Writing a Play or Musical on a Real Person

AWP Conference 2024
Virtual Session Outline
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Forums of entertainment are often wonderful ways to learn about the fascinating lives of real people all throughout history. In the event that you are creating a play or musical based on the life of a real person, have you ever wondered how to get permission before proceeding? Join the Dramatists Guild exploring business and craft, such as basic concepts of Right to Publicity, Right to Privacy, and relationship between the subject and their public image in commercial use.

Welcome & Introductions

Hello everyone and thank you so much for joining us today.

My name is Jessica Lit, and I am the Director of Business Affairs for the Dramatists Guild of America.

If you are not familiar, the Dramatists Guild is the national trade association for playwrights, composers, lyricists and librettists and our mission is to aid dramatists in protecting the artistic and economic integrity of their work. Visit our website for more information and resources for theatre writers.

Today we are going to be talking about the ins and outs of crafting a play or musical about or including a real person or real events. We will
also be discussing the legal issues that arise when writing about real people and events and providing insight into how to avoid those potential legal pitfalls.

I am grateful to be joined by a group of incredible writers who have a wealth of experience in this kind of work who can share their insight.

Please join me in welcoming: Dolores Diaz, Doug Wright, Robert Maesaka and Roger Q. Mason.

**Panel Participants**

**Moderator:**
Jessica Lit (she/her) serves as the Director of Business Affairs for the Dramatists Guild. In addition, Jessica has her own solo law practice, The Lit Esquire PLLC, aimed at educating artists of all disciplines about their legal rights to empower them to take control of their careers.
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Dolores Diaz (she/her) is a Chicago-based Chicana playwright from the U.S.-Mexico divide that has produced work with various companies including Goodman Theatre, TimeLine Theater, and Stage Left Theatre. She is a Dramatist Guild representative of the Chicago Region and a resident artist at Chicago Dramatists.

Robert Maesaka (he/him) is a St. Louis-based playwright whose work has been performed at Mustard Seed Theatre (White to Gray), The University of South Carolina-Upstate (White to Gray), St. Louis Shakespeare’s Confluence New Play Festival (Tolstoy’s Resurrection), and the Every 28 Hour Play Festival.

Roger Q. Mason (they/them) was recently touted by The Brooklyn Rail as “quickly becoming one of the most significant playwrights of the decade.” Their playwriting has been seen on Broadway (Circle in the Square Reading Series), Off and Off-Off-Broadway, and regionally. Insta: @rogerq.mason

Doug Wright (he/him) won a Pulitzer and a Tony Award for his play I Am My Own Wife. Broadway musicals include War Paint, Hands on a
Hardbody, The Little Mermaid and Grey Gardens. Films include Quills, an adaptation of his Obie-winning play. Television credits include Tony Bennett’s 80th Birthday special.

Facilitated Questions

Q: (All): To get started, I’d love if each of you can introduce yourselves and tell us a little bit about works you’ve written that include or are about real people. We can start with Dolores.

- Dolores (Chicago) goes on to talk about her play Los Tequileros, based on three tequila runners; and Man of the People, based on John Brinkley.
- Robert (St. Louis) talks about A Question of Loyalty, taking place in WWII Japanese internment camps in Arkansas, where the camp director is based on a real person; and Tolstoy’s Resurrection, with all characters in that play being real.
- Doug (New York) talks about Interrogating the Nude (Marcel Duchamp), Quills (Marquis de Sade), I Am My Own Wife (Charlotte von Mahlsdorf), Posterity (Henrik Ibsen) Grey Gardens (the Beales), Hands on a Hard Body (based on a documentary) War Paint (Elizabeth Arden and Helena Rubenstein).
- Roger (Los Angeles/NY) talks about ‘forgotten moments and remembers times,’ and a trilogy of plays they wrote about Lincoln. Lizzie (Elizabeth Keckley), Booth (John Wilkes Boothe), and Lavender Men (Taffeta, Elmer Elsworth, Abraham Lincoln).

Q (All): What about a person’s story compels you to want to write about them? Do you seek out real people or real events to write about? Or is it simply a spark of inspiration when you hear or read about something?

- Dolores talks about the necessity to think of the present moment and what’s around her; finding a touchpoint that a writer can build on to talk about the present moment.
- Roger talks about a question they asked about – ‘why do I keep writing about history?’ and a friend replies, ‘because we look to it as a survival guide to inspect the present and the future.’ The ancestors are the future and guide toward the future.
Robert speaks on how inspecting the past has helped him inspect his own hyphenated identity. It became important to capture the realism in the play from the character.

Doug speaks on ‘looking for a mask,’ or seeing a historical character that might be dealing with an issue that is beguiling him. He speaks on the Goodnight Oscar being based on his parents, and Quills being his ‘break-up’ play. Safe vessels in pouring his own personal experience into.

Jessica: When thinking about what sources you use for your work, one of the things you need to think about is copyright. While facts are not copyrightable, the original expression of those facts are. So, if you are using information from a biography or autobiography or from a news article, you need to be careful not to use elements of those texts that are copyrightable and if you do, make sure you have a license to do so.

Q (Dolores): What sources did you pull from when you were researching and writing your play, A Man of the People? Since the events took place in the early 20th century, news articles from the time would be in the public domain but were there other places you looked? Feel free to share with us any other tidbits about your experience writing this play as well.

Dolores speaks on the fact that there was a lot of different media available on John Brinkley: a podcast, a book, and other reference points. Did not find it challenging to steer clear of copyright problems, as most of the dialogue is not recorded. All of the sources are helping craft the narrative with tent posts of events to get to, but the way to get there, is in invented dialogue and imagination. She also speaks on finding the sources she used in finding this information, and importance in credibility when seeking sources (e.g., news articles, archives), as well as looking at research in the current moment that might reflect the subject matter of the play to make it clear for modern audiences.

Jessica: Interviews are also another time copyright comes into play – if you are conducting interviews – you own your questions, but there is an argument that the answers to those questions are owned by the
interviewee. That’s why it’s often smart to get a release from any person you interview.

**Q (Doug):** Your play, *I Am My Own Wife*, is based on a series of interviews you conducted with the subject, Charlotte von Mahlsdorf. Can you tell us a little bit more about how you went about that process? How did it contrast to your process for writing the other shows you’ve written about real people?

- Doug speaks on the two valuable functions of interviews: you get the raw material and stories that are important to this person. The second thing is transcribing them; in transcribing them, learning the cadence of their voice and rhythm of speech. Then, it’s available to you when you begin crafting a portrait. In *Hands on a Hardbody*, they received rights to the documentary, but didn’t have releases from everyone through that process. They sought them out individually for their releases and interviews, which became an informative process for the writing process – which led to research they wouldn’t have had in the first place.

**Q (Robert):** When I saw descriptions of your plays *A Question of Loyalty* and *Tolstoy’s Resurrection* on New Play Exchange – both were labeled as “docudrama.” In general, how true to the real events do you stay when you are writing pieces about real people? And in particular, these two pieces? If there is anything else you’d like to share about your process, we’d love to hear that as well.

- Robert speaks on the fact that there was a good amount of source materials for these plays. For *A Question of Loyalty*, reading through the amount of source materials was quite helpful – daily reports, etc. Daily documents and exchanges were more informative than any biography that could’ve been. For *Tolstoy’s Resurrection*, an autobiography was helpful. He saw himself more as a ‘curator’ of information in both. ‘What do I need, what’s interesting, what connects, what serves the dramatic purpose of the piece?’ Thought it was important not to change information for his purposes, and limitations of embellishment.
Q (Roger): You have written many plays which include real people – some try to portray a more accurate picture of a relationship or events, like Lizzie, and others you take more creative license, like in Lavender Men – can you explain why you may choose with one story to be more “truthful” whereas with another you may take more creative license? And again, please use this as an opportunity to speak more about your process and/or to any of the things we’ve already discussed today.

- Roger speaks on the subjectivity of truth, and what is documented, and that ‘truth is in the eye of the beholder.’ They find slivers of ambiguity where we’re not exactly sure what happened, where there’s room for imagination. In that space, they find the opportunity to explore themes and ideas that are interesting to them now through the context and frame of that moment. Lavender Men contained years of research, alongside primary and secondary source materials, though found very little information on Elmer – the key to a play like Lavender Men was the perspective of the narrator to bring that ambiguity into the narrative, alongside structure and lens of historical truths. Also, if folks have bent the truth in the past, they take license in the delicate balance of ‘agreed upon myths’ – and ‘what is true’, to layer a new perspective.

- Doug responds to this and speaks on the appropriation of characters being put in narratives of their own design throughout various plays and stories. With dramatic and literary precedent in mind, in a play like Quills with a large amount of research on the Marquis de Sade and reputable information/public knowledge, artistic license was easier to take since there was already enough documentation. In I Am My Own Wife, where he is introducing a character to an audience, he felt more responsibility to base events and information in reality to pay homage to the person.

A break from questions is now taken to allow for Jessica to speak on legal and business considerations.
All of the plays we’ve been talking about today are about people who are no longer living. However, when you are writing about living people - arguably the most important legal issue to be aware of is: **defamation**.

For those of you who may be unfamiliar - defamation can either be written (libel) or spoken (slander) and it is a state law, so the elements may vary slightly from state to state. However, in general the elements of a defamation claim are:

1. A false statement purporting to be fact;
2. Publication or communication of that fact to a third person;
3. Whom a third party would recognize from the offending depiction; and
4. The offending depiction would cause harm to that person’s reputation;
5. When it is a public figure claiming defamation - there is another element that has to be proven: actual malice.

One thing to note about defamation is that **truth** is a complete defense. So, if what you’ve written is proven to be true - you escape liability.

Another issue to be aware of is the “Right of Publicity” which is also a state right which protects the commercial use of one’s identity, persona, name, likeness. Unlike defamation, some states allow estates to bring a post-humous claim for right of publicity but that is typically when the deceased person was a public figure. However, because plays and musicals are generally considered “expressive works” as opposed to “commercial works” - right of publicity claims and, in particular, **successful** right of publicity claims are pretty rare.

**Q (All):** Now I must ask all of my panelists – I don’t believe any of you have written a play about a living person – is this because your lawyer told you not to? Or have you had defamation issues or other privacy and/or right of publicity issues in the past? Or is it something else?

- Doug speaks on the fact that *Hands on a Hardbody* were all living people, and flew to New York for the production. Securing rights agreements with them early helped in this, and the intention to honor them in their humanity. They kept an open dialogue with them throughout the production to make
sure they were okay with the script changes and dialogue choices. A healthy ongoing conversation with the subjects of the play was crucial to this process.

- Dolores speaks on the fact that having a living legacy as a part of the story, has sometimes given her pause and makes it a more intentional selection in stories and topics for her. She speaks on the importance of considering those close to the story and real people, such as family members, when crafting a story.

Q (All): To wrap up, are there any last pieces of advice or wisdom any of you’d like to share with our viewers? Or any final thoughts about conversation today?

- Roger reflects on how we write on real people on the time. Creatives abstract and craft metaphors, creating myths around the portrait of the character that might be more distant. Where facts and reality meet might be good to consult an entertainment lawyer. The abstraction allows a degree of separation and creative license.

- Doug speaks on the pretense of people coming to the theatre to learn about historical figures, but rather, that they want to learn more about themselves. You can have something incredibly historically accurate, but if the story or portrait doesn’t eventually turn into a mirror, he feels he has failed the audience. He feels a duty to do that.

- Robert speaks on the delight of going down ‘rabbit holes’ and off the beaten path, and that’s ‘where you find the good stuff.’ Enjoy the process.

Closing and Thank You

Thank you to everyone for joining us today. And a HUGE thank you to our panelists - Dolores, Robert, Doug and Roger – for sharing your insights and experiences. We are so grateful for your time.

For more information about the Dramatists Guild, please visit our website or follow us on Instagram at @dramatistsguild.
Event Curator/Organizer

Jordan Stovall (they/them) is a playwright, arts administrator, queer events producer, and drag artist (Wanda Whatever). They presently serve as the Director of Outreach & Institutional Partnerships for the Dramatists Guild, where they have worked since 2016.
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