

**Strom, Rachel F.**

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**From:** Gaby Darbyshire [gaby@gawker.com]  
**Sent:** Saturday, November 20, 2010 1:56 PM  
**To:** Strom, Rachel F.; Silfin, Beth  
**Cc:** Rosenfeld James; Victor Kovner  
**Subject:** Re: HarperCollins v. Gawker

Rachel,

Per our conversation just now, I am confirming that we will not be sending counsel to represent us in front of the judge. Our regular counsel, Davis Wright Tremaine, is conflicted, and we have not retained counsel on this matter yet, as we had been attempting to resolve it amicably.

As I stated to you on the phone, I am surprised that it has come to this with no word from Beth Silfin at Harper Collins. As of last night, Victor Kovner and James Rosenfeld of DWT, though not able to formally represent either side, were attempting to help resolve matters between the parties. They spoke to Beth, who indicated that HarperCollins was amenable to resolving this matter if Gawker were to reduce the number of excerpts dramatically in the post. While Beth did not say what she considered to be fair use, she certainly evinced a willingness to come to an agreement on this matter, and we acted in good faith accordingly to come to an accommodation.

We went very carefully through the post last night and removed some 90% of the excerpts, leaving a few paragraphs that in total make up perhaps 3 pages of the whole book. None of these excerpts are the "heart" of the book since none are particularly shockingly revelatory, nor have we usurped any actual serialisation rights; as a result, we firmly believe that this situation is distinguishable from *Harper v Row*, and we believe that what we have left is well within fair use.

We sent a revised draft to Beth late last night, and obviously, we expected to hear back from her to take the final steps to resolve this matter. Thus, you can imagine my surprise this morning to hear from you that you are going ahead with the TRO application. We have now made the changes and the original post no longer is available.

I believe we have acted in good faith in this matter and I want the judge to be informed of the circumstances so far, and of the fact that the post has been changed already. I would like to be included via phone - you can reach me at 646 207 6528 - but if the judge will not allow that, at the very least I would like your confirmation that you will provide him with a copy this email.

As stated earlier, I am also happy to accept service by email of any order resulting from the hearing.

Regards,

Gaby

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