

You (Alleged) Monster:
A Brief Theory About Why Lawyers Write Novels

By the time this article is published, you will all be familiar with my breathtaking new novel, The Locklear Letters. You will own two copies of it -- one for the coffee table and one for the nightstand -- so you will never be too far away from it.¹ You will memorize passages and quote it frequently to friends and co-workers alike, and you will make a point of remarking on its Akeen insights and pithy comments on the human condition,@ because, like everyone else, you enjoy using the word Apithy.@²

You will love The Locklear Letters like it was your own child. (The smart child, not the other one).

Unless you are a lawyer.

Or, more precisely, unless you are a lawyer who believes the only fiction that should ever be written by or about lawyers should demonstrate how noble the profession is. In fact, that=s what most lawyers B slash B authors (hereinafter ASlashes@) write about -- how cunning and wise lawyers are, right? That=s what Scott Turow and John Grisham write about, right? Right?

Wrong.

In fact, by writing about cunning and wise lawyers, I believe most Slashes are actually critiquing our profession. They are writing to illuminate the differences between what our profession is and what it could (or should) be. And I applaud them for it.³ I=m just not as subtle about it as they are.

In the past several months, I=ve had the pleasure of being interviewed by a number of journalists and commentators about The Locklear Letters.⁴ Most focus on whatever literary merit (or lack thereof) the book achieves. A great many have dwelled on my relationship (or lack thereof) with TV star Heather Locklear, the subject of the main character=s obsessive (yet non-threatening) letter-writing.⁵ But what surprised me -- and perhaps I was naïve in not anticipating it -- was that more than a few interviews have focused on the fact that lawyers take a

¹ Hey, look: This article has footnotes!

² Words like Apithy@ can make you sound smarter than you really are, and I, for one, wholeheartedly endorse doing anything that makes you appear smarter than you really are. In fact, I recommend carrying a copy of Pilgrims Progress with you wherever you go.

³ Clap, clap, clap.

⁴ No sarcasm here. It truly has been a pleasure. And if any of those journalists or commentators happen to stumble upon this little article, I say AHello. How have you been?@

⁵ Yes, I have heard from her. No, we are not dating. Yes, I know what her e-mail address is. No, I can=t give it to you.

beating in the book. A humorous beating, but a beating nonetheless. There isn't a single lawyer in The Locklear Letters you'd want sitting next to you at a wedding or at the beach.

Here's what I have to say about that: lawyers take a beating in the book because we deserve to take a beating.⁶ And we deserve a much harsher beating than The Locklear Letters jokingly delivers.

By and large, the library of novels (and movies, for that matter) written by and about lawyers deals with a world that is unreal. Not in the sense that the events did not happen and, therefore, are Afiction,@ but in the sense that they probably could not happen and are, therefore, closer to Ascience fiction.@ Simply put, the legal thriller, which has become wildly popular in my lifetime, may be enormously entertaining, but it bears little, if any, resemblance to any experiences of any lawyers I have ever known. And any lawyers you have ever known, too, if you'll be honest about it.

Boiled down to their common factors, the legal thriller usually involves: (1) a young and attractive lawyer⁷, who (2) comes into possession of a startling piece of information,⁸ which (3) is desired by an older, nefarious, yet prominent public figure⁹, who (4) hires thugs to try to retrieve the information from the young and attractive lawyer, who swiftly (5) outsmarts the thugs,¹⁰ (6) embarrasses the older, nefarious, yet prominent public figure,¹¹ and (7) obtains Justice with a capital AJ.@

Thrilling? Yes.

Realistic? No.¹²

Think about it: how often have you been chased during your legal career? The only time anyone has ever chased me in my 15 years of practice was when I accidentally picked up the wrong briefcase after a deposition. The other attorney found me in the parking lot, and we exchanged briefcases. I can only hope that, in recounting this incident, the other attorney did not tell anyone that, by retrieving his briefcase, he had obtained Justice with a capital AJ.@ At best, he had obtained Luggage with a capital AL.@

Of course, saying the Areal@ world of lawyers is not as thrilling as a legal thriller is not

⁶ Please note that I switched to the first person Awe@ in this sentence. I am one of you, my brothers and sisters. (I am not, of course, referring to my actual brothers and sisters, who have found better things to do with their lives). Remember that before you write a letter to the editor insisting that I am a cynical, self-loathing monster. And remember to say Aalleged@ monster, like a good lawyer would be careful to do.

⁷ Think Julia Roberts or Tom Cruise.

⁸ A tape-recording! A photograph! A long-lost witness! A long-lost witness with a photograph of a tape-recording!

⁹ The President! The DA! Gene Hackman!

¹⁰ AI switched the keys!@ AThey=ll never recognize me if I put a baseball cap on!@

¹¹ AYou can't do this to me -- I=m Gene Hackman!@

¹² By this, I do not intend to invite a new generation of Slashes to churn out Arealistic@ legal fiction. The world does not need to read Bob Deciphers the New Tax Code, Late Night in the Library, Carrying a Partner=s Briefcase Through the Airport, or Affirmed Without Comment! Not unless I've written them, of course.

profound, and I would be embarrassed if I pretended that it were. But that=s not my point. My point is that the authors of these thrillers know that they=re unreal. That=s the reason they wrote them. Slashes know the worlds they create are vastly different from the real world of lawyers, and, in so doing, they demonstrate how un-thrilling an non-heroic our profession really is. And readers, particularly other lawyers, know this.

No one thinks Julia Roberts fleeing a gunman while cradling the dog who witnessed a murder is realistic. No one.¹³

Everyone knows the practice of law is often tedious and drab. Fine, I accept that, and you probably do, too. But what is worse, and what is unacceptable, is that the profession can be shameful, and painfully so. It can be so shameful that, at a dinner party, you would not want to admit you were a lawyer for fear of the unwanted social repercussions.¹⁴ Because whenever we introduce ourselves as lawyers to strangers, we know there is a fair chance that we=re inviting that stranger to tell us his or her stories about the lawyers he or she has encountered. And very few of those stories begin, AI just adore lawyers. . .@ Many of the stories involve cursing and unpleasant hand gestures.

In a casual, admittedly statistically unsound survey I conducted of friends and acquaintances who practice (or practiced) law, there appears to be a belief that 30 to 40% of practicing lawyers are incompetent, unethical or dishonest.¹⁵

Thirty to 40%!¹⁶

And that=s not from outsiders. That=s from people within our profession. God only knows what percentages the general public might assign. 50%? 60%? More? Heck, I=m afraid to ask.

Every year or two a new study pops up in the media about the persons the public least trusts. You=ve probably seen these studies: they=re often accompanied by pie charts and little drawings of round-faced men with their fingers crossed behind their backs. And in these studies, it always seems that lawyers and used car salesmen rank first and second, in one order or the other, among our country=s least-trusted persons.¹⁷

Ouch!

At the same time, studies frequently appear ranking lawyers and dentists first and second

¹³ Except my Aunt Ruth, but I=m comfortable saying that there are extenuating circumstances at play.

¹⁴ At dinner parties, when asked what I do, I frequently say I=m a Asupermodel.@ I rarely mention that I have yet to find any work in that field.

¹⁵ Of course, I realize there is, or can be, a tremendous amount of overlap between these three descriptions. But it is possible to have one characteristic, but not the other two. Besides, I said it was a casual, statistically unsound survey, didn=t I? In fact, didn=t I use those exact words?

¹⁶ I trust the remaining 60 to 70% of you have already realized that I am not criticizing you and that you should now go out and buy another copy of The Locklear Letters in appreciation. For which I thank you in advance. As does my publisher.

¹⁷ No jokes about used car salesmen here. No used car salesman has ever bumped me with his chest and poked a finger in my face. A lawyer has.

(or second and first) among persons most dissatisfied with their careers.¹⁸ Those studies are usually accompanied by a cartoon of a round-faced man with a single tear on his cheek and a box of facial tissues in one hand.

Ouch again!

How do we end up at the top of both of those lists?¹⁹

I=ll tell you how: the two lists are related. People don=t trust us, and we hate ourselves for that. We collectively hate ourselves for that perception even if we specifically aren=t the ones who created the perception. We hate ourselves for the perception created by an untold percentage of incompetent, unethical and dishonest lawyers. We hate ourselves because whenever we meet strangers, they frequently assume that we are incompetent, unethical and dishonest.

We hate ourselves, we hate what our profession has become, so, through fiction, Slashes like Messrs. Turow and Grisham write about what our profession should be like. What we wish we were like. Handsome, adventurous, creative, intelligent and (a drumroll, please) respected.

In fiction, lawyers can obtain the Justice with a capital AJ@ that our system does not always seem to provide. In fiction, the right side always wins.²⁰

At this moment, I know no fewer than 20 lawyers who are writing novels, or claim to be doing so. I know no doctors, engineers, computer salesmen or police officers writing novels, but I know 20 lawyers doing just that. And my conversations with them about their projects are strikingly similar in tone and content.

Here=s a typical conversation:

Lawyer: Mike, I really loved The Locklear Letters, especially the keen insights and pithy comments on the human condition.

Me: Thanks. And nice use of the word Apithy.@

Lawyer: Have I told you about the novel I=m writing?

Me: Yes, you=ve been telling me about it for the past ten years.

Lawyer: Well, let me tell you about it again. In the novel, blah blah blah blah blah blah blah blah blah. And, in the end, the main character triumphs.

Me: Sounds great. I especially liked all the chasing.

Lawyer: Me, too.

¹⁸ No jokes about dentists either. I=m not aware of any dentist who has ever offered money to a witness for favorable trial testimony. I know a lawyer who did.

¹⁹ Or is it the bottom of both of those lists?

²⁰ Except To Kill a Mockingbird, if I recall the ending correctly. Maybe I should go back and reread it.

Me: The main character seems to be an idealized version of you, doesn't it?

Lawyer: I guess so.

Me: And the system you described seems to be an idealized version of our legal system, doesn't it?

Lawyer: I guess so.

Me: Did you ever notice that you never smile when you tell me about your work, but you always smile when you tell me about the book you're writing, the one with the idealized version of yourself and our legal system?

Lawyer: What a pithy comment!

At that point, we'll usually go get something to eat.

So, how do we regain our self-esteem, our love for our jobs and our profession? The answer has always been right in front of us: by regaining the public trust.

How do we regain the public trust? Well, if you don't mind me being serious for a moment, we can take a lesson from the medical profession, whose Hippocratic oath begins with these sobering yet beautiful words: "First, do no harm." Shouldn't lawyers take the same oath? Shouldn't we vow, both individually and as a profession, to do no harm?

How do we avoid doing harm? Through a more stringent analysis of ourselves and our colleagues. We have to do it by weeding out the incompetent, the unethical and the dishonest. (Maybe they can get jobs as used car salesmen or dentists).

Here is a modest, and admittedly simplistic, proposal:²¹

C Increased funding for the handling of bar complaints. Someone once wrote, "Justice delayed is justice denied."²² Well, through no fault of their own, it takes the state bar an awfully long time to resolve a bar complaint. They're understaffed and overworked (and probably underpaid, too). Let's give the bar the resources to investigate (alleged) transgressions as swiftly and effectively as possible. Double the bar dues, if we need to. Heck, triple it. But let's make sure to provide the funding necessary to ensure that problems are addressed promptly.

C Mandatory reporting of ethics violations. As it now stands, there seems to be an unwritten rule that only the most egregious ethics violations are ever reported. The reason: the process can be long and time-consuming, and there is a fear that the accused attorney will retaliate by filing his own complaint against the accuser. What would happen if we made reporting of bar complaints mandatory, not unlike some universities have done in implementing

²¹ Before anyone writes in to say, "If he's so darned interested in this, why hasn't Mr. Kun ever volunteered to sit on any State Bar committees," my answer is simple: do they serve cake at those meetings? Because that's about the only way you could tempt me to participate in any committee. And it better be chocolate cake!

²² A free copy of my next book to the first person who can tell me the name of the author of that statement.

honor systems? Well, the increased funding²³ would take care of the increased volume of complaints and, ultimately, the complaints should decrease because the conduct should improve. Sounds good to me.²⁴

C Certification of minimum qualifications. Doctors do it. Why shouldn't we? For example, how about requiring that a lawyer certify that he or she has at least observed an entire trial before allowing him or her to try a case? Why should the courts, the parties and the general public suffer because a lawyer hasn't even done the bare minimum to prepare to perform a particular service? The same for any specialty area. Let's make sure we establish that we know what we're doing before we do it. No one but at least of all the courts, our clients and the general public should suffer because of our inexperience and the mistakes that follow from that inexperience.

C An easily accessible database for inspecting an attorney's credentials and sanctions. Let's not hide critical information from each other, let alone the general public. People should be able to access information about each of us quickly and easily. And not just our names and the names of the schools we attended. Let's provide them with detailed information about our experiences and skills. And let's tell the public where that database is, too.

C Retesting. I've saved the best (or worst) for last. Listen, I know few lawyers enjoyed taking the bar exam. But just because you took an exam 20 years ago doesn't mean you still know what you're doing today, does it? Of course not. If we really want to improve our profession and its perception, we should require all attorneys to be retested every five years or so. I can already hear attorneys shouting obscenities at me in response to this suggestion.²⁵ I'd be more than happy to be the first one to sign up for retesting. Really.

The only other way that I can think of for us to improve the perception of our profession, and, thereby, become more satisfied in our jobs, is for all of us to write novels. Because writing a novel about lawyers reminds us about what we could and should be: honest, decent, ethical. I have no doubt that Messrs. Turow and Grisham and the other Slashes are happier in their work than me and you and you and you. And I would bet they have become better lawyers because they've written about what lawyers should be like.²⁶

If each and every one of us write a legal thriller, maybe, just maybe, we can all start behaving like the heroes of those novels.

Until that happens, I'm going to keep poking fun at our profession.²⁷

We deserve it.²⁸

²³ See the bullet point immediately above. Weren't you paying attention?

²⁴ Of course it sounds good to me: I'm the one who just proposed it. But I would have said the same thing if you'd proposed it. I swear.

²⁵ Remember, it's Alledged @ @\$% @* monster!

²⁶ Hmm, I wonder if I should've interviewed them for this article.

²⁷ Just like I did in The Locklear Letters. You really should pick up another copy of it, don't you think? Your copy looks awfully worn.

²⁸ See, I said Awe. @