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Defendant's Exhibit 165: Cooper & Sam Reese Sheppard Agreement

Northeastern University Press

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States. In every copy of the Work the Publisher will print a proper United States copyright notice containing the Author's name.

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The Author hereby grants and assigns to the Publisher the full and exclusive rights throughout the world, during the term of copyright and renewals thereof, to do and to authorize others to do the following:

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- * to distribute copies of the Work to the public by sale or other transfer of ownership, or by rental, lease or lending
- * to perform the Work publicly
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These rights extend to all forms, languages, and media, now or hereafter known or developed. They include, but are not limited, to translation, foreign rights, serialization, syndication, photocopying, abridgment, reprints in hardback or paperback, dramatization, public reading, radio, television, home video, mechanical reproductions in media (such as data bases and computer software), commercial or merchandising rights, sound recording, motion pictures, microforms, floppy discs or tape recordings, and book club editions.

The Publisher shall have the right to use the Author's name, likeness, and pertinent biographical data in promoting the sale of the Work.

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In the event that the copyright in the Work is infringed by others, the Publisher may, at its discretion, choose counsel to sue or employ such remedies as it shall deem expedient, and the Author shall take all actions necessary to enable the Publisher to protect copyright. The Author may join in the litigation. All recoveries shall be shared proportionately between the Publisher and the Author to the extent that each has participated in the action and after deducting costs and expenses. All recoveries shall be apportioned in accordance with each party's percentage of expenditures in the litigation. Regardless of whether the Publisher sues, the Author shall have the right to sue for protection of copyright if others use his/her material without permission.

5. DELIVERY OF THE WORK AND RELATED MATERIALS

Typescript On or before **August 1, 1994**, the Author will deliver to the Publisher the legibly typed original and one clean copy of the completed Work, which will be approximately **110,000** words long.

If the Work is on computer disk(s), the Author may deliver to the Publisher one copy of the disk(s) and two clean, printed copies of the Work, provided s/he has followed the Publisher's instructions on preparing an electronic manuscript.

Illustrations The Publisher and the Author shall mutually agree on the number and type of illustrations to be included in the Work. The Author will deliver camera-

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ready copy for all illustrations, maps, charts, drawings, or other material (except the index), along with their typewritten captions and credit lines to be included in the Work, by **August 1, 1994**.

Permissions The Author shall provide the Publisher with written evidence of authorization from persons whose permission is needed to use any text or illustrations as part of the Work by **August 1, 1994**. The Author further agrees to pay any fees associated with such permission and to furnish the Publisher with a complete list (including names and addresses) of such persons. At the Author's expense, the Publisher shall send copies of the Work to any person on said list who so requires.

Index If so requested by the Publisher, the Author agrees to prepare an Index promptly after receiving page proofs; or, the Author will allow the Publisher to arrange to have the index prepared at the Author's expense.

Retyping If the Publisher deems retyping of the Work necessary in order to process, edit, or send it to a typesetter without incurring penalty costs, the Publisher shall have the right to retype the Work and make one clean copy and to charge the expense against the Author's accumulated royalties.

If the Author should fail to comply with any one or more of these deadlines, the Publisher may give 90 days' written notice to the Author. If the failure is not cured within that time, the Agreement shall terminate automatically, subject to sections 11 and 16 herein.

6. ACCEPTABILITY OF CONTENT

The Work shall be deemed acceptable in form and content to the Publisher unless, within 60 days of their receipt, the Publisher gives the Author written notice of the respects in which the Publisher finds the Work unsatisfactory. The Author shall have 60 days from receipt of that notice to make and submit revisions. If such revisions are not satisfactory to the Publisher, or if no changes are submitted, the Publisher may give 90-days' written notice to the Author. If the failure is not cured within that time, the Agreement will terminate automatically, subject to sections 11 and 16 herein.

7. AUTHOR'S ALTERATIONS

Alterations made to the proofs or illustrations at any stage at the Author's request for reasons other than compositor or editor errors that exceed seven percent (7%) of the cost of the original composition and art work shall be deducted from the royalties due to the Author from the sale of the Work. If changes in second or later printings are necessitated by the discovery of errors for which the Author is responsible, the cost of corrections will be charged to the Author.

8. OPTION FOR THE NEXT WORK BY THE AUTHOR

The Author agrees to submit to the Publisher a manuscript or proposal for his/her next book-length work ("New Work") before submitting the same to any other publisher. The Publisher shall be entitled to a period of forty-five days after the submission of the New Work within which to exercise its option to publish it. If within that time the Publisher notifies the Author of its desire to publish the New Work, it shall thereupon negotiate with him/her with respect to the terms of such

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publication. If within thirty (30) days thereafter the parties are unable in good faith to arrive at a mutually satisfactory agreement for such publication, then upon advance written notice to the Publisher of refusal of the offer, the New Work may be submitted for publication to another party.

9. CHANGES TO THE WORK BY PUBLISHER

The Publisher will make the Work conform to the style it believes to be most suitable. All substantive changes in the Work are, however, subject to the Author's approval. Such approval shall not be unreasonably withheld by the Author.

10. PUBLICATION WARRANTY

Upon delivery of a final completed version of the Work, the Publisher shall decide whether to accept the Work and proceed with publishing a **hardcover** edition of the Work at its own expense (unless otherwise provided herein) in accordance to the following:

If the Publisher accepts the Work, it is agreed that the Work shall be published within 18 months of such acceptance. The Publisher shall reprint the Work if demand for the same may require it.

If the Author fails to submit a satisfactory version of the Work, or otherwise does not comply with section 5 or 6 herein, the Publisher is under no obligation to publish the Work, and this Agreement shall be terminated, subject to sections 11 and 16 herein.

If the Publisher decides not to publish the Work for any reason other than the Author's failure to submit a satisfactory version of the Work, the Author agrees that the Publisher's liability and the Author's remedies are limited to all rights to the Work and all advances paid or accrued, as full compensation for the Author's performance and any claim relating to or arising out of this Agreement. These remedies are exclusive and are in lieu of any other remedy at law or in equity.

If the Work is not published for reasons beyond either party's control, the Author's damages are limited to all rights to the Work and the amount advanced to date.

The Publisher shall consult with the Author on jacket and interior design for the Work.

11. PAYMENT: ADVANCES AND ROYALTIES

Advance The Publisher agrees to pay the Author in advance against royalties pursuant to the terms of this Agreement \$21,000, payable as follows: \$7,500 on signing of this Agreement, \$4,000 upon acceptance of the first 1/3 of the manuscript, \$4,500 on acceptance of the second 1/3 of the manuscript, and \$5,000 on acceptance of the complete manuscript.

\$7,500 paid 8/22/94
\$4,000 paid 10/6/94
\$4,500 paid 12/6/94
\$5,000 paid SB

If the Author fails to produce a satisfactory completed and final version of the Work when due, the Publisher may, at its option, demand the return of any advances paid to the Author hereunder, and upon such demand, the Author shall repay such advances to the Publisher and this Agreement will be automatically terminated.

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Royalty a) The Publisher will pay to the Author as royalty, subject to the terms of this Agreement, the following percent of the net price (list price less discount) on net sales (gross sales less returns) from all copies of the Work actually sold by the Publisher in the United States, including U.S. possessions and territories:

On the hardcover edition: 10% of the list price on the net sales of copies sold up to and including 10,000 copies; 12.5% of the list price on the net sales of copies sold over and above 10,000 copies up to and including 17,500 copies; and 13.5% of the list price on the net sales of copies sold over and above 17,500 copies.

b) For sales by the Publisher directly to customers outside the United States, the Author shall receive a royalty at the rate of one-half of the royalty rate listed above. If proceeds from sales made outside the U.S. may not be brought to the U.S. in whole or in part, royalties will be earned and due only to the extent that such proceeds are received by the Publisher into the U.S.

c) No royalty will be paid for copies sold below or at cost, furnished gratis for review, advertising, sample, or like purposes, or for copies sold to the Author.

d) The Publisher will render annual accounts each July and within 60 days of rendering the account, pay the Author such sums as may be due less any advance paid.

12. SUBSIDIARY RIGHTS

The Author shall, in lieu of royalty, receive one-half of all net compensation received by the Publisher for the licensing to others of translations, adaptations, foreign editions, microform, radio, photocopying (either directly or through the Copyright Clearance Center), book club or any other rights except those listed below and export sales or distribution arrangements from which the Author shall receive 5% of the Publisher's net compensation. The Publisher shall receive 25% of all compensation for movie and paperback rights, as well as 15% of all compensation in excess of \$50,000 for television rights. All movie, paperback and television rights shall be handled by Carol Mann Literary Agency, pursuant to clause 13, for which it will receive a standard commission of 10% to \$150,000.00, and 15% thereafter.

13. AGENCY CLAUSE

The author hereby empowers Carol Mann Literary Agency as his/her exclusive Agent to act as agent in all matters, except matters requiring the professional services of a CPA, in connection with publication, film, dramatic, television, audio or audio-visual cassette, lyrical, radio, software, electronic or mechanical recording rights for the Work which is the subject of this Agreement. All monies due hereunder and any other agreement relating to the above rights shall be paid to and in the name of the Agency at 55 Fifth Avenue, 15th Floor, New York, NY 10003, and the Agency shall promptly remit the Author's share of said monies to the Author and the receipt of said monies by the Agent shall be a good and valid discharge of all such indebtedness. The Publisher shall supply the

Agent with four copies of the first printing of the Work, plus additional copies as required for the sale of subsidiary rights.

14. CONFLICTING PUBLICATIONS

The Author agrees that s/he will not, without the prior written consent of the Publisher, write, publish, or furnish to any other publisher any work containing substantially similar material that might interfere with, injure the sale of, or otherwise impair the marketability of the Work, and that s/he will not allow his/her name to be used as editor, author, or contributor in connection with the compilation or publication of any such work. The Publisher, however, will not unreasonably withhold permission to allow the Author to publish portions of his/her Work in any fashion that the Publisher deems beneficial to the Work.

15. LOSS OF MATERIALS

The Publisher shall not be responsible for loss of or damage to any property of the Author (including the Work), except for loss or damage due to its own negligence.

16. RIGHT TO DISCONTINUE

When, in the sole judgment of the Publisher, the public demand for the Work in any form is no longer sufficient to keep the Work for sale or to warrant its continued manufacture and sale thereof, the Publisher may, by notice to the Author, offer to sell to the Author bound stock and unbound sheets of the Work at manufacturing cost plus packing and shipping, F.O.B. Publisher's warehouse. If the Author does not accept the offer within 30 days of notification, the Publisher may sell all copies or sheets then on hand at such prices as it can obtain. No royalties shall be paid on copies or sheets sold pursuant to this section.

17. AUTHOR'S PERFORMANCE

If the Publisher chooses to terminate this Agreement because of the Author's inability to perform as stated in section 5 or 6 herein, the rights to the Work shall revert to the Author or his/her estate, and any or all advances and royalties paid to the Author by the Publisher shall be returned promptly to the Publisher.

18. AUTHOR'S COPIES

The Publisher agrees at the time of publication to provide **each Author with 10 copies** of the first printing of the Work, if the Work is in book form, one copy of the first quantity produced if the Work is in non-book form. Additional copies may be purchased by the Author at a sum equal to 60% of the then current suggested list price of the Work for the Author's personal use and not for resale. If casebound and paperback copies of the Work are printed simultaneously, the Author's 6 copies shall be divided equally between cloth and paper. (The Author's discount will be applied to purchases of the Work made by the Author directly from the Publisher provided that, when placing the order, the Author identifies him/herself as being eligible for such discount and specifically requests it.)

19. SUMS DUE AND OWING

Any sums due and owing from the Author to the Publisher arising out of this Agreement may be deducted from any sum due or may become due hereunder from the Publisher to the Author.

20. ASSIGNMENT

The Author may not assign this Agreement except by operation of law in whole or in part without the prior written consent of the Publisher except that the Author may assign his/her royalties hereunder. The Publisher may not assign this Agreement in whole or in part without the Author's written consent. This Agreement shall be binding upon the heirs, executors, or administrators of the Author, and upon the successors and assigns of the Publisher.

21. SINGULAR AND PLURAL

Where required by the context, the "Author" shall include the authors if there is more than one.

22. APPLICABLE LAW

This Agreement shall in all respects be interpreted and construed in accordance with and governed by the laws of the Commonwealth of Massachusetts.

23. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and may not be modified, except in written form executed by both parties. This Agreement supersedes all prior Agreements with respect to the Work.

24. NOTICES

Any notice or communication relating to this Agreement shall be in writing and shall be sent by first class mail, telecopy, or overnight service to the address set forth on page 1 of this Agreement.

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25. WAIVER OF BREACH OR DEFAULT

The waiver of a breach of, or of a default under, any of the terms of this Agreement shall not be considered a waiver of any subsequent breach or default.

26. AUTHOR'S ADDRESS

The Author will keep the Publisher informed about any change of his/her address.

27. FORCE MAJEURE

Neither party shall be liable for damages arising from causes beyond the reasonable control and without fault or negligence of either party. Such causes may include, but are not restricted to, Acts of God, weather, illness, physical disability, and acts or regulations of public authorities or labor interruption, or delay of transportation service. Neither party will be under any obligation to compensate the other for expenses incurred or payments due in regard to this performance, should performance be canceled for any of the aforementioned reasons.

28. TERMINATION OF THE AGREEMENT

Termination of the Agreement for any reason shall not affect then-existing licenses and/or contracts and shall not deprive the Publisher of its right to receive its share of sums due under them.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date listed on page 1 of this Agreement

AUTHOR AND AGENT:

PUBLISHER:

Sam Russ Shuffard
Author

Donald D. M. J.
Assistant Treasurer, Northeastern
University

William T. Cooper
Author

Approved as to form
William Frohlich
Director
Northeastern University Press

[Signature]
Office of University Counsel