

20734

10/18/66

Dear Murray,

As Sidney <sup>c</sup>ones said, the fine print with Dell is very fine. They are now trying to pull stuff - and may have accomplished it - with the distribution contract on the present book. We had a clear understanding that they would assume responsibility for the returns on it that would be caused by the appearance of their edition. They have, in the contract they sent for my signature, interpreted this to mean they will substitute for the post office.

The contract was to have been prepared immediately after we left. I thought I asked that it be sent to you, but this I may not have done. In any event, I performed on my part immediately, as I shall detail. On Saturday the fifteenth, in an envelope postmarked the thirteenth, was the contract, dated the tenth, with a covering letter from Bair dated the 12th. A copy is enclosed.

As I had committed myself to do, first thing Monday morning - even before going to the doctor, as I was supposed to, for I had been taken ill on the way to New York - I went to the printer, ordered the requisite number of additional copies, assured myself that everything Dell asked for was to be sent immediately, and reported this. On Thursday I went to town and satisfied myself that everything was proceeding according to the schedule and politely reminded Tobey in a letter on Friday that he had not sent the distribution contract but that as soon as I got it I would seek your advice and then return it. When I got the contract, I spoke to Friedman, who was to take it up with them to eliminate those provisions on which we did not agree and to include those on which he had. Tonight, by phone, he told me Dell's interpretation and their agreement to eliminate paragraph 10.

The book is uncorrected in England, and I have told Friedman that if there is any additional paper required for it, I will not sign it until you approve it. I have informed Tobey it is theirs for distribution.

You may find defects in the contract I do not understand. These are the things I do or think I do.

There was no discussion of paragraph 3. All the arrangements we have with the present distributors are that they pay for the shipping costs. It is my understanding that it is the custom of the book business that the recipient pays shipping costs.

With respect to paragraph 4, this seems too general. I cannot assume responsibility for their shipping shortages. I suppose I am responsible for seeing that they get the 8,000 copies called for and agreed to, most or all of which will have been shipped before you get this.

We did not discuss paragraph 5. They did not raise the question. If it is the norm, I suppose I have no objection to it. They have read the book for libel and told me there is none (they have already set it in type, so they would seem to have no apprehension on this score).

Paragraph 6 is contrary to our agreement. The same is true of 11. I would not have agreed to this because it is beyond my capacity to perform on it. I made clear to them my financial condition and they went further and said there were certain pressures they could bring to bear on the wholesalers and would see to it that I am paid the considerable amounts all owe me. They explained that one, who they did not name, always behaved this way and when the time came they just said that if they were not paid the books would be withheld. This they said they would also do for me.

Worse, this means that as soon as they rush their book out all these will start bouncing, as will also some of those I have already placed. We discussed this and my apprehensions about those I had already placed and they agreed to my request that they keep their book a secret until the last possible minute. They further insisted that I turn over all my present accounts, both wholesalers and retailers, otherwise their position on the returns would be impossible. This extended to even my giving up the quite profitable business I have built of sending out copies direct to bookstores. I agreed because of their insistence and their agreement to assume responsibility for return to do this and to send out only individual orders. They requested and I agreed that I would send them all orders I receive from bookstores. As you can see, these provisions are not in the contract. Until it is in the form we did agree upon, I cannot decline orders that I get.

The net effect of this contract is to saddle me with the return of the Dell edition will inevitably cost. I would never have agreed to this, could not and did not. I could not have gone to the printer and ordered a fourth printing for which I could not pay (for my income has not been great enough to pay for the third, although I did on the day I ordered the fourth finish paying for the second) if there was any possibility any could be returned to me. I would not have signed or agreed to any distribution contract under these circumstances, as I think is obvious.

The truth is that in order to meet our obligation to the printer, I have not taken for myself a single cent of the gross return of the present book. As I feel at this moment, I cannot sign this contract even if they decide they can do nothing or will do nothing to make it consistent with our agreement. I had to perform on the basis of our verbal agreement or they would have had no books to distribute, and it is clear to me that their having books to distribute immediately is important to the success of the paperback edition. That the alternative is if they do not perform, I do not know, but I cannot contract to do what it just is beyond my capacity to do. I cannot accept the returns and pay the printer. They told John Friedman today they never agree to absorb the returns of books they distribute. This may or may not be the case, but there are other things they do not do, such as take over private printings, but to this regardless of their practice, they did agree, as Friedman well knows. I refused to sign the contract for the paperback edition unless they agreed to be responsible for the returns, regardless of the distribution agreement, for I could not commit myself to meet the obligation on the possible returns no additional printing would have still left from those books I placed in distribution. Even assuming this is an honest misunderstanding on their part, and I do not so believe, there is nothing I can do about it. What a crazy situation it also creates. If I do anything to promote the sale of the paperback edition, as without doubt they expect and are entitled to, and as I expect to do for them, for each book that brings me less than nine cents I give up a possible per-book net return of up to \$3.50 and a minimum of \$2.00 on those I have sold to distributors. This provision is the big stickler.

We did not discuss paragraph 7 and I do not understand it. Paragraph 9, perhaps from my ignorance of the publishing business, seems to me to be window dressing. Do they still expect to sell \$4.95 books in competition to \$0.95 ones. It seems to me their 30-day clause vitiates it anyway, especially since they seem to be the sole judges of what constitutes good faith.

Then they have abandoned, according to Friedman.

If it eventuates that I have to be responsible for returns, and this can happen only in the absence of a contract, I will accept nothing less than the return of the books for which I will then undertake to develop sales. I will not agree to the cover or affidavits provisions of paragraph 11 even verbally, and this is, as I said, outside our agreement and in contradiction to it. What they do with returns for which they are responsible may be none of my business.

With regard to 12, among the questions which seem obvious is that under the agreement we reached, I can conceive of nothing that I can owe them. I have no way of determining the correctness of whatever statements they have in mind by this provision and under the agreement we reached, they said they would remit promptly; They told Friedman they pay on sale, not on their receipt of payment. This may relate to the paperback only. I was not in on that discussion.

The remaining provisions may be normal but I do not understand them or their purpose, except for 13, which does accurately reflect the agreed commission.

I have gone further in hock for an additional approximately 7,500 copies of the book, so my position is not good. I have performed as I am supposed to. I have misgivings if this is the way they start out. It seems to me to be just plain dishonest. As a matter of fact, in order to perform, I had to incur the additional expense of overtime the extent of which I cannot know until I get the bills, but this I also did in order to keep my end of the bargain. Of course, I never dreamed that they would pull anything like this or I'd not have made the arrangement to begin with.

As of now, all the risk except their cost of printing I am running. I agreed to no advance because they claimed there is a hazard. I see no reason to assume risks I never agreed to and risks they did assume as a condition of the agreement.

Do you always get messes like this?

If I have to come up to New York, I shall, but until I find out whatever it is that the doctor in New Jersey apparently incorrectly diagnosed as gall-bladder trouble I'd prefer not to for I am uneasy driving, especially on the turnpike.

Sincerely and regretfully,

Harold Weisberg

*Enc. copy contract, letter 10/15 to Tolby*