

# THE LAWYERS WEEKLY

**Expanding the profession through fiction** *Lawyers in literature and TV are credited with enticing young people into the field*

By Michael Benedict

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When Toronto criminal lawyer Robert Rotenberg sits down to write one of his legal thrillers, he has a model in mind — and it isn't Perry Mason.

Rotenberg, whose three whodunits have received positive reviews, favours a more reality-based approach to his characters and situations.

"I'm interested in the inner world of lawyers," he says. "These people lead real lives with family, friends and flaws."

As for Mason, he adds: "I hated those stories. It was the exact same thing every time with Mason getting the guilty party to confess on the witness stand while the DA looked on helplessly."

Over the centuries, lawyers have figured prominently in literature — and in the public consciousness. Ever since Chaucer's time, fictional legal characters have influenced people's attitudes toward the law and the legal profession, but never more than today with the proliferation of world-of-law movies and TV shows that range from the realistic to the fanciful. Heroic figures such as Atticus Finch of *To Kill a Mockingbird* continue to draw people into the profession, while some television shows such as *CSI* distort public perceptions of how the criminal legal system actually works.

Rotenberg credits Scott Turow, also a lawyer who writes international best-sellers, with changing the way people look at courtroom dramas. "Turow produces intelligent, sophisticated writing where things are never what they seem to be. I like real-life stories where the bad guy sometimes gets away and other times where we simply don't know."

Rotenberg's lead characters in *The Guilty Plea* are clearly nuanced. Criminal defence lawyer Ted DiPaulo is a widower struggling to move on with his personal life who, when alone, dances to Kurt Cobain while playing an air guitar. Meanwhile, the Crown attorney prosecuting his client is troubled by doubts about both the guilt of the accused and the state of her marriage, re-igniting an affair with the case's lead police detective.

The effect of fictional legal characters on the profession and society in general has also recently become fertile ground for academics. The Cardozo School of Law in New York publishes the scholarly *Law and Literature* three times a year. Another tri-annual publication is *Law, Culture and the Humanities*, the voice of an academic association with the same name that promotes a "wide range of scholarship in legal history, legal theory and jurisprudence, law and cultural studies, law and literature, and legal hermeneutics." And the University of Texas boasts a 5,000-volume library devoted to its Law and Lawyers in Popular Culture program.

Meanwhile, Osgoode Hall law professor Kate Sutherland teaches an upper-year seminar on law and literature to demonstrate how fiction provides a "broader way to look at the profession." Says



Fictional lawyers have appeared in literature for more than 150 years. They also appear in many movies and television shows, including 'The Good Wife' which features Julianna Margulies as lawyer Alicia Florrick. Above, Florrick, left, represents Laura Hellinger (played by Amanda Peet), a U.S. Army captain, in a recent episode. [Photo courtesy of CBS/Global]

Sutherland: "Fiction can be a wonderful tool to discuss some of the ethical issues lawyers face in their practice."

Among class readings are *Bleak House* by Dickens, and Kafka's *The Trial*, but Sutherland also uses short stories by writers such as Louis Auchincloss that unveil transgressions by establishment lawyers or that illustrate the evolution of the relationship between law and society. One of her favourite short stories is the 100-year-old *Jury of Her Peers* by Pulitzer Prize-winner Susan Glaspell that is based on the trial of a woman convicted by an all-male jury of killing her husband after experiencing years of abuse.

As Sutherland's course illustrates, fictional portrayals of lawyers have been mostly negative. Although she understands why this is so, Sutherland worries about the impact of this mindset. "The legal profession is one of power and people often use power for ill. But to be unremittably negative is unfair. I prefer characters that are complicated, because most people are."

Among the positive fictional role models, Finch, the loving widower-father who defends a black man falsely accused of rape in a small southern U.S. town, is in a category of his own. Indeed, the *American Bar Association Journal* recently ran a cover story about "The 25 Greatest Fictional Lawyers (Who are not Atticus Finch)."

"I'm surprised how many law students tell me they wanted to become a lawyer because they saw *To Kill a Mockingbird*," Sutherland says.

And while Sutherland acknowledges that Julia Roberts's Oscar-winning performance as the real-life Erin Brockovich, who spearheaded a \$333-million (U.S.) successful class action suit, has been a positive role model for women in law, she worries about the influence of the likes of TV's Ally McBeal who is "more concerned about her wardrobe and personal life than her work."

In contrast, the Alicia Florrick character of TV's *The Good Wife* presents a more true-to-life picture of both female lawyers and the profession. "She demonstrates the reality that many lawyers deal with on a daily basis, the ethical dilemmas, the long hours, the commitment to clients and the impact on families," says Toronto family law practitioner Kathryn Smithen.

Lawyers typically enjoy reading about and watching fictional legal characters, but they often bristle at how their profession is presented. "TV crime programs do not generally view the defence favourably," says Toronto criminal lawyer Brian Greenspan. "American programs, especially, portray positively a certain level of unethical conduct for the prosecution, if it leads to a conviction.

"One of the worst examples is the movie *And Justice for All* where Al Pacino plays a defence attorney who betrays solicitor-client privilege in order to convict his guilty client. He forsakes every principle of the profession, and gets cheers from the movie courtroom audience. What's bothersome is that the movie is meant to evoke approval for doing the wrong thing."

Yet, lawyers on balance say the popularity of legal fiction, whether in books or on screens, leads to a better understanding of the profession.

"There is a greater sense of lawyers as one player in a very flawed system," says former judge and former federal deputy minister of justice George Thomson. "The complexity of practice is more apparent, and there is likely a better understanding, but not necessarily approval, of the role of defence counsel."

But that complexity clashes with the public's desire for simple black and white solutions offered by paragons such as Finch. However, thanks to the popular appeal of one TV crime series, a new non-human legal hero is emerging. "As a result of the success of *CSI* and its various spinoffs, the new courtroom hero is forensic science," says Toronto criminal lawyer Steven Skurka. "The hapless defence lawyer is no match for DNA."

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