

PHIL STANFORD

Roots and grafts

SINCE DECEMBER 14, WHEN he signed an out-of-court settlement agreeing to pay \$650,000 and admitting that "various materials from *The African* by Harold Courlander found their way into his book *Roots*," Alex Haley has been busy trying to explain what happened. "Like so many who've made it big—financially as well as professionally—" he wrote in the March issue of *Playboy*, "I've become a sitting duck for lawsuits." The problem, as he told an interviewer for *Newsweek*, was that he was another victim of "a rising phenomenon, the number of lawsuits against successful authors by those who are less successful." Or, as he put it somewhat less graciously (in an interview for the *Washington Star*), Harold Courlander was a "writer who had a target of a writer who made it very, very big."

Without a doubt, Alex Haley has made it very big. In the two-and-a-half years that have elapsed since the publication of *Roots*, Haley has won a Pulitzer Prize, earned several million dollars, and, not least of all, become a cultural hero. It is also probably true, as Haley has been telling everyone, that it's tough at the top, and perhaps it would be petty for the rest of us to begrudge him a measure of sympathy for his new-found wealth and fame.

However, our sympathies should not blind us to the fact that Haley's statements about the possible motives of people who might wish to sue him simply beg the real question. As the saying goes, anybody can sue; but not too many come away with \$650,000. When he discusses his travails, Haley is fond of pointing out that before

Courlander's case came to trial, another author of a book about black history, Margaret Walker, sued him for plagiarism. Haley contested that suit and won. The question is this: Why was Alex Haley willing to pay so much money to have the suit by Harold Courlander dropped?

In the *Newsweek* interview Haley explained his reasons for agreeing to the settlement this way: "*Roots* is one of the major symbols of hope and pride for a whole people and I didn't want to see it get scarred by implication and innuendo." Shortly after the settlement he told an audience in Sacramento, California, that he did it because he couldn't stand to see his book "cut down and ridiculed."

Just what Haley means by these statements is a bit puzzling. By the

The African

[The hunter's] senses must be burning. He must hear what the farmers cannot hear. He must smell what others cannot smell. . . . His eyes must pierce the darkness.

time Haley, through his lawyer, proposed to settle Courlander's suit out of court, the trial was in its sixth week. Both sides had concluded their arguments, and all that remained was for the opposing lawyers to present their summaries. Each side was to have three hours for its summation, so the trial would have been over in a day. Under

the rules, no new evidence could be introduced; all the damaging innuendoes and implications that Haley says he feared had already been made part of the public record.

Haley could have averted all of this unpleasantness by agreeing to a settlement at an early stage of the trial. Instead, he waited until the trial was over, except for the lawyers' summations—and the judge's verdict. (Haley and his lawyers had not asked for a trial by jury.) Clearly, at this point, the people Haley says he was seeking to protect would have been best served by a favorable verdict. In fact, a not-guilty verdict for Haley, clearing him of all suspicion of plagiarism, could only have raised their hopes and enhanced their pride in his book and in themselves. Yet after nearly six weeks of a rough-and-tumble trial, Haley chose not to wait another day and a half for the verdict. The question remains: Why did Haley decide to settle?

THERE IS NO DOUBT THAT material from Courlander's book appears in *Roots*. Early in the court proceedings Haley himself admitted three such instances. In one instance Courlander and his lawyers had obtained, through pretrial discovery, a manuscript page with verbatim passages from *The African* stapled to it. The passages, with some slight alterations, had been incorporated into the published version of *Roots*. In the other two instances there was no evidence from notes, but the similarities were just as undeniable. The following passages are an example:

The African

[Hweshuhunu] drifted into wakefulness again. He felt his father's presence in the darkness. He reached out his hand, but there was nothing to be felt.

Roots

One night when Kunta had fallen asleep but drifted back into wakefulness . . . he lay staring up into the darkness. . . . Feeling around him, in some strange way, the presence of his holy-man grandfather, Kunta reached out into the darkness. There was nothing there to be felt. . . .

Haley's admission of these three instances was embarrassing perhaps, but not legally decisive. To establish copyright infringement the plaintiff must prove not only that the defendant copied, but that he copied substantially. In his suit, Courlander contended that Haley had not only copied or paraphrased eighty-one passages from *The African*, but that much of the first

sections of *Roots*, dealing with Kunta Kinte's life in his African village, his capture, and his journey aboard a slave ship, had been modeled on *The African*.

In some of these instances—which, it should be kept in mind, Haley never admitted—the copying seems obvious. One example is Haley's description of the lice Kunta Kinte was forced to endure on board the slave ship:

The African

[The lice] worked their way into the hair and the body crevices. They crawled on the face and drank at the corners of the eyes. . . . The hands lay poised waiting for the sensation on the skin. If the fingers caught the predator, it was killed between the fingernails.

Roots

[The lice] were worst wherever the body crevices held hair. Kunta's armpits, and around his *foto*, felt as if they were on fire. . . . But the lice preferred to bite him on the face, and they would suck at the liquids in the corners of Kunta's eyes or the snot draining from his nostrils. He would squirm his body, with his fingernails darting and pinching to crush any lice that he might trap between his nails.

Another such example is Haley's description of the special abilities Kunta Kinte had developed as a hunter in Africa. (As it happened, Courlander's protagonist had also been a hunter in his native Africa.)

The African

[The hunter's] senses must be burning. He must hear what the farmers cannot hear. He must smell what others cannot smell. . . . His eyes must pierce the darkness.

Roots

The hunter's senses must be fine. He must hear what others cannot, smell what others cannot. He must see through the darkness.

Some of the other instances of copying alleged by Courlander are equally apparent; some of them are subject to interpretation.

As the judge, Robert J. Ward, said midway through the trial, "Copying there is, period." The only issue left to be decided, he said, was whether substantial copying had occurred. Because Haley and Courlander settled out of court, we will never have a legal determination on that issue. Common sense, however, tells us that Haley would never have agreed to pay Courlander \$650,000 unless he had feared that the judge's verdict would be even more costly, either in money or prestige. If any doubt remains on that score, it is only because Haley's admission of guilt—that "various" portions of *The African* "found their way" into *Roots*—is so vague.

TO THIS DAY, HALEY INSISTS that he is guilty of using only three passages from *The African*, and these, he says, were all copied inadvertently. Haley says he simply doesn't know how it happened. As he told the court, the "best honest explanation" he can give is that someone must have copied the passages on a piece of paper and slipped the paper into his hands during a lecture tour. "[T]here were very few occasions," Haley testified, "when in the midst of a reception . . . that some several people would not at some point or other just come and kind of say, 'Here's something of interest to you, I think. . . . It might be anything from a 3x5 index card which might contain the name of a book and author. It might be something they had Xeroxed. It might be

Roots

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something in longhand . . . and by the time I got home I would have a considerable accumulation of volunteered materials from diverse people." Once he got home, Haley said, he would dump everything into a box, and later he would sift through it to see if there was anything he could use in his book.

And to this day, Haley insists that he has never read *The African*—that, in fact, until he was sued by Courlander, he had never even heard of the book. Haley's statements on this point have been categorical. The following is from the pretrial memorandum submitted by Haley's lawyers:

The defendant, Haley, will prove at the

trial that he did not have knowledge of or access to *The African* at any time prior to or during the writing of the novel *Roots*.

Another pretrial document makes the same assertion:

The book *Roots* was originated and written by defendant Haley without access to or knowledge of *The African*.

These statements, coupled with the evidence presented by Courlander and his lawyers in their pretrial documents, struck the judge as "amazing." "You see," he told Haley's lawyer during the early stages of the trial, "as you build up the length, the breadth, the scope of the man's research, it becomes less believable that he never saw this book." To continue to make such a claim, the judge warned, could only make him question the rest of Haley's case, "as far as credibility is concerned."

Haley and his lawyers, however, were undeterred, for when Haley took the witness stand, under oath, under questioning by his own lawyer, the following exchange occurred:

Question: When did you first hear of *The African*?

Haley: In the spring of 1977, in connection with an article that appeared in the *New York Times*.

That, of course, was the year following the publication of *Roots*. (*The African* had been published in 1967.) If Haley's answer is truthful, it is difficult to see him as a plagiarist. At worst, he might be considered the victim of his own careless research methods. If, on the other hand, he was lying, he is guilty, at the very least, of perjury.

NOW THAT THE TRIAL IS over, Haley is at work on another book called *Search*, which is to be the story of the twelve years he spent researching and writing *Roots*. According to news accounts, it will be finished later this spring. However, before Haley sends the final manuscript off to his publisher, he would do well to recall a name that until now has not surfaced in any discussions, in or out of court, of Haley's research: For the sake of accuracy and thoroughness, he may even want to mention the name—Joseph Bruchac III—in his new book, for if what Bruchac says is correct, he played a rather significant role in the story Haley will be recounting.

Bruchac, 36, is employed by Skidmore College in Saratoga Springs,

New York, where he is the coordinator for the college's Without Walls program, an extension program for prisoners. He says he is uneasy about saying what he has to say because he realizes that it might have far-reaching implications. Perhaps that is why he did not come forward during the trial. "My own concerns are with the Third World," he says. "I'm part American Indian myself. I thought it would be very unfortunate if this became a scandal. But as a writer myself, I was shocked to see someone having used someone else's work—or at least appearing to use it—without giving proper credit, and so I felt I had to say something."

At the time, Bruchac says, he was an instructor in black and African history at Skidmore. He had recently returned from three years of teaching in West Africa, he says, "so it would be sometime in the winter of 'seventy or 'seventy-one that Alex Haley came to lecture at the college." (A check of the records of Haley's booking agent places that visit at January 22, 1970.) Haley's lecture was about a book he was working on at the time, about his search for his ancestors. Its working title was *Before This Anger*.

"I was very impressed," says Bruchac. After the lecture there was a reception, and Bruchac sought out Haley. "We sat down and talked, and in the course of our talk I mentioned the book to him." Bruchac recalls that he felt that Haley's knowledge of the "African experience" was rather weak, and so he suggested to Haley that he should read *The African*, which Bruchac had been using as a text in one of his courses. "He seemed very interested," says Bruchac.

Haley seemed so interested, says Bruchac, that Bruchac left the reception, drove to his home three miles away, and got his own copy of *The African*. "When I got back we talked some more about the book and then before I left I gave it to him. I said something like, 'Here, you can keep it,' and Haley said 'Thank you.' I even think he said, 'I'll read it on the plane.'"

Of course, Bruchac has no way of knowing whether Haley did, in fact, read *The African* on his trip home. However, he is quite certain that he discussed *The African* with Haley at some length, and that he gave Haley his personal copy of the book.

The suit has been settled but the issue is not closed. □



PETER KOVLER

The strategic petroleum rathole

AFTER THE ARAB OIL embargo in 1973, American leaders vowed that the United States would make itself independent of foreign sources of energy. But today, five years and several billion dollars later, the Strategic Petroleum Reserve, the cornerstone of the federal government's energy program, is a shambles. Designed to put 500 million to 1 billion barrels of oil into an emergency reserve that would protect the United States from another embargo, the petroleum reserve program has so far managed to pump only a small fraction of that amount into the ground. Thanks to astonishing cost overruns and spectacular mismanagement, the reserve, once held out as the "answer" to America's "oil crisis," may share the fate of the electric car and oil shale as ideas whose day has come and gone.

The reserve was initiated in December 1975, when Congress unanimously approved the program as part of the Energy Policy and Conservation Act. The idea was to buy oil from diversified foreign sources and store it in underground salt domes in Louisiana and Texas for an emergency. Under the auspices of the former Federal Energy Administration—now part of the Department of Energy—sites were located, cost analyses were prepared, a team of experts was assembled, and Congress was asked to appropriate billions of dollars, a task it performed cheerfully and uncritically.

Today, there are congressmen who

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wish they had looked a little more closely at the charts, maps, and diagrams that FEA officials carted up to Capitol Hill each year at appropriation time. Assured that the reserve would be ready by now to handle interruptions of oil supplies, many in Congress discovered during the Iranian crisis that the program had put only 70 million barrels of oil into the ground. This figure falls far short of the promises of the last two administrations. Under Gerald Ford, the FEA had planned to have 150 million barrels stored by December 1978 and 500 million by 1982. When the Carter administration came to town, this schedule was stepped up. Acting on the advice of FEA chief John O'Leary and energy adviser James Schlesinger—the Department of Energy had not yet been formed—Carter set new goals of 250 million barrels of oil in storage by 1978, 500 million by 1980, and 1 billion by 1985. If the current shortfall of 72 percent had not raised a few eyebrows in Congress, another problem might have: Because the pumps for the storage sites are not yet in place, the 70 million barrels of oil already in the ground are out of reach.

For the first time, members of Congress are asking questions about the Strategic Oil Reserve, and the Department of Energy has more excuses than a philandering spouse. "This target of 250 million barrels in store by 1978 anticipated smooth operations of all aspects of the program," an Energy Department official wrote last October to a congressional appropriations subcommittee. "However," he admitted, in a classic understatement, "the program has encountered a number of obstacles." Among those he listed were technical problems, "unanticipated construction problems," and delays in securing environmental and construction permits.

Although the Department of Energy tries to duck the blame, in fact the failure of the reserve is the result of its own spectacular mismanagement. The most alarming sign of this bungling has been a series of cost overruns worthy of a defense contractor. In a 1976 report, the FEA estimated that the average cost of construction and land acquisition for salt caverns and mines would be between \$1.38 and \$1.65 per barrel of stored oil. Last year, however, the Department of Energy was telling a different story: "Storage facilities costs are now expected to be higher than the original estimation," it re-