going to be similar to those that 11:49:58
23 we already covered. 11:50:00

24 Do you have any evidence that the
25 Clayton F. Summy Co. was aware of this edition

1 of the printing of Good Morning To You? 11:50:08

2 A. There is no evidence of that. 11:50:13

3 Q. How about the Hill sisters, do you 11:50:15

4 have any evidence that they knew about this 11:50:17

5 version of Good Morning To You and Happy 11:50:17

6 Birthday To You? 11:50:19

7 A. There is no evidence of that. And 11:50:23

8 if I may add there is no evidence that they 11:50:23

9 wrote the thing. 11:50:24

10 Q. There is no evidence that they 11:50:25

11 wrote what? 11:50:28

12 A. Good Morning To You. Number 23 in 11:50:29

13 that publication. 11:50:38

14 Q. What about tab A? 11:50:40

15 A. That is the one that we talked 11:50:44

16 about before. Where it credits Mildred J. Hill 11:50:46

17 composing and arranging and Patty Hill with 11:50:49

18 writing and adapting. And that is a publication 11:50:53

19 only of Good Morning To You which we know is by 11:50:54

20 them. 11:50:56

21 Q. Why would you say the song Good 11:50:57

22 Morning To You there is no evidence that they 11:50:58

23 wrote the thing? 11:51:01

24 MR. RIFKIN: He said in tab E.

25 A. In tab E there is no evidence that

1 song there that only occupied two staves, but 11:53:30
2 he didn't or she didn't do that. 11:53:32

3 Again, it implied to me that people 11:53:36
4 knew what the words of Happy Birthday were, 11:53:38
5 they didn't have to be printed. And perhaps 11:53:43
6 one might say the reasons why Good Morning To 11:53:45
7 You is printed is because that was copyrighted, 11:53:46
8 we know that. 11:53:48

9 Q. You said you don't have any 11:53:52
10 evidence that this is authorized or they knew 11:53:52
11 about it? 11:53:55

12 A. No, but the implication is whoever 11:53:59
13 put this together felt that there was no need 11:54:01
14 to put the words of Happy Birthday in there. I 11:54:04
15 think one can go on to say that since the words 11:54:09
16 of Good Morning To You are in there, Good 11:54:10
17 Morning To All along with the music, whether 11:54:14
18 this is a pirated edition, whoever put it 11:54:16
19 together seems to have respected the 11:54:19
20 association of those two which were 11:54:22
21 copyrighted. And it may be that there was no 11:54:22
22 association in mind between the Happy Birthday 11:54:25
23 words and anything else, but that so many 11:54:27
24 people knew them that there was no point in
25 fiddling around with the layout of this page in

1 order to try to fit them in. 11:54:32

2 Q. Do you have any evidence of what 11:54:34

3 you're describing right now that that was what 11:54:35

4 was going on in the minds of the engraver? 11:54:38

5 A. No, I don't have evidence of it. 11:54:40

6 But it would have required a major rearrangement 11:54:44

7 of the page. There is simply no room to fit in 11:54:46

8 Happy Birthday To You in addition to the words 11:54:48

9 to Good Morning To You. There is no room. 11:54:48

10 There is no space 11:54:52

11 Q. Could that be the reason just as 11:54:55

12 well that it was widely known? 11:54:57

13 A. It could be, but I think the two go 11:54:59

14 hand in hand. If you want people to know what 11:55:00

15 they are singing you either have to figure out 11:55:01

16 a way to layout the page. The solution was 11:55:04

17 clear to me. You have to find a shorter part 11:55:06

18 song for the bottom half of the page and be 11:55:10

19 able to space out the staves a little bit so 11:55:12

20 you can fit in Happy Birthday. 11:55:15

21 It seems, again, we don't know what 11:55:18

22 the engraver was thinking, but it seems that 11:55:19

23 the engraver didn't feel it was necessary to 11:55:21

24 put in those words. Probably, I have to say

25 probably because people knew the words.

1 Q. But again, the same question, you 11:55:34
2 don't have any evidence that people knew the 11:55:36
3 words at the time other than the documents that 11:55:38
4 you have been provided by Mr. Rifkin? 11:55:39

5 A. That's right. 11:55:41

6 Q. We haven't done any independent 11:55:44
7 study about how widely, quote unquote, widely 11:55:47
8 the lyrics to Happy Birthday To You were known 11:55:48
9 at this time, correct? 11:55:49

10 A. Well as I explained to you before, 11:55:53
11 yes, I don't see how you could do that. You're 11:55:55
12 talking about lyrics that may be associated 11:55:59
13 with hundreds of thousands, millions of people 11:56:03
14 perhaps even who never wrote down yesterday we 11:56:06
15 sang Happy Birthday or who may have written it 11:56:08
16 down but those letters can't be found anywhere 11:56:11
17 or if you went through 500,000 letters you 11:56:13
18 might find two that referred to it. But that 11:56:16
19 doesn't prove anything because it is not the 11:56:19
20 sort of thing that you bother writing about. 11:56:22

21 Look at it this way, you write Dear 11:56:24
22 Granny we went yesterday or we had yesterday my 11:56:28
23 birthday party and we sang Happy Birthday. Do 11:56:30
24 you think that letter is going to be preserved
25 somewhere.

1	all singing Happy Birthday.	11:58:44
2	Q. But you're not aware of that	11:58:45
3	sitting here today?	11:58:47
4	A. No.	11:58:53
5	Q. Paragraph 21 The Golden Book Of	11:58:53
6	Favorite Songs.	11:58:59
7	A. Yes	11:59:12
8	Q. Look at tab F. Look at the piece	11:59:16
9	of music again similar to the one, the previous	11:59:16
10	one; is that correct	11:59:19
11	A. Yes, the same thing with the	11:59:20
12	backward base.	11:59:21
13	Q. My questions are the same, is there	11:59:23
14	any evidence from this document that this was	11:59:28
15	authorized by the Clayton F. Summy Co., this	11:59:35
16	printing in tab F?	11:59:37
17	A. No, although as I think about it it	11:59:43
18	is another Chicago company and maybe that would	11:59:45
19	have been a little dangerous.	11:59:48
20	Q. When you say a little dangerous,	11:59:48
21	what do you mean?	11:59:57
22	A. To Hall & McCreary. The publisher	11:59:59
23	of this excerpt.	12:00:00
24	Q. What I'm asking you is do you have	
25	any evidence that it was authorized by the	

1 point that you're making in paragraph 28, fine. 12:55:34
2 If there are other documents that you feel you 12:55:38
3 need to include in your report, then I want you 12:55:39
4 to have the opportunity to do that. Maybe we 12:55:39
5 don't take that now. Maybe we take a break and 12:55:40
6 you identify it in the production which ones 12:55:40
7 you think -- 12:55:42
8 A. No, I could tell you right now. I 12:55:45
9 just want to look back at that paragraph to see 12:55:48
10 what I actually referred to, but the various 12:55:57
11 samples start in the big black binder, Exhibit 49, 12:56:06
12 up to tab 38 and continue to tab 50. 12:56:09
13 Q. Look at paragraph 28 where it says 12:56:11
14 "Various samples of this piece differ in their 12:56:15
15 cover information, design, publisher or price. 12:56:21
16 Some say Summy Publishing Company, (Summy 12:56:23
17 3075)." What does Summy 3075 refer to there? 12:56:25
18 A. The publication number so you can 12:56:28
19 find it among the various samples, some of them 12:56:32
20 have different numbers to indicate what they 12:56:32
21 are. That is standard. 12:56:35
22 Q. If I look at J and I see the 12:56:39
23 publication number, I see the number 3075 in 12:56:40
24 the lower left corner?
25 A. Yes, that is the one.

1 Q. Is that what you're referring to? 12:56:44

2 A. Yes. 12:56:45

3 Q. What does that number tell you? 12:56:49

4 A. Normally when a publisher puts a 12:56:51

5 number it is the number of their publication. 12:56:54

6 It is his 3,075th publication. 12:56:57

7 Q. So is it sequential? 12:57:04

8 A. It should be. It may be in some 12:57:06

9 periods it is called a plate number for the 12:57:07

10 engraving plate. 12:57:11

11 Q. My question is the one before it 12:57:16

12 the engraving plates would be number. And 12:57:17

13 3074 would be something else? 12:57:19

14 A. Yes. And 76 would follow it. 12:57:22

15 Q. Can you look at Exhibit L for a 12:57:31

16 moment. You see in the lower left-hand corner 12:57:32

17 that is 3076? 12:57:33

18 A. That is probably the next one. 12:57:34

19 Q. The next what? 12:57:36

20 A. The next thing they published. 12:57:40

21 That would be my inference based on what I know 12:57:42

22 that they would number sequentially. 12:57:49

23 Q. Let's look back at paragraph 28 to 12:58:00

24 make sure that I'm done there. Did you review

25 the certificate for the copyright registration,