

**Harper & Row Publishers, Inc. v. Nation Enterprises,
471 U.S. 539 (1985)**

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| Year | 1985 |
| Court | Supreme Court of the United States |
| Key Facts | Former President Gerald Ford sold plaintiff Harper & Row Publishers, Inc. the right to publish his memoirs. <i>Time</i> magazine paid Harper & Row for the exclusive right to serialize excerpts of the unpublished memoirs. Before <i>Time</i> began serializing, defendant Nation Enterprises, publisher of <i>The Nation</i> magazine, obtained an unauthorized copy of the unpublished memoirs and published a 2,250-word article, at least 300-400 words of which constituted verbatim quotes taken from the manuscript. <i>Time</i> magazine canceled its agreement with Harper & Row, who sued <i>The Nation</i> for infringement. |
| Issue | Whether <i>The Nation</i> 's unauthorized reproduction of excerpts from the unpublished memoirs was fair use. |
| Holding | The Court found defendant's unauthorized reproduction of excerpts from the unpublished memoirs was not fair use. The Court held that the unpublished nature of a work is a key, though not necessarily determinative, factor tending to negate a fair use defense. The Court also declined to expand fair use to create "what amounts to a public figure exception to copyright" in response to defendant's First Amendment argument. Additionally, the Court held that although the excerpts constituted a quantitatively insubstantial portion of the memoirs, they represented "the heart of the book" and were qualitatively substantial in view of their expressive value and their key role in the infringing work. Finally, noting that the effect of the use upon the potential market for the copyrighted work was the "single most important element of fair use," the Court found that the defendant's use "directly competed for a share of the market" and presented "clear-cut evidence of actual damage." |
| Tags | U.S. Supreme Court; News reporting; Textual work; Unpublished |
| Outcome | Fair use not found |

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