June 17, 2011

Lit Lawyers: The Fake-Memoir Business

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Who gets hurt when a purported work of non-fiction turns out to be fake or to contain fictional elements? And can that hurt be converted to a dollar amount? (The second question is, of course, rhetorical: in America, any and all damage is worth something.) A better question might be: who benefits?

Last week at the Daily Beast, Mike Giglio reported on a second class-action lawsuit brought against Greg Mortenson, regarding the alleged inaccuracies in his world-beater, "Three Cups of Tea." (Mortenson, who had heart surgery last week, has commented only briefly on the allegations, first made on "60 Minutes" and by Jon Krakauer.) Giglio had reported in May about another case, brought by two state representatives in Montana, home of Mortenson's Central Asia Institute, that charges the writer and his charitable organization with fraud and racketeering. That case focussed on, among other things, the potential misappropriation of funds by Mortenson through acts of deceit; this most recent suit, which also names Mortenson's co-author, David Oliver Relin, and his publisher, Penguin, as defendants, centers on the claims made by the book itself, alleging that readers had been swindled. (Mortensen has not responded to either of the class-action suits. His publisher, Penguin, says it is waiting for Mortenson to recover from heart surgery before making any amendments to the text.)

As to who stands to gain, the suit, filed in Illinois and first reported by Courthouse News Service, lists Deborah Netter, identified as "a former teacher and avid reader" (aren't readers always praised as avid?) as the primary plaintiff, along with "all others similarly situated," hence the suit's class-action nature. Among other allegations listed in the document (which I suggest reading in full, if only for its mind-bending legalese):

Plaintiff and the Class purchased "Three Cups of Tea," and many of them, too, spent time reading it, all the while expecting to receive an inspiring true tale of non-fiction. As a direct and proximate result of the Defendants phony marketing and representations promoting the book as a true and honest work of non-fiction, Plaintiff and the Class have been damaged and deceived.

Not only did people buy it, but many of those people actually spent some time reading it! (Others probably just bought it to stock their bookshelves at home, so to look "interested in the world" to guests. It fits nicely next to "The Kite Runner," I hear.) At Jacket Copy, Carolyn Kellogg scoffs: "When it comes to reading, the claims seem, well, silly. Enticing readers to purchase a book is something all publishers do all the time." True, few readers take literally a jacket blurb that promises that a book "will change you forever," or "make you see the world in a whole new way"—and then go stomping back to the bookstore when such transformations don't take place. Most do, however, take seriously the distinction between fiction and non-fiction and would prefer to at least be made aware

when a self-promoting non-fiction writer has taken liberties with the truth. (The complaint goes to some lengths, for example, explaining how the defendants allowed the book to be included in the non-fiction category in the New York *Times* Best-seller List.)

A look at the case reminds us of the other group of people who gain from fictionalized memoirs: lawyers who bring the cases. The history of literary jurisprudence is endlessly engrossing; see the United States v. One Book Called "Ulysses," the "Lady Chatterley's Lover" case in Britain, and the Ginsberg "Howl" obscenity trial, to name just a few modern examples. Judges and juries ruling on the various qualities of books may strike us as odd, and perhaps even dangerous—especially weighing the various merits of fact and fiction—but literature and the law are natural companions, in that they both center on the meaning of words and interpretation of text.

Here, one of the attorneys is Larry Drury, of Chicago, who Erin Geiger Smith reports handled a similar class-action suit brought against Random House in connection to James Frey's "A Million Little Pieces." That case did not earn its plaintiffs millions of little dollars, but instead was notable for the fact that as part of the deal, Random House offered consumers a refund, an offer which just a few thousand bothered to pursue. (I wonder if Oprah submitted a claim?) Initial reaction to these two cases involving Mortenson: there's not much money in it. Nonetheless, Mike Giglio quotes Walter Olsen, of the Cato Institute, who suggests that some lawyers are keeping their eyes out for other chances to engage in this new breed of literary litigation.

Certainly, it's easier than ever before to catch anything from an error to outright lies. The Internet provides a venue and a resource for millions of engaged and persnickety (and often angry) readers to check facts and find inconsistencies. (Amy Davidson writes this week about the case of the "Gay Girl in Damascus.") All writers have to be more precise than ever, especially memoir writers, who sell books based as much on the power of their personalty as the power of their prose. Marketing oneself means being on Twitter, Facebook, maintaining and updating an author site, and making the rounds to any talk show that offers an invitation. Mortenson was a model for unknowns looking to gain exposure; now he is a warning.

Book publishers have at least a couple of options if they want to stop paying legal fees, both of which are quite simple. First, they could hedge their bets and move away from classifying memoirs as documents of perfect truth. I'm reluctant to bring her into this swamp, but Virginia Woolf writes well about the slipperiness of personal history in the unpublished meta-memoir "A Sketch of the Past":

These then are some of my first memories. But of course as an account of my life they are misleading, because the things one does not remember are as important; perhaps they are more important … Unfortunately, one only remembers what is exceptional. And there seems to be no reason why one thing is exceptional and another not.

Yet stamping a cover with “the totally true story,” or some such formulation, is certain to sell books. While the Illinois complaint puts it in rather simple language, most readers I suspect do prefer “to receive an inspiring true tale of non-fiction” than to seek similar inspiration from fiction. And no one likes being lied to; these readers, I also suspect, would have little patience for Woolf’s discussion of truth and memory. (And, anyway, Woolf never claimed to have been kidnapped by the Taliban.)

Second, and this is certainly a cry in the dark, publishers could fact-check the non-fiction titles they publish. It’s a well-known secret that books aren’t routinely checked (too expensive?) and that conscientious writers often have to employ fact-checkers on their own initiative and at their own expense. Pressing Frey or Mortenson on some of their stories before publication might have lessened the dramatic quality of their stories, but it would have yielded the truth—implied or stated—that they had promised readers. Whether purely accurate narratives would have made for better books is, well, another story.