

KAY COLLYER & BOOSE LLP  
ONE DAG HAMMARSKJOLD PLAZA  
NEW YORK, N.Y. 10017-2299  
(212) 940-8200

JEREMY NUSSBAUM

October 5, 2001

TELECOPIER: (212) 755-0921

WRITER'S DIRECT DIAL NUMBER  
(212) 940-8357

VIA TELECOPIER (360/838-1542)  
AND MAIL

Mr. Michael W. Perry  
Inkling Books  
11537 34th Avenue N.E.  
Seattle, Washington 98125

Re: Tolkein/THE LORD OF THE RINGS DIARY

Dear Mr. Perry:

We are the attorneys in the United States for the heirs and successors in interest of Professor J.R.R. Tolkien. It has come to our clients' attention that you are proposing to publish a book, titled as above, which is apparently to include or describe the adventures of many or all of the principal characters from THE LORD OF THE RINGS on a day-by-day basis. Please be advised that this publication may constitute an infringement of our clients' copyright in THE LORD OF THE RINGS and may violate other legal rights as well including, without limitation, trademark rights in the title of the work and interference with licenses of the rights to publish blank diaries and journals utilizing said title. In order to avoid the prospect of claims and litigation concerning this matter, we hereby request that you furnish us with a copy of your publication so that we may review it and advise you whether, in our judgment, it would infringe and/or violate the legal rights of our clients as aforesaid.

We thank you for your prompt attention to this matter and advise you that the foregoing is sent without waiver of any rights of our clients in the premises all of which are expressly reserved.

Very truly yours,

KAY COLLYER & BOOSE LLP

By: \_\_\_\_\_

Jeremy Nussbaum

JN:erm

cc: Cathleen Blackburn, Esq. (Via Telecopier)

Note: The letters from Inkling Books were taken from a computer archive and reformatted for this informational kit. The text, however, is the same as the original.

Tuesday, October 9, 2001 [From Inkling Books]

Jeremy Nussbaum  
Kay Collyer & Boose  
One Dag Hammarskjold Plaza  
New York, NY 10017-2299

Dear Mr. Nussbaum,

Thanks for contacting me. I'd managed to locate a contact for the Tolkien estate in the U.K., but hadn't located it for the U.S. I appreciate hearing from you.

You can relax and enjoy a long coffee break. This book was very carefully conceived. There are no trademark or copyright violations in connection with *The Lord of the Rings Diary: A Chronology of J.R.R. Tolkien's Classic Tale*, ISBN: 1-58742-011-2. If you're a fan of Tolkien's, I imagine you'll want to get a copy for yourself.

The book is a reference work much like a dictionary or encyclopedia. In a dictionary you'd look up Frodo and discover that his birthday was September 22. In this book, you can look up Thursday, September 22, 1418 and discover that the day was Frodo's fiftieth birthday.

In the entire book there is not a single quote from *The Lord of the Rings*. Nor does it claim to be, for instance, some long-lost Purple Book of Hobbiton written by Master Samwise's daughter or any other fictional character conceived by J.R.R. Tolkien. It claims to be exactly what it is, a reference book conceived and written by a modern author. All the words are the author's and are fully copyrightable by him.

There is also no way a reasonable person could confuse the book with *The Lord of the Rings*, which in the single volume edition is three inches thick and contains enough material for three lengthy films. *Diary* is a slender 3/8 inch thick and in a reference format that no one will confuse with a novel. In fact, the book will open with a strong warning that it should not be read by anyone who hasn't read *The Lord of the Rings* at least once. That means that the book's title is in no way intended to deceive potential buyers into thinking it's the novel or a substitute for it.

To be honest, *Diary* makes for dull reading. It isn't exciting and it isn't literary nor was it intended to be. It's like a dictionary, it packages facts about Rings in the most useful possible format. It summarizes who was doing what on a particular day in the least possible words with little sense of drama or character development. As its author, I poured hundreds of hours into it. But that work went into carefully sorting out facts that lie scattered over several thousand pages in the complex and often bewildering original and its subsidiary books.

There are also hundreds of sidenotes referencing events to chapters in *Ring* or to one of Tolkien's other books. As a result, this book is of little use to anyone who doesn't own *Ring*. It should also make its readers more likely to be drawn to *Unfinished Tales* or *The Silmarillion*. All too many readers are confused by the complexity of those two books and avoid them. *Diary* will tell them precisely where to go for more details about, for instance, the history of the One Ring and make them more interested in buying them. For that, the Tolkien estate just might thank me.

From your remarks about "blank diaries and journals," I imagine you are actually concerned about something completely different. You're concerned that this might be a date or appointment book based loosely on *Rings*. Like hobbit dolls and toys, the names of such things can be protected by a trademark. But by no stretch of the imagination is this a blank diary or journal. It covers over 1400 years. It starts and stops in the oddest of ways. In places it skips centuries. Even where events are more compacted, it skips days or even weeks at a time for the simple reason that nothing is happening worth reporting. As a date book it is totally useless. All the months have thirty days. (There's a February 30th but no March 31st). Dates always come on the same day of the week and the phases of the moons are good only for 1941-42. There are even additional days added that don't fit into any month. As Gollum might say, "No, my precious, this is not a date book. Not at all."

True, there will be blank space in the book. But that black space is an unfortunate publishing necessity. The format has numerous headings, typically one or two per page. Ordinarily, when they appear near the bottom of a page, they'd wrap to the next page, leaving ugly white space at the bottom. To avoid that, we'll be inserting variable, additional space between headings to even out pages and ensure that each chapter ends on a left-hand page. Readers are free to make notes there, but the notes will be about the text of the book, not about their daily lives.

Now that I'm in touch with you, I have several questions and remarks.

First, as presently written, the side notes to the text (footnotes in a sidebar) include nine short quotes (for a total of 356 words) from Tolkien's *Letters* to explain his intent in writing the book a certain way. Since that's less than one quote per chapter, it should easily qualify as "fair use," but I would appreciate your opinion in the matter.

Second, I'd be happy to let Tolkien's primary publishers, Houghton Mifflin and Unwin, release this book under their name. If you know who I should contact at either, I would appreciate knowing their name. You can also have them contact me directly. The book is virtually done so, if we hurry, it could be out before the end of the year.

Third, I'd be quite happy to send you a sample of the book, but I will need a non-disclosure agreement first. I'm sure you're honest, but I need to be careful, so nothing legally messy develops. I spent quite a bit of time developing the format, which will have some copyright protection. But the bulk of my work lies in factual information about what happened each day. That isn't copyrightable by either you or I, so my only protection lies in having this book come out first. After that, readers will know who copied who.

Fourth, when the book does come out, I wonder if you'd be willing to forward a copy from me to the elusive Christopher Tolkien. I could send you two copies, one of which you could keep and one that you would forward on to France. I was going to send it via the UK, but sending it through you makes more sense. It will also show that you're on your toes and doing your job well.

Finally, from this point on we might want to keep in touch via regular mail. My faxes come via an efax services and are sometimes lost.

I hope I have answered your questions and left you reassured. Feel free to let me know if there is any other information I can supply.

Sincerely,  
Michael W. Perry

KAY COLLYER & BOOSE LLP  
ONE DAG HAMMARSKJOLD PLAZA  
NEW YORK, N.Y. 10017-2299  
(212) 940-8200

JEREMY NUSSBAUM

TELECOPIER: (212) 755-0921

WRITER'S DIRECT DIAL NUMBER  
(212) 940-8357

October 12, 2001

VIA TELECOPIER 360 838 1542  
AND MAIL

Mr. Michael W. Perry  
Inking Books  
11537 34<sup>th</sup> Avenue NE  
Seattle, Washington 98125

Dear Mr. Perry:

Your letter of October 9 arrived in today's mail. Although we certainly understand what you were saying about your book, it is obviously not possible for us to agree with your conclusions without having had an opportunity to review it ourselves. While your reference to "a non-disclosure agreement" is not completely clear in this context, we can certainly assure you that we would be receiving your manuscript for purposes of legal review only and certainly will not publish or otherwise exploit it. We therefore ask, again, that you send us a copy of the book as promptly as possible.

The foregoing is sent without waiver of any rights of our clients in the premises, all of which are expressly reserved.

Very truly yours,

KAY COLLYER & BOOSE LLP

By:

Jeremy Nussbaum

JN/lc

cc: Cathleen Blackburn, Esq. (w/encl., by telecopier)

KAY COLLYER & BOOSE LLP  
ONE DAG HAMMARSKJOLD PLAZA  
NEW YORK, N.Y. 10017-2299  
(212) 940-8200

JEREMY NUSSBAUM

TELECOPIER: (212) 755-0921

WRITER'S DIRECT DIAL NUMBER  
(212) 940-8357

October 22, 2001

VIA TELECOPIER 360 838 1542  
AND MAIL

Mr. Michael W. Perry  
Inking Books  
11537 34<sup>th</sup> Avenue NE  
Seattle, Washington 98125

Re: THE LORD OF THE RINGS DIARY

Dear Mr. Perry:

Reference is made to our letter of October 12, to which there has been no response. For your convenience, an additional copy of that letter is being sent to you herewith. You have not sent the manuscript of the book, as we requested, as you are presumably unwilling to risk its being reviewed prior to publication; the inference from this is plain enough. In the meantime, we have been advised that you have posted to various websites an indication that this is "a large and less-than-reputable" law firm; if you seriously believe that this is a means of advancing your cause, you are sadly mistaken.

The foregoing is sent without waiver of any rights of our clients in the premises, all of which are expressly reserved.

Very truly yours,

KAY COLLYER & BOOSE LLP

By:

Jeremy Nussbaum

JN/lc  
Enclosure  
cc: Cathleen Blackburn, Esq. (w/o encl., by telecopier)

Monday, October 22, 2001 [From Inking Books]

Jeremy Nussbaum  
Kay Collyer & Boose  
One Dag Hammarskjold Plaza  
New York, NY 10017-2299

Dear Mr. Nussbaum,

My apologies for not responding more quickly. As always, this book is consuming quite a bit of my time and this past week, in another capacity, I had to participate in an emergency communications drill involving Seattle-area hospitals. Since September 11, that sort of preparedness has become more important, as I am sure you understand.

I've enclosed a copy of the actual posting I made to the two Tolkien news groups. As you can see, in no way did I suggest that your firm was a "large and less-than-reputable" one. On the contrary, I devoted an entire paragraph to making clear that everything that I have heard left me with a positive impression of the Tolkien estate and its representatives. Whoever your informant is, I would suggest that in the future you devalue anything you might hear from that source. It doesn't seem to be a reliable or accurate one.

The "less-than-reputable" reference was to a friend of mine so severely disabled with multiple sclerosis that she has only partial use of one hand. One book she wrote as a literary critic so enraged the legal representatives of a somewhat large literary estate that they threatened her small publisher with a lawsuit. Intimidated by the potential legal expense, the publisher dropped the book. She was forced to buy out their inventory and distribute it herself, a great burden given her condition. Predictably, though the book remained in print, the literary estate did not go after her. That's the sort of intimidation I meant. It does exist.

Now to respond to the main point of your last letter. If you'll notice, near the bottom of page two of my October 9 letter I offered to send you a sample of the book if you would supply me with a signed non-disclosure agreement promising not to disclose its contents to anyone who might use it to publish something similar. I certainly wasn't worried about Kay Collyer & Boose publishing or exploiting it. I was worried about someone at the firm (perhaps a Tolkien fan) looking at it and mentioning the contents, ever so casually, to a friend in publishing. This book is certainly legal, but the idea behind it is clever enough I'm surprised someone hasn't done it before and a bit worried that someone with better marketing connections may copy it quickly. Given that situation, my request is quite reasonable and there are no grounds for concluding I have anything to hide.

At this point I need to be blunt. Culturally, Seattle is very different from New York City. Though it sometimes gets us into trouble—as with the WTO riots—we're far more laid back. Civility and open communication are highly valued. Even though we have the second worst rush hour traffic in the country, one study found that we're also among the politest drivers. What in NYC is interpreted as being aggressive comes across here far differently.

In my letters, I've tried to be helpful, describing my book in detail and offering to supply a sample under one reasonable condition. Since my first letter should have cleared up any possibility that this was a "blank diary or journal," I had hoped you would raise any copyright questions you might have. I'm surprised you haven't. I made four requests at the end of my last letter. You dismissed one and ignored the other three, including a specific one about quot-

ing 356 words from *The Letters of J. R. R. Tolkien*. Yet you want me to be at your beck and call, supplying everything you want on demand with no commitment on your part to protect my intellectual labors. That hardly seems fair. In addition, you seem to have taken grossly inaccurate hearsay and, without checking it, used it to accuse me of saying something I never said.

I certainly think you owe me an apology, as well as a greater spirit of cooperation and helpfulness in this matter. We should work together as friends. I certainly want this book to comply with the copyright laws. There is no reason for us to be foes.

Also, please keep in mind that next year I plan to contact Christopher Tolkien about working with him to create a book that would be virtually all quotations from his father and deal with specific themes in his father's writings. So rest assured, I don't want to get on the wrong side of the estate.

Sincerely,  
Michael W. Perry

P.S. If you'd like a guideline as to what that non-disclosure agreement should say, have it list those who will be permitted to see the book and make a commitment they will not describe, in any way, its contents to someone else. I doubt it needs to be more than a paragraph long and your signature is enough.

---

[Note: The following posting was made to [rec.arts.books.tolkien](http://rec.arts.books.tolkien) about October 6-7, 2001. It was entitled "Question on Tolkien Estate Lawyers." Italics and bolding added.]

In a few weeks we (Inkling Books) will publish a completely new reference book on *Lord of the Rings*, one that'll be like nothing else on the market and one we think *LOTR* fans will find very useful.

As its author, in recent months I've spent hundreds of hours working on it. It has been a labor of love and has taught me even greater respect for the great care J.R.R Tolkien exercised when he wrote *LOTR*. As soon as it comes out, I plan to send a copy to Christopher Tolkien with my sincere compliments.

Today we got a fax from a law firm in NYC that represents the Tolkien estate in the U.S. I know copyright law and know the book is miles within the law. But I also know that a large and less-than reputable law firms can make life difficult for a small, independent publisher.

**I suspect they are simply being careful, mean well, and intend to stay within the law. I've also heard that the Tolkien estate is quite reasonable in its attitude toward reference books that help readers understand and appreciate *LOTR*. Such books can only help their sales. Mine, in fact, is worthless without a copy of *LOTR* and will strongly motivate people to buy *Unfinished Tales*, and *The Silmarillion*.**

However, before I reply to them, I would like to hear from anyone who has had experience with lawyers representing the Tolkien estate. Any suggestions you might have would be much appreciated. I'd hate to see this book delayed even a day by legal wrangling.

Mike Perry, Inkling Books, Seattle  
Assistant Editor, *The C.S. Lewis Encyclopedia*, Editor, *Stories for Girls* by Hans Christian Andersen, Editor, *Theism and Humanism* by Arthur J. Balfour, Editor, *Eugenics and Other Evils* by G.K. Chesterton, Editor, *Dachau Liberated*.

KAY COLLYER & BOOSE LLP  
ONE DAG HAMMARSKJOLD PLAZA  
NEW YORK, N.Y. 10017-2299  
(212) 940-8200

JEREMY NUSSBAUM

TELECOPIER: (212) 755-0921

WRITER'S DIRECT DIAL NUMBER  
(212) 940-8357

October 30, 2001

VIA TELECOPIER 360 838 1542  
AND MAIL

Mr. Michael W. Perry  
Inkling Books  
11537 34<sup>th</sup> Avenue NE  
Seattle, Washington 98125

Re: THE LORD OF THE RINGS DIARY

Dear Mr. Perry:

We received your fantastic letter of October 22 in yesterday's mail. Veering between bellicose demands for an apology (for accurately quoting what you freely disseminated on the internet) and cozy suggestions that we "work together as friends", the only thing that is clear is that you are not furnishing a copy of the manuscript because of a purported concern that "someone at the firm" might mention its contents "ever so casually, to a friend in publishing". That this concern is wholly trumped up is amply demonstrated by your reiteration of the requests contained in your prior letter that we put you in touch with the publishers of Tolkien's works and with Christopher Tolkien, and that we facilitate the obtaining of a permission to quote from the volume of letters.

The purpose of our request to review your manuscript was in order to be able to advise our clients whether, in our view, its publication would constitute copyright infringement. One would think that it would be helpful to you, if we do believe an infringement has occurred, to be apprised of that before you had gone to the expense of printing and distributing copies. Without seeing the manuscript it is obviously not possible to "raise any copyright questions", and it is difficult to understand how you could purport to be "surprised" that such "questions" have not been raised. At the same time, if you genuinely "don't want to get on the wrong side of the estate", you appear to have planted yourself firmly on that very side.

KAY COLLYER & BOOSE LLP

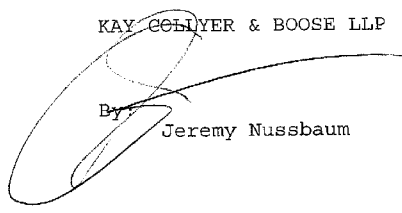
Mr. Michael W. Perry  
October 30, 2001  
Page 2

As this correspondence is becoming wasteful, we ask, again, that you furnish a copy of your manuscript for the purpose described above and in our prior letters. You will obviously face the consequences should you persist in refusing to comply with this request.

The foregoing is sent without waiver of any rights of our clients in the premises, all of which are expressly reserved.

Very truly yours,

KAY COLLYER & BOOSE LLP

By  Jeremy Nussbaum

JN/lc  
cc: Cathleen Blackburn, Esq. (w/encl., by telecopier)

Friday, November 2, 2001 [From *Inkling Books*]  
Prof. Oliver Goodenough  
Vermont Law School  
PO Box 96  
South Royalton, VT 05068

Dear Professor Goodenough,

In your capacity as counsel to Kay Colyer & Boose, I need your assistance in a matter that concerns the firm.

I've attached the relevant correspondence. In brief, I'm a writer and small publisher who is about to release a book entitled *The Lord of the Rings Diary: A Chronology of J.R.R. Tolkien's Classic Tale*. It's a reference work for Tolkien's popular epic, but instead of being arranged alphabetically by term, it's arranged chronologically by date. You can go to Wednesday, February 30, 1419 and find a brief description of what each of the main characters does on that day. The descriptions are terse, drawn from a number of sources (including a lunar calendar), and never involve quotations. From the very start the book has been carefully designed to comply with copyright and trademark law in consultation with a friend who's a university professor quite familiar with the law.

The book was posted to *Books in Print* back in July. Oddly, it wasn't until October that I heard from Jeremy Nussbaum, a legal representative of the Tolkien estate. Apparently, without investigating what sort of books we publish, he assumed it might be a "blank diary." In my reply I politely assured him that it is not. It isn't blank, it's based on a Shire calendar where all the months have thirty days, and in places it skips years or weeks at a time simply because the characters are doing nothing.

You can read the rest of our correspondence for yourself. To be frank, I'm at a loss as to what to do. I can only assume from Nussbaum's behavior thus far that he's used to working with small town publishers who're frightened by his jargon, intimidated by his hints of legal action, and yield quickly and abjectly to his demands. Unfortunately, that sort of behavior just doesn't work with me, and so far he hasn't demonstrated any ability to adapt to a more equitable relationship.

I did graduate work in medical ethics at the University of Washington Medical School that was roughly the equivalent of two years of law school. I've also been writing, editing and publishing professionally for almost twenty years. In the process, I have signed more non-disclosure agreements than I care to count. Given the nature of this book, I simply can't understand his repeated reluctance to provide me with such an agreement. He seems unwilling display any concern for my intellectual property rights.

In this matter, it also helps to understand my personality. I'm much like my great-great-great-grandfather who was lynched or shot (family traditions are uncertain) by the Klan in 1873 Alabama. Like him, I'm simply not intimidated by threats (particularly groundless ones). When the aircraft were hijacked on September 11 with box cutters, I recalled a situation in which I was threatened with one. In the late 70s, I was assistant director of a homeless shelter in Anchorage, Alaska. One of my responsibilities was to spot individuals whose beligerence posed a threat. On one occasion I spotted such an individual, escorted him to the door and told him he'd have to find his own accommodations on a night when the temperature would be in the teens. He didn't like that and threatened me with a box cutter. My response was to tell myself, "This proves I'm right tossing this jerk out." Of course I wasn't foolish. A husky member of our staff was standing behind him, ready to pin him down if he made the slightest hostile move.

Other than the hassle it has been, I'm not concerned about myself. This book is completely legal. But I am concerned that the legacy of J. R. R. Tolkien, whom I greatly respect, may be tarnished if such behavior continues. Given how strongly Tolkien, a kindly gentleman, deplored precisely the sort of behavior shown in these letters, it does not seem appropriate to have him represented in such a manner.

Perhaps the best solution is to simply transfer my case to someone at the firm who has a more cooperative attitude and let them supply me with an appropriate non-disclosure agreement.

They could also help me with a matter that I've raised twice with Mr. Nussbaum to no effect. The descriptions never quote any other text, but there is some added commentary and side notes that quote, in bits and pieces, a few hundred words from *The Letters of J.R.R. Tolkien*. I'd like to get that settled properly and quickly.

Thanks for taking the time to listen.

Sincerely,  
Michael W. Perry

Sunday, November 11, 2001  
Michael Collyer [and R. Andrew Boose. From *Inkling Books*]  
Kay Collyer & Boose  
One Dag Hammarskjold Plaza  
New York, NY 10017-2299

Dear Mr. Collyer,

This letter concerns recent correspondence Inkling Books has received from Jeremy Nussbaum, who represents the literary estate of J. R. R. Tolkien in your offices. Copies of that correspondence are enclosed. Copies of my replies should be available from Mr. Nussbaum's office. Please be advised that I have also contacted Prof. Goodenough in this matter.

We have certain concerns about that correspondence.

*October 5, 2001*—Since Mr. Nussbaum could only assume that he was corresponding with a small Seattle publisher, the language of this letter is inappropriate. He seems under the impression that our book could be included among “blank diaries and journals.” In such a case, it would have been proper to ask, plainly and politely, if that were so and supply us with information about any trademarks the heirs of J.R.R. Tolkien may hold in that area. Since I did graduate work in medical ethics (very law-intensive) at the University of Washington's Medical School, I had no difficulty getting his point. But worded as it is, it was likely to confuse most small publishers and force them to spend money on legal advice that they should be able to keep for their children's needs.

Though it is easy to suspect that this letter was intended to intimidate rather than inform, I replied politely to Mr. Nussbaum. I made clear to him that the book is in no way a blank diary or journal. I also supplied him with details as to why the book did not infringe anyone's copyrights or trademarks. I told him that before anyone could receive a sample of the book, they would have to sign a non-disclosure agreement. I've signed many such documents in almost 20 years of writing, editing and publishing, so I know the request was reasonable.

*October 12, 2001*—Unfortunately, Mr. Nussbaum didn't take my request seriously and his assurance misses the point. I never thought that Kay Collyer & Boose would “publish or otherwise exploit it.” The book is a good and much needed one, and I fear details about it leaking out the NYC's many publishers. Absolutely no one outside Inkling has seen it, so I was being quite generous in my initial offer to allow him to see it under but one condition.

Other commitments delayed my reply and, to be honest, I didn't particularly want to merely repeat what I'd already said.

*October 22, 2001*—It's difficult to know how to take this letter. The most charitable interpretation is that he simply lost his temper. Someone less charitable might insist he is accusing Inkling Books of deliberately conspiring to violate copyright law—a serious charge. Since he's the one who refused my generous offer, his rationale is less-than-impressive.

Next he mentions some hearsay that he seems to have badly misinterpreted. To make matters clear, I've enclosed a copy of the Internet newsgroup (not web page) posting to which he refers. (It was done between his first letter and my reply.) As you can see, the reference to “large and less-than-impressive law firms” is a general one. (It was based on the experience of a friend, severely disabled with MS, who was harassed by the lawyers of another literary estate for publishing a book critical of how that estate was handling its responsibilities.) You'll notice that in the posting I spend an entire paragraph explaining that, to the best of my knowledge, the lawyers representing the Tolkien estate are not of that sort. Since this comes after Mr. Nussbaum's first letter, it was a generous statement.

*October 30, 2001*—Alas, this letter led to the conclusion that working directly with Mr. Nussbaum was impossible and that other members of the firm must be enlisted to help in this matter.

At the risk of taking up more of your valuable time, I'll point out why his reply is so frustrating. First note that he says, “Veering between bellicose demands for an apology . . . and cozy suggestions that we “work together as friends.” My actual remarks were these:

“I certainly think you owe me an apology, as well as a greater spirit of cooperation and helpfulness in this matter. We should work together as friends. I certainly want this book to comply with the copyright laws. There is no reason for us to be foes.”

Simply stating that I feel I deserve an apology is hardly constitutes “bellicose demands,” and the call for cooperation was certainly sincere, even if it has proved futile.

It's also difficult to deal with someone who appears to handle evidence so poorly. The fact that I'd like to provide copies of the book to larger publishers and Christopher Tolkien in no way means that my insistence on getting a non-disclosure agreement from him is “wholly trumped up.” My correspondence to Mr. Nussbaum made clear that both would be receiving copies of the book after it was published, when disclosure is no longer an issue.

Hints of insecurity evidenced in the second paragraph of this letter may be a clue as to why Mr. Nussbaum has chosen to be so difficult in this particular case. Our book was posted to *Bowker's Books in Print* in July with a title that makes clear its link to *The Lord of the Rings*. Yet his first correspondence to us did not come until October. Attempting to deal harshly with us may, in part, be an attempt to cover up for that failing. If so, it seems to have backfired.

Unfortunately, there may be more to the matter than that. You should be aware of another and much more serious matter, one that concerns Kay Collyer & Boose as a whole.

Yesterday I had lunch with the author of several major books on J. R. R. Tolkien. (He had traveled to the west coast to speak at a Tolkien conference.) Being English, he told me that, fortunately, he hasn't had to deal with the estate's legal representative in the U.S. But he went on to add that even in England the U.S. representative was acquiring a reputation for being “nasty” in his dealings with others. (Perhaps Mr. Nussbaum senses this problem, and that's why he reacted so badly to my innocent Internet posting.)

With other authors, that might not matter. With J. R. R. Tolkien, a gentleman of gentlemen, it matters immensely. Tolkien deplored the very sort of behavior Mr. Nussbaum has displayed in these letters, at one point having one of his beloved hobbits refer to such things as “orc talk.” He believed quite strongly in the importance of kindness, gentleness and pity and deplored any abuse of power—the central point, in fact, in his tale of the Ring. His kindness is obvious in his published Letters.

In my most recent letter, I suggested to Mr. Nussbaum that it might be better if this case were passed on to someone else at the firm. Since he hasn't taken up that offer, I'd like to repeat it to you, with an additional suggestion that it be someone skilled in cooperation rather than confrontation.

Thanks for your time and consideration.

Sincerely,

Michael W. Perry

[*Note: There is a mistake in the next-to-last paragraph above. The suggestion to assign a new lawyer was made to Prof. Goodenough on November 2 rather than to Mr. Nussbaum.*]

KAY COLLYER & BOOSE LLP

ONE DAG HAMMARSKJOLD PLAZA

NEW YORK, N.Y. 10017-2299

(212) 940-8200

TELECOPIER: (212) 755-0921

WRITER'S DIRECT DIAL NUMBER  
(212) 940-8357

JEREMY NUSSBAUM

November 20, 2001

VIA TELECOPIER 360 838 1542  
AND MAIL

Mr. Michael W. Perry  
Inking Books  
11537 34<sup>th</sup> Avenue NE  
Seattle, Washington 98125

Re: THE LORD OF THE RINGS DIARY

Dear Mr. Perry:

Reference is made to our prior correspondence in which we requested a copy of your manuscript of the above-titled book in order to be able to formulate an opinion as to whether its content infringes the copyright and other rights of our clients, the heirs and successors in interest of Professor J.R.R. Tolkien. You have not complied with that request; instead, in an apparent effort to distract attention from that simple fact, you have commenced a campaign of letter-writing to (at least) two of my partners and to another individual who is of counsel to this firm. Your evident aim in this is to vilify, embarrass and defame me to my professional colleagues as well as to "the author of several major books on J.R.R. Tolkien". It is not clear what advantage, other than your obvious delight in your own rhetoric, you seek to obtain by this vain effort to make my character and professional capability the issue rather than having even the minimal decency to acknowledge that the only topic in question is the content of your book, and the only issue is whether you will or will not furnish us with the copy we have long been requesting. The self-aggrandizing and malicious nature of these communications hardly gives rise to any confidence in your assertions that your book does not infringe our clients' copyrights.

KAY COLLYER & BOOSE LLP

Mr. Michael W. Perry  
November 20, 2001  
Page 2

The foregoing is sent without waiver of any rights of our clients in the premises, all of which are expressly reserved.

Very truly yours,

KAY COLLYER & BOOSE LLP

By 

Jeremy Nussbaum

JN/lc

cc: Cathleen Blackburn, Esq. (via telecopier)  
R. Andrew Boose, Esq.  
Michael Collyer, Esq.  
Oliver R. Goodenough, Esq.

KAY COLLYER & BOOSE LLP  
ONE DAG HAMMARSKJOLD PLAZA  
NEW YORK, N.Y. 10017-2299  
(212) 940-8200

JEREMY NUSSBAUM

TELECOPIER: (212) 755-0921

WRITER'S DIRECT DIAL NUMBER  
(212) 940-8357

November 30, 2001

**VIA TELECOPIER (360) 838-1542  
AND MAIL**

Mr. Michael W. Perry  
Inkling Books  
11537 34th Avenue N.E.  
Seattle, Washington 98125

**Re: THE LORD OF THE RINGS DIARY**

Dear Mr. Perry:

It has come to our attention that you have approached the publishers of THE LORD OF THE RINGS in order to pursue your request for permission to use quotations from Professor Tolkien's letters in your book. In that connection, you furnished HarperCollins with a number of pages from the book (i.e. those containing the quotations), which the British attorney for the Tolkien Estate forwarded to us for review. The fact that you submitted these materials, thereby disclosing the entire idea of your book, makes it abundantly clear that the non-disclosure agreement on which you had insisted in prior correspondence with us was nothing more than a sham, intended to give you time to complete the book.

Be that as it may, these materials are sufficient to demonstrate the style, structure and content of your book, which appears to be a retelling of the entire story of THE LORD OF THE RINGS in a chronological format. As such, your book would plainly be a derivative work, which is defined in the statute as "a work based upon one or more preexisting works," including "any ... form in which a work may be recast, transformed or adapted". One of the exclusive rights reserved to copyright owners is the right "to prepare derivative works based upon the copyrighted work", and the defense of fair use, which applies to "purposes such as criticism, comment, news reporting, teaching ..., scholarship, or research" is obviously inapplicable to your project, which is purely commercial in nature and involves nothing more than a retelling of the same story that Professor Tolkien chose to tell in the format he selected.

KAY COLLYER & BOOSE LLP

Mr. Michael W. Perry  
November 30, 2001  
Page 2

Based upon the foregoing, your book may not be published without the written authorization of our clients, and if you proceed to publish in the absence of such permission it will constitute a copyright infringement for which you will be subject to all remedies and sanctions provided in the statute, including monetary damages and injunctive relief. We demand that you abandon your project and ask that you promptly confirm, in writing, your compliance with said demand.

The foregoing is sent without waiver of any rights of our clients in the premises, all of which are expressly reserved.

Very truly yours,

KAY COLLYER & BOOSE LLP

By: \_\_\_\_\_

Jeremy Nussbaum

JN:lp

cc: Cathleen Blackburn, Esq. (Via Telecopier)  
Mr. David Brawn (Via Telecopier)  
Mr. Clay Harper (Via Telecopier)



Wednesday, December 5, 2001  
Council on Professional Discipline, Appellate Division, State Supreme Court  
Departmental Disciplinary Comm. for the First Dept.  
61 Broadway, 2nd Floor  
New York, NY 10006

Dear Council on Professional Discipline:

This letter is a formal statement of grievance against Jeremy Nussbaum, an intellectual property lawyer at Kay Collyer & Boose of One Dag Hammarskjold Plaza in New York City. We are requesting that the Council on Professional Discipline review this material and take the steps it deems most appropriate.

To quote from the law firm's first letter to us, Kay Collyer & Boose "are the attorneys in the United States for the heirs and successors in interest of Professor J. R. R. Tolkien." Tolkien was the author of a popular series of books, the best known of which is *The Lord of the Rings*. Over 50 million copies of that book have been sold since it was published almost half a century ago, and its popularity is growing. (This Christmas season sees the release of the first of three movies based on the book. The movie rights, however, were sold in 1968 to a J. R. R. Tolkien Enterprises and do not figure in this case.) According to information on the firm's Internet web site, Mr. Nussbaum handles cases involving Prof. Tolkien's literary estate, and all the letters we have received from them have been written and signed by Mr. Nussbaum.

From the beginning, we want to stress that our grievance is not directed in the slightest at the heirs of Prof. Tolkien (meaning his family). We have the greatest respect for Prof. Tolkien. He was the kindest of gentleman and in his books, letters and personal life he made abundantly clear how much he abhorred the use of coercion, threat and intimidation of any kind. Given the respect the now-grown Tolkien children have for their father, we do not believe the family knows the extent of Mr. Nussbaum's misbehavior nor, if they knew, would they approve of it. In all probability, the Tolkien family has more reason to be grieved by Mr. Nussbaum's behavior than we do. In fact, one reason we have tried so hard to resolve this matter amiably is because we have not wanted to upset Prof. Tolkien's family or create a controversy that might invade the privacy they value so highly.

Unfortunately, Mr. Nussbaum has not left that option open to us, and we have been forced by events to take vigorous action. Mr. Nussbaum has apparently mistaken our attempts to deal with this matter in a friendly and cooperative fashion as sign of weakness. He has failed to realize that I have a lot in common with my great-great-great grandfather, Hopwood Hallmark, who was murdered by the Ku Klux Klan in 1873 Alabama for refusing to bow to the restoration of white supremacy.

Even more disturbing, throughout this situation, we have had the distinct impression that all our efforts to get Mr. Nussbaum to alter his behavior were directed at deeply engrained habits built up over many years. Even when his tactics were obviously failing to achieve their desired end, he has persisted in them. In all probability, our case is not an isolated example, but merely an exceptional case in which the person targeted refused to be victimized. We ask the Committee to keep that in mind as it reviews this evidence.

Now I fear I must burden you with some background, so you can appreciate the circumstances of this case.

Inkling Books is a small, Seattle-based book publisher begun two years ago. In this case, small really means small. In this grievance I use "we" to refer to the publisher and "I" for my

own experiences, but keep in mind that Inkling Books is really me, helped and advised by friends, but having no employees. Though it is growing, our income remains small. I have little doubt that Mr. Nussbaum can bill the Tolkien estate more for an hour of his time that Inkling Books earned in its most recent month (\$287.01). That enormous gap in relative financial and legal resources should be kept in mind when this grievance discusses deprivation of counsel, threats and harassment.

The company's name was chosen to emphasize our ties to the 'Inklings,' a small group of writers and their friends (including Prof. Tolkien) that met in an Oxford pub during the 1930s and 1940s. The first book we published was *Theism and Humanism*, a 1915 book authored by British Prime Minister Arthur Balfour. Though we knew its sales would never be large, we published it because Inkling member C. S. Lewis said it was one of the ten books that most influenced his thinking. Last year we also published *Eugenics and Other Evils* by G. K. Chesterton. Though Chesterton was not an Inkling, as an English writer he had many ideas in common with them and, before the horrors of Nazism, he wrote one of the few book-length criticisms of that once-fashionable ideology. Again the book certainly won't become a best-seller, but we are gratified that professors are using it as a classroom reader.

Much the same can be said for another of our books, *Dachau Liberated*, the first published version of a hard-to-obtain U. S. Army report that may have been first official report on Nazi atrocities to be released after the war. Again, we were not trying to get rich. A scholarly reprint service might charge 75 dollars for a crude copy of the report. We typeset the book, provided commentary, added an index, and are selling it for \$9.95 to reach the largest possible audience.

Keep in mind that at Inkling we have always been careful to stay well within the law. For instance, when we publish a book that is in the public domain, we take the time to locate a pre-1923 copy of the book. When we added some on-the-scene illustrations by a combat artist to *Dachau Liberated*, even though we knew that as a soldier the work he did for the 42nd Division's newspaper was in the public domain, we still contacted him and made sure we had his permission.

Having published a book with links to Inkling member C. S. Lewis and one by Inkling kin, G. K. Chesterton, early in 2000 we began to look for something linked to Prof. Tolkien. By summer we had decided to do a book that would fill a major gap in the reference works available on *The Lord of the Rings*. There are a number of one-volume encyclopedias detailing people and places and an excellent atlas describing the geography. But no one has done a reference book on the chronology, sorting out when each event occurs in a complex narrative spread across five books and often buried deep within appendices. The result, after many months and hundreds of hours of labor, is *The Lord of the Rings Diary: A Chronology of J. R. R. Tolkien's Popular Epic*. From the response we are getting from Tolkien fans, the book will fill a much-felt need. That alone is clear evidence that it does not duplicate anything owned by the Tolkien estate.

In July, soon after we reached a decision about what we would publish, we posted the book to the widely available *Books in Print* database. That should be kept in mind when you read Mr. Nussbaum's attempt to claim that we are trying to sneak an illegal book onto the market. Mr. Nussbaum may have been laggard at catching notice of the pending book—he did not write us until October—but we have never tried to conceal it. We're merely so small and far-away from the center of the publishing world (NYC), that we conserve our limited marketing resources until a book is almost out.

We turn now to the correspondence that has been the sole point of contact between Mr. Nussbaum and myself. As you read, remember that there are two threads to follow. One is what we thought was going on at the time we received each of his letters. That was quite confused and changed over time as we tried, not very successfully, to make sense of his behavior in psychological terms. The second is what Mr. Nussbaum was actually attempting to do. That is much more disturbing and something we only recently understood. Now let's look at each of the letters in this case.

#### **Mr. Nussbaum's October 5, 2001 Letter**

As you read this letter, imagine yourself as a typical small publisher with little or no legal training. Notice how much legal terminology Mr. Nussbaum uses even when the ideas he is stating could have been explained in lay terms. The result is menacing and intimidating isn't it? That pattern repeats throughout his letters.

Note too a startling omission. Though he is a lawyer representing a client whose interests might be in conflict with those of Inklings Books, he says absolutely nothing about our need to seek the advice of counsel. That isn't a momentary oversight. In none of his six letters to us—letters filled with legal advice of a sort—has he ever suggested that we obtain the services of a lawyer who will represent our interests. That, I am sure you are aware, is a clear violation of section DR 7-104 of "The Lawyer's Code of Professional Responsibility" which states:

During the course of the representation of a client a lawyer shall not: . . .

2. Give advice to a party who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such party are or have a reasonable possibility of being in conflict with the interests of the lawyer's client.

We now realize that this omission is not accidental. Mr. Nussbaum did not want us to seek legal assistance because he wants to be our only source of information about the law and our only interpreter of the facts in the case. (Rest assured, his scheme failed. We have talked to a lawyer.)

To be embarrassingly honest, when we received this letter, we were so untutored in the tactics of the bad sort of lawyers, we actually thought he used legal jargon out of either sheer meanness—"Do what I say or spend hundreds of dollars on lawyers," or laziness—he simply didn't want to take an additional minute or two to express himself more clearly. We now realize that was wrong.

Strange as it now sounds, we also tried to sympathize with his plight, hoping that by doing so he would become more reasonable. The "cc. Cathleen Blackburn" at the bottom tells the story. She is the U.K. representative for the Tolkien estate (at Manches & Co. in Oxford) and is probably Mr. Nussbaum's senior. Our book had been posted to *Books in Print* back in July, yet it was October before he writes us. Such an obvious blunder had to be concealed by acting tough, as if his failing were our fault.

#### **Inklings' Letter of October 9, 2001**

(Please excuse this copy. At this early stage, we did not realize the debate would drag on so long, so we made our usual electronic copy rather than printing an archival one, hence no letterhead.)

Notice that we answered his letter politely, even thanking him for a letter whose tone certainly hadn't earned such a warm reply. We were still thinking psychologically and trying to defuse what we then thought was a combination of fear and anger on his part. In contrast to

his hurried letter, we took the time to go into great detail about the book, describing why it had no copyright problems and suggesting that he need not fret.

At the end of the letter, to try and put our relationship on a more cooperative, give and take basis, we made four requests. The first was clearly part of his responsibility as the estate's lawyer. For permission to quote from *The Letters of J. R. R. Tolkien*, he should have referred us to the book's publishers in the U.S. and the U.K. Later I asked a professor who writes Tolkien books and he told me what to do, but the delay (and yet more harassment by Mr. Nussbaum) has meant that to meet our publication deadline we must cut those quotes. That not only means that our book will be of less value to readers, it means that the estate will lose both the income it would have gotten from giving permission and money from the sales of Letters that would have been stimulated by our book. In that matter, Mr. Nussbaum has been serving his own interests rather than those of the estate.

The second and four requests are a good indication that our book is being published in good faith. We're not only willing to work with Tolkien's U.S. and U.K. publishers to release an edition of the book under their name, when it comes out, we're eager to send one of the first copies to Prof. Tolkien's son Christopher. That's strange behavior if, as Mr. Nussbaum alleges, we intend to violate copyright laws. Criminals prefer darkness.

Our third request has been the occasion of a great deal of trouble between Mr. Nussbaum and myself. Our request for a non-disclosure agreement is certainly reasonable. At that time publication was still several months away and we had shown the book, with its unique layout and content developed over many long and weary hours, to absolutely no one. I've worked as a writer and editor for almost 20 years and have signed more such agreements than I can count. His first letter made it obvious that he wasn't the sort of person to be trusted, so we were actually being generous offering to let him see a sample under only one condition.

#### **Mr. Nussbaum's Letter of October 12, 2001**

This letter is the mildest of the six and gave us some hope that our effort to end his unpleasant behavior was having an impact. Unfortunately, he did something that at that time made no sense—he didn't supply that critical non-disclosure agreement. Even assuming, for the sake of argument, that this experienced lawyer didn't have a clue what we meant, he could have made a stab at one. Simply promising to show the sample to no one outside his office and attaching his signature would have been enough. Instead he made the odd remark that his firm would "not publish or otherwise exploit it." Never in our most fevered imagination, did we consider the possibility that Kay Collyer & Boose would go into publishing. We were concerned that the sample would be shown (perhaps ever so casually) to someone who would, the very next day, have a proposal for a rip-off book on the desk of an innocent and unknowing editor at Houghton Mifflin. Only after this book is in print is it safe from such people. Alas, for all his professed concern for the intellectual property of his client, Mr. Nussbaum hasn't displayed any concern for our intellectual property rights.

#### **Mr. Nussbaum's Letter of October 22, 2001**

Recall that we made four requests in our October 9 letter. When Mr. Nussbaum failed to respond to any of those requests, ignoring three and slighting the fourth, we were left mystified as to what to do next. Should we write him yet another letter, repeating those same requests? That seemed pointless. Since virtually anything is a better use of time than dealing with a self-centered lawyer who expects us to dash about ("as promptly as possible") at his beck

and call, we let the matter slide. I had other things to do, including an emergency communications drill to prepare Seattle for a 9/11 type emergency. Hence this angry letter from him.

In this letter the gloves come off, and the real Mr. Nussbaum emerges for the first time. No longer is he merely trying to make us dependent on him for legal advice, even though he represents a potentially conflicting client. Now, he says that I have become a criminal, engaged in a conspiracy to evade copyright law. According to him, I am “presumably unwilling to risk its being reviewed prior to publication.” Not only that, I have “posted to various websites an indication that this is a ‘large and less-than-reputable’ law firm.” Remarks that strong certainly constitute an attempt to intimidate. This might be a good point to bring up section EC 7-21 of the “Lawyer’s Code.”

The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce the adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so misused may be deterred from asserting legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

Is he threatening criminal action unless we comply with his demands in this civil matter? Technically that isn’t true. Copyright violation and libel, which he seems to be getting at above, are civil matters. But remember that I’m not a lawyer and Mr. Nussbaum clearly doesn’t want me to consult one. I suspect that many authors and small publishers would not know the difference. His remarks certainly give the impression that, unless they relent, agents of the copyright office will come to their door, arrest warrant in hand. Consciously or unconsciously, Mr. Nussbaum is relying on just that to intimidate us.

Fortunately, when I first read that, my response could be roughly summed up as, “Is this guy stupid as a fence post?” We had clearly told him, ‘send a non-disclosure agreement and you’ll get a sample of the book.’ He hadn’t sent the agreement, so we hadn’t sent the sample. It was that simple. How did that suggest evil intent? I know enough law to know that, if we really published a book that violated copyright law, Mr. Nussbaum could come after us quickly and matters could rapidly get expensive. Does Mr. Nussbaum know less about the law than I do? Not likely.

Then there is the matter of the posting to an Internet newsgroup (not, as he alleges, to a web page). I’ve included the entire posting, so you can read it for yourself. Notice that the reference to “large and less-than-reputable law firms” is in a totally different paragraph from my discussion of the firm representing the Tolkien estate. It actually refers to a severely disabled friend who wrote a book exposing how badly another writer’s estate was handling his literary legacy. That estate’s lawyers got so nasty, her publisher panicked and dropped the book. She was forced to buy up their inventory and sell the copies herself, a great burden given the severity of her condition. Revealingly, the estate’s lawyers never went after her. They knew what she was doing was completely legal.

You’ll notice that my remarks about the firm representing the Tolkien estate were actually quite positive. I state that I believe, “they are simply being careful, mean well, and intend to stay within the law.” Given that this posting was made a day or so after my first letter from Mr. Nussbaum—the one filled with so much intimidating legal jargon—I was bending over backwards to be complimentary. Rest assured, I’d never make that sort of posting again.

We attempted to correct Mr. Nussbaum in our next letter (described below), but had no success. At that time, we couldn’t understand how someone who seemed unable grasp a text so obvious a child could understand it could have become a successful lawyer. In addition, there was his “we have been advised” remark. Why would a lawyer with some 33 years of legal experience make such serious charge based on nothing but hearsay? Something was indeed odd.

#### **Inkling’s Letter of October 22, 2001**

Since we received this copy by fax, we responded to Mr. Nussbaum’s letter on the day it was sent. This hot-tempered lawyer was in another snit and needed calming—or so we thought.

Still not understanding Mr. Nussbaum’s actual tactics, we attempted to reason with him. We explained in detail the Internet posting and included a copy of it. We went on to point out the obvious, we hadn’t sent the book sample because he hadn’t sent a non-disclosure agreement. In our postscript we even told him what the agreement should say. “This guy can’t really be this dumb,” I told myself.

On the second page of the letter we tried to deal with this one-sided conflict as diplomatically as possible. We contrasted the different styles of Seattle and New York City, suggesting that his aggressive behavior didn’t translate well into our culture. Our example is apt. In our recent mayoral election one candidate ran on a platform of “I get things done” and the other ran as “I’m a nice guy.” Since the “nice guy” won, we can expect four more years the same “do nothing by consensus” we had with our last mayor, the one responsible for the WTO disaster.

Read carefully the last three paragraphs of this letter. Here, though I believe I remain cordial, I do get direct with him and his failure to act professionally. He did not like that show of independence and will react strongly to it in his next letter.

#### **Mr. Nussbaum’s Letter of October 30, 2001**

One of Mr. Nussbaum’s more reprehensible tactics is to attack an ordinary lay person, used to polite civil discourse, with charges so extreme that they reel back, unable to think clearly or see how outrageous his behavior is. Compare his claim, “Veering between bellicose demands for an apology . . .” with what we actually said, “I certainly think you owe me an apology, as well as a greater spirit of cooperation and helpfulness in this matter.” A mild indicative sentence is certainly not “bellicose demands.” Notice how he sneers at our efforts to get him to tone down his harsh rhetoric, calling it “cozy suggestions.”

While the “Lawyer’s Code” understandably speaks in general terms, we do think one portion applies here. Section EC 1-5 reads: “A lawyer should maintain high standards of professional conduct and should encourage other lawyers to do likewise. A lawyer should be temperate and dignified, and should refrain from all illegal and morally reprehensible conduct.” Making harsh, baseless allegations and mocking someone’s effort to reconcile differences is hardly being “temperate and dignified.”

Mr. Nussbaum continues in that same intemperate vein through the rest of the paragraph. Rather than just send us a non-disclosure agreement, he tries to discredit why we are asking for one. Our “concern is wholly trumped up,” he says, because we’ve asked him to put us in touch “with the publishers of Tolkien’s works and with Christopher Tolkien.” But we had no problem with sending the Tolkien editors at Houghton Mifflin and Harper Collins copies of our manuscript because once that manuscript crosses their desk, they’re certainly intelligent

and ethical enough to recognize a short rip-off proposal coming later for what it is. And our stated desire to send a copy to Christopher Tolkien began with “when the book comes out.” Once our book is available through any bookstore, all need for secrecy about its contents ends.

Again, Mr. Nussbaum has made charges so outrageous, it’s difficult to know how to take them. Is he stupid? Does he think we’re stupid? No. As we will see, he has other purposes in mind. There is a method to his madness, a method that has worked all too well in the past with less feisty authors and small publishers.

His second paragraph is interesting. On one level it represents his only attempt in six letters to frame our relationship in terms that appear favorable to us as well as him. Did we do the right thing in seeing this as bogus, based on his prior behavior, or did we let a good opportunity pass? Alas, based on his behavior since, we did the right thing. His first paragraph is as harassing and demeaning as any he has written, and that behavior has continued in subsequent letters. And of course he still, for some strange reason, won’t send that non-disclosure agreement? What is behind that, I keep asking myself?

Notice too that, while he places the soothing legal advice he plans to give us in terms of serving his client, he is actually attempting to serve as our de facto lawyer, even though he is employed by a potentially opposing interest. If he’d intended to ensure that our book conformed to the law, advising us to consult a local intellectual property lawyer would have served as well. That assumes, of course, that his concern is with the law and that he doesn’t intend to impose his will on this case in defiance of that law. Unfortunately, it is easy to suspect that what he really intends is to carpet bomb the literary landscape for many miles around the small area protected by the estate’s copyright. Using threats of legal action, he wants to “copyright” anything the estate might conceivably profit from in the future.

His remark about this correspondence “becoming wasteful” may indicate something hopeful. Copies of his letters continue to go to the estate’s U.K. representative, Cathleen Blackburn. Is she becoming aware that his undignified behavior has been counterproductive (costing the estate hundreds of dollars) or that his attacks constitute ill-reasoned, unethical and unprofessional harassment? We hope so.

**Inkling’s Letter of November 2, 2001 to Professor Oliver Goodenough, Legal Counsel for Kay Collyer & Boose**

**Inkling’s Letter of November 11, 2001 to R. Andrew Boose and Michael Collyer, Senior Partners at Kay Collyer & Boose.**

We won’t comment much on these two letters, written nine days apart, except to point out that they reflect the growing frustration we were feeling with how Mr. Nussbaum was treating us and our continuing effort to work within the system to get those problems resolved. Notice that in both letters we respectfully ask, given the tensions between Mr. Nussbaum and myself, that they assign our case to another lawyer.

We have received no communication of any sort from Prof. Goodenough, Mr. Boose, or Mr. Collyer and Mr. Nussbaum remains assigned to the case. Nor does it appear, from Mr. Nussbaum’s behavior in two subsequent letters, that these three individuals made any effort to end his unethical behavior. Although this grievance is not directed at the firm’s counsel or senior partners, section DR 1-104 of the “Lawyer’s Code” does apply here:

A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to the disciplinary rules.

During this period and since, we were also trying to find someone outside the law firm who might be able to advise us on how to resolve this situation amiably. In person and by phone, email and correspondence, I have contacted five individuals who have written about Tolkien. One, an English writer, helped by telling me that he had heard that the estate’s U.S. lawyer was “nasty.” That certainly suggests we aren’t Mr. Nussbaum’s only victim.

**Mr. Nussbaum’s Letter of November 20, 2001**

Alas, another tiresome letter from Mr. Nussbaum. Our legitimate effort to resolve matters by contacting the firm’s counsel and two of its most senior members is reduced to a mere “campaign of letter-writing” and an all-too-accurate description of his behavior has become defamation.

In addition, he still hasn’t faced the fact that he didn’t get a copy of the book because his attempts to intimidate led us to distrust him and refuse to send a sample without at least the minimal security of a non-disclosure agreement. Unfortunately, matters are now far beyond that. He has become predictable in the worst sort of way. From all the distortions of fact and law he has displayed, we have become certain that, whatever the real copyright status of our book, he will attempt to brand it illegal and threaten to take nasty legal action if it is published. That is why we asked his law firm to provide another lawyer. Our instinct about his ultimate agenda soon proves correct.

**Mr. Nussbaum’s Letter of November 30, 2001**

As of this day, this is the last letter we have received from Mr. Nussbaum. Like before, he attempts to twist facts almost beyond recognition, always with a goal of harassing and intimidating us, a small publisher bereft (he hopes) of legal counsel. These habits appear to be so well-established that he doesn’t seem to be able to deviate from them.

We supplied Houghton Mifflin and HarperCollins with copies of a limited number of pages in the book in which we quote from *The Letters of J. R. R. Tolkien* because it is a necessary part of receiving permission and because we knew of no reason to distrust them. After I sent the letters off, it occurred to me that a copy might inadvertently fall into Mr. Nussbaum’s hands, triggering his all-too-predictable response. I sent an email to the Permissions Manager at Houghton Mifflin, asking that they not open the letter unless they could ensure that Mr. Nussbaum did not get a copy. They confirmed the trust I placed in them by fully complying with that request.

I had no email address or phone number for HarperCollins, so I decided to treat that letter as an experiment. In insisting on having a non-disclosure agreement from Mr. Nussbaum, we had stressed that copies could wander about inadvertently, reaching places they shouldn’t. That is precisely what happened in this case. Our mail to HarperCollins was passed on to the estate’s British attorney and from there to Mr. Nussbaum. Though Mr. Nussbaum claimed that sending a portion of the book to HarperCollins proves that our insistence on the agreement “was nothing more than a sham,” it actually proves the exact opposite. Any good lawyer would recognize that and not advance such a bogus argument.

In the second paragraph we reach what Mr. Nussbaum has been trying to achieve from the start. As we eventually came to realize, he’s been trying to get a copy of the manuscript, or at least a few scraps of it, in order to have some facts that could be distorted and matched with an equally distorted view of the law (both specialties of his), so he call on us (still deprived of legal counsel) to halt our project. Predictably his closing words are nasty. If we defy his will, we will be subject to “remedies and sanctions . . . including monetary damages and injunctive

relief.” That, he mistakenly thinks, will advance the interests of his client, one of the kindest and most decent writers of the twentieth century.

Some of his points in that second paragraph are silly, such as the mention of “commercial in nature,” since the number of publishers who give books away is microscopically small. We’ll deal with his more substantial claim that the book “is nothing more than a retelling the same story” without “criticism, comment, news reporting . . . scholarship or research.” Just keep in mind that the quotes I will be giving are copyrighted.

*No comments? How about this:*

There is uncertainty as to when Gollum escaped. “The Tale of Years” gives the year as 1417. At the Black Gate of Mordor on March 5, 1419, Gollum told Frodo and Sam that his escape took place years earlier, which would suggest a date no later than early 1417. However, at that time Gollum was lying to conceal how much he knew about the passage through Cirith Ungol and especially its inhabitant Shelob. Since Gollum escaped Mordor intent on finding the Ring and had no reason to remain near its terrors, it is likely that he escaped in late 1417. The physical harm he received under Sauron and the need to find food in a barren waste in winter may have slowed his escape long enough for Aragorn to capture him in the Dead Marshes on February 1, 1418.

*Or this:*

The wary Gollum may have put too much trust in darkness. On February 1, the winter sun set about 5:30 p.m. and the moon, a waning crescent only about 30% illuminated, will not rise until after 4:30 a.m. He expects over 9 hours of total darkness to increase the distance between himself and the horrors of Mordor.

*Or maybe this:*

“The Tale of Years” dates Aragorn’s capture of Gollum to 1417. “The Hunt for the Ring” states that Gollum was captured on February 1, but no year is given. Gandalf’s account at the Council of Elrond gives no date but offers hints. When Gandalf first heard the news, he assumes (rightly) that Aragorn was still with Gollum. That would be unlikely if the capture had occurred a year earlier. Given how intensely Aragorn and Gandalf had been searching for Gollum for eight years and the extreme importance of the news that Sauron now knew the Ring was found, it seems highly unlikely that Aragorn would have taken Gollum to the Elves in March of 1417 and then done so little that Gandalf did not get the news for an entire year. Most important of all, the tightly knit and rapidly moving sequence of events that follow the capture fit far better with the February 1, 1418 date assumed here.

*Then there is this:*

When Gandalf hears about Gollum’s capture, he may have been bound for the Shire to see Frodo and examine the Ring based on what he had learned at Minas Tirith.

And those are merely what’s on pages two to five of the fourth chapter—four pages out of an almost 200-page book. Mr. Nussbaum may be blind to them, but there are many, many comments in the book, both specifically set off as commentary (indented and blocked) and worked into the main flow.

*And then there is the alleged lack of literary criticism. This time I’ll give only two examples, but there are many more. Here is the first:*

Two manuscripts say that the Black Riders arrived two days after Gandalf escaped while only one says that they came on the same day as the escape. But the dating

adopted here allows much needed time for the Black Riders to get to the Shire (roughly 600 miles away) on September 22, a mere five days later. Even getting five days of travel time requires that the Black Riders arrive at Isengard early on the morning of the 18th, perhaps before Saruman has discovered Gandalf missing (hence, the confusion in the manuscripts). For some of the Black Riders, the travel time will be even less, since they arrive about sunrise on the 22nd. (In July, Gandalf, also on horseback, took twelve days to make a similar journey.) This dating fits with “The Tale of Years,” where the Black Riders cross the nearby Fords of Isen on this day.

*And then there is:*

Frodo and Sam’s movements from March 10–14 form the most difficult chronological problem in the book. Their weariness and the continual darkness in the sky, on the stairs and inside Shelob’s lair deprive readers of most clues about the passage of time—an effect Tolkien seems to have deliberately created. The chronology given here fits with the available information with one exception. “The Tale of Years” has Gollum slipping away to Shelob (as the hobbits talk and go to sleep) and returning to find Frodo sleeping on the same day (the 11th). But that is difficult to reconcile with Gollum’s remark when he returned that the hobbits had slept into the next day. In general, events during this period do not fill the time available. In our attempts to resolve the problems, the gaps have been filled with a long sleep by the exhausted hobbits (11th to daytime on the 12th), Sam’s deep shock over Frodo’s apparent death (dusk on the 12th to the perhaps dusk on the 13th), and Sam’s unconsciousness after hurling himself against the under-gate (perhaps the evening of the 13th to noon on the 14th).

*As to teaching, scholarship and research, here are a few of the sections where the book turns to those purposes. I will only give a short, introductory quote, though many of these sections run to several pages.*

#### ***The Shire and Modern Calendars***

All calendars face a common problem. The year isn’t exactly 365 days long. To keep from slowly slipping out of synchronization with . . .

#### ***More than Chance***

From what seems to be a chance meeting of two travelers in Bree to the sprouting of a White Tree in the wild, the events recounted in this chapter point to an oft-recurring theme in Tolkien’s writings. In them . . .

#### ***Tolkien’s View of Nature***

In his stories, there’s no mistaking the love Tolkien has for the Shire and its hobbits. Much of the horror we experience reading about . . .

*Needless to say, I find Mr. Nussbaum’s ill-informed attacks on my skill and integrity as a researcher and writer grossly insulting and abominable.*

#### ***Conclusion***

This grievance has gone on long enough. We’ll conclude, so we take up no more of your valuable time.

By the time we received Mr. Nussbaum’s last letter we understood perfectly well what he intended to do. He intends to keep us from seeking legal counsel, a grave failing. He intends to keep us so harassed and intimidated by his continual attacks on our integrity, that we are rendered powerless and willing to accept whatever he says and do whatever he asks. By continual repetition, he intends to condition us accept his gross distortions of logic, facts and the

law. In addition, he hopes to use his legal expertise (or at least legal jargon) and deep, financial pockets to silence any effort we might make to rebel at his ill-treatment. That explains his odd refusal to supply a non-disclosure agreement. Doing so would have put our relationship on a more equal basis and would have demonstrated that we could make him do something. That he intends to prevent at all costs. Mr. Nussbaum resembles nothing so much as a fifth-grader who bullies innocent little second graders. In us, he has finally encountered an adult.

All this is to serve one purpose, to give him the power to block the publication of our quite legal and, for Tolkien fans, very interesting book. In some twisted sense, he may consider his behavior a service to his client. We consider it an grave insult to a noble man. What Mr. Nussbaum does in the name of J. R. R. Tolkien is the grossest possible insult to a kind and gentle man with the highest integrity. Mr. Nussbaum's sly deceptions, manufactured "rules," and threats of legal "lock-holes" bear a startling resemblance to the second most evil character in *The Lord of the Rings*, Saruman, particularly as he is described in the next to the last chapter of the book, "The Scouring of the Shire."

For us, one critical question remained. Was what he did, however cruel and unprincipled, something for which he could be disciplined as an attorney? For that, a few days ago we went to the website of the New York State Bar Association, discovering its grievance procedure and "The Lawyer's Code of Professional Responsibility." We were especially elated to read DR 7-101, "Representing a Client Within the Bounds of the Law." The relevant part states:

A. In the representation of a client, a lawyer shall not:

1. File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another. . . .
3. Conceal or knowingly fail to disclose that which the lawyer is required by law to reveal.
4. Knowingly use perjured testimony or false evidence.
5. Knowingly make a false statement of law or fact.

A more concise description of Mr. Nussbaum's behavior could not be written. Note the parallels to behavior well documented in his six letters to us:

- He has taken action obviously intended "to harass or malicious injure" us, both financially and, we suspect in his remarks to others, to our reputation.
- He has "knowingly fail to disclose" something he is required to tell us—that we should seek the advice of a lawyer who will look after our interests.
- He has repeated twisted testimony (even our own) and falsified evidence to serve his ends.
- He has made numerous false statements of law and fact.

In considering this evidence, we ask the Council on Professional Discipline to take into account the following factors:

- The harm Mr. Nussbaum intends to inflict on us is quite substantial. The time we spent writing this book could have been spent working as a technical writer earning roughly \$25,000. Even a conservative estimate of the lifetime value of a such a handy reference to a writer as popular as Tolkien comes to \$200,000 or more. One large bookstore chain has already contacted us about carrying it.
- This behavior not only occurred repeatedly over a two month period, Mr. Nussbaum's near-mechanical performance suggests that his behavior is a long practiced habit.
- Serious consideration should be given to the fact that small publishers and independent authors have limited resources which make them fearful of seeking legal assistance. My

willingness to continue to push for redress should not conceal the fact that others may have suffered similar abuses in silence. In all probability, books that should have been published, haven't, and careers of talented new writers have wilted under Mr. Nussbaum's attacks. This issue is much bigger than one book.

It is for those reasons that we plead with the Council on Professional Discipline to take the strongest possible action to discipline Mr. Nussbaum. We also respectfully request that they insist that he make amends for the harm he has inflicted on us as well as cease his attempts to harass and intimidate us.

Not being a lawyer, I am uncertain as to whether there is more that should be said. If the Committee has any questions or needs more information, they should feel free to contact me at any time.

Sincerely, Michael W. Perry, Editor, Inkling Books

[*Note: This followup letter was sent five days later on Monday, December 10, 2001.*]

Dear Council on Professional Discipline:

This letter is an addendum to our letter of December 5, 2001 and continues our formal legal grievance against Jeremy Nusbaum, a lawyer with Kay Collyer & Boose. Could you please make sure all those reviewing our grievance receive a copy of this addendum? It contains material not available on December 5 and further addresses his claim that our book lacks criticism, commentary, scholarship or research.

After many hours of labor we have counted all such items in the book. Be advised that the book is still being edited, so these numbers will undoubtedly increase. Our electronic copy is already 24 pages longer than the printed copy on which these calculations were based.

Here are the facts. That earlier edition contains some 895 factual statements (comment, criticism etc.) which are, to our knowledge, not available *anywhere* in the writings of Prof. J. R. R. Tolkien. In addition, for research and teaching purposes it contains 217 instances where the date of an event is specified even though in a vast majority of those cases (perhaps 95%) the date is *not* given by Tolkien. (Typically, he dates events as some number of days after a major event whose date is only given in a distant appendix.) The book contains 195 instances where the day of the week has been calculated (although Tolkien rarely does so). It specifies the people involved in 358 cases and the locations in 384 cases. It also calculates—by a complex process—the modern date corresponding to dates in the book. (That was done because moon phases play a major role in the story and lunar calendars are only available in our modern calendar.) In addition, it contains 574 references to events buried in appendices or less-known books, and in sidenotes it makes 528 references to other books. That totals 3345 items or almost 20 per page. We believe that is impressive.

This book will be exceptionally valuable for researchers and scholars, taking its place on their shelves alongside dictionaries, encyclopedias, and atlases. Just this morning a university library that maintains a collection of Tolkien's papers called wanting a copy.

Sadly, this gap between rhetoric and facts seems to be another example of Mr. Nussbaum's willful disregard for evidence. We find it particularly gauling that he is probably misleading those who know nothing about this book. We also wonder why, if what he says is true, anyone would want to buy our mere "retelling" of *The Lord of the Rings* for \$14.95, when Amazon.com sells Houghton Mifflin's complete, single-volume edition for \$14.00.

Sincerely,

Michael W. Perry, Inkling Books.