

Dear Jim,      Harpers-McKinley

1/18/77

The mail had just come, I was responding to a letter and Fox of Harpers phoned. It is now 1:30 and aside from taking that letter out of the machine and having a quick snack this is how long we talked.

When after a long time I went over parts of the King chapter and in case after case saw the rotten business of all the dodges he used to avoid me or saying he was using my work and realized that we were still talking about the same things we had talked about before it became quite unsettling to me.

If when I do what Fox has asked he is not satisfied I'm not going to waste any more time on them. I'd rather sue and have it over with. I did take much time on the phone last month and perhaps earlier, I did make copies, I did offer them everything I had, I did tell them it is not all on the notes I made on the manuscript, I did tell them they should see the correspondence file and I did say that I see no way of them satisfying themselves if they are not willing to accept my word and examples without them coming here and going over everything. The only restriction I place on anything was with regard to the rights of privacy of others in these files and not herein relevant. I just can't imagine anyone being more open and trying to be more helpful in addressing a problem. Nor can I imagine anyone being more innocent in it. But perhaps without realizing it - Fox does seem like a nice enough guy - they are getting abusive without realizing it.

They are just pretending they see nothing. Yet in little way they disclose knowing more than they've let on. They claim they have not seen the Playboy correspondence yet they know the amount Playboy paid me. There has to have been some contact for them to know the correct sum and it is not reasonable given what I've represented to them that they not learn all they can from Playboy. I'm sure they did.

If my handwriting is illegible, it is in the form of marginal notes and they could long before this have made a comparison with their text. If they did not see what I was driving at they could have made a list as they were scanning what I sent they could have made a list and asked me. They have not. This is the first I've heard since I sent the xeroxes. With my set and the set I sent them and a list of what they wanted to ask me about this part could have been taken care of expeditiously. There will still be more if they remain with questions, hours of tapes of our conferences. Playboys and mine. Meanwhile they have not only proceeded, they've edited and included the corrections. I guess they actually have the book manufactured after making these changes. His pages and those on the bound proofs do not coincide.

We kept talking of copyright only and fair use. I tried to tell him that there are also other legal questions and that you had consulted and had advised me of them, that they involved business law and the use of what I have not yet published. He tried to slip away from the last two and it is when we get into the King part of it that I did get upset over it.

Originally I told him that tomorrow I would go over my set of the manuscripts and pick out a few cases for him but that I'd do it tomorrow because you are coming the next day. Then he said he's send me the new version so I can see if it has been removed. At this point I think I'll let them take that time. I'm out much time on this and can't do what I want to do, as I did tell him. I'll go over places I marked. Depends on when the new version reaches here if I'll take the added time of reading it word for word. If you say I should at this juncture I will.

What he may not understand is that while I have adjusted to the waste of so much time as caused by my being without means I see no reason why I should have to waste all this time for big corporations of considerable wealth. If they pay me for it, as they have not and have not offered to, it still does not let me do what I want to do because there is nobody I can pay to do what I have given up doing when I regard the responsibility

as theirs. Until I give them reason it is my responsibility. Once I give them reason to believe and some proof and have offered them everything else - more than they could get under discovery because they'd have no way of knowing what to ask for - I do not believe, unless law and practice is otherwise, that they can keep putting all of this on me.

What he is worried about is the cost of sending someone here. They have spent as much, whether or not he realizes it, and still need to do it. They are not ~~worried~~ concerned about the cost to me in time wasted.

If Howard and Dave were not so busy I'd get them to annotate. He said he'd sent me two copies, one to make use and return to him and one to keep. I could, if they had time, send the other copy to others to go over to mark the cribbing.

I did address unfair use to him in several ways as we talked. On JFK I asked him to check the index to see where my work that was used was credited, my belief being that it is not fair use not to credit, particularly when the billing is of Flaybey's original investigation. On King I read off some examples from the end of the chapter, beginning with the McDonnell-Chernley-parking lot parts.

He asked me about something in one of my letters. I saw he was either misunderstanding it or making on he did, the latter more likely. It is where I offered to help them with other defects in the book. It is not past that point. I told him it is not a good work and that they can be subject to other actions, that what I had in mind was the event they did want such services. He said they had had counsel read it. I said they had not only cribbed extensively but had pretended the opposite and I could see grounds for at least costly defenses against suits and that in my opinion there could be a legitimate Ray suit. I did tell him McKinley was at the evidentiary hearing, that Ray's remedies were not exhausted and that I do not intend to go around suggesting that people, sue them. He said he was glad to hear that.

A lack of due diligence exists from the lapse of time, from the making of changes without incorporating those I would want and of which they knew and x in their having time to do these things and reduce the damage. He asked me when I told him of the new book if I was saying that the appearance of this could prevent my getting a contract. I told him no, I could not say that but I could say it reduced the chances, reduced what I could expect and certainly could kill the ancillary sale. He said he could see this. I am not clear if he restricted this to the ancillary sale.

He seems to be saying that they can use copyrighted material without permission or credit and this can be fair use. I did not argue that. I did show him a number of examples of deliberate unfairness, of nastiness and of inaccuracy, deliberate inaccuracy, to accomplish this and that the combination constituted unfair business practices at least. I told him McKinley knew the fact developed at the hearing and as an example used the cracks about the autopsy and my opinion and its suppression - say it would be different if it were not suppressed. I told him I had gotten it by litigation. He asked when. I said 1970. I told him I used some in facsimile, that he has frame-U<sup>2</sup> and that he can see it. He dropped that without an opinion. Without disagreement although he said something about the language not being stolen.

It was upsetting to learn when we got into the King stuff that they had revised and with all of this and all the trouble I've gone to had not sent me a copy of the revision. Then when I saw all that dirty business with verbal nails and knees it got a little of what Scott would call "intense." I told him I was getting upset. He took this to mean tired. I said not tired, that I was not tired, and that there was nothing personal relating to him, that if I accused other than good faith on his part I'd just sue and certainly would not have been as open. I then explained that there is throughout this work the use of my work out of context, generally uncredited, sometimes inaccurately, sometimes unfairly, in a deprecating manner, and that this is not easy to take when there are two wealthy corporations involved. That McKinley's problem was ego, that he could not say I had done the basic non-official work and that he had to sneer for the formula.

I could have said that without the sneer formula the wealthy corporations would not publish and I did make a passing comment in another context about one of their own people trying to get them to publish what was not stolen. (I did not there say stolen.)

I tried to give him an idea of the extent of this work, the conditions under which it has been done and the costs, and that finding this done with it and to me by those who did not have to do it from urgent need not easy to take.

The crap is loaded with dirtiness and dishonesties that knowing nothing of the case law I would take to be the opposite of fair use. I came across an example while thumbing to look for the business about the parking lot and read it to him. This was on the supposedly voluntary, spontaneous FBI releases of materials. I asked him what kind of a representation that is of my suing and for so long a period of time and at such cost that the transcripts are three inches thick. I gave him an idea of the volume of the documentary material, told him I have two parts of the book in draft and asked ~~him~~ him to consider what any jeopardy to all that work could mean to me and how he would feel to find this kind of use and misuse made of it. I think from what he said and how he said it that he did at least sympathize with my emotion and perhaps was somewhat embarrassed at all of this creekiness and dirtiness, whether or not he can defend it under law.

I did tell him that after the initial stealing from my JFK work I told Playboy ~~me~~ verbally and in writing not to use any more, that it is not that I wanted to be paid for what they used but I did not want it used, period. That I had told them I'd seek an injunction unless they agreed to remove what I objected to, that I had taken the initial steps toward seeking an injunction, including by consulting you and your consulting others, and that I could not file once I received assurances that were not kept. He did seem to understand this and questioned about whether I was talking about what was used in court. (This case about for other reasons.) I told him not and used the solution to how the crime was committed as an example. He asked several times and I told him it was my work not defense work and that as a lawyer he should understand that there is no appropriate use except in a trial and there has been none—that we were trying to get one.

The other connection in which court case up is when I told him that the use of my work in court was unfairly treated and was not represented as my work at all when it was and before use in court McKinley knew it was. It does not even say it is from the court record ~~me~~ and I explained the Playboy claim of original investigation. It is hardly consistent with the intent of fair use not to mention an official proceeding as the source or how that official proceeding came about, etc. I think he understood this. He did not argue about it.

On the question of copyright I asked him did he really need more than the Playboy's payment to me and their letter saying how fair and reasonable I was with them over it. Here is where he disclosed knowing the sum and where I told him part was consultation fee. Here I had two things in mind: first I regard it as an admission of fact beyond any question and second it gives them something with which to go back to Playboy and make demands for restitution. And to McKinley ditto. I did not say this.

I think you should be thinking about the law as it relates to Playboy and me now and whether after deceiving me into not asking for an injunction and using my work after I demanded that it not be and selling it to another for reuse or being part of that sale I do not have an action against them. If so we should be thinking about what to do and how to go about it. I see no reason not to make whatever under the circumstances is a reasonable demand of them. On this, by the way, McKinley sure as hell knew before there was a book. In addition he called me at one point and said all this nasty business was not his, it was Playboy. Bill, who also had like 'in, was on the phone and also spoke to him. He promised to send the next instalment that weekend and never did. If these scums are going to steal my work the least they can do is bear some of the cost of it!

Hastily,