

FROM LITERATURE TO LITIGATION

AN ESSAY FROM THE RECORDER
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For several years I taught the fiction-writing workshop at the University of California, Davis extension. The number of lawyers who enrolled in my classes always surprised me. Often there were more lawyers than members of any other profession. I'm pleased to report that the lawyers, on the whole, were fine fiction writers, often better than the journalists, who favored one-sentence paragraphs and insisted on beginning all stories with a lead.

The flaws in the stories written by lawyers fell into certain patterns. Many lawyers wrote stories in which they dispensed justice with a heavy hand, punishing the bad characters and rewarding the good ones. I thought perhaps they had entered the legal profession on a quest for justice, and not finding it in the courts, they

turned to fiction so they could make stories come out as they thought stories should. Their desire for justice was so great that they missed the subtle point that in literature, as in life, justice is often indirect: Characters get what they deserve but in unexpected ways.

Other lawyers in my class shied away from conflict. Every writer of fiction knows that without conflict you have no story. Many beginning fiction writers properly set up their stories with all the requisite conflict, but as their stories heat up, they get uncomfortable. Just as they probably shy away from confrontation in their lives, they shy away from the conflict they create in their stories, and as a result, short-change their characters' development and tack on unsatisfying endings.

The lawyers who shied away from the conflict in their stories were often introverted and quiet. I supposed they were bookish types who had gone to law school because they were good at reading and writing and thinking. After college graduation, they had probably looked forward to three years in the peaceful setting of a law library. Then they were thrust into the legal profession to battle on behalf of their clients. Disliking all that conflict, they fantasized about the quiet, inward life of a writer. Thus they enrolled in a fiction class only to be told by their teacher that they must face up to the conflict in their stories.

After teaching English and creative writing at

the college and university level for eight years, law school seemed like the natural next step for me. I had been toying with the idea of law school for some time, and I made up my mind to apply while watching Bill Clinton's Senate impeachment trial. I was impressed by former Sen. Dale Bumpers' speech in defense of Clinton, particularly when he compared Kenneth Starr's pursuit of Clinton to Javert's pursuit of Jean Valjean. He wasn't afraid to stretch language to the limits, and he understood how to work a metaphor. Listening to his speech, so filled with rhetorical flair, I knew there was room in the legal profession for a fiction writer. That very week I began studying for the LSAT.

Some people have the mistaken idea that fiction writers are liars. They believe that fiction, by its very nature, is a distortion of the truth. A neighbor once told me he had published a work of short fiction. He said this in an offhanded manner, as if he had rolled out of bed one morning and written a publishable story. From experience I know that it takes many years to master the craft of fiction writing, so I asked him to tell me about his story. He described a travel essay. When I said, Oh, a travel essay, he looked startled and said, Yes, I suppose that's what I wrote, a travel essay. I asked him why he had called it fiction, and he said, Because I exaggerated parts.

Evidently, to some people, short stories are

nothing more than flawed travel essays. But to those of us who find meaning in fiction, short stories are not a distortion of the truth: They are a way of getting to the truth. Fiction writers, like lawyers and other artists, understand the limitations of facts. Depending on the viewpoint of the narrator, the same set of facts can lead to vastly different stories, each with its own version of the truth. Similarly, the passage of time can change the colors of our memories, and this in turn changes the truth of what happened. And language, with its own limitations, never allows for complete precision. Artists thus turn to metaphor as a more exact way of expressing truth.

There is much overlap between the study of fiction writing and the study of law. Short stories have conflict, characters and resolution. The cases I read my first year of law school also have conflict, characters and resolution. Often, though, the resolutions were forced and unsatisfying, perhaps because someone was afraid to face up to actual conflict. Fiction, like any good metaphor, stands for something greater than itself. Cases, too, stand for abstractions, or rules as my law professors called them. My civil procedure professor told our class that litigation is storytelling. More specifically, litigation is about competing versions of the same story.

In its ideal form, literature, like litigation, is a search for the truth.