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January 11, 2005

Norman G. Finkelstein

Dear Ms. Withey:

As counsel for Professor Dershowitz, I write to follow up on your letter of December 16, 2004. Specifically on your assurance that you “are reviewing Professor Finkelstein’s manuscript very carefully on several levels, evaluating both the overall scholarly quality and the specific charges that he levels against [Professor Dershowitz]”.

Although I have obviously not read the unpublished “Beyond Chutzpah”, we have already documented several of the false “charges” that Finkelstein levels against Professor Dershowitz. The book’s title itself indicates that it is an attack on Professor Dershowitz; and Finkelstein has confirmed this by describing it as a “manuscript for University of California Press, a large part of which is devoted to [Professor] Dershowitz”. Moreover, Finkelstein’s statements to date — which we have on tape or in print — also show that the “University of California Press” book contains at least nine defamatory assertions and probably many more.

First, Finkelstein himself says your book will assert that Professor Dershowitz “almost certainly didn’t write the book [*The Case for Israel*], and perhaps didn’t even read it prior to publication”. (He has repeated this libel even more categorically in several speeches and interviews and has asserted that he means it “literally.”) That is false. And it is not a matter of opinion. Professor Dershowitz wrote *The Case for Israel* himself. And I mean wrote. Handwrote. We have the manuscript pages in Professor Dershowitz’s handwriting. We certainly would make those available to a jury.

Second, Finkelstein has asserted that your book “level[s]... plagiarism charges against Dershowitz” and will indeed “devote a full chapter” to this charge. The plagiarism charge is categorically false. Professor Dershowitz followed the Chicago Manual of Style requirements, and identified the original quotes in his book. Several

leading experts have confirmed that what he did was proper and was not even close to plagiarism. Obviously, a debate over the Chicago Manual of Style doesn't sell books. So Finkelstein makes an incendiary assertion, which not even he believes. Indeed, he has said publicly that he does not "get too excited about the plagiarism issue" and that his defamatory statement that "Alan Dershowitz plagiarized ...[is] funny". Only to Finkelstein. Laughing all the way to the bank. And that is what we know before we even take his deposition.

Third, Finkelstein has expanded on the plagiarism charge by saying, in a recording that he himself distributes, that "one-third of [*The Case for Israel*] is plagiarized" from Peters' book. This is obviously not a dispute about the Chicago Manual of Style. And even if Finkelstein thinks that this too is funny, it is not. Moreover, Finkelstein has asserted that percentage literally, even though 90 percent of *The Case for Israel* deals with events that occurred after the publication of Peters' book and that are not even covered in the Peters books. Moreover, as "support", Finkelstein has stated that the Mark Twain quote that Professor Dershowitz uses in *The Case for Israel* is exactly the same as the Mark Twain quote that Peters uses in her book. That is wrong. Approximately 20 words used by Peters were omitted in Professor Dershowitz's quote, a quote that he had been using for more than 10 years before Peters published her book, including in a debate against Chomsky in 1973. No more availing is Finkelstein's repeated statement that he has a handwritten note from Professor Dershowitz directing his research assistant to "copy" Peters' citations. There is no such note. What there is is an instruction in the galleys which directs a research assistant to "cite" several sources. There is an enormous difference between copying and citing and Finkelstein willfully uses the word "copy" and implies that he is quoting when he does so.

Fourth, Finkelstein has said that the book will assert that "every substantive sentence in [*The Case for Israel*], is fraudulent, a remarkable achievement". Let us think about that. Finkelstein asserts that "every substantive sentence" in over two hundred pages is not only false, but deliberately and knowingly false. And that one of the United States' most renowned scholars -- not some nut-- did this. I can win a lawsuit over the falsity of such a claim. Even for a distinguished public figure like Professor Dershowitz.

Fifth, Finkelstein has also said that "large parts" of *The Case for Israel* were simply made up and that "20 assertions" are simply "fabricated whole cloth." That is absolutely false. The only support for this assertion is a single example in which Finkelstein makes up "quotes" from Professor Dershowitz and from the Israeli Supreme Court. Fabricated quotations don't make it.

Sixth, Finkelstein claims that Professor Dershowitz deliberately ignores evidence contrary to his thesis. For example, Finkelstein has said that Professor Dershowitz never cites Amnesty International and other organizations critical of Israel. In fact, Professor Dershowitz cites them on numerous occasions. Indeed, *The Case for Israel* is largely a response to the false charges leveled by certain critics of Israel. Similarly, Finkelstein accuses Professor Dershowitz of distorting the facts of a case in

Israel. But Finkelstein knows that Professor Dershowitz was writing about a different case. And, Finkelstein again makes up “quotes” to support his false statement.

Seventh, Finkelstein attacks Professor Dershowitz’s bona fides as a supporter of Israel. Thus, Finkelstein claims that Professor Dershowitz did not care about Israel until after Israel won the 1967 war and that Professor Dershowitz says this in his book *Chutzpah*. Both statements are categorically false. Professor Dershowitz was a leader in the efforts to support Israel in the months leading up to the 1967 war and before it was known whether Israel would win. Professor Dershowitz can document this. And *Chutzpah* has no assertion of the type made by Finkelstein. Reading it should suffice.

Eighth, Finkelstein claims that Professor Dershowitz justifies “ethnic cleansing” in his book *Chutzpah*. That is false. Professor Dershowitz does not even mention the term. Rather he deals with relocations of populations designed to end conflicts, such as the ones done following the Second World War. Reading *Chutzpah* will show again the falsity of the Finkelstein statement.

Ninth, Finkelstein has alleged that Professor Dershowitz made up his life as told in *Chutzpah*. This is totally false.

The very fact that Finkelstein has been caught in these direct falsehoods, including his literal claim that Professor Dershowitz did not write *The Case for Israel*, raises significant issues for the Press at several levels. Since Finkelstein is using the imprimatur of the Press to make these points, you are on notice that nothing that Finkelstein says can be accepted as true. Cleaning up the obvious lies in his book is not enough. When a reputable publishing house decides to publish an attack book full of highly questionable allegations of fact against a distinguished scholar, it must have complete faith in the author’s general credibility and research history. Since it is difficult to fact-check every single allegation, inevitably the publisher must rely on the author. In this case the author is a proven liar with a long track record of making up quotations, whose lies have been exposed not only by Professor Dershowitz, but by numerous objective reviewers and scholars, many with no axe to grind. The entire work must thus be assumed by the Press to be false with a heavy burden on the author to demonstrate that every factual assertion is true and that the counter-allegations made by Professor Dershowitz are not true. This is after all different from a publication by one of the United States’ most renowned scholars; no one would accuse Finkelstein of being that. When you find a cockroach in the bowl of spaghetti, you throw out the whole bowl, not just the cockroach.

The liberty of unlicensed printing obviously means that you are free to publish such a screed. As Milton put it in the *Areopagitica*, no one should “praise a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and sees her adversary but slinks out of the race”. But books are “as meats and viands are; some of good, some of evil substance”. Finkelstein’s rotten writings will fail on the merits (other than in the neo-Nazi neighborhood), just like David Irving’s books did. And they will discredit any publishing house that makes the mistake of publishing them.

But your right to publish does not mean that you can promote (and profit from) this defamation of Professor Dershowitz. A university press's publication of offal can only be motivated by the desire to make money. You know better. Your knowing publication of such falsity obviously establishes malice, as does the utter absence of "scholarly quality" of Finkelstein's work. (I am sure that "Beyond Chutzpah" has the same "scholarly quality" as the rest of Finkelstein's oeuvre.) You are now on notice of Finkelstein's lies, his malice and his well established reputation for mendacity. The Press certainly has what the defamation lawyers call "malice". This malice has parallels to the CBS case in to-day's papers that resulted in the firing of four executives. It involves false and fraudulent allegations, including made up quotes, that should not be published without the most scrupulous vetting and checking -- which was not done in the CBS case and which has not been done in this case.

But let me end on a non-confrontational note. We are prepared to sit down with your fact-checker, your legal counsel and anyone else you wish to show the documents that prove the falsity of Finkelstein's defamations. We are also prepared to provide you with the names of witnesses who will confirm the falsity of Finkelstein's claim. We are prepared to review Finkelstein's allegations word by word and demonstrate their falsity. Thus far we have not been asked to provide anything for the Press to review. It is impossible -- both factually and legally -- for you to do the requisite vetting and due diligence without speaking to us and getting our documentation. And this we are prepared to do.

I await your reply.

Sincerely,



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