

## Law and Fiction: A Roundtable with Our Judges

**Editors' Note:** As part of this fiction issue, the *Journal of Legal Education* conducted a roundtable discussion with our four judges—all notable writers in the genre of legal fiction—about what attracted them to writing and legal fiction, their research in the face of evolving law and technologies and their writing process. Below is the edited transcript of that conversation, conducted in the fall of 2012.

**ALEXANDRA D'ITALIA:** Why does this genre of legal fiction intrigue you? Does anybody want to jump in?

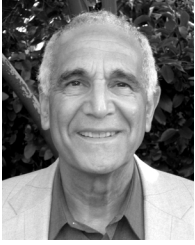


**MICHAEL CONNELLY:** I covered a lot of trials when I was a reporter at the *Los Angeles Times*, and the stuff I would see didn't necessarily match up with the stuff you would normally see on TV and movies, even some books. And, just being an egomaniac, I thought I would write about this and really bring some verisimilitude to what I did, and so it'd be a little bit of what goes on behind the courtroom, or outside the courtroom, and stuff like that. So to me, it was a writing challenge, coupled with the fascination that I probably had because I read *To Kill A Mockingbird*.

**D'ITALIA:** What do you mean, "it didn't match up"?

**CONNELLY:** We've seen it in American popular entertainment, meaning television and movies—writers do not let the reality of the justice system get in the way of telling their story. So you'd have hearsay evidence just routinely thrown out in courtroom scenes, and so then when I was a reporter and I was sitting in a courtroom, it became very clear that a criminal trial is not like what I had watched for years on television. And I'm not just talking about *Perry Mason*, which was so beyond reality, I'm talking about *L.A. Law*, and shows like that.

**D'ITALIA:** Marshall, you wrote for *L.A. Law*, didn't you?



**MARSHALL GOLDBERG:** I was there the first season. Let me try and answer the question about “what is it about the genre that intrigues me.” At the core I have this strong sense of injustice, that just draws me to so many stories. I’m one of these people that wants justice to prevail, and with the legal genre there’s this suspense whether justice will actually prevail. Now with *L.A. Law*, Steven Bochco, who was the creator, used that suspense as a springboard for showing the characters who operate in the legal system. And I think whether justice prevailed was, in a sense, secondary to watching those characters. He was more interested in the motives of people who were drawn to that system, not all of whom are idealistic. And I think that is what fascinates people about the legal genre—the tension between “will justice prevail” and the characters, appealing or not so appealing, who are drawn to that system.



**DENISE HAMILTON:** I was at the *L.A. Times*, and in fact, Michael and I overlapped a bit at one point in time. I covered a lot of trials, and a large part of a trial is filled with a lot of boredom, a lot of sitting around and waiting. And obviously, that has to be excised from a book or a TV series or a movie. So first of all, when you fictionalize a trial, you have to make everything flow together and you have to basically keep just the juicy parts. But I’ve also found that often what I saw as a reporter was only the tip of the iceberg—a lot of the really juicy stuff was happening behind the scenes. Similarly, as a member of the jury, if you’re just sitting there listening to the trial, you’re going to miss all the backroom views and everything that’s happening at the bar. So I think when you write fiction, you get to put in some of what the public doesn’t necessarily see.

When there’s a crime that goes to trial, as a reporter, they are just the best stories in the world to write about because they’re juicy, and they’re tragic, and they’re horrible, and they show the worst of humanity, our darkest impulses. And often, there are also people who do amazing things and are heroes, or there are people thrust into heroic situations, and I think for me, it was just this very, very primal drama of emotions—the seven deadly sins, and the Ten Commandments. And yet it’s playing out in such a formal scenario that is almost kabuki-like because of all the rules attached to it. Everyone is really civil in the courtroom and only occasional little outbursts that often you see more on TV shows than in real life. It is these simmering, primal emotions under the surface of this rigid and formal structure that I find so fascinating.

**GOLDBERG:** I agree with everything Denise just said. Or as they say in the chatrooms, “what Denise said.” With litigation you have people who are one step from grabbing a weapon and fighting it out. On that level, you’re trying

to manage these really deep emotions and put them in a more civilized context, so that people won't kill one another. And yet, at the same time, the stakes are enormous. I think that's another reason people are drawn to it: people entering the legal system are just so close to desperation. So the stakes are high, people are one step away from just taking matters into their own hands.

**D'ITALIA:** Media today highlights our tendency toward violence, and yet statistics show that actually there is less crime; for instance, crime among teenagers is down. What's changed for you as storytellers as people's perceptions of crime and violence have changed, if anything?

**CONNELLY:** [laughter] I don't know, I don't want to answer first every time, but if no one's saying anything—I think we all try to reach what's going on in society. The last so-called “legal thriller”—if you want to call it that—I wrote last year, was about a lawyer, who's a criminal defense attorney not finding enough work because crime is down, and so he reinvents himself as a foreclosure defense attorney. That's a reflection of what's going on in the legal field now, and the lawyers that I used to help me with my books, half of them have given up criminal defense because there is less crime and less money to pay for private defense. And so I can keep writing stories where the character gets these big cases, but the reality is there aren't that many. That's a direct effect that societal trends had on what I was writing.

**HAMILTON:** Right.

**CONNELLY:** Denise, you want to go next, or...?

**HAMILTON:** Well, while crime is down, the media is focusing with laser-like intensity on these very sensationalistic crimes, and so it gives, perhaps, the public a skewed impression of things. One of the things that attracts us to crime fiction in general, and legal thrillers being part of that, is the idea that the bad guy will get punished in the end, or at least found out, or killed, or come to some kind of rough justice. And for us as readers, because of course I'm a reader as well as a writer, I think that's very therapeutic, and whatever form that takes, maybe crime's down, maybe crime's up, maybe the crimes are different, maybe they're more white collar than blue collar, people are still going to kill each other—and I think that the whole experience of watching a show on TV or reading a novel, or seeing a movie is we go through the entire arc of identifying with the bad guy, or being scared for the victim; identifying with the witnesses who might get murdered because they testify or identifying with the attorneys and what's at stake for them personally. We're led through this very interesting path and at the end justice is served. It's cathartic for us.

I think one issue with legal fiction is that people are getting more and more savvy about the way the legal system works, and they think that because they've seen *L.A. Law* they know exactly what's going to happen, it's the same with *CSI*. It becomes more and more difficult for all of us as writers because of all the technology—we're having to invent more and more convoluted scenarios of "yeah, well why didn't he pick up the cellphone," or "why didn't he just check her GPS coordinates," or "why didn't she see who that was on caller ID." But even though we're grappling with these technological difficulties, I think that ultimately, whether you're writing about a foreclosure attorney or a criminal defense attorney, the issues are still the same and the battles are still the same on some very elemental levels. That is why people will go back time and again to crime fiction. It's the idea of working through the crime and figuring out the puzzle—feeling that catharsis at the end.

**GOLDBERG:** I was in law before I started writing, and what took me to writing was that I became more interested in exploring personal issues than just purely political or legal issues. And to explore personal issues, if you want to do it in drama rather than just therapy, is that trouble has to appear over the horizon. And nowadays the most natural place to find trouble is with the legal system. If you explored it elsewhere, like in westerns, trouble would come from the bad guys. But so much of the hassle of life can come from the legal system—if you want to learn about your character and find out how they react under pressure, just have them deal with the legal system. That can be through being accused of a crime, or having to hold on to what they currently own when some venal person or company is trying to take them for all they've got. It's just a really natural place for a writer to work out creative issues.

**HAMILTON:** Can I just say one other thing?

**D'ITALIA:** Oh, of course!

**HAMILTON:** I think that the legal arena also offers an incredible way for writers to comment on society. As much as Raymond Chandler and Dashiell Hammett did—the legal system is a prism whereby we can peer in and see how money and power can be manipulated, how backdoor deals can be struck. It allows the writer and the reader to see the true structure of power. And then of course if you're writing a crime novel, you have to have some kind of justice for the little guy too. I think that crime novels are also novels about race and class and money and power—the genre in general is a very good way to write about justice for the little guy: the cynicism of how things really work and how the little guy occasionally triumphs despite that.

**D'ITALIA:** I think that's true. Denise, you had mentioned keeping up with technological advances, and Michael, you had mentioned talking with lawyers—how do you keep up with police procedure, technology and the law, all of which are constantly evolving? I know Sue Grafton set her series in the '80s because she didn't want to write mysteries including all those technological advances.

**CONNELLY:** Somebody else go first.

[Laughter]

**D'ITALIA:** Putting it another way, what's your research process?

**HAMILTON:** You talk to people—

**GOLDBERG:** I guess I have two answers to that. One is that I paradoxically pulled back and took advantage of technology at the same time by writing a historical novel.

**D'ITALIA:** What do you mean?

**GOLDBERG:** By writing a historical novel I got to slyly comment on how people struggled with everyday life when technology was so different, but at the same time I was able to utilize technology in a way I never could have ten years ago. If I wanted to do a scene with the mayor of New York in 1888, I just had to Google it. I found out all I needed—his name, his background, his everything. But as far as keeping abreast for more contemporary settings, jeez, it's all around us. There's an app for everything, as my daughters say. And you can just ask people for help. One of the things that's been so interesting about shifting into writing is that people are really happy to share information.

**HAMILTON:** Absolutely.

**GOLDBERG:** I just pick people's brains. My wife is a journalist, and I'm amazed how willing people are to share information. All you have to do is ask! Who knew? Could be I have been lucky, but that's my experience.

**HAMILTON:** People who are starting to write, they don't know that every police department, every park service, every coroner's office has a PR or media relations department, and those people are there to answer questions. Maybe not about specific cases that they're trying to hold back information on, but in

terms of procedure and how things work. I have told this to so many people, and they're like, "Really? You mean I can go on a drive along with the Beverly Hills cops?" Yes you can! All you have to do is pick up the phone.

**CONNELLY:** I would just agree that you've got to constantly be a reporter or researcher and keep in touch with people that are doing the work you want to write about. It's all on the Internet, but at the same time, nothing can replace anecdotal, verbal stories from somebody who's been in front of a jury or somebody who's been at a homicide crime scene. I don't live in California anymore, but I go there all the time to maintain relationships, to hear stories, to learn more and to figure out what's changing in terms of procedure.

**GOLDBERG:** There's the research side and there's the dramatic framework side. For me, you do enough research to feel like, "Okay, I kind of know about this area." Then I construct a story, and after the framework is really solid dramatically, I go back into the research and learn even more, and most of the time it doesn't change the framework. It's usually just putting more meat on the bones of that framework. Writing is both researching and thinking out the dramatic structure of the story. That's where these two journalists [Michael and Denise] have a huge advantage.

**HAMILTON:** But research can also be a trap, you know? You have to pull back at some point and say, "I'm never going to know everything, I'm going to start writing, and some of this will happen in the second draft. I'll just fill in those blanks or get the verisimilitude later, but I need to be moving forward with the writing right now."

I also wanted to say that you could certainly get a lot of official information from sources, go on ride-alongs and get stuff for attribution, but sometimes the best stories, for me, are the ones that the cops or the attorneys tell you that they don't want attributed to them—where they tell me some story, and they'll say, "You can't say that I told you, but here's what really happened," or "Let me tell you this story." They want the information to get out, they just don't want it to be traced back to them, either because they feel that it's been treated unfairly in the newspaper or on TV, or they just know it'll reflect well on them or their bosses. Often times, police or lawyers get a real kick out of seeing a book that deals with an issue or case that they were involved with.

**D'ITALIA:** The segues today are just fantastic—you've started to talk about the writing process. If you peruse any book on writing, fiction especially, they offer the same advice to the emerging writer: write every day. Do all three of you write every day?

**CONNELLY:** I do.

**GOLDBERG:** Yeah, yeah, I do.

**CONNELLY:** Yeah, it's kind of what Denise was just saying about research can be a trap. Very important, but you should always be writing, always. I don't do three months of research and then start writing; when I have an idea for a book, I start writing it and I'm researching it as I'm going—shooting emails, making trips to courtrooms or police stations or whatever, but I'm always writing.

**HAMILTON:** Yeah, that's very true—

**GOLDBERG:** You know, writing's hard. And I think sometimes, if you don't watch it, doing all the research can be a way to avoid writing. Once you are really in the habit, when you're poking around with story and character and really immersed, it's like you're never not writing. You're never not thinking about it because it's just thousands of little decisions that have to get made and you just keep mulling them over and over. If I ever get out of the habit, by going on vacation or visiting friends, it's like getting out of shape—it takes me a few days to get sharp again.

I can't believe I'm saying this, probably because I'm in my office, but I really watch intoxicants while I'm writing. I want to be able to write the next day, and I don't want to wake up worrying that my judgment's off. These people you read about who get high and write or who get drunk and write—I can't relate to that. In my case the stuff the next day is going to be awful.

**HAMILTON:** I think Charles Bukowski has ruined more would-be writers than we could ever imagine, who think they have to get drunk to write.

**GOLDBERG:** Right. The second thing I was going to say goes back to something Denise was saying about the trap of research and the trap of the Internet. There's so much fascinating stuff and it can get you off your story. You think you're writing, but you're really not, you're just heading down a dead end and wasting time. That's another thing about the discipline, of just staying focused on “what's my story, who are my characters, what's going on right now?” It's really important to maintain that discipline or else you'll get sucked into so many distractions.

**D'ITALIA:** All of you pursued other careers first, and many of our winners are wearing multiple hats, pursuing two careers, writing on the side, and so my question is, did you always know you wanted to write fiction? And what made you pursue the other career first? Was there one particular moment when you



became a writer—an “a-ha” moment—or was it that writing gradually took precedence?

**CONNELLY:** I didn't know I wanted to be a writer until I was already in college, and pursuing another major. Then it hit me really hard. I switched majors and I purposefully went into journalism because I knew I wanted to write crime fiction, but knew very little about it. I felt like my choice was, do you want to become a cop and experience it, or do you want to become a reporter and get close to it and also learn the craft of writing. I chose the latter, and so I knew from the first day as a reporter that I was in a mode where I was observing for other purposes as well. I was always writing fiction at night, and learning that part of it, and eventually I got better at it. You do anything in life a lot and you should get better at it, that's what I had felt I was doing. Then I finally got something published, and there was an overlapping period, and then I was able to leave journalism behind and just focus full-time on fiction. It was a long time coming, but it was actually a plan that I came up with when I was 20.

**D'ITALIA:** Wow—

**HAMILTON:** I'm impressed!

**D'ITALIA:** Me too!

**HAMILTON:** Yeah, that's like Joseph Wambaugh who wanted to write and he became a cop—isn't that right, Michael?

**CONNELLY:** I think so, yeah.

**HAMILTON:** I didn't always know that I wanted to be—but I always was a writer. Even when I was five years old, I was telling stories, and making up stories and writing little stories about my dog, or about outer space, travel or whatever. But I guess I just never realized that this was kind of a viable career option, and so I majored in economics in college.

I had World War II, Depression-era parents who—they never actually said it out loud, but impressed upon me—“you need to be able to support yourself and make a living, you know, it's a hard world out there and you can't count on The Man to support you.” Which was all great, because it made me very independent. And so it wasn't until I graduated from college and had a boyfriend who was studying journalism that I looked at what he was doing and thought, “Wow, this seems really interesting. You mean you get paid to run around and ask people questions and then write about it?”



I got a master's in journalism from Cal State Northridge, and I started working on the school paper which led to an internship at the *L.A. Times*, and for a long time that kind of sated my—it scratched that itch—I was writing. But I was always drawn to the human drama stories, the trials and the crimes, and I liked hanging out with the cops and having drinks with them and getting information from the lawyers and getting them to talk to me, on the record or off. I just found that putting together the story fascinating. I remember that I would pour over transcripts of preliminary hearings in the trials, and I would put together dialogue that was based on what the witness said. I would pull out quotes and use them to enhance whatever story I was telling for the *Times*. I'm not saying that I changed anything, but there was this moment when this light bulb went off, and it was like, "Oh my God, these court documents are these amazing repositories of dramatic info; you have to sift through all the really boring stuff, and the instructions to the jury and this and that, but there are embedded nuggets of just wonderful, dramatic stuff."

So then I started writing—at that point I think I had left the *Times* and was writing magazine stuff, and so those were like 6,000 word pieces, which really had different chapters, and I was able to use the actual testimony from the trials, and the preliminary hearings to construct these narratives that had a dramatic arc. And around that time I joined a writing group where I was living in Silverlake; it was nine ladies and we would meet every other Sunday night and read work in progress.

I started noodling around with the story I had done for the *L.A. Times* about immigrant Chinese kids who live alone in these big mansions, and one of them got into trouble. I knew that I wanted to write a crime novel because I loved the fast-paced idea of crime novels and how you're able to kind of pull the veil back on what society is really like, and how sometimes, the good guys turn out to be the bad guys, and you can write about money and power and class and privilege.

Like Michael, there was a lot of overlap where I did journalism and fiction—I still love journalism because I love the energy of it, it's such an adrenaline rush. The first five books that I wrote were about a journalist in L.A. so I felt like I was living in the newsroom of my mind for a long time. Now I write full-time and it's a blessing because it's about all I can do well, you know? Write books and drive teenagers around.

[Laughter]

**D'ITALIA:** Marshall?

**GOLDBERG:** Well, I think I was—

**D'ITALIA:** Because you made the biggest leap—

**GOLDBERG:** I envy these two for their clarity earlier in life; I didn't get clear developmentally for ten years after they did.

I was a lawyer, and then I had a great job in the United States Senate, as a counsel for the Senate Judiciary Subcommittee on Constitutional Rights. I was the lead staffer on the Voting Rights Act extension, the guy on the Senate floor that the bills managers and Senators who have all other kinds of things to worry about, turn to and say, "What's the answer to this question?" It was a very heady and stimulating experience. But within a short period of time, I just felt like, "There has to be more than this." It was a job and an experience I had worked toward for a long time, but it was not as satisfying as I wanted it to be. So I began to look around for something else to do.

But it never occurred to me to write. I never got much encouragement for my writing in high school or even in college. Coming out of law school, I got a lot of praise for the way I would write memos or press releases or summarize cases, but I still didn't think I could write, so when I began to look around for something else to do, a friend of mine said, "Well, what do you really like?" And I said, "I love movies."

So I left the United States Senate and moved to Palo Alto, which is where I'd gone to law school. I worked in a revival movie theatre—this was before they had DVD's. It showed two different movies every night from the '30s and '40s. My plan was, I'd either buy the movie theatre or do something else in film. I also took a production class, but it just never occurred to me to get in writing until I sat and watched these movies. I would take a tablet and outline the scenes as I was watching them, and I said, "You know, I think I can do this."

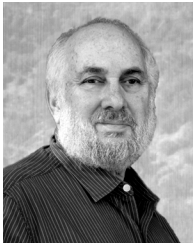
And then I got involved in a presidential campaign and went back to Washington for another stint. But I still had the dream. Later, while recovering from a back operation, I wrote a *M.A.S.H.* script, and I sent it to the *M.A.S.H.* people. They liked it and they encouraged me to come out [to Los Angeles]. By the time I saw my way clear to move out, there wasn't a job at *M.A.S.H.* But I got a job at a Norman Lear show a few months after I moved out, and I started writing comedy. Then I got onto a legal show. I would bounce back and forth from TV comedies to TV dramas. But when I look back, I always loved stories, I always loved movies, and I think somewhere along the way, I picked up a facility for how to tell a story. To this day, I'm absolutely fascinated by how good stories are put together. And so that was my transition.

**D'ITALIA:** Thank you all for your time. You're going to inspire a lot of people.

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**Fiction Editor's Note:** Charles Rosenberg had to miss our roundtable discussion at the last minute due to an urgent client issue. This is the struggle for so many writers who balance their work life and their writing life. I asked him to answer some questions about that balance and the relationship between his "work" and his writing.

**D'ITALIA:** How did your training as a lawyer influence your writing? Your writing process?



**CHARLES ROSENBERG:** My first novel is a legal thriller, so it's fair to say that I picked up a lot of the procedure and terminology for the first time in law school, and then added to it by being the legal analyst for E! TV's coverage of the two Simpson trials. But I don't think law school taught me much about writing that I didn't already know when I got there. I wrote a short story in college (not a very good one, by the way), and since I didn't write fiction again for several decades, it may be that the "if-then" logic of law school actually smothered the fictional urge.

**D'ITALIA:** Does the emergence of so many more police procedurals and law procedurals on television influence or inform your writing in any way? If so, how?

**ROSENBERG:** I lived at the heart of the law procedural beast for 25 years as the credited legal technical adviser to four TV shows—*Paper Chase*, *L.A. Law*, *The Practice* and *Boston Legal*. So over those years I got to read, comment on and discuss hundreds of one-hour TV dramas written by great writers, including Marshall Goldberg. It was like a super-course on dialogue and dramatic structure.

**D'ITALIA:** You pursued your law career first; did you always know you wanted to write? What made you pursue it first?

**ROSENBERG:** I still practice law full time. So for me the question might be asked the other way around: what made me want to write a novel in the midst of practicing law? I think the answer is that I've always wanted to write a novel. I started one in the 1970's that I didn't finish. When I started this one, my wife asked me, "Are you going to finish this one?" So I kinda had to, you know, or risk being teased about it for the rest of my life.

**D'ITALIA:** You still wear several hats, how do you do it? Do you find the need to take on other projects so that you continually find new inspiration/ideas?

**ROSENBERG:** I teach a lot as an adjunct law professor. I've always thought that to teach well you have to fill yourself back up with something or you become empty as a teacher. Full-time academics fill themselves back up by scholarly research and writing. I do it by practicing law. And so for me, new ideas come from the combination of practicing law, TV consulting and teaching. And it helps to teach a variety of topics—in my case, over the years, everything from entertainment law and copyright to criminal procedure and law and popular culture.