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*Bryan Schwartz focuses on the rights of people portrayed in docudramas*

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ON Sunday night, NBC showed a "docudrama" about David Koresh and the Waco standoff. The pattern is familiar. Yesterday's news stories become today's "Movie of the Week." What about the real people who are portrayed in docudramas? Does the law offer them any protection?

Docudramatists actually face a variety of legal constraints:

Defamation law. You may have a legal remedy if a docudramatist hurts your reputation by creating false impressions about you. But U.S. courts have drastically reformed the libel law to protect free expression. "Public figures," such as politicians or pop stars, can win only if they prove the producer acted "maliciously." That means deliberately lying or showing reckless disregard for the truth. (Canadian law is less forgiving to the errant artist). Docudramatists tend to be truthful about or kind toward "solid citizens." They can safely make villains of people whose reputations are already devalued - such as convicted criminals.

Breach of privacy. A producer can be liable for dredging up someone's sordid past (e.g. as a thief or drug dealer) and telling everyone about it. Even "public figures" might have some legal protection against revelations that are so unwarranted and embarrassing as to "outrage community standards."

Copyright. Actual events cannot be copyrighted. So even if a book author spent years uncovering the facts, anyone can use them. What the author owns is his or her unique way of presenting the facts. A docudramatist could not, for example, quote at length from a book without permission.

Interfering with pending trials. The CBC's much-praised drama *The Boys of St. Vincent* is about child abuse in a religious school. The characters are all fictional, but the story is loosely drawn from a real situation in Newfoundland. Before it was first shown, a similar case arose in Ontario.

The courts banned the CBC from broadcasting the program in Ontario until after the criminal trials were over. The fear was that potential jurors would be prejudiced.

The legal wild card is the "right to publicity." In the past few decades, judges and legislators have started to establish a new property right: to control the use of your image, including your physical appearance and voice. Example: a hockey card company must buy permission from the players.

In a docudrama, actors portray a real person. Their actual face and voice are not used, but does drawing on their life history amount to violating their "right of publicity"? Elizabeth Taylor thinks so. When ABC tried to make a "docudrama" about her life, Ms. Taylor said her "right to publicity" would be violated and sued to stop production. She said, "I am my own commodity. . . . If somebody else portrays me and

fictionalizes my life, it is taking away from me." The network abandoned the project, so the case never went to trial.

A few Taylor-like cases have resulted in verdicts. Different courts have reached opposite results. In my view, people should not "own" their life stories. They should not be able to veto any "docudrama" that displeases them. The artistic and educational value of docudramas are worth protecting.

True, docudramas often turn a complex reality into a simple morality play. People watch, critics retch, producers get rich. But the genre is an ancient one that includes works of the highest artistic and moral value.

The Bible stories of King David are based on historical chronicles, but the authors reshaped them to preach a religious message and to explore the moral and psychic dilemmas of the characters. Shakespeare's "histories" are similar. The ranks of modern docudramas include justly acclaimed works like Constantin Costa-Gravas's *Z*.

What about the people whose lives are "docudramatized"? They generally suffer no commercial harm. The heightened public interest can help them sell their own account of events. The law of defamation provides some protection against "dramatizations" that are grossly unfair.

The public interest? Docudramas may give some people a misleading impression about recent events. The movie *JFK* has been condemned by some for factual inaccuracies. But the film has surely encouraged many people to read non-fiction accounts of the assassination by credible journalists and historians.

Our biggest concern should actually be with the probity of genres that are supposed to aim for strict factual presentation and fairness – like the news media and academia. A few months ago, the NBC news division abjectly apologized for showing a misleading "dramatization" of the flammability of a type of General Motors truck. Society can only benefit from docudramas if it retains a section that is scrupulously "non-fiction."

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