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A Memoir of Hope and Survival
and Localising the Ramifications of
Publication**

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Analysing the Legal and Ethical Issues Arising from Margaret B. Jones's *Love and Consequences: A Memoir of Hope and Survival* and Localising the Ramifications of Publication

In analysing the controversy surrounding Margaret B. Jones/Margaret Seltzer's 2008 memoir *Love and Consequences: A Memoir of Hope and Survival*, I discuss the legal and ethical issues arising from the revelation that the book's content was fabricated. This paper argues that Seltzer committed not just a hoax – a largely ethical designation – but was responsible for literary fraud – a legally enforceable deception motivated by personal gain. A discussion of the issues arising from the publication of *Love and Consequences* involves an intimate look at the circumstances surrounding the book's release, a discussion of the legal issues likely to have arisen in accordance with the precedent set by James Frey's *A Million Little Pieces*, the ethical questions arising from Seltzer's subsequent defence of her actions, an overview of comparative Australian instances of literary fraud and an analysis of the larger industry concerns incited by Seltzer's deceit. In examining the intersection between literary hoax and fraud, I begin by examining the events which saw *Love and Consequences* go to print.

In considering the legal and ethical issues arising from Margaret B. Jones's *Love and Consequences: A Memoir of Hope and Survival*, it is important to understand the events which led to the book being recalled. Ostensibly written by Jones, a part-Caucasian, part-Native American woman, the novel *Love and Consequences* privileges an account of Jones's troubled upbringing as a foster child who ran drugs for the Bloods, a group of gang-bangers in South Central Los Angeles. Jones claims for her thirteenth birthday she received a gun; by age sixteen she was cooking crack. The memoir follows the author through childhood to young adulthood where, against all odds, she graduates from the University of Oregon (Rich, *Gang Memoir*). *Love and Consequences* was praised for its affecting storytelling and was dubbed 'humane and deeply affecting' by Pulitzer Prize-winning book critic for the *New York Times* Michiko Kakutani. Thus, it came as a shock to the publishing industry when it was revealed, via a phone call from the author's sister, that Margaret B. Jones was a pseudonym for Margaret Seltzer, a white woman raised in the affluent neighbourhood of Sherman Oaks, LA, surrounded by her biological family (Rich, *Gang Memoir*). Seltzer had been privately schooled in North Hollywood; she had never been fostered and had no experience drug-running. Her 'memoir' was entirely fictitious. By the time Riverhead Books (an imprint of the Penguin

Group USA responsible for publishing the book) learned of the hoax, Seltzer had promoted her book on several radio shows, where she had assumed the identity of her authorial pseudonym by verbally employing cultural colloquialisms ‘homies’ and ‘home girl’ (Rich, *Gang Memoir*). Riverhead Books terminated Seltzer’s press tour and set about recalling and refunding the nearly 19,000 copies of *Love and Consequences* sold. As the hoax gained greater attention, it emerged that Seltzer had contacted literary agent Faye Bender, who had helped her develop the manuscript. Sarah McGrath, an editor at Scribner (a division of Simon & Schuster) bought the completed treatment. When she took a new job at Riverhead Books in 2006, the manuscript went with her (Rich, *Gang Memoir*). Before it went to print, McGrath laboured over *Love and Consequences* with Seltzer for three years. The editor was shocked to learn the memoir was fabricated. In a weepy confessional interview with the *New York Times*, Seltzer maintained that her novel was grounded in experiences of close acquaintances who had worked on projects to decrease gang violence.

In examining the legal issues arising from the publication of *Love and Consequences*, I extrapolate on the charges Seltzer would likely have faced should her deceitful actions have been discovered after her novel had been more widely distributed. The *Love and Consequences* hoax was exposed in a comparatively short timeframe when compared with James Frey’s 2003 novel, *A Million Little Pieces*, published by Doubleday Books (a unit of Random House). *A Million Little Pieces* was an alleged personal memoir dealing with Frey’s drug addiction and rehabilitation, and suicide of his partner. In 2005, Oprah’s Book Club publicised Frey’s novel, which went on to spend fifteen weeks total atop the *New York Times* Best Seller list. By 2006, the *Smoking Gun* website published an article entitled ‘A Million Little Lies’, where they pointed to incongruities between Frey’s claims and real events. Returning to *The Oprah Winfrey Show* in 2006, Frey confessed to inventing segments of his memoir. A class action lawsuit for consumer fraud was filed and settled out of court by Random House and Frey, with Random House agreeing to refund readers who had purchased the novel while under the impression that it was a factual memoir. While Riverhead Books may count itself fortunate that Seltzer’s deception was discovered in time to mitigate damages, I discuss the probable legal issues that would have been levelled at the author and publisher. Following the discovery of the hoax, a publisher for Riverhead Books, Geoffrey Kloske, stated:

The fact is that the author went to extraordinary lengths: she provided people who acted as her foster siblings. There was a professor who vouched for her work, and a writer who had written about her that seemed to corroborate her story.

He added that ‘Ms Seltzer had signed a contract in which she had legally promised to tell the truth’. (Rich, *Tracking the Fallout*)

The above statement proves that Seltzer is guilty of fraudulently misrepresenting herself in her contract with her publishers as, prior to signing the contract, she falsely and knowingly misrepresented her book as a memoir: as a factual account of events which took place in her life. In terms of product liability, Riverhead Books is not legally responsible for fact-checking Seltzer's novel since she retains the copyright to her intellectual property, while Riverhead Books merely financed the production and distribution of the materials (Taylor). It is Seltzer, then, who is responsible not only for breach of contract with her publishers but also with her readers as she is manifestly incapable of delivering the advertised goods, a memoir. If the book had been published in Australia, it would have been subject to Schedule 2 of the Australian Consumer Law (ACL), a national law, part of the *Competition and Consumer Act 2010* (Cth), enforced by the Australian Competition and Consumer Commission (ACCC), which deals with consumer protection. Section 18 of the Act prohibits 'deceptive or misleading' conduct, section 21 prohibits 'unconscionable' conduct, while section 29 prohibits the 'false and misleading' promotion of supplied goods. Deceptive or misleading conduct (section 18 ACL) is implicit in marketing the book as memoir, while 'unconscionable' conduct – conduct which is unfair and goes against a 'good' conscience – (section 21 ACL) was, in Seltzer's case, exhibited by boosting the sales of the fictitious tale by marketing it as factual. It is true that, insofar as a consumer paid for and received a book as advertised, Seltzer did not mislead her customers; however, *Love and Consequences* was falsely advertised as being a memoir and therefore made false and misleading claims about its contents, or its 'composition' (section 29 ACL). Thus, I would argue Seltzer's illegal actions included breach of contract through misrepresentation and false advertising, and would have, under US law, followed the precedent set by James Frey's *A Million Little Pieces*. In an Australian context, Seltzer broke numerous sections of Australian Consumer Law with the result that she committed an act of literary fraud by deliberately misattributing her memoir.

In addition to the legal implications of misrepresenting her novel as a memoir, ethical considerations need to be weighed in order to prove that Seltzer committed not just a literary hoax, but literary fraud. Here are the ethical elements of Seltzer's defence:

For whatever reason, I was really torn and I thought it was my opportunity to put a voice to people who people don't listen to. I was in a position where at one point people said you should speak for us because nobody else is going to let us in to talk. Maybe it's an ego thing – I don't know. I just felt that there was good that I could do and there was no other way that someone would listen to it. (Rich, *Gang Memoir*)

In employing a teleological defence, or an 'ends justifies the means approach', Seltzer suggests that the outcome of promoting a book featuring a minority voice outweighs the deception

she employed in assuming a false authorial voice. However, I would argue that a teleological approach should not be applied in circumstances where there is a morally absolute solution: an immoral course of action to bring about a moral end should not be considered when a moral course of action, employed to bring about the same moral end, remains a feasible option. Thus, I maintain Seltzer's moral end – of 'speak[ing] for us [the individuals she claims to represent]' – is not contingent upon deceit. In 'put[ting] a voice to people who people don't listen to', Seltzer discounted an ethically sound means of achieving the same end, such as collaborating with a disenfranchised person, correctly attributing stories she claimed were taken from friends and acquaintances or simply not marketing her book as a memoir. As McGrath, Seltzer's editor, states, 'There was a way to do this book honestly and have it be just as compelling,' (Rich, *Gang Memoir*). Similarly, Seltzer's objective – to contribute to a cultural discourse surrounding underprivileged groups – is diminished since the outcome (the aforementioned discourse) is not ground-breaking enough to justify the deceptive means she employed. The disenfranchisement of ethnic minorities is *not* breaking news. So, not only does the end not justify the means but this same end – the promotion of disenfranchised stories – is subject to erasure upon the discovery of the means – Seltzer's subterfuge. To simplify: once Seltzer's deception is discovered, the ensuing sensationalism surrounding the discovery of the author's true identity will blot out any potential good done by creating such a story. Well-intentioned or not, Seltzer's defence has evoked a white saviour stance since she has managed not only to colonise a literary space reserved for POC writers who may have been able to offer comparative memoirs, but she has utilised resources available to them via a traditional publishing route (agenting, marketing, design budget etc.) in satisfying her 'egotistical' exercise. In the second place, let's consider the testimony of McGrath, the editor who spent three years working on *Love and Consequences*:

It's very upsetting to us because we spent so much time with this person and we felt such sympathy for her and she would talk about how she didn't have any money or any heat and we completely bought into that and thought we were doing something good by bringing her story to light ... There's a huge personal betrayal here as well as a professional one. (Rich, *Gang Memoir*)

As a result of Seltzer's actions, McGrath, Seltzer's agent Faye, the Riverhead Books team and Times reviewer, Kakutani, all received reputational backlash for lending their cultural currency to a writer who they felt had an important tale to tell. This lends credence to my argument that Seltzer bypassed the territory of hoax to cement herself as a literary fraud, undertaking actions for pecuniary gain, just as in the instances of the Australian cases below.

In examining similar hoaxes in a contemporary Australian context, I revisit the circumstances surrounding Helen Demidenko, Norma Khouri and Belle Gibson's literary

trajectories. The earliest of these cases took place in 1994 when Australian author Helen Demidenko published her novel *The Hand that Signed the Paper*, a story about a Ukrainian family who were Nazi collaborators during the Holocaust (Byrne, 176). *The Hand that Signed the Paper* won *The Australian/Vogel Literary Award* for unpublished manuscripts in 1993; the following year, the novel won the Miles Franklin award. It was subsequently revealed that while Demidenko, pen-name of Helen Dale, had claimed Ukrainian heritage – which played a large part in the publicity for the book as well as her controversial treatment of ethnic groups within the text – Dale had no such Ukrainian ancestry (Sparrow). The second hoaxer, Norma Khouri, was living in Australia at the time her self-professed memoir, *Forbidden Love* (2003), was published. The memoir detailed the honour-killing of her childhood best friend, a crime which took place in Jordan. Kouri's book became a bestseller with more than 200,000 copies sold in fifteen countries, until, in November 2004, it was revealed that Norma Khouri – real name Norma Majid Khouri Michael Al-Bagain Toliopoulos – had only lived in Jordan until she was three years old. Her novel was pure fabrication (Byrne, 176). The final and most recent instance of Australian literary fraud deals with social media star Belle Gibson, creator of *The Whole Pantry* app and cookbook (2014). Gibson claimed to have healed herself from life-threatening brain cancer via the use of alternative and homoeopathic remedies which she outlined online and in her book. *The Whole Pantry* app sold to more than 300,000 users, while the cookbook, published by Lantern Books (a division of Penguin Books), came with a preface stating she had ceased conventional and medically proven cancer treatments in favour of 'natural' healing (Errington, 8). Once it emerged that Gibson had lied about her company's charitable donations and that Penguin hadn't authenticated her medical records, the case went to Federal Court as *Director of Consumer Affairs Victoria v Gibson* [2017] FCA 240 (15 March 2017). A thematic trend emerges in the content of the above-mentioned works of literature, a trend which Seltzer participates in and Larson elucidates upon:

Stories about racial struggle, discrimination, oppression and hardship – those would sell. But books about marginalized people living everyday lives, raising kids or falling in love? Publishers had no interest in those stories.

Consider, also, this exchange with *NPR News* host Michele Martin and guest author Laura Browder:

MARTIN: I take it that you think it's significant that she [Seltzer] chose to be part Native American.

BROWDER: Absolutely. There's a very long history of fake Native American memoirs because in this country we see Native Americans as the most authentic Americans, in a way, as a doomed, suffering, pure group of people with great spiritual potential. ... [T]here

are other people like Margaret Seltzer who I think feel pain, feel traumatized, feel unhappy, and they want to attach that kind of inchoate pain to an identity that everyone recognizes as suffering ... [T]hat's why we get fake memoirs like this, where she is a foster child, parentless, she's in a gang. You know, everyone understands that she's had a bad time when she attaches this to a racial or ethnic identity, to poverty, to parentlessness. (Martin)

From a marketing perspective, it benefited Demidenko, Khouri, Gibson and now Seltzer to occupy the genre of 'misery lit', which is concerned with a central character overcoming suffering and hardships. The problem with the above authors misrepresenting elements of their own identities or stories to fit this genre is that they are perpetuating a victim narrative to which they have no right and monetising their readership's empathy by falsely claiming they are members of ethnic groups and otherwise-abled minorities. In the above instances, each of the perpetrators represents a complex intersection on the ethical/legal spectrum. Of the three, Gibson was the only hoaxer to have legal action brought against her as a direct result of capitalising upon her misrepresented story. In an Australian context, Gibson has set a legal precedent for making false claims in her book, a precedent which Seltzer would likely follow.

In delving into issues of literary fraud, there remains the overarching question of culpability: which parties are at fault? Did the publisher play a large role in instigating fraud, does the fault lie with the creator of the content – the author – or should readers also share a portion of the blame for too readily accepting a published narrative? As previously stated, publishers are not legally accountable for the truths they promote when they bring a text to print. Taylor offers a justification for this:

[I]t's not practical. Publishers release hundreds of books each year, most of them several hundred pages long. A publisher simply can't afford to fact-check all of those books to the standards of, say, the *New Yorker*, where a fact-checker essentially re-reports each story. As one person in publishing ... said: 'You couldn't get these books out the door, at least not below a \$100-a-copy price point.'

Conversely, Hoyt outlines the process by which Seltzer's deceptions were confirmed:

With a few computer keystrokes ... Jack Begg, the supervisor of newsroom research at *The Times*, showed me that there was no record of a Margaret B. Jones in Eugene, Ore. With a few more keystrokes, he brought up property records showing that the house Jones said she owned was bought by Margaret Seltzer and another

person in 2000 and now belongs to Stuart and Gay Seltzer after an ‘intrafamily transaction’.

With so little effort required to authenticate the author’s identity, surely it would not be unreasonable for an editorial team to complete a random factual spot-check, especially since the genre of memoir holds claims of truth and thus would potentially open the publishing house up to charges of defamation should the characters Seltzer portrayed be unhappy with their textual representation. A book calling itself a memoir has certain obligations arising from the genre. A reader does not feel compelled to independently fact-check each non-fictional text they read, especially since most author contracts require an author to vouchsafe the accuracy of their work. Of course, broadly speaking, a reader *should* interrogate any mass-produced media they consume but all in accordance with its form and genre. The recent spate of ‘fake news’ has many individuals calling into question the sources and ethics of modern-day journalism and their uses as a tool of social agenda-setting (Kruse, Norris and Flinchum, 63). However, in the instance of media journalism, this agenda-setting is largely used to manipulate public perception while, in the case of book publishing, fraudulent behaviour is employed to induce pecuniary advantage to the creator. Thus, Seltzer’s actions in publishing a false memoir from which she would profit crossed the line between a hoax and actionable literary fraud.

In arguing that Seltzer’s misrepresentation of her purported memoir *Love and Consequences* does not merely represent an act of hoaxing (a largely ethical classification) but of fraudulent behaviour (a legally actionable deception), I am asserting that Seltzer’s driving motivation is pecuniary gain and not minority representation. In discussing the circumstances surrounding the book’s release and Seltzer’s consequential teleological defence of her actions, the legal issues likely to have arisen in an Australian context, comparing *Love and Consequences* to James Frey’s *A Million Little Pieces* (a novel which attracted a class action lawsuit) and contemplating the larger industry questions concerning fact-checking and culpability, I maintain that Seltzer committed an unethical and legally actionable mode of packaging creative content which disrupted an inherent genre contract, and explicit written contract, between herself, her publisher and her readership.

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