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# The Recipe Copyright Title Bout of the 20th Century: Olney vs. Nelson vs. Beard

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Richard Olney's *The French Menu Cookbook* (1970) and *Simple French Food* (1974) profoundly shaped American food trends in the 20th century—mostly behind the scenes. They inspired Alice Waters as she launched Chez Panisse, igniting a fresh California cuisine revolution. She, James Beard and Julia Child would all make regular pilgrimages to Olney's hermitage dwelling in Provence to dine with this genius of the palate.

Success spawns copycats. The culprit here is *Richard Nelson's American Cooking* (1983). It is filled with recipes copied verbatim from *Simple French Food* (and other cookbooks). When food journalists uncovered Nelson's pilfering, a plagiarism firestorm ensued. But did his blatant recipe copying violate U.S. copyright laws? The answer is nuanced.

Careless recipe gathering derailed Nelson's once promising career. This post examines the merits of a copyright lawsuit Olney filed to protect his professional reputation.

## *Setting the Purloined Table*

Hunger and romantic longing for French cuisine followed on the heels of returning World War II veterans, vivid food memoirs, ala M.F.K. Fisher's *The Gastronomical Me* (1943) and endearing cookbooks like Elizabeth David's *French Provincial Cooking* (1960).

With the publication of *Mastering the Art of French Cooking* (1961), Americans had a definitive guide for preparing dishes they had only tasted abroad or in fancy restaurants. Julia Child would become French cuisine's most charming U.S. ambassador. That a dashing first couple—John and Jacqueline Kennedy—loved it sent restaurateurs and home cooks into overdrive.

Like Julia, Richard Olney strove for authenticity. Born in Iowa, he traveled to Europe in a quest to be an artist painter. His medium instead became the taste palate. Olney spent much of his adult life cooking in Provence:

In 1961, in love with the light, the landscape, and the odors of Provence, I bought an abandoned property near Solliès-Toucas. The house, perched halfway up a hillside, its only access from below a somewhat precarious footpath . . . was a total ruin. Stretching above, the several acres of stone-walled terraces planted to olive trees, once meticulously cared for, are grown wild to all those herbs—rosemary, wild thyme and savory, oregano, fennel, lavender, and mint—whose names are poetry and whose mingled perfumes scent the air of Provençal kitchens and hillsides alike.<sup>[1]</sup>

Over time, Olney converted his sanctuary into a culinary haven. His subtitle for *The French Menu Cookbook* says it all: The Food and Wine of France—Season by Delicious Season—in Beautifully Composed Menus for American Dining and Entertaining by an American Living in Paris and Provence.

"Simple" food is the credo of Olney's second cookbook. By *simple*, Olney does not mean to embrace notions of "elementary nourishment for the anti-sensualist or ease of preparation for the lazy cook." Rather, he endorses the aphorisms of the Prince of Gastronomy, Curnonsky (Maurice Edmond Sailland)—as examples of what *simple* food signifies:

- In cooking, as in all the arts, simplicity is the sign of perfection.
- La cuisine! That's when things taste like themselves.

Per Olney, "If food is not good, it is not simple." He reserves special ire for cooks concocting elaborate *faux* foods; for example, vegetarian cooks—who "expend most of their ingenuity trying to destroy the vegetableness of the poor fresh things, welding them into horrible imitations of meat dishes in pathetic compensation for self-imposed deprivation."

The then-reigning United States food titan, James Beard, took notice of Olney's impeccable taste. Beard's preface to *Simple French Food* is effusive:

Richard Olney is a many faceted artist—painter of no mean ability, a writer of rather stylish prose, a cook of incredible facility gifted with one of the most sensitive palates I know. Almost greater than his sensual delight in fine food is his lusty enjoyment of wines. He is acutely critical of what he eats and drinks and sometimes intolerant, but he can defend his point of view knowledgeably and articulately.

Alice Waters followed Olney down his *simple* food rabbit hole. One need look no further than her *The Art of Simple Food: Notes, Lessons, and Recipes from a Delicious Revolution* (2007) for direct linkage. She reminisces about her first visit to his home:

My first visit to the village of Solliès-Toucas began in that state of extreme self-consciousness and absorbent, heightened awareness that sometimes accompanies a first visit to the house of someone who is very important to you. I remember every detail: the climb up the steep hill to his little house set amid terraces of ancient olive trees; the clicking of the cicadas, the rustle of the leaves in the wind, the aroma of the wild herbs all around us mixed with the smell of Richard's Gauloise cigarettes.

Waters offers an important litigation clue to Olney's personality: "In conversation, Richard could be blunt in his judgments—and he was always right. In print, on the other hand, although he was still always right, his judgments were expressed with discretion and finesse."<sup>[2]</sup>

*Who is Richard Nelson?*

Richard Nelson followed a different pathway to initial success in the professional food world. He grew up on a ranch in South Dakota, "eating wonderful food cooked by my maternal grandmother." To being labeled a "maverick in the kitchen by food writers and students," he replied that "I simply cook as I see fit and allow nothing to intimidate me."

His mentors were James Beard and June Platt. Beard and Nelson would teach cooking classes together at a Seaside, Oregon resort. Platt had become well known for such eponymous cookbook titles as *June Platt's Plain and Fancy Cookbook* (1943) and *June Platt's New England Cookbook* (1971).

Nelson's introduction to *American Cooking* offers his philosophical take on "American cuisine": "I think it's high time we took proper pride in it. From the beginning, the keynote of good American cooking has been simplicity." He relates that "Every recipe in this book has been tested."

James Beard encouraged Nelson to write his inaugural cookbook and wrote its forward. Some key Beard insights include:

- "In this period of much too much written about something called 'New American cookery,' it is a joy to have someone who recognizes the fact that true American cookery is something with which we grew up."
- "Richard's association . . . with June Platt, was a definite high point. I consider June Platt to have been one of the great cooks of her time." "Her food was meticulous, beautiful, and carefully prepared—a joy to the palate."
- "I remember at other times when [Nelson] worked with me for the Oregon classes Richard's ability to sense where we would shop for certain things. He seemed to literally smell out the people who could supply wild berries, herbs, and good fish . . ."
- "Richard became concerned that there was very little camaraderie among the various cooking teachers all over the country. As a result, he became very active in an organization that is now quite successful—The International Association of Cooking Schools. He traveled extensively in the cause of this organization and was made its first international president. [It later became the present day International Association of Culinary Professionals.]
- Nelson's "AMERICAN COOKING is a reflection of his early years and a continuation of his later culinary experience. It is a book for the cook."

It's a book of traditions and a book of good-tasting food. It's not just another treatise on American cooking or regional cooking."

In the opening pages of his first cookbook, Nelson acknowledges and thanks those "who advised me from the beginning of the manuscript to its end" and "who transcribed every recipe."

When his cookbook is published in 1983, Nelson must have been riding high. He is being championed by America's most famous gastronome and is an established leader among culinary professionals. Those happy, fortunate times would vanish in a flurry of recriminations.

### *Food Journalists Smell a Recipe Rat*

Richard Olney's autobiography, *Reflexions* (1999) recounts how the recipe plagiarism scandal emerged through a food editor phone inquiry:

18 November 1983. Richard Shoffner, food editor of the Washington, D.C., monthly magazine, the *Washingtonian*, rang to say that, while reading a review copy of *Richard Nelson's American Cooking*, just published by NAL (New American Library) with a glowing forward by James Beard, he had discovered a number of recipes taken from *Simple French Food*. He read several to me; the wording was identical. \* \* \*

When I settled down with both books, I found thirty-nine recipes, word for word as I had written them except for slight editorial changes—replacing a semicolon with a period, changing one-half hour to thirty minutes, gratin dish to baking dish, flame to heat . . . .

Olney visits a lawyer to pursue potential legal action; his counsel's opening advice "was not enthusiastic." "There was no precedent for a case like this, he said, and many people considered recipes to be in the public domain. I handed him a copy of *Simple French Food* with a list of recipes and page numbers and began to read aloud from Nelson's book. Into the third recipe, he said, 'OK, you can stop. We have a case.'" Olney's lawyer warns him, however, that his opponent's "first move would be to hire specialists to prove that I was a plagiarist."

Nelson had not only incorporated Olney's recipes lock, stock and barrel into his cookbook, but also 26 recipes virtually verbatim from Francesco

Ghedini's *Northern Italian Cooking* (1979); and probably from other unknown cookbook authors as well.

Ghedini's life story ends tragically. Shortly after their marriage, his American wife succumbed to cancer. Per his editor, "Ghedini was so overcome with grief that he committed suicide soon after her death." The only thing he left behind was an unpublished manuscript of *Northern Italian Cooking*. No one took any legal action against Nelson or his publisher on Ghedini's behalf.

Nelson professed copyist ignorance. Olney believed Nelson "was out his depth":

[Nelson] seemed to have no idea what was happening or why. He is quoted repeatedly: "Recipes don't belong to anyone . . . . There is no such thing as an original recipe . . . . All cooks get recipes the same way—they are passed around . . . . They all came from my files . . . . If I'd had known they were Richard Olney's recipes I would never have used them . . . ."

Most likely, James Beard gave Nelson copies of Olney's recipes sometime during the summer of 1974. Beard had a manuscript copy of *Simple French Food* in hand, so he could prepare a forward to it. Olney connects the dots:

Details that made no sense before (the imbecility of copying word for word, Nelson's persistent denial that he had ever copied anything directly from a cookbook—he keeps saying, "the recipes are all typed out on 8 ½' x 11" paper in my files") fit perfectly if he thought the recipes he was lifting were Beard's. I now do not doubt that Jim xeroxed all of my recipes, passed them out to his students without identifying the source and taught them in the summer of '74, several months before *SFF* was published, and that his assistant, Nelson, filed them away to be put into his book.

In retrospect, it appears that Nelson created his cookbook by sending his editor 800 recipes from his files, of which around 500 were chosen for inclusion in his ill-fated cookbook.

When Beard became factually embroiled in the scandal, he distanced himself from the brouhaha: "This was a terrible and extremely stupid thing for Dick to do. Morally, it is a major thing, although I can tell you this kind

of thing has been going on for years and it is time something was done to stop it." In the *Seattle Times* (December 14, 1983), Beard is quoted: "(Nelson) pretends innocence, but a lot of us know better. It was extremely foolish of him, especially since we were all on his side." Nelson's *Seattle Times* response: "That snake!"

Olney eventually filed his copyright infringement lawsuit against Richard Nelson and his cookbook publisher in February 1984.

### *Are Recipes Free Goods?*

The adage that *information wants to be free* applied with force to recipes in the early Internet Age—as budding entrepreneurs copied recipes willy-nilly from printed cookbooks to add content to their food-related websites. Esteemed cookbook authors like Julie Sahni soon found recipes from her *Classic Indian Cooking* (1980) and other cookbooks appearing all over the world wide web with no source attribution.

What are the legal remedies for this transgression? Some may be surprised to learn that copyright protection for recipes *qua* recipes is quite thin.

Briefly put, U.S. copyright law *excludes* protection for any "idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." 17 U.S.C. 102(b).

Typically, recipes are composed of ingredient listings and rote cooking instructions. They describe and explain a procedure, process and method of operation for preparing a dish from scratch. At this threshold level, the standard recipe consists of uncopyrightable subject matter.

All is not lost though, copyright-wise. Some recipes include descriptions—called *headnotes*—that narrate an author's interest in or experiences with a particular recipe. That expression *originates* with the cookbook author and is therefore presumptively copyrightable.

Supreme Court cases explain why. The *sine qua non* of copyright is originality.<sup>[3]</sup> To qualify for copyright protection, a work must be original to the author. *Original* means only that the work was independently

created by the author—as opposed to copied from other works—and it possesses at least some minimal degree of creativity. The requisite level of creativity is extremely low; even a slight amount will suffice. Recipe headnotes satisfy this minimalist copyright *originality* requirement.

Compilations of recipes are also subject to copyright protection. A compilation is formed by the collection and assembling of preexisting materials or data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.

Will source attribution take you off the hook for copyright infringement liability? **No!** It is not a fair use defense. To avoid a copyright claim, you need a license or permission to copy another's copyrightable subject matter.

Having said that, many recipe authors would probably *not* seek legal counsel had they been credited as the source of a given recipe. It is a matter of professional respect and pride.

### *How Did Olney vs. Nelson Turn Out?*

Olney settled his copyright lawsuit in August 1984. Nelson and his publisher agreed to a consent judgment. They would not reprint any hardcover or paperback edition of *Richard Nelson's American Cooking* and they would not use any of the recipes from *Simple French Food* without Olney's written consent. Settlement monies flowed Olney's way.

Had Olney not settled, both he and James Beard were about to have their depositions taken. Pretrial discovery—in the form of answering interrogatories and producing documents—was also overdue. In fact, there was a pending motion to compel discovery responses from Olney, precipitating the case's resolution. Answering those discovery requests required Olney to explain in detail how he—not others—had originated recipes that Nelson plundered from *Simple French Food*. Working on those discovery requests presumably would have been an exercise in tedium. So Olney settled and declared victory.

Had the case progressed further, a key legal battleground would have been whether Olney's more colorful cooking instructions cross the the

nebulous legal line from being prima facie *uncopyrightable* subject matter into becoming original, copyrightable expression. A duplicated cooking instruction from *Simple French Food's* recipe for “creamed broad beans and bacon” frames the issue:

Cook the bacon in the butter in a heavy saucepan over a tiny flame for a couple of minutes—it should remain limp. Add the broad beans, the savory, just enough water to moisten lightly, salt, cover tightly, turn the flame high for a few seconds to launch the cooking and turn it low again so that the beans may sweat in their steam rather than boiling. Shake the pan gently from time to time and count from 20 to 30 minutes—until tender. Remove the saucepan from the heat and leave to cool for a minute or so.

Modified by an editor's pen in *Richard Nelson's American Cooking*, the instruction for the same recipe tracks Olney's diction:

Cook the bacon in a heavy saucepan over very low heat for a few minutes (it should remain limp). Add the butter, beans, savory, and salt with just enough water to moisten lightly. Cover tightly. Turn the heat to high for a few seconds to launch the cooking; turn it low again to allow the beans to "sweat" in their steam. Cook for 20 to 30 minutes, shaking the pan gently from time to time, until the beans are tender. Remove from the heat and cool for a few minutes.

Some curiosities arise from Nelson's Americanized transcription of Olney's recipe instructions. Nelson retains the English name for *broad beans*, instead of its more common label in the United States, *fava beans*. His editor surrounds the word *sweat* with quotation marks; with the advent of televised cooking shows galore, that concept is commonplace. While Olney's recipe is intended to serve four, Nelson's apparently serves 6 to 8, even though the ingredient quantities are identical. Go figure.

Regardless, Olney's recipe instructions are imbued with expressions of his cooking personality and ethos. His persnickety prose style is evident throughout *Simple French Food*. Well-respected cookbook authors concurred that Olney's writing style is idiosyncratic:

- Irena Chalmers: "Olney's writing style is distinctly different from that of anyone else in the field."

- Paula Wolfert: "Although Richard Olney is a wonderful wonderful cook, he didn't invent those French dishes. The point is that he wrote them in a style which is so uniquely Olney. Nobody else writes like that."<sup>[4]</sup>

Had Olney's copyright infringement lawsuit proceeded to trial, he likely would have prevailed in demonstrating that normally uncopyrightable cooking instructions were indeed original expression in his instance, meriting copyright protection. And Olney's trial counsel would have had a heyday cross-examining Nelson about his wholesale conversion of recipes—labeled with his own copyright symbol ©—just because he had cooked and liked them.

### *Nelson Fades Away*

When the Olney lawsuit settled, Richard Nelson was working on an American fish cookbook. It never saw the light of day. His career ended in disgrace. A "melting pot" era of cookery—where if you cooked something foreign on American soil, it became your own brand of cuisine—fell out of fashion.

The plagiarism scandal continued to reverberate. Nelson's cooking school organization adopted a revised code of ethics: unauthorized and unattributed use of another's recipes violated professional norms and could be grounds for expulsion, censure, reprimands or membership suspension. The revised code was not retroactive, however.

Meanwhile, Olney returned to his contemplative Provençal hermitage and authored more cookbooks with fastidious instructions reflecting the exactitude of a perfectly discerning palate.

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<sup>[1]</sup> R. Olney, *The French Menu Cookbook*, p. 12.

<sup>[2]</sup> The Alice Waters quoted materials are from "Alice Waters Remembers Richard Olney, *Los Angeles Times*, August 11, 1999, available online, <http://articles.latimes.com/1999/aug/11/food/fo-64819>

[3] See generally *Feist Publications, Inc. v. Rural Telephone Service, Inc.*, 499 U.S. 340 (1991).

[4] Irena Chalmers' and Paula Wolfert's comments about Olney's writing style are included in his autobiography, *Reflexions*, p. 266.