

RUSSELL & VOLKENING, Inc.

Literary Agents

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July 9, 1968

DIARMUID RUSSELL
HENRY VOLKENING

Mr. Eliot Porter
Great Spruce Head Island
Sunset, Maine 04683

Dear Mr. Porter:

I'm sorry you have to write so many long letters--and while on vacation too. And as I will be going off on vacation end of this month for all of August--and often unreachable much of the time in Maine since I go cruising with friends-- I would like to get things settled as much as is possible before I go. Besides I have a feeling the longer matters remain unsettled, the more set everyone will become.

At this point, many small matters in the contract have been settled and the areas in dispute are the following--and I mention them and also give my suggestions as to what I should write to Brower in a firm letter. I hope you can agree, for in some cases I will be conceding some things you would like to have and Brower will also have to concede things he would like to have. In effect, I am trying to mediate for recourse to law is trying, expensive and leads to nothing but exasperation.

(1) Galapagos royalties to be a flat 8%--and you get 70% of this. This is your suggestion and I think Brower must be asked to accept this.

(2) First serial rights (these may be hypothetical) Brower wants 50%. I suggested 20% for Sierra and want to stick to this, with an arrangement that if your photos are used alone, no share of money received shall go to the other parties to the contract. Equally if others material is used alone, they get all the money, less what Sierra takes.

(3) Foreign rights. Brower wants 50%. I want to suggest that after any expenses of translation they may have incurred, Sierra takes 20% (which is what an agent would charge for dealing with these rights) and the rest goes to the contributors to the work in the same proportion as the royalty sharing.

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(4) The Ballantine reprints. I went into these rather extensively with Wilentz. He says flatly that their production people are spending so much time on these that the 2% doesn't cover their costs and that this time will have to be cut down. Paul Brooks, who as a director may be regarded as somewhat prejudiced, but is an old friend and honorable, thinks the 2% is justified. I'd be inclined to let them have it. Let's leave out the matter of the GLEN CANYON mix-up -- I got a murky explanation from Brower which in no way indicated who was at fault-- but at the moment they seem to be supervising and more than Wilentz likes.

Can you go along with these suggestions? What I am trying to do is what seems best for all in a rather tangled situation. I do think Brower, and probably with the best intentions, has created most of the trouble-- and none of this should happen in the future. And I would wish to get relations better, for you may wish to do books for Sierra or they may wish you to do books--so brood and let me know.

I am returning the various letters you sent--which also indicate the casual and unbusinesslike way Sierra has been running matters. To remark about Mr. Krutch's letter, Clause 23 is the one about the Sierra 2% charge but I can't see that it confers on Sierra the right to make reprints without paying royalties. At any rate for the two contracts--California and Galapagos--this clause would be altered to make the charge relate to Ballantine reprints specifically, excluding all other uses. Clause II, relating to the sale of the copyright, will be totally rewritten and the sale arrangement knocked out--it will just say that if the book is out of print and the publisher fails to reprint, then all rights revert to the author. Clause 27 is perfectly all right-- it's intended to save the author taxes. If an author should get \$100,000 earnings in the one year, he would owe a lot of taxes to the U. S. Government. This clause stipulates(at the author's wish and with whatever figure he wishes to put in) that no more than some specified sum shall be paid in any one year. Additional earnings are added to the pool of royalties the publisher is holding and paid out at the specified rate till the pool of money is exhausted. Many, if not all, publishers' contracts have this clause to be used or not, as the author wishes.

With large and well-known publishers, the use of this clause is quite safe and can be beneficial(a lot of our clients use it) but I wouldn't be quite so sure about its use with Sierra. The U. S. says this is a legal tax device if the royalties withheld are commingled with the publishers' general funds--which means if the publisher went bust, the author would be in the same situation as other creditors, maybe getting 10 cents on the dollar. The royalties cannot specifically be set aside. The only other tax arrangement authors can use is complicated and when we have time I can talk to you about it.

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Mr. Porter

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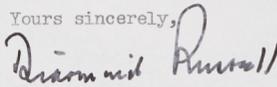
I should add here I've just had a letter from Brower and leaving out contested matters, he remarks about Clause (9) that they will account and that you are under no obligation to provide any more material than you have already provided. He also says most of the posters are given away free but that after a year they will pay 6% on any that are sold--but I will want to add to this that if the posters are just reproductions of your photos with some legend, that all this should go to you and not split.

I would also like to recommend to you that we should ask Sierra for a separate contract for you --specifically mentioning your royalty rate and your sharing of subsidiary rights when only your material is used. Besides you might want to trust Sierra's solvency and invoke that limitation of royalty clause to save taxes-- and in a single contract for all, it's too complicating to work out a clause which applies to you and not to the others, who might not at all want their money limited.

Now we come to the matter of what the theatre calls billing. I haven't raised this point yet with Brower since the other matters were more important for the moment. I don't know how the other books you did which had other contributors were handled. I think I have to leave this to your own good sense. Offhand I would say the jacket of the work should say by Eliot Porter, preface by Loren Eiseley--both of you being names that mean something. The title page can say this--and in smaller type could mention the others.

The matter of editing I don't know how to deal with. I looked over one page with minor editing which I thought was justified--but minor editing is a different thing to wholesale cutting which I gather is what has taken place without consultation. Obviously if all they could use is 20,000 words and you sent in 50,000 words, you should have known of this limitation beforehand and at any rate if substantial cutting was essential, then you should have done it. Sierra could make suggestions about this, but in the end you have to be responsible for what text appears under your name and so have to approve. Sorry to give you so much to read--and I hope you can mainly approve.

Yours sincerely,



Diarmuid Russell

P. S. On taxes--this is something we ought to talk about and I take it we have no chance to talk. My last day here will probably be July 30--and from August 1st on for the month, I'll be staying in David Rockefeller's guest cottage in Seal Harbor on Mount Desert. If you were spending the early part of August in Maine, we could meet up there, either at Sunset or Seal Harbor. If this is possible, let me know, or if you could be in New York before I go.