

**What Happens Next – Sunday June 20, 2021**  
**Writing Fiction, Raising a Thief, Internet Stocks**  
**Scott Turow QA**

Larry Bernstein:

Let's focus in on this conflict of interest.

So, the pharmaceutical industry is not alone in its self-regulatory procedures. I was thinking of... the finance industry, which does it and others, I was thinking of more recently, like the rating agencies. The rating agencies are these private companies evaluating other firms' creditworthiness. Yeah, they get paid by those same companies to do that analysis, creating the conflict, yet they also want to maintain their reputation as someone who can do the job.

The government doesn't do any credit analysis, but regulates the rating agencies who do it. That seems to work pretty well, except when it doesn't. I mean, there's subprime debacle.

Scott Turow:

In 2008, yeah.

Larry Bernstein:

Yeah. It was a complete catastrophe and it highlighted that problem. I can think of another one, which my wife was involved in which is equity research. Our first speaker is an equity research analyst and my wife noticed that, in order to get the IPO business, she had to recommend a stock as an equity analyst. And she lost her ability to give her free opinion because of that conflict of interest.

So, it exists in our society. Yep. It's not clear to me that the government would necessarily be a better job. How do you think about the fact that we have this conflict all the time and we deal with it in these sorts of ways?

Scott Turow:

I don't know that the rating agencies, because they're independent entities, are really good example. It would be fully comparable if a bond issuer were also giving itself a seal of approval as to its credit worthiness. And then, they might say, "Well, we've asked our accountants about it. They say we look good." And then, with the bond issuer having said, "This is all very wholesome. We're in great shape, financially. And government, you can come in for five minutes and see if we did something wrong in our analysis." You know exactly what the hazards would be.

The bond issuer needs the money, they want the money. And so, the conflict is great. The pharmaceutical companies have immense amount of money invested in the research for all of these medications. And indeed, as I said before, it's one of the things that made me more sympathetic to them than I expected to become in the process of doing this research. But the conflict is obvious when they say, "Go out and test your own medication." And we have a little

bit of a buffer now in the way that the drug companies do it. The whole testing operation and regime proved to be so expensive and probably antagonistic to the rest of the corporate function, that it's typical now for a pharma company to hire an outside entity called a clinical research organization. And they do the actual testing usually with subjects around the world. And people like John le Carré have made novels about the potential exploitation of third world populations by these ... by the CROs. But that's a complete aside.

The problem is that the CRO is really not totally independent. They have to maintain their reputation with the FDA. Otherwise the FDA presumably will stop respecting their results. But there's a lot of pressure on the companies that hire them. And in some ways the existence of the CROs allow people within the company to be much more unhindered advocates for getting the drug on the market, because they've got the CRO there as a kind of buffer.

I admit it would be a strange world where the government did something more efficiently than industry, but it just seems that we've got layer on layer in the current way of doing things. If I were the pharma manufacturers, I'd be ecstatic about this because presumably the liability problems would go away with it. If the government did all the testing, then it's like, "Look to them if there's something wrong with this drug. All we did was make it and give it to them." So there are advantages for industry in this kind of new regime as well.

Larry Bernstein:

Let me try to take a different direction for a second. I want to go to the creative process. So my daughter, Hannah, and I have been reading your novel and finished it this week. And my daughter said to me, "I don't understand how Scott Turow got me so engrossed in a fictional insider trading case when normally I would be completely indifferent to it in real life." Scott, how do you engross us in the detail of these sort of nuanced conflicts?

Scott Turow:

Well, obviously that's the goal. Some of it has to do with transmitting the necessary information in bite size digestible bits. But I hope what works well in my books and what takes people through them is some of the values of the old-fashioned realist novel, in the sense of involvement with the characters and a sense that the characters are complete and human and like you and ergo you care about their problems, which in this case happens to be the trial of an insider trading case.

Larry Bernstein:

My favorite playwright is Alan Ayckbourn. And he has a book called *Writing and Directing Plays*. And in the book, he says that what he tries to do before he starts to write the play is he imagines an industrial spring. And in act one, scene one of a play, he pushes as hard as he can on an industrial spring in that first scene and then he releases the spring in the second scene, and then he feels like the play writes itself. And as I read your book, *The Last Trial*, it's exactly the same sort of thing. You kind of pushed against the spring and then boom. The dialogue ... you created a situation where the dialogue writes itself. You can just ... I imagine it's very easy

for you to say, oh, here's the scene, here's the witness, here's the trial lawyer. I can just see it exploding. In the preparation of your novel, do you set the industrial spring?

Scott Turow:

Well first of all, I think Ayckbourn's description is completely accurate. And if you're talking about the quote unquote formula behind most popular narrative, whether we're talking about TV or movies or literature in its various forms, novels and plays, it's all the same way. It's conflict first, that what you're calling the spring. Faulkner said it was about the human heart in conflict with itself, which to me means the conflict has always got to involve values that are central to the characters. But you put the characters in a state of moral, if not physical, peril and then let it, in Ayckbourn's terminology, unwind and spring it open.

In terms of being somebody who practiced law for a long time and still does a little bit, I always caution my friends who are ... my fellow trial lawyers who are nice about the courtroom scenes. And I do say it's a lot easier to write cross examination where you not only make up the questions, but also the answers. And there's a certain way of letting it unfold by having the witness blunder in a way that fits into the overarching plan of the story. But generally, that's what we're all doing, which is getting things set up so that they unfold, they spring open, and the people who come along with that internal momentum that's created by first pushing on the spring and then releasing it, are God-willing the audience, the readers, the theater goer, if you were, they're all along for the ride.

Larry Bernstein:

You know, we did a book club years ago, Scott, where we invited Judge Richard Posner to chat with us about his book Law and Literature. And what Posner was trying to tell us was that we could learn a great deal about the law through a fictional setting. And one of the aspects about your series of books on Kindle County is it really highlights the battle between the prosecutor and the defense. And when you watch TV programs like Law and Order, there seems to be a greater element of seeking the truth and fact finding as part of the show. But in your books, it's more about this battle with almost an indifference to the truth. How do you think about why you focus so much more on the battle and deemphasizing truth seeking, which is supposedly at the core of how the legal system is meant operate?

Scott Turow:

Well, my answer would be because for the actual courtroom participants, if we're talking about the lawyers ... and in a lawsuit, a judge is supposed to be almost, a neutral umpire. If that's what we're talking about, from an advocate's point of view, that's exactly what's happening, which is it's a contest. And the theory of our adversary system is that the truth will emerge when each side fiercely contests the facts and presents them in a way that is most ... that sheds the best light on the side that the lawyer represents. I've never, by the way, been completely sold on this as a truth finding model.

And very often ... for example as a prosecutor, I learned once I left the US Attorney's Office, that I was a little less persuasive than I thought I was when I was a prosecutor. And it turns out

that the inherent prejudice that a jury brings into the courtroom where they think, "Oh, this guy works for the government. He's got nothing to gain. And I don't like criminals anyway," makes it a less than even fight between prosecution and defense. And I, as a prosecutor, never prosecuted anybody I didn't believe in every fiber to be guilty. And that's an important limitation when you're talking about the prosecution of criminal cases, which is frankly, a luxury that prosecutors in the federal courts who pick and choose their cases have over many of their state court colleagues who are very often presented with a case that's going forward because the police have filed a complaint and the case is going to be tried, period.

But on the level of the trenches, it's simply about putting your best foot forward. And the one limitation that exists of course, is in the system of legal ethics, which say that you can't lie to the court, you can't present evidence that you know to be false, you can't coach your witnesses to say things that you know to be untrue just because it's convenient for your side. And even that gets observed in the breach. I remember one of my favorite federal judges who's now a blessed memory, but Prentice Marshall was just a wonderful trial lawyer, became a federal district court judge. And I remember Judge Marshall giving us a sort of continuing legal education class. And he was talking about watching Phil Corboy, now also a blessed memory, prepare witnesses. And the way Corboy would yell and scream at his witnesses to get them to come out with the right answer. And I'm thinking, holy smokes, Judge, I'm not supposed to do that. I'm not supposed to yell and scream at the witness down in my office in the US Attorney's Office until he says what I want him to say. But as far as Marshall was concerned, that was part of the adversary system.

Well, let me give you another example of a lack of truth seeking and how the battle is more important. And I'll go back to your novel *Presumed Innocent*. In *Presumed Innocent*, you had the following scene. the prosecution is trying to make the decision of whether or not they should do a search of Rusty's house. And they say, "Oh, well, if we do the search, we're probably not going to find anything. And if we don't find anything that will hurt us in the trial, in the battle." It turned out to be a critical piece of the plot. But shouldn't the basis for the prosecution to need to do the search, whether it hurts them in the trial or not in the benefit of public policy to be truth seeking?

Scott Turow:

Yeah, the answer is sure. Yeah, they should do the search. But here's the other side of it, which is if I believe that Rusty is guilty, which those prosecutors certainly did. I know that Rusty's a canny veteran of the criminal justice system and he's not going to have hidden the murder weapon at home, for example, then all I am doing is letting him take advantage of his skill at subterfuge and subverting the system by doing the search. And so ergo, sitting in my prosecutor's office, I say, I'm really assisting the truth finding system by not doing the search because how stupid could he be that he'd still have the murder weapon at home? And I offer that response because, as you know, the murder weapon was still at home. So sometimes you don't know everything when you're sitting in the prosecutor's seat.

Larry Bernstein:

We had Julie Salamon, who was the former Wall Street Journal and New York Times film critic. She wrote a book about the making of Bonfire of the Vanities. And in the book, she interviews Tom Wolfe to discuss adapting a novel for film and Wolfe says something like, "Look, they're completely different art forms. It's not even clear to me that I will even enjoy the Bonfire of the Vanities in the film." But I recognize the challenge and how hard it is to turn what is a multi-hundred-page book into dialogue and visual image to express a similar sort of art form. A number of your books have been turned into films. How do you think about adapting novels to film and the challenges?

Scott Turow:

Well, I do agree with Tom, also now a blessed memory. It's very, very hard and it's hard for a number of reasons. To engage in a real heavyweight name-dropping, George Lucas once said to me, talking about this very issue, that movies as they're currently structured, which is to say running an hour and a half to two hours. So we're not talking about streaming series, but what George was talking about was the movie as we used to know it, that theatrical release, said, it's basically a short story medium. And you're better off adapting a short story than a novel, where the art of adapting a novel for a screenplay is figuring out what to leave out, and if you are leaving it out, how to make sure there's still integrity in the story. And when I've been asked how to do this, as I have frequently, I sometimes scratch my head and it's like, well, I don't know, take your Cartier off your wrist and open the thing up and figure out how many parts you can take out of it. And it'll still tell time, everything, it's like that watch where all the gears fit inside one another and it is hard to do it well. And it's one reason that although I have done some screenwriting in my late age, I have never been tempted to adapt one of my own books, because as I said, it's like performing surgery on yourself.

I didn't put it in the novel because I thought particular scene or character was dispensable. I put it there because I thought it was part of that coherent imagined world that I was trying to create. And so the leaving out is the first skill of the really good adaptor for the screen.

Larry Bernstein:

We had Aljean Harmetz speak about the movie Casablanca, last week. And her focus on why she thought it was so successful related to ambiguity, that the screenwriters didn't have to answer every question and left a lot of things unknown. To what extent do you use ambiguity in your art form? Not answering every question, but letting the reader be confused, not knowing what was truth as part of the experience?

Scott Turow:

Well, not everybody will agree with this, but I think the novel and narrative in general is always about ambiguity. If you could state the problem and the answer simply, then you would not need to read 350 pages about it. But it's that interaction of complex moral problems and human beings that produce something that's both involving, and one of the reasons it's involving is because in many ways it's unclear. Not only did Rusty do it, but if he knows who the

murderer is, should he turn that person in? And if the lifelong prosecutor says I'm not going to turn the true murderer in, what the hell does that say about the justice system to which he's supposedly devoted fealty for his entire adult life, that's obviously ambiguous and that's how I like it.

When Sydney Pollack said to me, when he directed the movie *Presumed Innocent*, what's the one thing you want me to leave in? I looked at him. I said, the shades of gray. But that to me is really the essence of a really worthy narrative art, is the ambiguity.