



The Story of My Life: Fiction, Ethics, and the Self at Law

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ABSTRACT (EN): In *Cooper v Stockett*, a plaintiff unsuccessfully claimed that a central character in the 2009 novel *The Help* was based on her and that the depiction caused her emotional harm. By analyzing the documents filed by the parties, this article argues that the plaintiff is best understood primarily as a reader. From this perspective, the relationship between plaintiff and defendant parallels that between reader and author on several levels. The plaintiff-reader uses both textual and extratextual information to judge the author's moral fibre, especially her level of commitment to anti-racism, and attempts to engage the law to address what are essentially moral wrongs linked to race and representation. Textually, how the White author deploys literary strategies to convey moral messages within the novel generates a sense of moral dissonance in the Black plaintiff-reader, and extratextual factors, such as interviews with the author and legal arguments advanced by the defence team, work to exacerbate that sense of dissonance, undergirding the plaintiff's conviction that she has been wronged. While the substantive law of personality rights and invasion of privacy are not particularly sympathetic to her project, the procedural process of the lawsuit nonetheless provides a forum for it.

RÉSUMÉ (FR): Dans l'affaire *Cooper v Stockett*, la demanderesse a plaidé sans succès que le personnage principal du roman de 2009 intitulé "*The Help*" était inspiré d'elle et que cette représentation de sa personne lui avait causé un préjudice émotionnel. En analysant les documents déposés en cour

par les parties, l’auteur soutient qu’on comprend mieux la demanderesse si on la considère d’abord et avant tout comme une lectrice. Vue sous cet angle, la relation entre la partie demanderesse et la partie défenderesse ressemble, à bien des égards, à celle qui unit le lecteur et l’auteur. La demanderesse-lectrice s’appuie sur des éléments d’information textuelle et extratextuelle pour juger la fibre morale de l’auteure, particulièrement son degré d’appui à la lutte contre le racisme, et tente de recourir au droit pour faire corriger ce que sont essentiellement des injustices morales associées à la race et aux représentations. Sur le plan textuel, la façon dont l’auteure de race blanche use de stratégies littéraires pour véhiculer des leçons morales dans la nouvelle crée, chez la demanderesse-lectrice noire, un sens de dissonance morale, et les facteurs extratextuels, comme les entrevues avec l’auteure et les arguments juridiques avancés par l’équipe de la défense, contribuent à exacerber ce sentiment de dissonance, renforçant chez la demanderesse la conviction qu’elle a été victime d’une injustice. Bien que le droit positif protégeant la personnalité et la vie privée n’ait pas été très favorable à son projet, le processus de la poursuite judiciaire fournit néanmoins une tribune pour ses revendications.

A. INTRODUCTION

“When I was writing this book, I never thought anyone else would read it, so I didn’t get real creative with the names . . . I just used people I knew. Some of them aren’t talking to me right now, but I feel like they’ll come around.”¹ (Kathryn Stockett, author of *The Help*)

“I think she is just a racist. She claims she respects black people but she just ran all over me.”²

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- 1 Jennifer Brett, “Peach Buzz” *Atlanta Journal-Constitution* (26 October 2009). The same journalist repeated the quote in a 2011 article: Jennifer Brett, “The Buzz: Kathryn Stockett, Author of ‘The Help,’ Sued by Former Family Employee” *Atlanta Journal-Constitution* (18 February 2011).
 - 2 Sharon Churcher, “Her Family Hired Me as a Maid for 12 Years but Then She Stole My Life and Made it a Disney Movie” *Mail Online* (4 September 2011), online: Daily Mail www.dailymail.co.uk/femail/article-2033369/Her-family-hired-maid-12-years-stole-life-Disney-movie.html, quoting Ablene Cooper plaintiff in lawsuit against Stockett.

“So ethical criticism does matter. It matters because who we become matters and because literature, or, rather, story in general, as an important midwife to our becoming, helps usher us into the world.”³

In February 2011, Ablene Cooper filed a lawsuit in Hinds County Mississippi against Kathryn Stockett,⁴ author of the bestselling 2009 novel *The Help*.⁵ Cooper, a long-time maid and nanny to Stockett’s brother, alleged in the lawsuit that the author had appropriated her name and likeness in the character “Aibileen” (one of the three central character-narrators in the novel), and in so doing had held Cooper up to the public eye in a false light, and intentionally or negligently inflicted emotional distress on Cooper.⁶ Stockett denied all claims, including the claim that she had based the Aibileen character on Cooper in any way.⁷ The suit was ultimately dismissed in August 2011 because the statute of limitations had run out before the suit was filed.⁸

This is a somewhat idiosyncratic example of lawsuits filed against authors of fictional works by real people upon whom the author allegedly based his or her work. In these suits, plaintiffs attempt to argue violations of personality rights, privacy rights, and/or defamation; however, they are nearly always unsuccessful.⁹ Nonetheless, such suits arise on a regular basis in the

3 Marshall Gregory, “Ethical Criticism: What It Is and Why It Matters” (1998) 32:2 *Style* 194 at 215.

4 *Ablene Cooper v Kathryn Stockett* (9 February 2011), 251-11-134 CIV (Circuit Court of the First Judicial District of Hinds County Mississippi) (Statement of Claim of the Plaintiff) [*Plaintiff’s Complaint*]; *Ablene Cooper v Kathryn Stockett* (14 April 2011), 251-11-134 CIV (Circuit Court of the First Judicial District of Hinds County Mississippi) (Memorandum of the Defendant in Support of Motion for Summary Judgment) [*Defendant’s Motion*]; *Ablene Cooper v Kathryn Stockett* (27 April 2011), 251-11-134 CIV (Circuit Court of the First Judicial District of Hinds County Mississippi) (Plaintiff’s Response to Defendant’s Motion and Memorandum for Summary Judgment) [*Plaintiff’s Response*]. The document contains a certificate of service dated 27 April 2011.

5 Kathryn Stockett, *The Help: A Novel* (London: Penguin Group, 2009).

6 *Plaintiff’s Complaint*, above note 4.

7 *Defendant’s Motion*, above note 4.

8 Matthew Belloni, “‘The Help’: Judge Tosses Lawsuit Claiming Character Stolen From Real-Life Maid” *The Hollywood Reporter* (16 August 2011), online: [Hollywood Reporter www.hollywoodreporter.com/thr-esq/judge-tosses-the-help-lawsuit-223783](http://www.hollywoodreporter.com/thr-esq/judge-tosses-the-help-lawsuit-223783); Kingfish, “Judge Green Dismisses *Help* Lawsuit” *Jackson Jambalaya* (16 August 2011), online: [Jackson Jambalaya http://kingfish1935.blogspot.ca/2011/08/judge-green-dismisses-help-lawsuit.html](http://kingfish1935.blogspot.ca/2011/08/judge-green-dismisses-help-lawsuit.html) (a video of the entire twenty-minute hearing as well as the court documents).

9 Some recent examples include *Tyne v Time Warner Entertainment Company LP*, 901 So (2d) 802 (Fla 2005), a case against the makers of the 2000 film *The Perfect Storm* brought by the families of the deceased fishermen whose demise the film depicts, where the defendants won; see also *Sarver v Hurt Locker LLC*, 39 Media L Rep 1204 (NJ 2010), a suit

United States, and their persistence begs the question of why plaintiffs continue to attempt such suits — is there something about a particular work of fiction that makes these plaintiffs believe that their case will be different? Is the lawsuit a useful forum for the plaintiff to voice moral complaints, even if the case will be unsuccessful before the court?

The following analysis will demonstrate that in cases like the one involving *The Help*, the plaintiff is best understood primarily as a reader who recognizes (or misrecognizes) herself in a novel. From this perspective, the relationship between plaintiff and defendant parallels that between reader and author on several levels. The plaintiff-reader uses both textual and extratextual information to judge the defendant-author's moral fibre. Textually, the defendant-author's moral choices — how she deploys literary strategies to convey moral messages (the "ethics of fiction") — generates a sense of moral dissonance in the plaintiff-reader, culminating in a lawsuit. Extratextual factors, such as interviews with the author and legal arguments advanced by the defence team, work to exacerbate the plaintiff-reader's sense of dissonance, acting as further evidence of the defendant-author's moral lassitude.¹⁰

This chapter will help clarify how law and morality intersect in this liminal legal domain, where plaintiffs continue to file lawsuits despite their general lack of success. It will apply the example of *The Help* to show how plaintiffs' moral judgments are informed by legal and extra-legal arguments, especially regarding the law's tendency to separate fiction from "truth" in the service of protecting creative licence. The plaintiff's legal arguments represent her attempt to recover her voice as a Black woman in a legal action that is not receptive to what she has to say — as a legal subject, if not as the subject upon whom a fictional character is based. She thereby seeks to remedy what she perceives as representational disenfranchisement at the hands of both a White author and the legal system. In the end, while the substantive law of personality rights and invasion of privacy are not particularly sympathetic to her project, the procedural process of the law-

brought by Sgt Jeffrey Sarver against the makers of the 2008 film *The Hurt Locker*, which the plaintiff also reportedly lost; see, for example, Henry Barnes, "Hurt Locker Lawsuit: Soldier must Pay \$187,000" *The Guardian* (9 December 2011), online: The Guardian www.guardian.co.uk/film/2011/dec/09/hurt-locker-soldier-must-pay.

10 Sheldon Sacks, *Fiction and the Shape of Belief: A Study of Henry Fielding with Glances at Swift, Johnson, and Richardson* (Los Angeles: University of California Press, 1964); studying the ethics of fiction aims to answer the question posed by literary theorist Sheldon Sacks: "How can any novelist embody his beliefs in novels?" at 1.

suit — the filing of claims, answers and defences, and responses — nonetheless provides a forum for it.¹¹

B. APPROPRIATION OF PERSONALITY, RECOGNITION, AND ETHICS: READERS JUDGING AUTHORS

Lawsuits like the one involving *The Help* are based on the shaky stance that a fictional character is essentially the “likeness” of a real person, and that this portrayal has caused this person harm.¹² Suits of this sort are difficult to win, mainly because freedom of expression guarantees in the US Constitution generally protect authors’ rights to use real life as inspiration for fiction, except in very clearly maliciously intended circumstances where a character is overtly linked to its real life counterpart.¹³

Still, the plaintiff in this case argued that the character Aibileen was based on her in ways sufficient to add up to an actionable likeness: the complaint refers to the similarity between her given name (Ablene) and its phonetic equivalent in the character Aibileen,¹⁴ along with two other sets of parallels. The first set involves strictly biographical comparisons: “Aibileen is described as black, middle aged, has a gold tooth, works for a white family in Jackson, Mississippi, and has a son who is deceased”¹⁵ and “Ablene is black, middle aged, has a gold tooth, works for a white family in Jackson, Mississippi, and has a son who is deceased.”¹⁶ The second set involves how

11 See, for example, Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans* (Chicago: University of Chicago Press, 1990). This study shares affinity with legal consciousness scholarship that has examined the dissonance between what litigants expect from the law and what they feel they get.

12 The defendant author denied these claims; *Ablene Cooper v Kathryn Stockett* (14 April 2011), Civil Action No 251-11-134 CIV (Circuit Court of the First Judicial District of Hinds County Mississippi) (Defendant’s Answer and Defences, at para 29) [*Defendant’s Answer and Defences*]. The caselaw on “likeness” mainly concerns a defendant’s commercial use of “look-alike” or “sound-alike” actors (often along with other visual and aural cues) specifically intended to invoke a celebrity persona, rather than a written portrayal of a character not intended to specifically refer to an actual person; see *Allen v National Video Inc*, 610 F Supp 612 (SDNY 1985); *Waits v Frito-Lay Inc*, 978 F 2d 1093 (9th Cir 1992).

13 See *Polydoros v Twentieth Century Fox Film Corp*, 67 Cal App 4th 318 (2d Dist 1997).

14 Plaintiff’s Complaint, above note 4 at para 19; Defendant’s Motion, above note 4 (citing *People on Complaint of Maggio v Charles Scribner’s Sons*, 130 NYS 2d 514 at 520 (NY Magis Ct 1954); the defence argues that caselaw holds that the name must “completely and exactly coincide” and “the context must also single her out and point to her ‘as does a portrait or picture’” at 4–5.

15 *Ibid* at para 20.

16 *Ibid* at para 21.

the author came to know the plaintiff, namely as the nanny to her nephew and niece (also named Stockett): “The two white children, a boy and a girl, that Aibileen cares for call her Aibee”¹⁷ and “the Stockett children, a boy and a girl, that Ablene cares for refer to her as Abie or Abi.”¹⁸

For the most part, these similarities are rather general, given that the book is about Black maids working for White families in Jackson, Mississippi, in the early 1960s. Stockett’s response is straightforward: *The Help* “is fiction and would not be understood by anyone as representing actual facts about any individual, much less Mrs. Ablene Cooper.”¹⁹ However, Stockett also marketed her book as particularly authentic, anchoring her credibility as a writer on the fact that she drew on her own biography.²⁰ For example, the dust jacket of the book states that Stockett was “born and raised in Jackson, Mississippi,” and three of the six pages of a postscript to the novel describe Stockett’s relationship with Demetrie, the real African-American maid who helped raise her.²¹ Her statement in an interview, cited at the start of this article, demonstrates that while her characters were not intended to be *portraits* of real people, she admittedly used real people and situations as models or inspiration for characters in the book.²²

It has been well established in US caselaw that authors are relatively free to draw inspiration from real life, but *Cooper v Stockett* provides an interesting example of a legal battle over the ethics of acknowledgement, accuracy, and sensitivity toward the real-life inspiration for fictional works. Much of Cooper’s complaint rests not on the law *per se*, but rather on the implication that Stockett is essentially a hypocrite and therefore morally

17 *Ibid* at para 22.

18 *Ibid* at para 24.

19 *Defendant’s Motion*, above note 4 at 4. The defence cites *Doe v Rowe*, 638 So (2d) 826 at 829 (Ala 1994), where the court held that the plaintiffs must lose because the book at issue “is clearly classified and represented as a novel, which the general public understands to be a fictitious work representative of real life” at 5.

20 Susan Tridgell, *Understanding Our Selves: The Dangerous Art of Biography* (Bern: Peter Lang, 2004) at 86. Tridgell’s book features a chapter on “Moral Accountability and Narrating the Self” — that is, how a biographer uses a life story to create continuity regarding a subject’s moral development, or to create discontinuity with a formerly amoral self. Stockett’s invocation of her youthful failure to appreciate racial issues as motivation compelling her to make up for this blindness as an adult/author is an example of Stockett narrating her moral development through her writing.

21 Stockett, above note 5 at 447 ff (postscript to *The Help*).

22 *Defendant’s Motion*, above note 4: “not only does the book say it is not attempting to convey facts about any real person, but it also identifies the real person from whom Ms. Stockett drew inspiration, and it is was Demetrie McLorn, not Mrs. Ablene Cooper” at 6.

blameworthy. In the plaintiff's eyes, Stockett is guilty of some wrong because she did not live up to her own professed moral code, and further did not meet her own reflexive ethics of fiction, as exemplified by the authorial ethics of the main White character in the novel, Skeeter Phelan, who enlists the help of a dozen maids to write a non-fiction "tell all" book about life as a Black maid working for a White family in Mississippi at that time. Finally, the plaintiff found further evidence of moral failure in Stockett's response to the lawsuit itself. The lawsuit is the plaintiff's attempt to take Stockett to task for these moral failures, loosely grounding the moral shortcomings in legally recognized wrongs.

At the core of these issues lies the problem of what readers perceive as "real" or "true" in fictional works, and how these determinations relate to an author's legal claims regarding the relationship between the novel and her own life. Literary scholar James Phelan wrote:

[A]udiences will develop interests and responses of three kinds, each related to a particular component of the narrative: mimetic, thematic, and synthetic. Responses to the mimetic component involve an audience's interest in the characters as possible people and in the narrative world as like our own, that is, hypothetically or conceptually possible; responses to the mimetic component include our evolving judgments and emotions, our desires, hopes, expectations, satisfactions, and disappointments. Responses to the thematic component involve an interest in the ideational function of the characters and in the cultural, ideological, philosophical, or ethical issues being addressed by the narrative. Responses to the synthetic component involve an audience's interest in and attention to the characters and to the larger narrative as artificial constructs.²³

Phelan went on to note that for most realistic narratives (like *The Help*), "the audience has a tacit awareness of the synthetic while it focuses on the mimetic and the thematic components . . ." ²⁴ The law, however, tends to focus on the synthetic component, and so favours defendants in these types of lawsuits.²⁵

23 James Phelan, *Experiencing Fiction: Judgments, Progressions, and the Rhetorical Theory of Narrative* (Columbus: Ohio State University Press, 2007) at 5–6.

24 *Ibid* at 6.

25 Thomas M Clyde, "Trial Q&A: How Do Juries React When Creative Works Mix Fact with Fiction?" (2010) 27 *Comm Law* 18 at 18. The article discusses the unusual victory (by jury decision) of a plaintiff in a suit regarding a fictional character in the 2003 novel *The Red Hat Club*. The jury awarded damages for libel, mainly due to the large number of similar-

Philosophy scholar and fiction writer Claudia Mills is one of the few who have written explicitly about the more general professional ethics about appropriating the stories of other people, with a focus on fiction writing.²⁶ Like journalists, fiction writers must deal with the ethical problems associated with *using others as means* — which, drawing from Kant, Mills claimed is only unjustified if it is all that you are doing.²⁷ Fiction writers frequently justify using others in the service of their art, arguing that they, like other artists, serve some artistic higher good that outweighs any ethical breaches.²⁸ There are of course limits to this line of reasoning.²⁹ Additionally, some writers and literary critics have noted that “great” literature deserves more leeway than poor or otherwise deficient attempts at writing or making art: lawmakers have wisely avoided these quality distinctions.³⁰

In crafting the character Skeeter in *The Help*, Stockett’s plot development focuses on Skeeter’s growth from an inexperienced and naïve young writer to a published author mindful of her ethical obligations. The plaintiff explicitly compares Stockett’s conduct to Skeeter’s:

The irony of this lawsuit is inescapable. In *The Help*, the young white character, Skeeter Phelan, solicits the assistance of thirteen African-American maids to collaborate with her to write a book called *Help*. When the book is accepted for publication Skeeter receives an \$800 advance. Skeeter then proceeds to give **all the money** to the maids, “the help,” who made her book possible.

Unlike Skeeter Phelan, Kathryn Stockett refuses to recognize Ablene Cooper, much less compensate her, for her role in *The Help*. Kathryn Stockett has reaped millions of dollars from this book, yet she denies Ablene

ities between the plaintiff and the character, who was also portrayed as a promiscuous alcoholic. The jury denied the plaintiff’s privacy claims; see *Smith v Stewart*, 660 SE (2d) 822 (Ga App 2008), the Court of Appeals of Georgia decision on which causes of action could proceed in this case.

26 Claudia Mills, “Appropriating Others’ Stories: Some Questions about the Ethics of Writing Fiction” (2000) 31:2 *Journal of Social Philosophy* 195 at 195.

27 *Ibid* at 202–4.

28 See, for example, Carolyn Anderson & Thomas W Benson, *Documentary Dilemmas: Frederick Wiseman’s Ticut Follies* (Carbondale: Southern Illinois University Press, 1991) at 4. Documentary film raises similar issues regarding the interplay of art and ethics.

29 Cases dealing with the “artistic merit” defence in relation to making child pornography are a rich site of discussion of the limits of using others for artistic purposes. In Canada, see *R v Sharpe*, 2001 SCC 2; see also *R v Katigbak*, 2010 ONCA 411; in the United States, see *New York v Ferber*, 458 US 747 (1982).

30 June Ross, “*R v Sharpe* and the Defence of Artistic Merit” (2001) 12:1 *Const F* 23 at 27.

Cooper is entitled to one dime in damages. With apologies to Oscar Wilde, life certainly does not imitate art, at least when it comes to *The Help*.³¹

In other words, because Stockett uses Skeeter's awareness of the ethics of writing as a means to foster reader identification with Skeeter as a hero (contributing to the ethics of fiction of the novel), she is particularly vulnerable to the charge that she is a hypocrite, or worse, that she deliberately exploited her subjects.

While Stockett admits to drawing on her memories of Demetrie, the maid (now deceased) who helped raise her, she denied using any currently living persons as inspiration.³² In this way she sidestepped obligations that would arise from Cooper's accusation that she is mistreating the real maids she used as material for her novel. To the plaintiff, Stockett's denials served as an aggravating factor for the infliction of emotional distress claim. The complaint also implicitly accused Stockett of being a racist: "Just as the white characters in 'The Help' treated Aibileen in a reckless, careless, and indifferent manner, Kathryn Stockett's past conduct and her continuing and repeated conduct towards Ablene is outrageous, reckless, malicious, and grossly careless."³³ Cooper illustrated her amplified distress through her emotional statements as she left the courthouse upon dismissal of her suit: "She's a liar! She's a liar! You know she did it and everybody else knows she did it . . . she knows she did it! Tell her to tell the truth, she's a liar!"³⁴

Other readers have also drawn conclusions about Stockett's racism based on what they see as her excessive denial of using Cooper as a model, especially because Stockett claims she barely knows Cooper. For example, the complaint states that "Ablene has, on occasion, served as a babysitter for Kathryn Stockett, keeping Stockett's daughter,"³⁵ but the defendant's answer states, "Ms. Stockett does not recall whether this allegation is true or not and so denies it."³⁶ Stockett has said in interviews that she has talked to Cooper only minimally over the course of her employment as her brother's maid.³⁷ But even this strikes some readers as evidence of moral weakness;

31 *Plaintiff's Response*, above note 4 at 10 [emphasis in original].

32 *Defendant's Answer and Defences*, above note 12 at para 29.

33 *Plaintiff's Complaint*, above note 4 at para 42.

34 "Ablene Cooper Reacts to Dismissal of 'The Help' Lawsuit" *WAPT News* (16 August 2011), online: YouTube www.youtube.com/watch?v=07F27VU4Ioc.

35 *Plaintiff's Complaint*, above note 4 at para 16.

36 *Defendant's Answer and Defences*, above note 12 at para 16.

37 "Author Hopes 'The Help' Lawsuit Thrown Out" *WAPT News* (15 August 2011), online: YouTube www.youtube.com/watch?v=D82NrKe5H2A&feature=relmfu. Stockett spoke

according to one comment on a *Forbes* blog discussing the lawsuit, “Kathryn Stockett is a liar. She states she met Ms. Cooper for 5 minutes? She has been the [maid] to her brother-in-law’s [sic] family for YEARS. Just because Kathryn might have treated her like furniture in the room like the white women in her book, does not mean she was not there.”³⁸

Perhaps Stockett and her lawyers denied more than necessary in asserting that the contact between Stockett and Cooper was inconsequential.³⁹ Indeed, this line of argument also provides fodder for criticism of Stockett’s choice to write her book in the first person via her three character-narrators (two of whom are Black). If she did not bother to take much notice, much less talk to her brother’s maid, what research did she do on what it really feels like to be a Black maid working for a White family? In the postscript to the novel, Stockett acknowledges that:

I’m pretty sure I can say that no one in my family ever asked Demetrie what it felt like to be black in Mississippi, working for our white family. It never occurred to us to ask . . . I have wished, for many years, that I’d been old enough and thoughtful enough to ask Demetrie that question. She died when I was sixteen. I’ve spent years imagining what her answer would be. And that is why I wrote this book.⁴⁰

As literary scholar Duchess Harris pointed out:

It would have behooved Stockett to ask her burning question of another Black domestic, or at least read some memoirs on the subject, but instead

about the lawsuit at a panel discussion at the National Association of Black Journalists convention in 2011, where she stated: “If you add up the seconds that we’ve seen each other, it would be maybe 10 or 15. I’ve met her twice. Hello how are you? Goodbye. Have a nice day.” This clip is incorporated into the WAPT-TV, Jackson, Mississippi, newscast the night before the hearing in *Cooper*.

38 Kiri Blakeley, “The Help: Maid Should Cash In Instead of Sue” *Forbes* (11 August 2011), online: [Forbes www.forbes.com/sites/kiriblakeley/2011/08/11/the-help-maid-should-cash-in-instead-of-sue](http://Forbes.com/sites/kiriblakeley/2011/08/11/the-help-maid-should-cash-in-instead-of-sue) (“escarondito” commenting on Kiri Blakeley’s blog). Note: Cooper worked for Stockett’s brother, not her brother-in-law.

39 *Defendant’s Answer and Defences*, above note 12, a further example of Stockett overstating how little she knew about the plaintiff at para 21; similarly, she denies knowing her niece and nephew refer to the plaintiff as Abie or Abi at para 24; *Plaintiff’s Complaint*, above note 4 at para 21, in response to the Plaintiff’s Complaint where she states that “Ablene is black, middle aged, has a gold tooth, works for a white family in Jackson, Mississippi, and has a son who is deceased,” in that the answer states: “Ms. Stockett is without knowledge of this paragraph and therefore denies it.”

40 Stockett, above note 5 at 451.

she substitutes her imagination for understanding. And the result is that *The Help* isn't for Black women at all, and quickly devolves into just another novel by and for white women.⁴¹

With regard to the first-person narration, Harris noted,

when the novel attempts to enter the mindset of the Black women, like Aib[i]leen or her best friend Minny, suddenly we enter the realm of the ridiculous So instead of incorporating a real Black woman's voice in a novel purported to be about Black domestics, the Skeeter/Stockett character is comfortingly centralized, and I can see why white women relate to her.⁴²

In response to Cooper's claims of appropriation, the defence also quoted Stockett's statements in the postscript of the novel, but with the intent to demonstrate that Stockett was writing about a matter of public interest and so deserves strong expression rights protection, regardless of her appropriation of Black women's voices: "As Ms. Stockett puts it, what it felt like to be a black woman in Mississippi in the 1960s is not 'something any white woman on the other end of a black woman's paycheck could ever understand. But trying to understand is vital to our humanity.'"⁴³ In other words, the defence argued that Stockett has the right to imagine what it is like to be a Black maid to a White family and not do any empirical research. The courts have taken this position in the past, which explains why most cases are dismissed. However, for plaintiffs like Cooper, appropriation of voice and subject position without acknowledgement or compensation is the first layer of the moral wrong, and the second is the inaccuracy of the resulting portrait. The law may not validate this type of moral problem by awarding damages, but Cooper's suit successfully forced Stockett to answer the claims, and thereby to acknowledge the existence of a broader moral problem that includes the legal system as a whole.⁴⁴

41 Duchess Harris, "Kathryn Stockett Is Not My Sister and I Am Not Her Help" *The Feminist Wire* (12 August 2011), online: The Feminist Wire www.thefeministwire.com/2011/08/kathryn-stockett-is-not-my-sister-and-i-am-not-her-help.

42 *Ibid* [emphasis in original].

43 *Defendant's Motion*, above note 4 at 6.

44 This strategy joins other efforts to use the law to affect social change. See Thomas B Stoddard, "Bleeding Heart: Reflections on Using the Law to Make Social Change" (1997) 72:5 NYU L Rev 967 at 970, examining the use of law to affect social change in the context of the gay rights movement in New Zealand.

C. FICTIONALIZATION, FALSE LIGHT PUBLICATION, AND THE ETHICS OF FICTION

False light publication is one of the four privacy torts recognized in the United States.⁴⁵ It addresses unwanted publicity that contains untrue information about a person, much like defamation.⁴⁶ Instead of focusing on damage to reputation, however, the privacy action protects against the mental or emotional harm caused by false or even misleading published information.⁴⁷ False light invasion of privacy is difficult to make out in relation to a work of fiction, precisely because works of fiction are not expected to adhere strictly to fact. Nonetheless, Cooper's claims again bring ethical issues into the legal forum, specifically the moral obligation for White authors to portray African-American characters accurately. For example, in citing the first category of demeaning false or misleading portrayals in *The Help*, the plaintiff referred to how the Aibileen character speaks in a heavy dialect, and what she says: "It has been emotionally upsetting and is highly offensive to Ablene to be falsely portrayed in 'The Help' as an African-American maid in Jackson, Mississippi who uses this kind of language and compares her skin color to a cockroach."⁴⁸ The second source of offensive falsehoods identified by the plaintiff was that the plot caused Aibileen to endure humiliating circumstances: "It has been emotionally upsetting and is highly offensive to Ablene to be falsely portrayed in 'The Help' as an African-American maid in Jackson, Mississippi who is forced to use a segregated toilet in the garage of her white employer's home."⁴⁹

The plaintiff's discomfort at her historical displacement to the early 1960s (where she is subjected to Jim Crow style racism) is understandable, given her close identification with the Aibileen character. The defence, however, claimed that this historical displacement is further evidence that Aibileen is *not* Ablene: as the defence points out, the character Aibileen is

45 Richard A Posner, "The Right of Privacy" (1978) 12:3 Ga L Rev 393 at 411.

46 *Ibid* at 419–20.

47 Many false light publication cases deal with publication of images of the plaintiff, where the false or misleading aspect comes from the placement of the image in a publication or a misleading headline or caption; see, for example, *Peoples Bank & Trust Co v Globe International Inc*, 786 F Supp 791 at 792–93 (WD Ark 1992); *Jose Solano Jr v Playgirl Inc*, 292 F 3d 1078 (9th Cir 2002); *Braun v Flynt*, 726 F 2d 245 (5th Cir 1984); see *Time Inc v Hill*, 385 US 374 (1967), which deals with the story of a plaintiff, rather than a photograph.

48 *Plaintiff's Complaint*, above note 4 at para 34.

49 *Ibid* at para 36.

fifty-four in 1963, whereas the plaintiff Ablene is middle-aged today.⁵⁰ This defence is not particularly convincing, because it is certainly possible for an author to place a character modelled after a contemporary person in another historical moment. However, neither party can legally articulate the readerly source of the plaintiff's complaint, which is far more complicated in that it rests on the interplay between Stockett's writing and Cooper's reading. In other words, the plaintiff-reader here is in large part responding to the dissonant conditions the defendant-author created for contemporary Black readers.

Literary scholar James Phelan developed a useful approach for understanding the “feedback loop among authorial agency, textual phenomena (including intertextual relations), and reader response[,]” which “assumes that texts are designed by authors in order to affect readers in particular ways” and that “reader responses are a function, guide, and test of how designs are created through textual and intertextual phenomena.”⁵¹ In many ways, *Cooper* is about how this “feedback loop” gets tangled — that is, where Stockett's intentions for her readers' experiences go awry, particularly along racial lines. With regard to the false light publication claim, the snags occur in part at the intersection of realism and melodrama, an intersection that alternately supports and undermines the author's claims to an overall ethical project that is anti-racist.

Authors who employ the literary technique of realism are particularly vulnerable to complaints about inaccuracy, because realism stakes relatively strong claims to truth (as the name suggests), particularly with regard to portraying stories depicting social upheaval.⁵² The genre of melodrama, on the other hand, employs techniques that enhance emotional impact, sometimes at the cost of realism, but no less likely to some ethical end.⁵³ With regard to *The Help*, critics have cited flaws in the realist depiction of the time period and the plight of its Black inhabitants, and have criticized Stockett's

50 *Defendant's Motion*, above note 4 at 6.

51 James Phelan, *Living to Tell About It: A Rhetoric and Ethics of Character Narration* (Ithaca: Cornell University Press, 2005) at 18.

52 Amy Kaplan, *The Social Construction of American Realism* (Chicago: University of Chicago Press, 1992) at 10.

53 See, generally, Linda Williams, *Playing the Race Card: Melodramas of Black and White from Uncle Tom to O.J. Simpson* (Princeton: Princeton University Press, 2001). Melodrama has been an object of intense study by feminist and critical race scholars, because it can both cement and undermine negative stereotypes.

use of melodramatic “Mammy” type characters, where both lines of criticism question the author’s true dedication to anti-racism.

For example, some critics have pointed to historical evidence that Black women participated overtly in the Civil Rights movement, contrary to the fearfulness and timidity depicted in Stockett’s characters.⁵⁴ This criticism is related to Cooper’s complaint that Stockett’s portrayal of how Aibileen talks and acts is “highly offensive.”⁵⁵ Critics have also pointed out that the novel pays scant attention to the intense level of political activism actually going on in Mississippi at the time, and that when they are mentioned Stockett sometimes gets them wrong.⁵⁶ Historical inaccuracy or underemphasis are moral criticisms here, levelled at Stockett as a White author of a book set in the Civil Rights era where the characters engage in their own form of activism: writing a tell-all book to expose the racism among the middle-class White women who employ Black maids, in order to “change things.”⁵⁷

Further moral criticisms arise from the melodramatic features of the novel. The moral sympathies afforded to various characters are obvious: Skeeter, Aibileen, and Minny are heroes; Hilly and Elizabeth are villains, with other characters more mildly villainous or at least deserving some sympathy (for instance Skeeter’s mother — where the readers’ judgment of

54 Nicolaus Mills, “‘The Help’ I Knew Cared More About Voting Rights Than Getting Back at White Ladies” *Christian Science Monitor* (16 September 2011), online: The Christian Science Monitor www.csmonitor.com/Commentary/Opinion/2011/0916/The-Help-I-knew-cared-more-about-voting-rights-than-getting-back-at-white-ladies. “As in Stockett’s novel, the help I knew had plenty of grievances against their white employers But getting back at the white families who hired them by helping a white author write a tell-all book (as Stockett’s fictional black maids do) was the last thing any of the help I knew was going to try. Too much risk for too little payoff.”

55 *Plaintiff’s Complaint*, above note 4 at para 34.

56 See Onyx, “The Medgar Evers Error in The Help’s First Edition” *A Critical Review of the Novel The Help* (9 April 2011), online: www.acriticalreviewofthehelp.wordpress.com/2011/04/09/medgar-evers-error-in-the-help. For instance, a historical error in the original printing of the book stated that civil rights activist Medgar Evers was bludgeoned in his front yard (he was actually shot). This error was reportedly repeated by Stockett in interviews before it was corrected in later editions; Onyx, “Challenging Kathryn Stockett’s Spin on Segregation” *A Critical Review of the Novel The Help* (17 January 2011), online: www.acriticalreviewofthehelp.wordpress.com/2011/01/17/challenging-stockett-on-segregation. Onyx’s site is entirely dedicated to criticism of the novel, movie, and extratextual issues (reviews, reception, and the lawsuit itself). Onyx further criticized Stockett for using civil rights events to humanize the White segregationist characters more than they deserved.

57 *The Help*, above note 5. The first section of the novel, written in Aibileen’s voice, features a conversation between Aibileen and Skeeter wherein Skeeter stakes her moral claim on civil rights, asking Aibileen: “Do you ever wish you could . . . change things?” at 10.

her sexism and racism is tempered by the fact that she is dying of cancer; and Stuart, who is judged less harshly because he is the only man showing an interest in Skeeter).⁵⁸ As with the classic melodrama, most of the action in the novel takes place in families and homes and revolves around actual or threatened victimization, although these situations are complicated by the employment relationship between the nannies and the mothers of the children they care for. Nonetheless, as in the classic melodrama, threats to and within families create narrative tension (for example, Aibileen worries what will become of her White wards if she is fired or otherwise separated from them).⁵⁹

Critics of *The Help* often target Stockett's use of stock characters, in particular Aibileen, a "Mammy" type character who is endlessly giving and affectionate to her White employers' children, yet tough on Black children.⁶⁰ In response to the plaintiff's claim that the appropriation of her name and likeness is "highly offensive" and has caused "outrage, revulsion, and severe emotional distress,"⁶¹ the defence countered that the "book cover describes 'Aibileen Clark' as a wise, regal woman."⁶² This response clearly misses the point that portraying a Black female servant as *wise* and *regal* rather than justifiably angry could be highly offensive, especially to those who see this type of figure as reinforcing racist stereotypes rather than breaking down racial barriers.⁶³ As literary scholar Michele Wallace wrote: "The Help glosses

58 Kathryn Stockett, *The Help: A Novel* (London: Penguin Group, 2011) ("Readers Guide for *The Help*" unpaginated back pages where reader sympathies are overtly courted for or against characters in the book, as reflected in book club study guides, such as the list of discussion questions the author poses to readers like: "Do you think that Skeeter's mother is a sympathetic or an unsympathetic character? Why?").

59 Sacks, above note 10. As literary scholar Sacks wrote, "[a]n action is a work organized so that it introduces characters, about whose fates we are made to care, in unstable relationships which are then further complicated until the complication is finally resolved by the removal of the represented instability" at 26.

60 See Onyx, "The Mommy/Mammy Issues in *The Help*" *A Critical Review of the Novel The Help* (2 March 2011), online: www.acriticalreviewofthehelp.wordpress.com/2011/03/02/mommy-mammy-issue; Touré, "Is *The Help* the Most Loathsome Movie in America?" *Time Ideas* (2 February 2012), online: *Time* <http://ideas.time.com/2012/02/02/is-the-help-the-most-loathsome-movie-in-america>.

61 *Plaintiff's Complaint*, above note 4 at para 31.

62 *Defendant's Answer and Defences*, above note 12 at para 31.

63 See Micki McElya, *Clinging to Mammy: The Faithful Slave in Twentieth-Century America* (Cambridge: Harvard University Press, 2007).

over the reality of African-American triumphs we bled and died for, in order to make a feel-good Hollywood story.”⁶⁴

The defence naturally sought refuge in the First Amendment, which affords especially strong protection to fiction “that addresses a matter of public concern, i.e., the relationship, between the races in Mississippi in the early 1960s.”⁶⁵ In response, the plaintiff retorted that the novel is not really about race relations, and used criticism of the genre of melodrama to drive this point home:

Ablene Cooper could not agree more with Stockett that race relations are indeed a matter of public concern. However, the problem for Stockett is *The Help* has absolutely nothing to do with race relations. According to the dust jacket on versions of *The Help* sold in the United Kingdom, the book is about “female love.” Specifically, the entire accolade reads as follows: “A big, warm girlfriend of a book about female love [t]hat transcends race and class.” Saying that *The Help* is about race relations in America would be akin to describing *The Da Vinci Code* as a book about Christianity.⁶⁶

In other words, it is precisely because of how she deploys the ethics of fiction via melodrama that her authorial choices inspire moral outrage against her, casting doubt on her actual dedication to anti-racism. The lawsuit gave voice to these broader complaints via a claim to community support for the plaintiff’s outrage: “Kathryn Stockett knows that Ablene is justified in the eyes of the community in Jackson, Mississippi in feeling seriously offended, aggrieved, and outraged by the conduct of Kathryn Stockett.”⁶⁷ While the composition of the community is not specified, the plaintiff clearly casts herself as a spokesperson for its disgruntled members.⁶⁸

64 Michele Wallace & Bridgette Bartlett, “The Help Love It Or Leave It?” (2011) 42:4 *Essence* 72 at 72.

65 *Defendant’s Answer and Defences*, above note 12 at 4 (para 3 of the Affirmative Defences).

66 *Plaintiff’s Response*, above note 4 at 9.

67 *Plaintiff’s Complaint*, above note 4 at para 37.

68 *Ibid.* The same claim is also made under the infliction of emotional distress part of the complaint: “These facts when told to an average member of the community would cause that person to characterize the actions of Kathryn Stockett as being outrageous” at para 47.

D. CONCLUSIONS: AUTHORS, READERS, AND THE SELF AT LAW

The *Cooper* lawsuit ended up giving voice to Ablene Cooper's complaints, as ultimately representative of a broader set of issues regarding White authors depicting African-American characters. This set of concerns does not often find a legal forum.⁶⁹ Indeed, the exchange of court documents between plaintiff and defendant are a fascinating dialogue about authorial practices and reader experiences that do not fit easily within established legal principles.⁷⁰

The dialogue centrally engaged what Wayne C Booth referred to as "ethical criticism," a mode of reading and analyzing literary work that the plaintiff insists is vital, although others, including the defence team, often malign it as a form of censorship.⁷¹ Yet, using the lens of ethical criticism helps us understand the claims of the plaintiff, and explains her persistent resistance to a more dominant mode of reading fiction (mostly shared by the courts) that is largely anti-humanist: that is, not especially interested in how an author's life makes its way into the telling, but rather considering a fictional work to be a stand-alone text.⁷²

Cooper's claims ran counter to this anti-humanist stance and demanded that the real people behind a fictional work be acknowledged and heard. In keeping with the circular nature of many of the claims, one of her final arguments was that, "By filing this motion for summary judgment and attempting to stifle the voice of Ablene Cooper, it appears that Stockett certainly does not have much interest in an 'uninhibited, robust, and wide open' debate taking place in the Circuit Court of Hinds County concerning this lawsuit."⁷³ The plaintiff thereby accused Stockett again of being self-serving, claiming that she valued freedom of speech only when it served her own

69 *Suntrust Bank v Houghton Mifflin Co*, 136 F Supp 2d 1357 at 1381 (ND Ga 2001), another interesting case with related issues which dealt with an African-American author, Alice Randall, who was sued for copyright infringement by the estate of a White author, Margaret Mitchell, regarding Randall's novel *The Wind Done Gone*, a rewriting of Mitchell's classic Civil War novel *Gone with the Wind* from the slaves' perspective; see David Roh, "Two Copyright Case Studies from a Literary Perspective" (2010) 22:1 Law & Literature 110, for an in-depth discussion of the case.

70 See *Geisler v Petrocelli*, 616 F 2d 636 (2d Cir 1980). This case suggests that claims against fiction writers are not *a priori* doomed to failure. However First Amendment arguments have generally prevailed in these types of cases.

71 Wayne C Booth, *The Company We Keep: An Ethics of Fiction* (Berkeley: University of California Press, 1988) at 3-4.

72 Tridgell, above note 20 at 12.

73 *Plaintiff's Response*, above note 4 at 9.

interests, and that she used the First Amendment to end the lawsuit and thereby perversely silenced the voices of real African-Americans. Although the legal arguments were presumably written by lawyers rather than Stockett herself, she is once again judged according to the ethics of her own position. She is painted as a hypocrite: morally (if not legally) in the wrong.

The plaintiff in *Cooper* thus relentlessly linked the experience of reading *The Help* with Stockett's statements — whether to the media, the public, or via the court documents in the lawsuit — and held the defendant-author accountable to a coherent ethical plan that cuts across all of these contexts. The plaintiff thereby reinscribed herself as a full subject into the novel and into the law, even as her case was not successful.⁷⁴

74 My study of the *Cooper* lawsuit shares affinity with legal consciousness scholarship focused on how the actual people who are addressed by a law manage their dissonance with how they are characterized in law; see, for example, David M Engel & Frank W Munger, *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities* (Chicago: University of Chicago Press, 2003).