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June 4, 1998

BY TELEFAXMr. Ken Follett
P.O. Box 708
London SW10 0DH, ENGLANDRe: Hammer of Eden

Dear Ken:

I now have had a chance to go through both your wonderful new novel and Dan Starer's comprehensive proper name report. I apologize for taking a little longer than I had hoped, but, as I told you, I was enjoying reading the manuscript so much that I quite consciously slowed down in order to enjoy it longer.

In analyzing the litigation risk of using proper names, I have assumed that the major issue is the possibility of defamation because of the coincidental similarity between the name of a villain in your book and a real person or entity. I assume that the similarity in name between the hero or an incidental figure in your book and a real person or entity would not hold that person or entity up to scorn, opprobrium and ridicule, which, of course, is the essence of a defamation claim.

With respect to non-villains, the issue is, of course, not defamation, but privacy. The privacy rules in this country are much less clear-cut than the defamation rules. While New York has a simple and straightforward statutory test: is the person's name or likeness used for reasons of "trade or business," and there are cases holding that incidental mention in a book is not "trade or business" within the meaning of the statute, in other parts of the country (notably California), the right of privacy has

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gotten mixed up with the right of publicity, and the desire to protect the valuable publicity rights of celebrities is often given a more expansive reading. Thus, privacy may go beyond an appropriation of the plaintiff's name or likeness for commercial purposes to include an unreasonable intrusion upon plaintiff's seclusion or solitude or into his private affairs, publicity which places the plaintiff in a false light in the public eye, or public disclosure of true, embarrassing facts about the plaintiff. I do not believe that a coincidental, good faith use of what turns out to be a real person's name is an unreasonable intrusion. Since there is no specific intent to mention names of real people, the other two criteria do not apply either.

Dan Starer's report discloses almost no problems which suggest changes that should be made in the manuscript. I concur that it would make sense to change the name of Liberty, Texas. The only other comments that I have are as follows:

✓ **Page 8, line 14 -- Dolly Mendoza.** Even though this woman is merely a remembered character from 27 years ago, she is a girlfriend of a criminal. The proper name report suggests that there is only one Dolly Mendoza in California, and for that reason I would consider changing her name.

Page 250, line 11 -- Chewy Chipahoy, Rice-A-Roni, Captain Crunch. Here and at other places in the manuscript, you have used registered or unregistered trademarks. Since you are referring to the product that the trademark refers to, there is no impediment to your doing so. However, it would not be surprising were you to receive communications from the trademark counsel for the proprietors of those marks worrying over the fact that you had not in some way indicated their trademark status. While you have no obligation whatsoever to do so, you might forestall such communications by adding at some point after the acknowledgments a series of lines to the effect that, for instance, "Rice-A-Roni® is a registered trademark of Large and Grasping, Inc."

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In addition to the foregoing, I have come across a number of Anglicisms that are jarring or unfamiliar to the average speaker of American English. While they'll probably get picked up in the copy-editing, I have taken the liberty of citing them here:

✓ **Page 70, line 11.** American lawyers don't refer to themselves as having a "legal qualification." Rather, the question would be "were you trained as a lawyer?" or "did you go to law school?"

✓ **Page 77, line 18.** "Mummy" - the American equivalent would be "Mommy."

✓ **Page 81, line 18.** "Kerb" - in America the word is generally spelled "curb."

✗ **Page 84, line 9.** "Quantico were puzzled . . ." - in America a mass noun like Quantico usually takes a singular verb ("Quantico was puzzled . . .").

✗ **Page 113, line 11.** "Hindu" - the distinction between various residents of the Indian subcontinent would probably be lost on Americans, who would be more accustomed to seeing "Indian" in this context.

✓ **Page 138, line 2.** "Inland Revenue" should be "Internal Revenue."

✓ **Page 196, line 10.** "Paracetamol" - not an American drug.

✓ **Page 499, line 5.** "Diamorphine" would be "morphine" in American.

Cordially,



Kenneth David Burrows

KDB/ss

cc: Mr. Dan Starer
Ms. Amy Berkower