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Legal History

Simon Rifkind and the Case of the Maligned Author

By C. Evan Stewart



Readers of the Federal Bar Council Quarterly will recall, when we last looked at Judge Simon Rifkind (Vol. XX, No. 3; May 2013), the focus was on his extraordinary essay: "The Lawyer's Role and Responsibility in Modern Society." This time the focus will be on Mr. Rifkind's most famous client, Jacqueline Bouvier Kennedy Onassis, and the turmoil over her attempts (legal and otherwise) to scuttle the publication of *The Death of a President*, authored by William Manchester.

An Authorized History

Within weeks of JFK's assassination, and mindful that many would be vying for the chance to write the definitive book on the events surrounding that tragedy, Jackie Kennedy ultimately picked Manchester for the job. Her first choice, Theodore White (her collaborator in starting the "Camelot" legend — after the assassination), declined. Manchester had written a highly admiring (some believed fawning) book on JFK during his lifetime (*Portrait of a President*); moreover, he had given the President control over that book's galleys. Those two facts may have tipped the scales in his favor. And although he was quite busy on other projects, Manchester did not feel he could say no to the martyred President's widow.

The next step for Manchester was to meet with the Attorney General, Robert F. Kennedy. At his first meeting with RFK, the author was "shocked by his appearance. I have never seen a man with less resilience. Much of the time he seemed to be in a trance, staring off into space, his face a study in grief." RFK notwithstanding made it clear he had his sister-in-law's authority over the project. And to that end, he told Manchester the book would be issued by Harper & Row and edited by Evan Thomas (who had performed similar work for the Kennedys on *Profiles in Courage* and *The Enemy Within*); that Manchester was contractually obligated to another publisher was a minor technicality. Ultimately, a memorandum of understanding was crafted and signed to cover the book project, with its points including:

- The book would come out after the November 1968 election (unless it was finished earlier).
- The final manuscript would not be published "unless and until approved" by both RFK and Mrs. Kennedy.
- Manchester's compensation would be a flat \$36,000 (without expenses); he also would be entitled to royalties from foreign sales (if any), and magazine serialization(s) (if any).

The Attorney General's office then announced the book project to the public, stating that "these arrangements have been made with Mr. Manchester in the interest of historical accuracy and to prevent distortion and sensationalism."

A Work in Progress

Manchester immediately terminated all other endeavors, moved to Washington, and started to work. Besides extensive research and visits to every site to be described in the book, Manchester also met Mrs. Kennedy for two

five-hour interviews. The sessions were taped and, as Manchester's later wrote: "Future historians may be puzzled by odd clinking noises on the tapes. They were ice cubes. The only way we could get through those long evenings was with the aid of great containers of daiquiris.... There are also frequent sounds of matches being struck.... Before [the first interview] I hadn't smoked for two years...; eight years would pass before I quit again."

Manchester worked around the clock. Within a short period, he had lost 20 pounds and his clothes fit him so poorly that Ethel Kennedy told him he needed a new tailor. On March 26, 1965, Manchester checked himself into a Connecticut hospital with "nervous exhaustion." Out after 10 days, he drove himself on and by March 1966 he had produced a first draft entitled *The Death of Lancer* (JFK's Secret Service name). Evan Thomas then informed him that RFK and Mrs. Kennedy would not be reviewing the manuscript; instead, in addition to reviews by Thomas and Manchester's literary agent (Don Congdon), two RFK aides/friends (Ed Guthman and John Seigenthaler) were being delegated the task of protecting the Kennedy family's legacy (and Camelot). The group of reviewers expanded quickly to include the chairman of Harper's (Cass Canfield), Ethel Kennedy, Arthur Schlesinger, and Dick Goodwin (former speechwriter for JFK and later LBJ).

The Early Reviews



Over the course of the spring of 1966, Manchester started getting feedback.

Thomas, for example, wrote: "This is the finest book I've read in 20 years here." Canfield weighed in with: "A work of unusual distinction and great power." Schlesinger wrote: "I think this is a remarkable and potentially great book. The research, the feeling, the narrative power, the evocation of personality and atmosphere, much of the writing — all are superb.... I hope you can stop them from editing too much history out of the manuscript." And Goodwin called it "a masterful achievement." At the same time, the reviewers had over 100 suggested changes, virtually all of which were non-

substantive (e.g., Guthman — "Page 10 — First line. Question the use of the word... 'ignorant.' I think this should be checked. Largely unfamiliar or unacquainted might be better." "Page 686 — Reference to Angel's four mighty Boeing engines. The plane is a Boeing but the engines are Pratt — Whitney."; "Page 1177 — wrong identification for Carmine Bellino. He is a certified public accountant.") Of Goodwin's few comments, the most significant was to recommend the title be changed to *The Death of a President*. Manchester responded affirmatively to this round of comments, believing "virtually all [the proposed changes] improved the manuscript."

The Next Set of Reviews

The euphoria of the first read-through was quickly diminished as a result of reviewers' second and third read-throughs. Of the people closest to RFK, the principal concern was the often unflattering portrayal of JFK's successor, Lyndon Johnson, and the potential political fall-out this Kennedy-authorized work could have on RFK's difficult relationship with LBJ, as well as on RFK's political future. A 36 hour session with Thomas in a Manhattan apartment was designed to eliminate any and all negative LBJ references (e.g., Manchester had described LBJ as a practitioner of political tergiversation. Thomas asked: "What does tergiversation mean?" Manchester: "Evasiveness, equivocation running a broken field." Thomas: "That goes."). Manchester left the meeting with Thomas believing that all of the political objections had been addressed. He was wrong.

Two lengthy sessions going over additional revisions were required in June and July of 1966. After the second one, Seigenthaler, speaking for RFK and Mrs. Kennedy, declared that the manuscript was approved for possible serialization and publication. Thomas and Manchester, however, believed they needed some affirmation directly from RFK; after a bit of pestering, RFK sent Manchester a telegram stating: "While I have not read William Manchester's account of the death of President Kennedy,... members of the Kennedy family will place no obstacle in the way of publication of his work."

This telegram allowed Harper to proceed with targeting the book to be released in January 1967. It also allowed for Congdon to conduct a bidding war for magazine serialization a war ultimately won by *Look* magazine for \$665,000. Manchester thereupon called RFK in Hyannis Port. RFK's reaction: "Great! Isn't that a record? [It was] *Look* has been so nice to the family and Henry Luce [publisher of *Life*] has been such a bastard."

Enter Jackie



Manchester was pleased (he would suddenly be rich), and RFK certainly seemed okay where things stood; but one person was not: JFK's widow. Mrs. Kennedy, who had been upset with Arthur Schlesinger when his Pulitzer prize-winning book on JFK had been serialized, was even more upset now. From Evan Thomas, Manchester learned that Mrs. Kennedy was objecting to the serialization money not going to the JFK library; but what ultimately became clear to Manchester was that "she didn't really want any book, that at most she would accept only a dull, obscure volume." ("I thought," she would tell Manchester in September, "that it would be bound in black and put away on dark library shelves.") RFK, under immense pressure from his sister-in-law, now made that clear to Thomas, wiring him: "Under the present circumstances, with the situation as difficult as it is, I feel the book on President Kennedy's death should neither be published nor serialized." This led to a stormy meeting in August 1966 in RFK's Senate office (he had been elected in 1964), in which Thomas, Seigenthaler, RFK, and Manchester "conferred, fumed, shouted, and glared and settled nothing." According to Manchester, "Bobby was at his most abrasive; at various times he threatened to take *Look* to court, insisted that [Manchester] give more money to the library, and demanded that I stop the serialization, all the while assuring [Thomas] that he wanted

the book to be published."

At the same time, Seigenthaler was submitting over 100 — new changes which Manchester viewed as "frank distortion." And a new editor was introduced: Mrs. Kennedy's secretary, Pam Turnure (also one of JFK's many alleged paramours). Turnure issued 77 changes, most of which were directed to dealing with personal items about the former First Lady about which the public knew nothing (e.g., the fact that Mrs. Kennedy regularly smoked cigarettes).

Also in August was a meeting of *Look* executives with RFK, Mrs. Kennedy, and her lawyer, Simon Rifkind. In response to a variety of threats, *Look* agreed to reduce the number of installments from seven to four. This was a substantial monetary hit to the magazine, but it did little to appease the Kennedys.

Mrs. Kennedy then tried a new approach: she invited Manchester and Goodwin up to Hyannis Port to resolve things. The Kennedy plane, the *Caroline*, flew the two men to the Cape, where Mrs. Kennedy met them on the tarmac, "wearing sunglasses and a green mini-skirt; she looked stunning." After some sporting events, the three got down to business. Unfortunately, the session was chaotic, with wild emotional swings and no real progress at getting to a rational compromise. What was clear to Manchester was that Mrs. Kennedy was determined to fight and to win; memorably she said: "Anybody who is against me will look like a rat unless I run off with Eddie Fisher." (Fisher had entered tabloid Hell in the 1950s when he had left his wife, Debbie Reynolds, for Elizabeth Taylor.)

With Harper's now lawyering up, bringing in Harriet Pilpel of Greenbaum, Wolf & Ernst, *Look* was also exploring how to protect itself not just from the Kennedys, but also from Manchester; the author, now totally frazzled, had suggested that he might seek an injunction to block the magazine. *Look's* response: it would sue him for "at least several hundred thousand dollars."

As if that were not enough, Goodwin now weighed in again, seeking the deletion of thousands of words from the four *Look* installments. RFK then invited Manchester to Hickory Hill (his Virginia estate), where, *inter alia*, he expressed concern that what Manchester had written "will injure both Johnson and me" (even while admitting he still had not read a single word written by the author).

Trying to escape the pressure cooker, Manchester booked passage for England aboard the *Queen Mary*. The night before it left, the author, at a Manhattan hotel under an assumed name, was surprised in the lobby by Thomas, who bore 30 more demanded changes from Seigenthaler and Turnure. The following morning, at breakfast he was confronted by Goodwin and Burke Marshall (a key aide under RFK at the Justice Department) with nine new demands. Shaken, he retreated up to his hotel room; within minutes, Bobby Kennedy was pounding on the door, yelling: "Bill, Bill, I know you're in there!"

Manchester somehow avoided a mano-a-mano confrontation with RFK and made his cruise. In his absence, Mrs. Kennedy shifted her anger to Harper's and, more particularly, to Evan Thomas. Blaming him for the entire *Look* imbroglio (as well as other sins), she leaned over at the end of a meeting and whispered to Thomas, "I'm going to ruin you."

While in England, Manchester continued to receive a battery of suggested changes from Goodwin, many of which the author agreed to. Harper's then weighed in, demanding more changes or it would not publish the book. This latter piece of news made JFK's widow very happy; it also caused Manchester to make 28 more changes to the manuscript. With that, Harper's green-lighted the book. And Mrs. Kennedy went nuclear.

Rifkind in Motion

Issuing a statement (written by Ted Sorenson) that the book was "tasteless and distorted" and that Manchester and his publishers had disregarded "accepted standards of propriety and good faith" and had violated "the dignity and privacy of [her] children," Mrs. Kennedy authorized Rifkind to go to New York State Supreme Court on December 16, 1966 to enjoin both Harper's and *Look*. Manchester, on board the *Queen Mary* returning to America, now recalled her words at Hyannis Port and realized he was being cast as Eddie Fisher (*i.e.*, the "rat").

But on closer inspection, the papers supporting Rifkind's submission had some serious flaws. First and foremost was Mrs. Kennedy's affidavit. Notwithstanding the Sorenson-drafted statement, she averred that she had "never seen Manchester's manuscript;" she further averred neither Harper's nor *Look* had allowed her to see it. That second representation was not accurate. Moreover, given the voluminous paper record of RFK representing her interests in the project and the numerous Kennedy representatives' involvement in the back and forth on the manuscript, a full detailing of all that in court would be telling (and not in her favor).

Even more problematic was RFK's affidavit, in which he "categorically state[d] that at no time did I ever give my approval or consent to the text of the manuscript, to any publication thereof, or to any time of publication; nor did I ever say or do anything from which the defendants could reasonably have believed that I did.... The fact is that no one who read the manuscript had authority to approve it on behalf of Mrs. Kennedy or me." As Manchester later wrote, these bold statements opened up RFK to possible perjury, since "[t]here were at least twenty witnesses who could testify that this simply was not so."

Indeed, upon review of the Kennedy legal papers, *Look's* general counsel offered to quit if he did not win such a slam-dunk case. That said, the public relations war was at an all-time high with a lot at stake *e.g.*, if *Look* had to postpone one issue, it could cost millions; RFK's reputation for ruthlessness was being revived; the uproar was increasing the public's interest in the book (the opposite of what Mrs. Kennedy wanted); Mrs. Kennedy's poll numbers were in decline (for the first time), etc. Judge Rifkind also weighed in extra-judicially: "I don't know about literary integrity, nor the matter of history. But I believe strongly in a man keeping his word, particularly when it is in a written memorandum of understanding."

On January 16, 1967, the trial was set to start, with RFK scheduled as the first witness. Hours before this rendezvous with destiny, the parties settled. In exchange for some further, non-substantive edits (*e.g.*, substituting "vanished" for "disappeared") — a total of seven pages of a 710 page book was cut — a consent decree was ordered by the Supreme Court Justice that allowed the "revised" manuscript to be published. By the term of the decree, Mrs. Kennedy could seek injunctive relief against anyone publishing a form of the book inconsistent with the "revised" manuscript (*Stern* magazine in Germany promptly announced it would do just that); the decree also, *inter alia*, ordered destruction of the "original" manuscript (except for four copies), and the delivery of Manchester's tapes with Mrs. Kennedy to the Kennedy Library (under seal). Judge Rifkind was quoted in the *New York Post*: "I never like to speak in terms of victory or defeat in a law case. I'll just say we are satisfied."

Postscript

- Manchester quickly patched up his relationship with a number of Kennedy loyalists, and later campaigned for RFK during his presidential run in 1968.
- By 1970, royalties for *The Death of a President* totaled \$1,057,247.64, all of which were donated to the JFK Library. When the first check for \$750,000 reached the library, Mrs. Kennedy contacted Manchester and also issued a "gracious statement" to the press that said, "I think it is so beautiful what Mr. Manchester did."

- Evan Thomas, whom Manchester felt had let him down in face of the Kennedys' pressure, ultimately left Harper's for another firm. More importantly, having gotten multiple sclerosis in the 1950s, Thomas' disease had gone into remission (for the most part) thereafter. Unfortunately, the stress of this drama brought the disease back to the fore and stayed with him until his death in 1998. Perhaps ironically, his son (also Evan Thomas) would later write the best, extant biography of RFK: *Robert Kennedy: His Life* (Simon & Schuster 2006).
- Someday, if the Kennedys allow it, a great book will be written tracing the provenance of the various edits to the manuscript as it was tinkered with by so many people with different agendas (historical, political, and other).
- The historical record is unclear of exactly when it happened. But at some point, Mrs. Kennedy sat down in her apartment at 1040 Fifth Avenue and finally read Manchester's book cover-to-cover. When she finished it, it is reported that she said only one word: "fascinating."

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