

10/23/71

Dear Mary,

Last night I got a message from a friend in New York City that FRANK-ET is being remaindered. It did not include the price, therefore I can't say what the publisher sold them for. However, this is a clear violation of the contract, which they have never kept, always violated. The only question in my mind is whether everybody else I know is right, that the publisher was "reached" in some way. My own view is that one at least is as crooked as both are professionally incompetent, and their performance, of persistent refusal to perform, is enough to accomplish the same end. So even if I am right it makes no real difference for the result is the same.

Lawyers present a real problem. Long ago, when Dell cheated me out of a very large sum of money, not having the money to hire a lawyer, I got on on a 50% basis. He took that case, one against Meredith, which never paid for the part of \$4 they used in the Jay Davis book, for which we had contracted, and they also took without contract the Dialogues to Will. To date he had done nothing, not even for 50%. Anticipating the present problems, I wrote him several months ago. Silence.

Aside from letting you know that the remainder time is now, pursuant to our recent conversation, I write for other reasons. But on the remainder, I wrote them last night demanding that they obtain the return of those books out and then perform under the contract. I doubt they'll do it, for they have been so very crooked I think they'll stop at nothing. Shortly I will go to the Post Office and send that letter certified, return receipt, as I did the last citing other violated provisions of the contract, to which after a month or more there had been no response. It took me 14 months to get my signed copy of that contract. I will, when I return, make a copy of it as I received it from them, and the point of putting it this way will become clear later, and send it to you for several reasons.

The only local lawyer I know has been in practice but a short while and does only estate work, so I can't depend on what he tells me should I consult him. Frankly, aside from not wanting to ask even the time of day for Dad, for reasons of which you know enough, I lack confidence in his ability. I've had to do too much of his legal thinking in the Ray case and in the Freedom of Information suits, where he has not done what I have suggested, he has erred and it has been obvious.

So, I will be writing these wretches later. And I'd like to ask that you ask your people if the draft of the letter I'll write is ok or if they have other suggestions. If that is asking too much or is improper, just tell me. I'll also be making some explanations. I could ask Dad's partner, Bill, but I think it would be wrong to have him in on this with Dad representing Ray. I am not without confidence in Bill, of whom I am also quite fond.

Meanwhile, let me start making some explanations, for I am also getting company today, the fine young fellow, a friend of Gary's before he became a friend of mine, who I think is about to back out on our deal on \$4 for reasons that do not make sense. So, I'll also get the mail when I mail this certified letter and hope to have it done so he and I can talk and get whatever there is settled. You know me well enough to know that there will be no serious compromise on content.

First, one of the things I do not know whether as a matter of law it is wise to disclose but I think I must if I am to be able to get a settlement out of these crooks without going to court is this: when it became clear that they were being crooked, I did two things: I taped all my conversations with the business end of the partnership, Outerbridge, with whom all these arrangements were handled, and I have his voice agreeing to everything on which I insisted and he now agrees. Second, all of this happened after it was really too late to back out, having given my word and done most of the added work, and then the second partner, Dienstfrey, was here on the editing, I discussed it all with him, and have his letter assuring me not to work about it, it would all be taken care of.

As recently as our last conversation, which was perhaps two months ago, I taped my conversation with David Outerbridge. As recently as then he agrees to what I say and what the contract provides on the advance, but just refuses to address it.

What happened is that first I found these people, unknown to me before, through a friend of D's who is a friend of mine, my friend having worked for JFK. Based on my experiences of the past, I have several minimum terms. One is that I would not have to do any of the editing but would be restricted to going over any editing they did. I turned down one offer to publish on this basis alone. It is in writing, so should it become a matter of my good faith and truthfulness, that is recorded. Second, I insisted that there be agreement that there would be vigorous advertising and public relations behind the book. I said that unless this were assured I had no interest because with my experience in the field, without it there was no prospect of any success at all. In Bill's presence, I spelled the minimum of this out. It included sending me around the country and speaking engagements to promote. I knew from the past certain shows I could do, and I assumed, as they assured me, that they had a p.r. end. It turns out to be David, and he is so incompetent he not only failed to but refused to call the papers in NY when Percy Foreman, having ~~been invited~~ flown to NYC just to do a TV show, fled when he heard he would face me. He was in the studio being made up. Only the makeup man blabbed. That could have made the papers and made the book. In order that there be no doubt that G&D would have to perform, I insisted on enough of an advance for them to work to get it back. I spelled this out to DG, telling him that I had dealt with friends and had yet to find the publisher who could be trusted. He agreed on a \$10,000 advance, and I'll describe the conditions when I return from the p.o., for they will be doing business by the time I get there and this will let me lay abed and enjoy the rate I have just taken to her.

Although it was not a condition of the advance, I said I would use it to print 5,000 copies of the full O&P, and the estimates I then had, a bit old and a bit higher than \$10,000 led me to fix this round number. He agreed that if they did the book this would be the advance and he also agreed that I'd do the full thing, with reference to their edition in it, all the documents in the appendix, etc., and they'd refer to mine in theirs. Although there was no discussion of length, I knew and I suggested that the book should be restricted to the ring part only. I rather suspected they'd cut it more than they did to make a cheaper book than a \$10.00 one, for this is the figure I thought I could sell the unabridged one for. That price cuts seriously into the potential sale of a book.

He did not get back to me within the three weeks he said he would, but I was so certain from the way he talked that they would do the book that I withdrew another copy from a large house, where I did not feel they'd go for it. In all of this my interest was speed, for I not only wanted to get it over with and onto other work but I knew what was pending in court and the influence the book could have on that by making it harder for the judge to be crooked.

They did come back to me, in some excitement, saying they wanted to do the book, etc. By that time I knew I couldn't begin to afford to do the private printing for our many debts were pressing too hard, and I so told him. Because I believed that there would have been a value to them on having the full edition out earlier and getting some attention I might have been able to arrange, I told them that because the advance figure of \$10,000 had been based on my printing the book, I'd accept any other figure they could get for the identical work. It was carefully described as identical with ~~WHITMAN~~ in every way but one, the number of pages to be 640. Same paper, cover, etc., all costs except for camera-ready copy. I don't now recall whether this was before or after they sent me the first draft of the contract, which I rejected. But I think I'll have to stop trying to be honest with people. Anyway, the first contract didn't incorporate provisions on which we had agreed and was for an advance of but \$1,500. David readily and without argument agreed that the advance had been computed as I set forth above, that he'd have the figures gone over and would send me another. He did, with the advance up to \$6,200 and only some of the other provisions added. I phoned him about this, said (he told me his production man was off getting married or something) that I'd sign and return it with a codicil incorporating the agreed provisions not incorporated, and it would become effective on his returning the signed copies of both. I sent him two

copies of the codicil, one to keep as part of his part of the contract, one to sign and return to me. As time went on and I stayed as busy as usual, I didn't realize that he never returned the contracts. When D was here going over editing, I did realize it and reminded him of it. I explained that the agreed advance was for \$10,000, that the return of the contract was subject to their proving they could duplicate the identical book of the specified size for less than \$10,000, and that that had never happened. When he returned to NY he wrote me and said not to worry about it, it would be taken care of. It never was. I kept asking for the signed contracts and not getting them. When I did this by phone I taped. David said he had sent them, I said I'd never gotten them and when it was clear by this time that David is a crook I didn't suggest sending me zeroes. Thus, only when I insisted in writing did I get a copy. That was 14 months late. And what he then sent I have all stapled together. It is the form contract and the codicil, which he hadn't signed, thus explaining the refusal to return the contracts.

Meanwhile, David finally sent me a breakdown totally \$6,200 but not including all costs and including no specifications. They were, when I challenged these figures, to substantiate them. He didn't because they couldn't. I have this in writing and on tape. Finally I took their figures to a printer and he laughed, saying they totalled about half the real cost. The reason David didn't specify is that there is enormous difference in the cost of paper of different quality, in the cost of binding. For my books I have to use and always have used expensive paper, and a sewed binding, by far the most costly but also the most durable. The difference in costs can be accounted for by these two items alone, their using cheap paper and a glue binding, neither of which is acceptable under the agreement. The last time I spoke to David he actually admitted that the book described was a 640 page duplicate of WHITEHEAD, that it called for 60-pound paper and a sewed binding, so there never was and remains no doubt of this. This they owe me on this basis alone \$300.

They never had a single meeting with me to promote the book. They never arranged a single promotion. The first one I arranged and Harris D agreed to David killed. The only others, and there were but few, I arranged for with a young friend helping. David tried to kill them. They even refused to have a press conference on publication. These were, of course, bad signs, and because they never came close to keeping production schedules, they cost me about six months of writing time. I stayed busy, but I couldn't undertake more writing because daily I was due to get proofs I had to go over and return pronto.

The one time we had a meeting after publication was when I was in New York for a promotion I arranged. It was St Patrick's day. I had a sprained foot and couldn't get a c.b. I walked most of the way from 44 and Lexington to 72 and 8th way before I could get one. Their sole purpose then was to try and cage me into picking up the tab for an overcharge on typesetting on the ground that this was because copy was dirty. I explained that first of all this was too late, second had they raised the question with me I had other alternatives, third they got a book, a copyrighted book, not a manuscript, and it was exactly what they read and approved, and moreover, it just was not my responsibility. I have since learned that the contract precluded this. Then they never paid the second part of the advance, falsely claiming that I had agreed to not accept it when it was due, whereas I had said I'd need it promptly for my bank. When, after much haggling, they finally sent me what they described as an accounting, they this identical sum, to the penny, charged against me as "author's alterations". Of course, I made none and we have a duplicate set of proofs to prove it. I'd pointed on the indexing proofs all corrections, coding them in color. They were either 100% or close to it of types only. And as I later learned, the first \$100 were not to be charged against me. I pointed these things out, demanded repeatedly and to this day have not gotten proof that these were my author's alterations and bills to support the charge, and the one thing they did was say they recomputed it and they made a mistake of \$40. I haven't gotten that either. They claimed it was a big deal and took time and I tell you that I checked about half the book in half an hour and didn't find one. I believe this is fraud. They just haven't responded.

The real estimates for doing the described book in the cheapest plant in DC is about \$14,000, by the way. I submitted this to them when they didn't ever justify their figures, which I demanded repeatedly. I used such words as saying a book was not enough, that they couldn't under the contract use toilet paper for stock and chewing gum for binding.

One of my great fears is that they are so incompetent they are going broke.

Meanwhile, another legal question. I dealt with a partnership. They never told me they incorporated. They still write, as of their last letter, on a letterhead not of a corporation, but for the envelope, but when I finally got a few bucks then did acknowledge, having no choice (for the return of book)s it was a corporation check. Is this not illegal, that is, are there no requirements that all corporations be so identified on all stationery, etc., and if so, is it criminal, something they might worry about? It was, I think, when I was younger and in the state in which I then lived.

Well, this is the essence of the mess. The contract requires that "disputes 1, as I recall it, be settled under arbitration. I wonder if these things are mere "disputes". I think it is item 2). I'll be digging it out and enclosing a copy. I think the publicity that might be arranged for the filing of a suit might be effective in getting them to straighten this up. Of course, I also feel that in not doing anything to promote the book they violated the contract to my detriment. And I also want the return of any rights they have under the contract, esp. now that they have remaindered it.

But something that might help and get a little action in this business of the remainders. If they get a letter from a law firm saying that I had arranged through a client of that firm to get any remainders pursuant to the contract and have informed them that the book is being remaindered in violation of the contract, without me having been consulted or told, it might let them know I am serious and might have side benefits.

I haven't shaved yet, and I'd better do that, then I hope to be able to copy and include the contract and then to find time to get it into today's mail, which will require going into town after my guest comes. I don't know if you can do or arrange or suggest anything, but we sure need help. Meanwhile, if and when I get to DC, I'll also see if Bill can help or if he agrees he is too complicated as Dad's apriner.

Thanks for anything.

10/28/71-second

Dear Mary,

My guest not yet having come, I've copied the contracts and a few other relevant papers. Sorry the used brown paper and I couldn't make clear copies.

Marked with a 1 is a spurious and incomplete "Statement of Royalties" due in July, undated but received relatively recently. I have the letter I immediately wrote asking for a real one.

You will note that the extra type-setting charge is first described as entirely different than author's alterations, of which I made none. I think this is where the fraud comes in.

With regard to incorporation, if that is a legal point, you will note that as of my last check, it is a corporate check but the covering letter is on a partnership I-head.

Nos 18 and 19 refer to my rights to the negatives, plates and remainders. However, with the book only six months old and my last word from them having to do with a promotion on a scheduled, and anyway, I have no way of knowing unless they notify me that they are going to dump the rest of the books on hand by remaindering, I think this entitles to to them and I am certain that our discussion (taped) is clear that they are to be offered to me first.

They claim I agreed to forgo getting the second part of the advance which I believe was due in February, about the 8th. Not only did I not but in the course of going through the file I found this one of I am sure several letters saying the opposite. What really happened when I didn't get it is that I phoned and ask them if they had a temporary financial embarrassment, David, the crazy bastard, having first flown to Europe and then to California on wild-goose chases, if not pleasure, and they said they did. This was long after payment was due. I then offered to ask for sums as I needed them for but a short while, until they could pay it all. Note the time difference between this one letter of April and the final "advance" check of August 4.

You know the problems I have with \$35. If you want to keep a copy, wither or not you can help me, do, but please return these so I won't have to take the long time with my slow machine and exhaust my paper supply for whenever I run out the \$35 will be a problem.

But you will not from the spurious cost breakdown the use of the word "quality" in describing the book and in reference to WW. Thus I don't really need the tapes on this because the quality of the paper and the quality of the binding are what they have cheated on and which (again, all on tape besides letters) they have refused to supply. I have checked this personally with a very reputable printer and there is absolutely no question. But you will notice that there is no specification in the breakdown, and ever since I've been asking for it, first promised after the honeymoon and they just avoided.

I do not think that unless there is special meaning to the words these kinds of crooked things fall within the dictionary meaning of "disputes" or "differences". But I don't know.

Hasty thanks,