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Guest Editorial:

The Books Are Selling Just Fine, Thank You, or Scholarship and the Permissions Problem

Joseph Thomas

If you’re an American, chances are you’ve heard of Shel Silverstein. If so — and if you’re not a big fan — you probably associate him exclusively with children’s literature, know him as the author of hits like *The Giving Tree* and *Where the Sidewalk Ends* and *Falling Up* and *A Light in the Attic*, and maybe also deeper cuts like *Who Wants a Cheap Rhinoceros?* and *The Missing Piece*. But even if you haven’t heard of him, don’t know his children’s books, you’ve probably encountered his work — most likely his songs, as some rest so deeply in the cultural consciousness of the U.S. that many people don’t know that they know them until somebody points it out.

Surely, in the shadowy reaches of some cobwebby corner of your mind you recall Dr. Hook and the Medicine Show’s “Cover of the Rollin’ Stone,” right? Or that Johnny Cash number about a boy named Sue? (He’ll tell you: “Life ain’t easy for a boy named Sue.”) How about Cash’s hit “25 Minutes to Go,” the one about a prisoner’s final, 25 minutes at the gallows, the verses counting down 25 to zero as our hero waits for the switch to be pulled? (Now they’re testing the trap and it chills my spine, and the trap and the rope, aw! they work just fine! Eleven more minutes to go!) Or that Irish Rovers tune about a unicorn missing his ride on Noah’s Ark: “I got your green alligators and long-necked geese, some humpty backed camels and some chimpanzees. Some cats and rats and elephants, but Lord, I’m so forlorn, I just can’t see no unicorns!” And even if you’re unfamiliar with the name Bobby Bare, you’ll doubtlessly find that Americans over 40 recall at least one of his better-known songs from the 1970s: “The Mermaid,” “Rosalie’s Good Eats Café,” “Tequila Sheila,” “Warm and Free,” or “The Winner.”

Well, Shel’s the bald-headed raconteur behind them all. He’s written for or had his songs recorded by Gordon Lightfoot, Lucinda Williams, Belinda Carlisle, Marianne Faithfull, Loretta Lynn, and a host of others. Hell, even indie darlings like My Morning Jacket and Andrew Bird and Dr. Dog have recorded his work, right alongside The Boxmasters (minus Billy Bob Thornton), the Pixie’s Black Francis (aka Frank Black), and the likes of John Prine and Nanci Griffith.

With hundreds of songs to his name, Shel is what you could call a songwriter’s songwriter (most of his wealth, you might be surprised to discover, came not from his children’s books, but from licensing songs). He
got his start in the 1950s singing standards with Red Onions, a staple of Jean Shepherd’s variety act (yes, the Jean Shepherd of “A Christmas Story” fame), and then as part of the Greenwich Village folk scene (his presence in the Village led his friend and collaborator Larry Moyer to solicit from Shel a song for Moyer’s neglected Beat gem, “The Moving Finger,” a film in which Shel also appears). Shel hung with the West Coast freaks (alongside the boys in Dr. Hook), and eventually set himself up in Nashville, where he’d meet Johnny Cash. (Shel fictionalized his bitter disenchantment with the Nashville scene in “Rough on the Livin’,” a tune inspired by Nashville’s lamentable treatment of bluegrass legend Lester Flatt: “Nashville is rough on the living, but she really speaks well of the dead.”) Shel was so respected as a songwriter that Bob Dylan trekked to Shel’s San Francisco houseboat on the Sausalito Bay, sat down, picked up a guitar, and played through every song that he’d eventually record as “Blood on the Tracks” -- just to get Shel’s opinion. (Shel approved.)

Shel also wrote songs for the (unwatchably bad) Mick Jagger film “Ned Kelly” (Waylon Jennings and Kris Kristofferson take care of the singing) as well as the better-than-its-reputation Dustin Hoffman picture “Who Is Harry Kellerman and Why Is He Saying Those Terrible Things About Me?” (Shel even has a cameo; Hoffman joins him and the guys from Dr. Hook onstage at the Fillmore East for a quick song.) Shel’s involvement with theater and film wasn’t limited to music: in the early 1980s his friend David Mamet inspired him to write scores of short theater pieces, and together they co-wrote the 1988 comedy, “Things Change,” starring Joe Mantegna.

Shel’s an important figure, is what I’m getting at.

He grew up in Chicago and as a young man sold hotdogs at Wrigley Field. He went on to enlist in the Army and served as a soldier in Korea where he drew cartoons for The Pacific Stars and Stripes. His first book was a hardcover collection of those Army comics, Take Ten (1955), which was republished in paperback by Ballantine the following year as Grab Your Socks (1956). That same year Shel, fresh out of the service, sold some comic strips to Playboy. They appeared in the August issue, his handful of cartoons collected together in a small booklet stapled into the center of the issue. Shel befriended Hugh Hefner, becoming a regular contributor to the magazine and a regular visitor to the Chicago mansion (so regular that he had his own room: The Red Room) where he drank wine, bedded women, and experimented with marijuana, hash, cocaine, and peyote (but never L.S.D.). In addition to comics, Shel also contributed to Playboy travelogues and poems and song lyrics and other odds and ends. Simon and Schuster collected his non-military cartoons of the 1950s and called it Now Here’s My Plan: A Book of Futilities, which was published in 1960.

Quite the ladies man, Shel never married, but he did father a couple of kids (each with a different lover). One of those children, Shoshanna, died tragically of a brain aneurism as a child. Her death in the early 1980s preceded (and I believe, prompted) Shel’s turn from children’s literature to the world of playwriting.

Shel’s an important figure, is what I’m getting at. He lived an interesting life, and he produced more than his fair share of aesthetically and commercially successful art.

Which brings me to the lead (which I seem to have buried): I know this stuff because I’ve been writing a scholarly book about Shel Silverstein’s life and work for the last few years. You see, only one Silverstein biography exists (written by a sort of professional biographer who’s also written, with inhuman speed, biographies about Stephen Colbert, Michelle Obama, Stephen King, and Dan Brown -- among others -- and several books about dogs. Make of these facts what you will). I guess if you count the Shel-centric (and ultimately quite lovely) memoir by Shel’s lifelong friend, Marv Gold (Silverstein and Me), you could up that number to two. However, these two books don’t talk much about the work, about Shel’s poetry, his cartoons, his music. A frustratingly small number of scholarly and critical studies of any type examine his artistic production, and of those very, very few studies, even fewer discuss that work in the context of his life or put his work for children beside his work for adults. That is: there’s not a lot out there that strives for the Big Picture.

Ah, but I’ve exhumed the lead only to bury it again. So why has there been so little critical attention paid to such a provocative and prolific character, so little scholarship striving for the Big Picture? Put simply: because of Shel Silverstein’s estate. Because it’s so damned difficult to get permission to quote from his poems and songs, to illustrate claims with reproductions of his art -- even a tiny black-and-white reproduction of a comic panel or three or four lines of a song. As I’m sure many of you know, I’m not the only scholar of an important figure who has faced this problem. It has to change.

It comes down to this: the Silverstein estate is especially reticent to give out what’s called “permissions,” the right to quote from (or reproduce parts) of work protected by copyright. Last year an academic journal (published by Johns Hopkins University Press) asked me to obtain permission to reproduce some of Silverstein’s material for an essay on comics and picture books. The images I needed were various, but most first appeared in Playboy, so I started there. Shel’s old pal, Marv Gold, the gentleman who wrote the memoir I mentioned above, gave me a contact at Playboy. After several queries, all met with silence, I at last heard from this contact’s secretary, who put me in touch with one of Shel’s relatives, a nephew who evidently handles this kind of thing for the estate. I wrote this nephew several times before he referred me to a law firm with the kind of name one might find in a Silverstein poem: Solheim, Billing, and Grimmer.

Sadly, I can’t reproduce SBG’s letter because it’s protected under
would think fair use statutes were custom built to protect scholars and artists who want or need to reproduce excerpts from copyrighted work in the service of education or art or scholarship -- and if one did, one would be right. But whether we’re protected or not, most presses prefer to play it safe and make scholars request permission.

This situation is disastrous for serious scholarship for a number of reasons. Instead of simply writing what our research tells us, quoting what we need to quote, scholars are put in the position of hunting down permissions, a process that can take months. And recall, we’re sent out to obtain permission for quoting as few as three or four continuous lines of poetry (my first publisher, Wayne State University Press, recommended -- that is, insisted -- that I seek permission for any quotation over three lines and for any reproduction of any image, part or whole.) But more absurdly, it puts our research and our conclusions at the (not so) tender mercies of the subjects of our scholarship (or, worse, the mercy of their estates). If scholars and critics know we need “permission” to quote a few lines of a poem, a few panels of a comic, a verse of a song, we might -- and, sadly, too often do -- mellow out what might otherwise be more harsh or unsympathetic assessments. We might modify or neglect certain avenues of inquiry, might hesitate, say, to point out that many of Shel Silverstein’s children’s poems first appeared in Playboy, might not dwell on the fact that a beloved author/illustrator of children’s books wrote and performed a song called “Fuck ‘em,” a song that includes the lyrics:

Woman come around and handed me a line
About a lot of little orphan kids suffering and dying.
Shit, I give her a quarter cause one of them might be mine.
Yeah, the rest of those little bastards can keep right on crying.
I mean, fuck kids.

A scholar might steer clear of such controversial material for fear a permission request -- or a request to read manuscripts, to visit a private archive, to reproduce sections of unpublished work -- might be rejected by the estate. And remember: the estates from which we need permission do not have to explain themselves. There is no appeal process. Their decision is final, and often irrevocable. (Nota bene: although that five-line excerpt above -- from a song featured on an unreleased demonstration recording -- should be covered by fair use, if this were a typical U.S. academic press, that press would more than likely insist I ask Solheim, Billing, and Grimmer for permission to reproduce it. And since SB&G has already denied said permission, well: you can imagine how that would go.)

My professional difficulties with the Shel estate are perhaps unusual -- flat-out refusal, in perpetuity, with no given reason: that is, a kind of censorship -- but it’s an extreme case that illustrates a problem pervasive in the scholarly world. Other scholars have had difficulties similar to mine. Books
and articles on Louis Zukofsky, Sylvia Plath, Adrienne Rich, Philip Larkin, and a host of others have died on the vine as a result of persnickety estates (or difficult artists). (Check out Ian Hamilton’s Keepers of the Flame: Literary Estates and the Rise of Biography for some particularly famous examples.) Other books have survived, but were born hobbled by the lack of quotation. (The scholars involved are understandably nervous about publicizing their fights, so forgive me for being vague.) Similarly, scholarship on Disney, Harry Potter, and Star Wars films, as well as comics owned by Marvel and DC, live out their lives on hard drives, never published, or see publication in adulterated form, a shadow of their author’s intent, crucial images omitted and replaced by a weird kind of scholarly ekphrasis. And even if scholars get permission, it often comes with a hefty price tag -- a fee paid by academics who write for free.

I could wrap up this piece with the obvious analogy of Big Pharma’s influence on medical journals, point you to that essay in The Atlantic that demonstrates how copyrighted works from the mid-century are disappearing into an Orwelian memory hole, or even lament the power Disney has over our legislative bodies, but instead, I’ll end with a question and gesture towards an answer: How legitimate can scholarship be, these days, when scholars cannot point to works of art we find interesting or problematic, troubling or provocative, cannot set our commentary beside the texts on which we comment, cannot enter into serious discussions about important works and their writers without asking permission of those selfsame artists or their moneyed interests?

The public perception of scholarship and criticism is shaped by instances where objectivity has failed. Everybody knows stories of novelists reviewing the work of their friends, poetic rivals going after each other in the press, lavishly illustrated encomiums to this or that artist published with the estate’s blessing. The influence of estates on scholarship tarnishes public perception of scholarship, makes it even harder on most scholars, those who strive for objectivity, strive for honest and thorough discussion of works and artists we find important. And these estates, with the power to withhold permission when one writes what they don’t want written -- the power to withhold permission simply because the books are selling just fine, thank you, we don’t need a scholar nosing around and upsetting things -- these shortsighted estates not only frustrate scholars, like me, but they fail in their role as stewards of the reputations of artists and writers with which they have been entrusted.

So what’s the solution? Sadly, these practices are so deeply entrenched, so natural to writers and presses and their editors and lawyers and, yes, to estate executors (and their lawyers) that sometimes it seems all writers and scholars can do is mutter complaints to friends. If there is a solution, it requires that more scholars speak up. We need to out presses with too-strenuous permission guidelines (presses like Wayne State and Johns Hopkins, both hard-working publishers of integrity that nonetheless should stand up for academic freedom, for the rights of the scholars and critics who write for them). We need to write essays like the one you’re reading, explain to the public how unreasonable estates can be about policing what’s said about the artists whose legacy they ostensibly curate.

What we have here -- if you’ll forgive the military metaphor -- is but one front in a larger war against the rigorous analysis of fact. It’s part of a war against the presentation of evidence, a war against thoughtful, good-faith argumentation and conscientious debate. It’s another front in the larger war against truth. Which side are you on?

Note: An abbreviated version of this essay was published online in Slate, where it was given the title, “Executors or Executioners? Why can’t my biography of Shel Silverstein quote the works of Shel Silverstein? His censorious estate.” <http://www.slate.com/articles/arts/books/2013/10/my_shel_silverstein_biology_can_t_quote_shel_silverstein_why.html> (11 October, 2007)

Endnotes


References

Joseph T. Thomas, Jr. is an associate professor at San Diego State University, where he directs the National Center for the Study of Children’s Literature. He has written a handful of essays, a bunch of poems, a poetry collection (Strong Measures), and a scholarly monograph (Poetry’s Playground: The Culture of Contemporary American Children’s Poetry). He divides his time between Los Angeles and San Diego. You can follow him on Twitter at @josephsdsu.