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## Invasion of Privacy: The *Cross Creek* Trial of Marjorie Kinnan Rawlings

Laura J. Hines  
*University of Michigan Law School*

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INVASION OF PRIVACY: THE *CROSS CREEK* TRIAL OF MARJORIE KINNAN RAWLINGS. By *Patricia Nassif Acton*. Gainesville: University of Florida Press. 1988. Pp. 175. Cloth, \$18; paper, \$10.

Zelma is an ageless spinster resembling an angry and efficient canary. She manages her orange grove and as much of the village and county as needs management or will submit to it. I cannot decide whether she should have been a man or a mother. She combines the more violent characteristics of both and those who ask for or accept her ministrations think nothing at being cursed loudly at the very instant of being tenderly fed, clothed, nursed or guided through their troubles.<sup>1</sup>

With these words, Marjorie Kinnan Rawlings<sup>2</sup> triggered a legal battle that would be fought for more than four years and would threaten to divide her close-knit community. The vivid description of her friend Zelma Cason in Rawlings' 1942 autobiographical work *Cross Creek* so enraged Cason that she instituted a suit against the author seeking \$100,000 in damages for violating her right to privacy,<sup>3</sup> a cause of action that had yet to be recognized in the state of Florida. Patricia Nassif Acton,<sup>4</sup> in *Invasion of Privacy: The Cross Creek Trial of Marjorie Kinnan Rawlings*, presents an intriguing narrative account of this important early case in the development of privacy law that is still remembered as one of the most theatrical in Florida history.

*Invasion of Privacy* describes Rawlings' move to the northern Florida hamlet of Cross Creek, her growing love for and acceptance by the Cross Creek natives, and her use of the community as the inspiration for her most successful works. Rawlings was not insensitive to the dangers of depicting her neighbors in her works. To the contrary, she apparently went to some lengths to get the approval of those she deemed most likely to be hurt or angered by her stories (pp. 16-20). However, she never imagined that Cason, one of Rawlings' oldest friends in Cross Creek, would respond so violently to her portrayal in the book.

Rawlings' reactions to Cason's initial outrage and subsequent lawsuit are conveyed through the use of Rawlings' voluminous correspondence with her lawyer, Philip May, and her editor, Maxwell Perkins. These letters provided Acton with invaluable insights into Rawlings'

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1. M. RAWLINGS, *CROSS CREEK* 48-49 (1942).

2. Rawlings was an author who achieved literary fame for her stories about north central Florida. She was awarded the Pulitzer Prize for *The Yearling*, a 1938 novel "hailed as a literary masterpiece." Pp. 10-11.

3. Although the original complaint included counts of libel and unjust enrichment, the invasion of privacy count was the only one litigated. P. 59.

4. Patricia Nassif Acton is a clinical law professor at the University of Iowa College of Law. Acton conducted her research for this book in 1985 while serving as a visiting professor at the University of Florida College of Law.

private thoughts and strategy at each phase of the litigation. Unfortunately, no such body of work exists through which to ascertain Cason's thoughts, or those of her attorney, Kate Walton. The dearth of information about these two women forces Acton to speculate about their initial meeting, their motivations, and their strategy. Acton's speculation is assisted by the use of interviews she conducted with friends and relatives of the participants in the case, some of whom could comment from their first-hand observation of events. These personal recollections help to fill in gaps left by the pleadings, motions, transcripts, and newspaper accounts.

Clearly, Cason and Walton shared a strong belief in what has been called the "right to be let alone."<sup>5</sup> The particular manner of invasion in this case, an author's truthful description of a person in an autobiographical work, had never before and has rarely since been thought to create a cause of action.<sup>6</sup> However, the Florida Supreme Court recognized the existence of a privacy right in this unique situation. The court held that a prima facie case for invasion of privacy is made even where the portrayal is both favorable and truthful, so long as the author did not have her subject's consent.<sup>7</sup>

Cason's cause of action is categorized as "public disclosure of private facts."<sup>8</sup> The irony of this type of suit, as illustrated by the *Cross Creek* trial, is that the litigation itself causes additional public exposure of the information sought to be protected. In Cason's case, the only people who would have known that she was the "Zelma" of Rawlings' story were her friends and neighbors who read *Cross Creek*. By going to trial, Cason held herself out to the world as "Zelma" and subjected herself to far more public exposure than she would have received by maintaining silence. Unlike a libel suit, where the libeled individual has much to gain by bringing suit to vindicate the false statements made against her character, here the plaintiff has little to gain, as the facts are true, and litigation can bring vindication only at the expense of further unwanted publicity.<sup>9</sup>

It is unlikely that a plaintiff could succeed under these facts today.

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5. Samuel Warren and Louis Brandeis, in their early influential article, credit Judge Thomas M. Cooley with coining this phrase in his 1888 treatise on torts. Warren & Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 195 n.4 (1890) (citing T. COOLEY, A TREATISE ON THE LAW OF TORTS 29 (2d ed. 1888)).

6. A recent student note observed that there are "only a handful of reported cases involving both autobiographical rights and the public disclosure tort." Note, *Unauthorized Biographies and Other "Book Revelations": A Celebrity's Legal Recourse to a Truthful Public Disclosure*, 36 UCLA L. REV. 815, 833 (1989).

7. *Cason v. Baskin*, 155 Fla. 198, 20 So. 2d 243 (1944).

8. W. PROSSER & W. KEETON, THE LAW OF TORTS § 117 (5th ed. 1984).

9. For instance, the *Cross Creek* trial became a media circus. See G. BIGELOW, FRONTIER EDEN 42 (1966) (The trial "became one of the main events of the Gainesville social season, so that the entire action was played out before a packed house of reporters, backwoods crackers, and Gainesville housewives.").

Acton notes in her acknowledgement that despite Rawlings' fears about the case being utilized as precedent to restrict artistic freedom, the case has only been cited for general privacy issues (p. 170). She speculates briefly as to why this is so. One explanation Acton offers is that authors of biographies and autobiographies may more frequently obtain the consent of persons included in their works (p. 170). This is precisely the sort of chilling effect, however, that Rawlings feared. Following her trial she wrote a bitter letter to the Florida Supreme Court arguing that "[i]f the Florida law requires that I get permission in advance from each of the individuals concerned in my life story . . . it will make [writing an autobiography] an almost impossible undertaking" (p. 138).

The more likely reason why the case has not been used as legal precedent restricting the freedom to write autobiographies and biographies, according to Acton, is that courts today under similar circumstances are more inclined to tip the balance toward the public rather than the private interest.<sup>10</sup>

A Supreme Court case decided since the publication of this book appears virtually to have eliminated the future likelihood of success under such a cause of action. In overturning a Florida appellate court ruling in favor of a rape victim whose name was inadvertently published, the United States Supreme Court in *The Florida Star v. B.J.F.*<sup>11</sup> indicated its hostility toward such claims. While declining to hold broadly that "truthful publication may never be punished consistent with the First Amendment,"<sup>12</sup> the Court nevertheless held that "where a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order."<sup>13</sup>

Acton's account of the case is from a historical rather than a legal perspective. Although her training as a lawyer enabled her to "construct a readable account of this complex case" (p. 167), her abbreviated explanations of the legal issues involved may frustrate readers attempting to gain a deeper understanding of privacy law. Rather than conducting a legal analysis of the inherent conflict between an individual's right to privacy and society's interest in the dissemination

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10. Reflecting on the common law and Supreme Court developments in the private facts arena, one commentator declared that "[w]hen suit has been instituted against media defendants solely on the ground of public disclosure of private affairs, the plaintiff has almost invariably lost." Hill, *Defamation and Privacy Under the First Amendment*, 76 COLUM. L. REV. 1205, 1255 (1976). Professor Hill called the *Cason v. Baskin* rule "strange" and noted that "not surprisingly," the case is unique. *Id.* at 1257 n.243.

11. 109 S. Ct. 2608 (1989).

12. 109 S. Ct. at 2613.

13. 109 S. Ct. at 2607. The Court in *Florida Star* expanded upon its holding in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). In *Cox*, the Court held that publication of information obtained from official court documents open to the public could not be grounds for an invasion of privacy claim.

of news and information, Acton details the conflict through her examination of the litigants themselves. Cason's personal obsession with her privacy,<sup>14</sup> and the humiliation she claimed to experience in her community following the publication of Rawlings' depiction, are set off against Rawlings' deep concern about the case's potential impact on artistic freedom to write.<sup>15</sup> These two women epitomize the inherent tension between the protection of an individual's personal privacy and the right to a free press. Through its vivid descriptions of these women, *Invasion of Privacy* reminds us that real people underlie lawsuits and legal principles.

Although Acton chose to write a legal history, this story could as easily have been written as a women's history. The book describes a trio of forceful, independent women who made legal history through their determined quest for justice at a time when women were not even allowed to serve on juries or to sue on their own behalf. Yet Acton refers only briefly to their roles as women who refused to conform to society's expectations and how they dealt with those expectations.<sup>16</sup> Despite her neutrality, Acton clearly feels an affinity with these women. She refers to all three by their first names throughout the book, and wrote that she could "understand the instincts that . . . gave [Rawlings] the courage to press on in her work" (p. 166). The feminist reader will also appreciate and identify with the strong women characters that populate *Invasion of Privacy*.

Kate Walton, Cason's attorney, was one of the first women admitted to the Florida Bar. Walton's vehement advocacy for Cason's privacy claim no doubt stemmed from her own intensely private nature.<sup>17</sup> She is described as a "stand-out among Florida women in the early 1940s" (p. 36). Her tenacity and forceful advocacy helped to persuade the Florida Supreme Court to adopt a cause of action most thought it would not consider. Acton only briefly refers to the discrimination that Walton faced as one of the first women attorneys in the state,<sup>18</sup> speculating that fear of prejudice against her by the all-male jury may have led to her decision to let her father conduct most of the trial proceedings (p. 49). This discrimination and fear of prejudice is typi-

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14. For example, Cason hated to be photographed and she destroyed most of the few photographs of her that were ever taken. P. 31.

15. Acton claims that Rawlings' refusal to settle the case came from her conviction that artistic freedom was at stake. P. 76. See also E. SILVERTHORNE, MARJORIE KINNAN RAWLINGS: SOJOURNER AT CROSS CREEK 243 (1988) ("I could probably have bought off Zelma for a thousand . . . But I felt I could not stop short of complete vindication where so vital a principle was at stake.")

16. See *infra* note 18 and accompanying text.

17. Pp. 38, 58. In a letter to her lawyer, Rawlings speculated that the dramatic tone of Walton's brief "would make one think that Kate Walton was trying her own case as well as Zelma's." P. 58.

18. Walton's own father, a prominent attorney whose firm she joined, did not initially approve of women in the law. P. 38.

cal of that faced by most women lawyers of Walton's day, who were considered "misfits" for refusing to follow traditional female paths.<sup>19</sup> Rawlings and Cason were also "misfits" in their own way.

Rawlings was a highly acclaimed author at a time when most women did not have outside careers. She told the court that she had both a profession and a business. Writing was her profession, while her business was growing oranges (p. 103). Her supporters included notable women authors of her day such as Zora Neale Hurston, Ellen Glasgow and Margaret Mitchell, who took a professional as well as a personal interest in the lawsuit.<sup>20</sup> Rawlings was also known for her unorthodox wit, which greatly entertained the packed courthouse during her testimony at trial.<sup>21</sup>

Zelma Cason, according to Rawlings and virtually everyone else who knew her, lived a vigorously independent life spiced with passionate and not infrequent profane outbursts.<sup>22</sup> Acton notes that Rawlings' depiction of Cason as manlike was not unwarranted. Her insistence on wearing pants, her love for and readiness to use guns, her occasional boxing matches, and her preference for male friends led many in the community to view her as unusually "masculine" (p. 30). Although she defied female stereotypes, Cason still felt that she had been "humiliated" by Rawlings' truthful depiction of her as man-like, strong-tempered, and profane.

Although Cason's privacy claim probably would not succeed today, Acton has written an entertaining and informative account of a particularly colorful and unique legal dispute. This very readable book not only appeals to a general audience but may be of value to persons interested in women's history or the development of privacy law.

— *Laura J. Hines*

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19. See K. MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA* x (1986) ("Women who nevertheless insisted on seeking a career in the law were regarded as oddballs and misfits who in not accepting more traditional feminine roles were destined for failure.").

20. Mitchell was greatly concerned "because of the legal precedent involved for writers." E. SILVERTHORNE, *supra* note 15, at 277.

21. P. 102. During her cross-examination Rawlings turned the tables on Walton's father by questioning him about a point of law. Her lawyer objected, but Mr. Walton pointed out that it was to Rawlings her lawyer was objecting. Everyone in the courthouse, including the judge, burst into laughter. P. 108.

22. Acton describes Cason as a "strong-willed, voluble and opinionated woman" with a "colorful and exciting personality." Pp. 29, 32. One neighbor she interviewed recalled that Cason's notorious cussing could be heard for a quarter of a mile. P. 29.