



Author! Author!

Why Do Lawyers Write Fiction?

By Jennie Bricker

Practicing law is demanding, engaging, often downright intense — it's not like we're flipping burgers or pumping gas, craving an outlet for our stifled creativity. But lawyer-writers are as common as dandelions, taking root in the infertile soil of a 60-hour work week and springing up everywhere. John Grisham. Scott Turow. It's not a new phenomenon: Washington Irving and Franz Kafka were both law graduates. Even Gabriel Garcia Márquez and Harper Lee served time in law school classrooms before they became literary icons.

Why do so many attorneys take up fiction writing? Apart from the obvious — that we know how to use language — the reason may lie in our ancillary abilities. By personality or training, we are good at many of the things required of successful authors: Telling stories, rolling with the punches, learning new skills and staying in charge.



“Nick!” Trina screamed. “Look out!”

I cranked the wheel to the right and stomped down on the brake pedal, throwing the truck into a shuddering, rubber-smearing slide. As we came to a stop I stabbed the button to automatically lower all the windows, jammed down the emergency brake, and fumbled the .357 from my waistband.

“Trina,” I said with a laborious, patently false calm, “find something to shoot and start shooting.”

I practiced my own preaching and opened up at the soldiers behind the hip-high wall. At the same time, they surged over the top, amazingly lithe and dexterous considering the encumbrance of head-to-toe armor and heavy pole arms.

— Ken Lizzi, *Reunion*



In contrast with his protagonist, Ken Lizzi’s day job rarely requires him to carry firearms. Lizzi is general counsel at Dark Horse Comics, a comic book publisher in Milwaukie, where Lizzi has worked for the past two decades. But he’s been writing stories longer — since he was 12 years old.

Twilight Times published his debut novel, *Reunion*, in 2014. Lizzi describes the novel as a “post-apocalyptic romp” in the science fiction/fantasy genre. Police officer Nick Gates is working the night shift in downtown Portland when the “Claimants” and their architectural infrastructure smash down throughout the city, the soldiers armed with battle axes, sporting full armor and riding domesticated glyptodons (extinct in this dimension for 10,000 years).

Nick, his wife, Trina, and their anthropologist buddy Gordon eventually make a break out of occupied Portland, grinding east across Oregon in a pickup truck and Hummer, crossing over wrecked highways and past fortresses of hostile invaders toward Idaho.

Lizzi has a spouse, a preschool-aged daughter and a full-time job. He writes early in the morning, late in the evening, sometimes on the weekend. Why does he do it? “I have stories I want to tell,” Lizzi answers.

Telling Stories

Storytelling is as old as humanity, possibly the most enduring and effective way we communicate. Hearing a story makes neu-

rons fire in our left temporal cortex, producing the experience of “grounded cognition” — the sense of being *in* the story, feeling the protagonist’s emotions, physical sensations and movements, not just figuratively but biologically.

We tell stories because we have to; we tell them constantly. According to evolutionary psychologist Robin Dunbar, 65 percent of all public conversation consists of gossip — that is, storytelling. We use storytelling to make sense of our lives and our experiences, including our suffering and mortality. Real-life events spool out in random, most of them far outside our control, but stories let us arrange those events into the structure of narrative. Cody Delistraty writes for *The Atlantic* that stories “allow people to see patterns where there is chaos, meaning where there is randomness.”

Lawyers are especially adept at spinning out tales. What is a hypothetical, after all, but a fictional narrative? Yale law professor Stephen Carter believes the Socratic method is what makes so many lawyers good at fiction writing. “That process, which virtually every law student despises, gets us to begin thinking about the ‘what ifs,’” he told an American Bar Association audience in 2012. We are good at asking “what if?” What if this contract clause found its way into court? What if the tank explodes? The partnership dissolves? The bottom falls out of the real estate market? Who bears the risk of blame and liability?

The better the storytelling, the more likely it is to make an impact. According to Stanford business professor Jennifer Aaker, people are 22 times more likely to remember information when it is conveyed in a narrative. Researcher Dan Johnson found that reading fiction made people more empathetic. The more absorbed in the story they became, the more empathy they exhibited afterward. Johnson tested readers’ empathy by staging an “accident” during what his subjects thought was downtime during the study: He dropped a handful of pens and measured reactions. The readers who had been “highly absorbed” in the fiction they’d read helped pick up the fallen pens about twice as often as other participants.

As a prosecutor in Chicago, mystery writer Scott Turow realized his most important task was to give the jury “a consistent narrative,” the story of how the crime happened, told through the “multiple voices” of witnesses. Oregon’s own bestselling mystery writer, Phillip Margolin, was a criminal defense attorney for 25 years. He uses real cases as source material but makes sure “that only the exciting parts are included.” And he found storytelling had a side benefit: When he was trying “really serious murder cases where my client could die,” fiction writing gave Margolin an “escape hatch” from the stress.

Susan Stoner worked as in-house counsel for the Amalgamated Transit Union. Like Margolin, she found that writing fiction provided respite from her conflict-ridden day job. As a lawyer, she says, “you get tired of fighting.” Writing in the early mornings and on weekends, Stoner found she “could escape to a world where everyone does what you want them to and it all comes out the way you like.”

Ken Lizzi photo by Isabel Lizzi, book cover by Brad Fraumfelter.



Taking a key from his pocket, Drake unlocked the door, gestured them through and locked it behind them. The five of them stood in the underground.

Dust began to clog Sage's nose. The inky blackness beyond the lanterns pushed inward and he felt an inner shriek of fear building. Quickly he looked up and counted the wooden floorboards, listening for the thumping boots and the drunken life taking place overhead.

"What's a matter?" This question came from behind him, from the heretofore silent Bendt. "'Fraid of the dark?"

— S.L. Stoner, *Land Sharks*



Sage Adair is a restaurateur in Astoria, circa 1902. In *Land Sharks*, he gets ensnared in an intricate conspiracy to shanghai sailors and reap criminal profits. Adair is the hero of the series of historical mysteries penned by S.L. Stoner, aka Susan Stoner. She began the series in 2010 with the publication of *Timber Beasts*, a story that grew out of historical events in Oregon in the early years of the 20th century.

When she finished *Timber Beasts*, Stoner initially looked for a literary agent while rewriting the novel — about 14 times. Ultimately, she abandoned that search, turned down a contract from a publishing company and decided to maintain control over her own content, marketing and distribution. She and her husband formed Yamhill Press. After *Timber Beasts*, Yamhill Press published *Land Sharks* in 2011, followed by roughly one book each year. Stoner retired from her law practice in 2015 but continues to draw on her work experience and historical research to tell stories. Her latest novel is *The Mangle*, a story about women working in turn-of-the-century laundries. The narrative incorporates elements such as the Brandeis Brief and Oregon's pioneering legislation of the first wage and hour law.

As a labor and civil rights attorney, Stoner describes herself as a "lifelong lefty." Her novels explore the lives of working-class characters. Part of her motivation came from a desire to communicate with the workers she represented at Amalgamated Transit: "I wanted to tell them their own story in a way they could get caught up with," she explains.

"If you have a great story, you can really make an impact," says Jim McDermott. "My aim was to deconstruct the American Dream as I and those I'd worked with in menial jobs had encountered it." McDermott keeps busy as a litigator at Portland's Ball

Janik firm, where he's practiced law for 24 years. "As a litigator, you are constrained by the facts," he says, "but with fiction, you can fuse your imagination with your experiences to create a more poignant story."

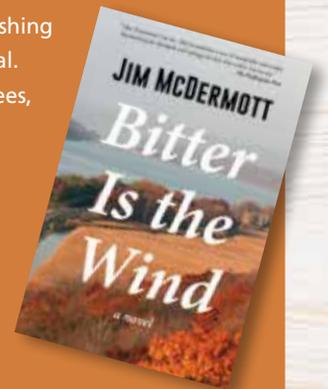
Bitter Is the Wind, McDermott's first novel, was published in 2016, then released as a trade paperback this March. McDermott tells the story of a father and son left behind by death in Salt Point, an unincorporated village in rural upstate New York. The father, George Johnson Sr., works on a factory assembly line. His son, George Jr., goes to college on a scholarship, eventually earning an MBA at a prominent business school. When he first leaves for college, he and his father drive together in the Johnsons' pick-up truck.



On most of the drive north, neither father nor son spoke. With the rain beating down hard and the wiper blades cranking at full speed, young George confined his view to glimpses of fields, barely discernible through the car's rain-blurred windows. At sixty miles

an hour, the images, flashing one after another, seemed surreal. The rolling hills, with so many trees, seemed so filled with life. Trees and humans have an important similarity — they both have no say in where they're born and grow up. Some are born in rich national forests. Others are born in the way of rich shopping mall developers.

— Jim McDermott, *Bitter Is the Wind*



McDermott and his fictional character, George Jr., shared the jarring experience of moving from a working-class background into a setting of privilege and power. McDermott reminisces about the beginning of his legal career at a major Washington, D.C., law firm: "Instead of going to old places in a dilapidated old car, I went to new places in the first-class cabin of airplanes." McDermott decided to use fiction to capture that experience. In 1990, he took a 10-month leave of absence from the law firm and completed the first draft of *Bitter Is the Wind*.

"It was a mess," he admits. Back to his law practice, McDermott kept at it, writing on weekends, nights and early mornings. In all, he guesses he rewrote the novel "two dozen times." He found an agent, who shopped his book around to several large publishing houses. Finally, he negotiated a contract with Cune Press, a small Seattle publisher that put out a hardcover edition

in February 2016. The novel received good reviews, prompting Rare Bird Books to buy the rights and release another hardcover edition, followed by a paperback edition.

Rolling with the Punches

“First novels are risky,” says literary agent Betsy Amster, a former Portlander who now runs Betsy Amster Literary Enterprises from Los Angeles. Among publishers, the appetite for risk is never voracious and may be growing smaller. McDermott’s long journey to publication doesn’t come as a surprise to Amster, who has watched authors struggle through draft after arduous draft. “Even someone as successful as Jonathan Kellerman admits on his website that it took him ‘13 years typing away in an unheated garage,’ as he puts it, to come up with something publishable. It shows you how hard it is to write fiction. Jennifer Lauck, a local writing instructor, tells her students that ‘it takes as long as it takes.’ That’s a smart way to set expectations, I think. We all acknowledge that it can get frustrating. Unfortunately, an agent can’t protect you from that. Persistence is key.”

Attorneys are accustomed to losing as well as winning. Like inflatable punching clowns, we get knocked down only to bounce back up with a smile. If we got our feelings hurt every time we experienced rejection — from clients, judges, administrative agencies or, for that matter, agents and editors — we wouldn’t last long in the profession.

“Writing is nothing if not a long-distance race,” writes New York literary agent Betsy Lerner. She tells of John Grisham’s first novel, *A Time to Kill*, which took years to write and more years to see publication. Its underwhelming release consisted of a tiny print run of 5,000 copies and an author advance of \$15,000. But *The Firm*, Grisham’s second novel, netted him a check for \$600,000 from Paramount, which bought the movie rights before Grisham had even signed a publishing contract. Lerner attributes Grisham’s success to hard work and persistence rather than luck.

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“Luck has always been a major factor in my writing career,” says Margolin, but the story of his success, like Grisham’s, is about perseverance. Now at work on his 22nd novel, Margolin has written one bestseller after another since his first book was published in 1978. His second novel, *The Last Innocent Man*, became an HBO movie, while *Gone, But Not Forgotten* was made into a miniseries starring Brooke Shields. Margolin’s fiction has been selected by the Book of the Month Club, has been nominated twice for an Oregon Book Award and has received the Spotted Owl Award for best Northwest mystery. His latest book is *Violent Crimes*, a mystery starring his series character, criminal attorney Amanda Jaffe.



Tom Beatty picked up the fallen knife and held it at the man’s throat.

“Who sent you?” Beatty demanded, but the man was past answering. He sagged against Beatty, his eyes closed, and his last breath escaped.

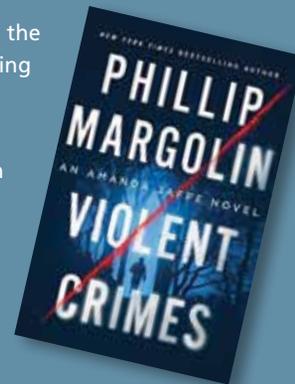
Beatty dropped the body and stared at it in frustration. The prehistoric horror Amanda had just witnessed paralyzed her and she could only stare at Beatty, his face smeared with mud and his body cloaked with dripping leaves. Then she remembered her gun, and yanked it out of her holster.

Beatty paid no attention to the weapon. “What are you doing here?” he demanded.

Amanda’s mouth was dry and her voice cracked when she finally managed to speak.

“I was looking for you.”

— Phillip Margolin,
Violent Crimes



Until he retired from law in 1996, Margolin, like Amanda Jaffe, handled criminal cases, including homicides and death penalty cases. A fan of Perry Mason novels, Margolin knew in the seventh grade that he wanted to be a criminal defense attorney. He read voraciously then — and still does — and held fiction writers in such awe that he was convinced he “could not possibly write publishable fiction.”

Still, he decided to try it. He wrote his first novel during his last semester in law school, when he (uncharacteristically) didn’t have a job and “didn’t know what to do with myself.” The story was based on his experience in the Peace Corps, and he found that he enjoyed the writing process. But the book itself was “terrible,” Margolin acknowledges. He wrote another novel. It was also bad. He didn’t try to get them published.

Meanwhile, Margolin graduated from the New York University School of Law in 1970 and then moved to Oregon to clerk for Oregon Court of Appeals Chief Judge Herbert Schwab. After a stint at the Multnomah County district attorney's office, he opened his own private practice, specializing in criminal defense. But he also kept writing fiction, finally publishing a short story in 1974, "The Girl in the Yellow Bikini." His confidence bolstered, he landed upon an idea for a third novel based on the Peyton-Allan murders, famous in Oregon but not widely known outside the state. Margolin calls it "the most amazing case in American history." It became the underpinnings of his novel, *Heartstone*.

He was five chapters into *Heartstone* when Marty Bauer, a friend from law school, came to Portland for a visit. Bauer worked as an attorney at International Creative Management, a huge literary agency, so Margolin asked his friend if he would show someone at the agency the first few chapters. "I wanted to know if I was wasting my time," says Margolin. "Two weeks later, I came back from court and everyone was sitting around with a bottle of champagne. I asked them what was going on, and they told me that my agent had called from New York and had sold my novel."

Like Margolin, Val Bruech drew on her experience as a defense attorney when she wrote her debut novel, *Judicious Murder*. The story of its publication combines good luck and persistence.

Judicious Murder is set in Joliet, Illinois, where Bruech practiced criminal law for 16 years. Her protagonist and first-person narrator is defense attorney Susan Marshfield, who sets out to solve the mystery of who murdered Judge Sam Kendall. Brave, tenacious and at times foolhardy, Marshfield presses on in the face of growing danger and violence.

Is Marshfield based on her creator? "To a degree," Bruech says. Bruech graduated from the John Marshall Law School in Chicago in 1976. Out of her class of 160, only four were women. Of those four, three, including Bruech, practiced criminal law. Bruech speculates that her protagonist might be an amalgam of all three women.

Bruech began working on *Judicious Murder* in the early 1990s. Long periods of two or three years passed when she had no time to spare for the novel. "You have to make a living," says Bruech, "and the law is a jealous mistress." But Bruech had been a "ferocious reader" as a child, and always knew she wanted to write. So she turned to the novel in earnest after she retired, writing and rewriting, working on pacing and dialogue, even changing the identity of the murderer. She loves the creative process, which she says forces her to "look at the world in a nonlinear way." When the writing flows freely, Bruech finds it exhilarating: "There's nothing else like it. It's a little like when the jury comes back with a 'not guilty' verdict — but it lasts longer."

When her novel was ready, Bruech sent queries to agents and pitched the book at a writers' conference, all without success. Finally, pure chance and good luck intervened: A friend put her in touch with a small press that specializes in mysteries and thrillers. Bruech signed on, and Smoking Gun Publishing released *Judicious Murder* at the end of 2016.

Learning New Skills

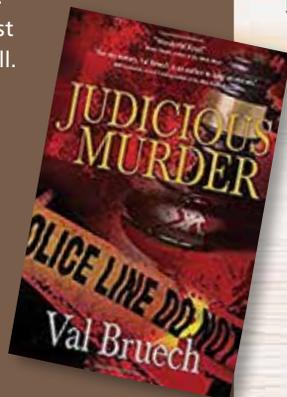
Bruech, a big believer in learning and honing the craft of fiction writing, estimates that she's attended more than 100 writing workshops. Just because we can use language skillfully does not necessarily mean we can produce good fiction. "The making of art is a mysterious process," says literary agent Lerner. "The serious writer understands that her craft may take years to develop." As legal practitioners, we are students throughout our careers, and not just because we have to rack up CLE credits. We are always learning new law, always becoming conversant with our clients' areas of expertise, always trying to examine problems from new angles.

We are good at many of the things required of successful authors: Telling stories, rolling with the punches, learning new skills and staying in charge.



He was headed for the side where he could get enough purchase to keep me under. If I could dig all ten nails into the arm choking my neck deep enough to draw blood, I might jerk free, but it would be temporary: he was much stronger than I and extremely determined. I angled my head to keep as much water as possible out of my mouth, filled my lungs with air and forced myself underneath him. I brought my knees up close to my chest and drove my feet into his groin with all the strength I had left. Immediately the arm around my neck vanished and I was unleashed. I broke the surface and stroked helter-skelter for the side of the pool like a crazed sailfish. I grabbed the edge and hoisted myself up, but my legs dangled for an instant. An iron cable wrapped around my waist and I was flung backward like a rag doll. When I struck the water it was like hitting concrete: pain detonated in every part of my brain. Fingers like talons closed around my throat and I was helpless against them. Semi-conscious, I stared into my attacker's eyes and saw my own terror-stricken face in his reflective goggles. Then everything disappeared.

— Val Bruech, *Judicious Murder*



“Fiction writing is a craft,” says Richard David Bach, who didn’t take up fiction until after he retired from practicing environmental law at Portland’s Stoel Rives law firm. He wrote his first novel, *Common Enemy*, in six months. “It was terrible,” he says, laughing. “I was writing like a lawyer.” Undaunted, Bach took courses in fiction writing at Portland State University. “I had to learn the craft,” he explains.



Grisha guarded the door of Viktor Viken’s mansion in a \$2000 Hugo Boss tuxedo, with a neck as thick as his Russian accent, acting as if he had never seen me before in his life.

“I am sorry, Mr. Commoner,” he said. “I not finding you on leest.” He didn’t act sorry at all.

He probably decided I couldn’t possibly be on his list the moment he spotted my SUV — socially undesirable vehicle — in the long queue of Lamborghinis, Rolls, Mercedes, Jaguars and Lexi rumbling and purring up the cobblestone driveway. But before I could suggest he check his leest again his hitherto bored expression came to attention and he touched a small black button in his left ear.

“Da,” he said, to no one in particular.

“My mistake, Mr. Commoner. Please come in and enjoy evening.”

— Richard David Bach, *Common Enemy*



In Bach’s Common Denominator “erotic thriller” series, Raam Commoner is a lawyer who represents billionaire cruise ship owner Viktor Viken. Bach found his inspiration for *Common Enemy* in a dinnertime conversation and a “what if” question: What if a passenger were murdered on a cruise ship?

After his writing courses at PSU, Bach rewrote *Common Enemy*, found an agent at a writers’ conference and waited for the agent to sell the book to a publisher. That didn’t happen, and Bach realized his agent had lost interest in pitching the novel. He fired the agent in favor of self-publishing. E-books were becoming popular, so Bach decided to forego print publication. Since the release of *Common Enemy* in 2012, Bach has penned and published three more novels in the Common Denominator series and has recently finished a fifth outside the series.

Staying in Charge

Like Bach, Joyce Cherry Cresswell wrote *A Great Length of Time* after her retirement. Initially, Cresswell searched for a literary agent, but eventually she realized she preferred to keep ownership and control of her work. She approached Indigo Editing, a firm of editors, designers and publication managers who work with authors interested in self-publishing. *A Great Length of Time* came out in 2015, under Cresswell’s own imprint, Mountain View Press.

And then, in April 2017, *A Great Length of Time* won the prestigious Ken Kesey Award for Fiction, one of the Oregon Book Awards sponsored by the Portland nonprofit, Literary Arts. Self-published books are ineligible for most literary awards, but the Oregon Book Awards are an exception. Cresswell’s award helps confirm that the stigma attached to self-publishing has all but fallen away.

In today’s publishing world, the “Big 5” New York book publishers include HarperCollins, Penguin Random House (formed by the Penguin–Random House merger in 2013), Simon & Schuster, Hachette, and Macmillan. The Big 5 have the resources to promote the books they publish under their various imprints, but most smaller presses do not. Authors frequently find themselves in charge of marketing and selling their own books. Like Cresswell, Stoner and Bach, they decide it makes more sense to stay in control of their literary destinies.

“One misconception about self-publishing is that authors choose this route only if and when they can’t get a traditional deal,” says Tabitha Lord, winner of the 24th annual *Writer’s Digest* Self-Published Book Award. “That isn’t true anymore.”



Shortly before his death, President Lincoln had said that the fight might continue until every drop of blood drawn by the lash was matched by one drawn by the sword. While the words were poetical, Rose had thought them reckless.

There was no evening-out to be had here. Blood did not cleanse blood; it only deepened the stain.

Rose shook her head to clear the sad thoughts of the lost president from her mind.

The war was over. The nation was delivered. The scar was deep, but the body was mending. Let the president — and the patient — rest.

—Joyce Cherry Cresswell, *A Great Length of Time*



Cresswell's protagonist and narrator, Rose Barnett, is a medical doctor during the American Civil War. She volunteers to serve with the Union Army but must work as a nurse, rather than a surgeon, because of her gender. Dr. Barnett is assigned to a hospital ship, and her story is "not about battles and not about romance — it's not *Gone with the Wind*," says Cresswell. Instead, Dr. Barnett navigates conflicts both internal and external, including class disparities, racism and slavery, gender roles, sexual orientation and, most of all, the atrocities and senselessness of war.

How did Cresswell settle on her story idea? "It's a bit of a family story," she says. "My grandmother was adopted in 1906 from an orphanage by my great-grandmother, a woman the family knew as 'Aunt Charlotte.' Aunt Charlotte's lifelong companion was a woman physician: 'Dr. Buckel.' I found a reference to Dr. Buckel in a footnote, and from there I learned more and more about her. This book is based on Dr. Buckel's story."

Cresswell waited until retirement to begin *A Great Length of Time*, but she says she spent "decades of mulling" and had wanted to write since she was a child. She graduated from the University of Oregon School of Law in 1978, and her writing remained sporadic while she worked as an attorney, both as a solo practitioner and later in a field office of the U.S. Department of Justice. Cresswell retired in 2010, which, she found, provided an excellent incentive to begin writing in earnest.

"When I started writing the novel, I didn't know if I could do it. It was literally an experiment," says Cresswell. She offers this advice to aspiring lawyer-writers, eager to write fiction while working full time: "It's okay to wait. If it keeps talking to you, it will still talk to you when you retire." On the other hand, attorneys who simply must put pen to paper (or mouse to pad) should follow Ken Lizzi's advice: "Sit your ass down and write, whether you feel like it or not." **B**

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