

# N I N K

February 2012  
Vol. 23, No. 02

## Fiction and Bioterrorism: Sources for Authors

BY KAREN KENDALL

Anyone who hasn't been living under a rock is aware of the potential for an act of bioterrorism in the U.S. The recently released movie *Contagion's* ultimate premise is (Spoiler Alert!) that a lethal disease propagates across human populations by chance; the source is an infected bat in the wilderness of China. The disease spreads in much the same way that avian flu does.

But many authors of commercial fiction have taken that premise a step further, attributing an epidemic to a deliberate act (Robin Cook, *Outbreak*) or specifically, an act of terrorism. Examples of the latter include Tom Clancy's classic *Executive Orders*, Michael Palmer's *A Heartbeat Away*, Daniel Kalla's *Pandemic and Resistance*, Marc Cameron's *National Security*, Michael Walsh's *Shock Warning*, Richard Reinking's *Pox*—and there are countless others.

While fictional, these stories are based on the very real and increasing threat of bioterrorism in this country, and several of the authors draw upon medical and/or military backgrounds.

It's widely believed that more than thirty countries have developed biological weapons of mass destruction, spanning at least a dozen bacterial and viral agents and toxins. These can spawn diseases such as small pox, anthrax, viral fevers, and plague, among others. A 2001 article in the journal *Military Medicine* notes that 100kg of anthrax spores released in the vicinity of Washington, D.C. could result in anywhere from 130,000 to 3,000,000 deaths from inhalation alone.

While this information, sadly, is no longer either new or surprising, it's the fear that an epidemic such as this will go unrecognized for weeks that is truly terrifying. While the scenario in *Contagion* has characters dying within hours or days of being infected, it's all too likely that the initial symptoms of a (covert) anthrax attack would be far less dramatic. They could go unnoticed, brushed off as the beginnings of a common flu, since the early symptoms are similar.

If smallpox were released in a major metropolitan area, chances are that the first cases would be misdiagnosed as chicken pox, and then only after an incubation period of two weeks—during which millions more people would be exposed to and contract the disease, which is highly contagious.

Continued on page 3 ▶

### INSIDE this ISSUE

*New! Rules. New! Tools.: The Recap*

<b>Authors and Agents Face A Shifting Landscape</b> .....	4
<b>Transmedia: Storytelling Isn't Limited to Books</b> .....	6
<b>Who Controls eBook Rights?</b> .....	7
<b>In Memoriam: Garda Parker</b> .....	10
<b>The Mad Scribbler: Fiction v. Life</b> .....	11
<b>On Fandom: I Love You ... I Hate Your Hair</b> .....	13
<b>Writing Is Taxing: And The Two Shall Be As One ... Sort Of</b> .....	16
<b>Not Your Usual Writing Advice: Revisiting Feng Shui</b> .....	18

## Novelists, Inc.

FOUNDED IN 1989

### Founders

Rebecca Brandewyne  
Janice Young Brooks  
Jasmine Cresswell

Maggie Osborne  
Marianne Shock

### Advisory Council

Janice Young Brooks  
Jasmine Cresswell  
Maggie Osborne  
Marianne Shock  
Linda Barlow  
Georgia Bockoven

Evan Maxwell  
Victoria Thompson  
Steven Womack  
Barbara Keiler  
Pat Rice  
Jean Brashear

Vicki Lewis Thompson  
Brenda Hiatt Barber  
Pat McLaughlin  
Kasey Michaels  
Kay Hooper  
Donna Fletcher

If you have questions regarding Novelists, Inc., please contact a member of the Board of Directors.

### 2012 Board of Directors

#### President:

Lou Aronica  
laronica@fictionstudio.com

#### Treasurer:

Trish Jensen  
trish@trishjensen.com

#### President-Elect:

Laura Parker Castoro  
Laurawrite@aol.com

#### Newsletter Editor:

Marianna Jameson  
Marianna@MariannaJameson.com

#### Secretary:

Denise Agnew  
danovelist@cox.net

#### Advisory Council Rep:

Pat McLinn  
Patricia@PatriciaMcLinn.com

### 2012 Committees

#### 2012 Conference

Co-Chairs: Meredith Efken &  
Kelly McClymer  
Program: Karen Tintori Katz

#### Anthology

Editor: Lou Aronica

#### Authors Coalition Rep

Elaine Isaak

#### Elections

Chair: Sylvie Kurtz

#### Managing Electronic Rights

Chair: Open; contact Kay Hooper

#### Marketing

Chair: Elaine Isaak

#### Member Retention

Chair: Barbara Bretton

#### Membership

Chair: James LePore

#### Nink Online Index

Denise Lynn

#### Nominating

Chair: Kay Hooper

#### Royalty Committee

Chair: Allison Brennan

#### Volunteer Jobs List

#### Coordinator

Dianne Despain

#### Website

Chair: Pati Nagle

#### Blog Coordinator

Patricia Rosemoor

Complete committee member listings  
are available on the website:

<http://www.ninc.com>

#### Central Coordinator:

Tonya Wilkerson, Varney and Assoc.  
Novelists, Inc.  
P.O. Box 2037  
Manhattan KS 66505  
Fax: 785-537-1877  
Ninc@varney.com

#### Website:

<http://www.Ninc.com>

Address changes may be made on the  
website.

For members without Internet access,  
send changes to the Central Coordinator.

Copyright ©2012 by Novelists, Inc.  
All rights reserved. No part of this  
newsletter may be used or reproduced  
in any manner without written  
permission.

## Introducing...

The following authors have applied for membership in NINC and are now presented by the Membership Committee to the members. If no legitimate objections are lodged with the Membership Committee within 15 days of this Nink issue, these authors shall be accepted as members of NINC. For further information or to recommend eligible writers, contact:

Membership Chair: James LePore  
leporej5@optonline.net

### New Applicants:

Patricia Kay (Trisha Alexander), Houston, TX  
Theresa Ragan (T.R. Ragan), Granite Bay, CA  
Trish Milburn (Tricia Mills), Hermitage, TN  
Debra Holland, Fullerton, CA  
Sue Phillips (Susan Phillips, Susan Leslie Liepitz, Gillian Doyle),  
Long Beach, CA  
Karen Smith (Karen Lee, Ann Jenkins Lee), Broadlands, VA  
Jodie Pearson (Lydia Dare, Ava Stone), Cary, NC  
Mary Campisi, Avon Lake, OH  
Julie Cummings (Eliza Gayle), Charlotte, NC

### New Members:

Judi Fennell, Worcester, PA  
Deborah Cooke (Claire Delacroix, Claire Cross), Stratford,  
Ontario, Canada  
Marsha Canham, Sharon, Ontario, Canada  
Esri Albritten (Esri Rose), Boulder, CO  
Beth Orsoff, Los Angeles, CA  
Day Smith (Day Leclair), Buxton, NC  
Wendy Marcus (Wendy S. Marcus), Wappinger Falls, NY

### NINC has room to grow...

Recommend membership to your colleagues.  
Prospective members may apply online at  
<http://www.ninc.com>. Refer members at ninc.com.  
Go to Members Only, "Member Services" and click  
"Refer a New Member to NINC." Take NINC  
brochures to conferences. Email Pari Taichert with your  
mailing address and requested number of booklets.  
ptaichert@comcast.net.

### NINC Statement of Principle

Novelists, Inc., in acknowledgment of the crucial creative contributions novelists make to society, asserts the right of novelists to be treated with dignity and in good faith; to be recognized as the sole owners of their literary creations; to be fairly compensated for their creations when other entities are profiting from those creations; and to be accorded the respect and support of the society they serve.

# Fiction and Bioterrorism

Continued from page 1 ▶

Professionals in the field also note that a hoax that induces mass panic/hysteria could be as bad as, or worse, than a real outbreak.

But the scariest, most true-to-life scenario may not be the release of a biological agent or weapon itself, but an ineffective level of response and preparedness in dealing with it.

Experts have noted a specific need for what's known as the "four C's": command, control, communication, and coordination. These "four C's" must not only be planned, but rehearsed repeatedly on every level from the local to the regional to the national, or it's all too likely that our handling of a bioterrorism strike would make the social and logistical chaos that happened in the wake of Hurricane Katrina look like brilliant maneuvering.

Fortunately, in the decade since the attacks of September 11, 2001, tremendous effort has been put into developing our national emergency response to health threats like bioterrorism. But whether the plans are as effective in operation as they are on paper remains to be seen, and random tests of the system, specifically in terms of command, control, and communication, are not always encouraging. (i.e., Can the local family health practitioner tell a small pox lesion from a chicken pox lesion? Who is in authority at smaller facilities? Is first-responder equipment compatible with other equipment? What happens in the event of an overload of cell phone communications systems?)

The writer of the bioterrorism thriller can turn to a number of resources for information on this topic, some of which are provided below. Please note: This list is by no means complete and is only meant to serve as a "jumping off" point.

## Non-Fiction Books:

*Encyclopedia of Bioterrorism*. Rebecca Katz. John Wiley & Sons, June 2011.

*Bioterrorism: Psychological and Public Health Interventions*. Robert J. Ursano (Editor). Cambridge University Press, April 2004.

*Biosecurity and Bioterrorism: Containing and Preventing Biological Threats*. Jeffrey Ryan. Elsevier Science, March 2008.

## Online Sources:

Armed Forces Health Surveillance Center: <http://www.afhsc.mil/home>

Association for Professionals in Infection Control and Epidemiology: [www.apic.org](http://www.apic.org)

Centers For Disease Control: [www.cdc.gov](http://www.cdc.gov)

Defense Medical Surveillance System: <http://afhsc.mil/dmss>

Department of Health and Human Services: [www.hhs.gov](http://www.hhs.gov)

Department of Homeland Security: <http://www.dhs.gov>

(For a good summary of DHS bioterrorism response preparedness, see:

<http://www.dhs.gov/ynews/testimony/20111018-garza-protecting-against-biological-threats.shtm> )

Environmental Protection Agency: (water and bioterrorism)

<http://water.epa.gov/infrastructure/watersecurity/lawsregs/bioterrorismact.cfm>

Environmental Protection Agency: (portable field decontamination unit)

[http://cfpub.epa.gov/ncer\\_abstracts/index.cfm/fuseaction/display.abstractDetail/abstract/6358/report/F](http://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/display.abstractDetail/abstract/6358/report/F)

Federal Bureau of Investigation: <http://www.fbi.gov/about-us/investigate/terrorism/wmd>

Federal Emergency Management Agency (FEMA): (National Response Framework)

<http://www.fema.gov/emergency/nrf/aboutNRF.htm>

Journal of the American Medical Association: <http://jama.ama-assn.org> (search keyword: bioterrorism)

Journal of Public Health Management and Practice: <http://journals.lww.com/jphmp/pages/default.aspx>  
Military Medicine, the journal of AMSUS (Society of Federal Health Professionals):  
<http://www.amsus.org/index.php/journal>  
National Institutes of Health: <http://health.nih.gov/topic/Biodefense>  
Public Health Emergency: [www.phe.gov](http://www.phe.gov)  
Public Health Services Commissioned Corps: <http://www.usphs.gov>  
Society of Critical Care Medicine: [www.sccm.org](http://www.sccm.org)  
World Health Organization: [www.who.int](http://www.who.int)

*Karen Kendall is the author of 22 novels and novellas for publishers like HarperCollins, Penguin Group, and Harlequin. She is no expert on the topic of bioterrorism, but has a relative who is. And she did sleep at a Holiday Inn Express last night . . .*



## New! Rules. New! Tools.: The ReCap

# Authors and Agents Face A Shifting Landscape

**Agent Panel: Marilyn Allen, literary agent and partner, Allen O'Shea Literary Agency LLC; Elaine P. English, attorney and literary agent; Eileen Fallon, Eileen Fallon Literary Agency; Marlene Stringer, Stringer Literary Agency LLC**

**BY LAURA PHILLIPS**

The panel addressed several issues facing authors and agents in the shifting landscape that defines publishing today.

### Shifting Roles

Many authors are now asking agents to handle specific projects while keeping others, particularly self-publishing, out of the agent's hands. Each of the panelists expressed openness to conversations about such relationships. They also urged authors to keep their agents informed about any publishing or publicity efforts so the agent can help with strategic planning, or at least won't be blind-sided should a publisher express concerns about an author's other ventures.

### Tips for Authors Who are Self-Publishing Backlist or New Material:

Don't assume the agent isn't due a percentage on any self-published material. Check your agency contract. Discuss the specifics, and if necessary, work out a new arrangement.

Be aware that authors don't own the final edits to a previously published book, particularly any copy-rightable material added by the publisher such as back-cover copy, cover art, and substantive editing and rewrites not performed by the author.

Purchase rights for any added-value items are negotiable.

Be aware of your legal boundaries and what liabilities you are assuming when you self-publish.

## Conflict of Interest?

When questioned about the possible conflict of interest when agents step outside their traditional role to publish books or directly help their authors self-publish, the panelists reported varying comfort levels and emphasized the need for clear communication.

Ms. Stringer said the specifics depend on the type of relationship an author has with an agent, on what specifically the agent handles. She said she would rather be “the director, the choreographer” than act as a publisher.

Ms. Allen said she works “strategically” with clients to make sure copyrights and permissions are up-to-date, assess e-book distribution channels, and “add as much value and be as fair as I can. We have to behave professionally as a collaborative team.”

Ms. English specified that her role and remuneration “depends on what you ask me to do. Foreign rights would be a standard commission basis.” Services such as contract negotiations and review are billed at an agreed-upon flat rate. She said she also has been able to work out arrangements with clients who asked her to locate service providers, do editorial work, or handle other details.

## Boilerplate Changes

The panelists seemed as concerned as authors about changes in rights clauses of publisher boilerplates, many of which are non-negotiable. Stringer said this is occurring even within contracts in which an author has a long-term relationship with the publisher, and that agents have been able to work around those clauses in some cases, but not in others.

Ms. Fallon concurred and cited a significant increase in legal costs as a result of consultations on these new boilerplates. “You really have to pay attention to that and use a publishing attorney.” She and Ms. Stringer both noted that the legal review process is adding significantly to the time lag between a contract offer and the actual payment of advances.

Ms. English noted that some authors have walked away from such contracts. “You are not alone, but I know it’s a scary position to be in.”

Ms. Allen added that one of her clients had accepted such a contract, against her advice, because ultimately the contract delivered something that was more important to the author’s goals.

The panelists gave similar responses to a question concerning author dissatisfaction with royalty rates, particularly e-book royalty rates.

“Ultimately the author has the power,” Ms. Stringer said. “It’s your business. You have to decide where your bottom line is. Publishers are experimenting, trying lower advances, experimenting with royalty rates. Your survival comes after theirs in their minds.”

*Laura Phillips writes, and runs a niche software company, from her farmhouse in rural Missouri. She’s planning the strategic release of her backlist in digital outlets.*

## ***NINC Bulletin Board***

Compiled by Kit Frazier / [kitfrazier@yahoo.com](mailto:kitfrazier@yahoo.com)

### **NINC Anthology—Promotional Opportunity**

NINC’s first anthology, *Cast Of Characters*, is scheduled for release in early April—and NINC members have the opportunity to promote their work along with promoting the anthology and the NINC organization. NINC members are encouraged to submit a Set Piece—an extract from an upcoming novel that stands on its own. The Set Piece should be no more than 5,000 words and must be excerpted from a book being published or re-issued between April and June 2012. Members interested in participating or who would like more information should contact NINC President Lou Aronica at [LAronica@FictionStudio.Com](mailto:LAronica@FictionStudio.Com)



## New! Rules. New! Tools: The ReCap

# Transmedia: Storytelling Isn't Limited to Books

BY SUSAN GABLE

Many years ago, the train companies made a big mistake. They decided they were in the train business rather than the transportation business.

Marc Milot and Billy Hume of Radiator Transmedia were at the NINC conference to make sure we (and publishers) don't make the same mistake. To remind us we're in the storytelling business, not solely the *book* business.

Transmedia means *across media*: telling stories using multiple formats. That can mean many things, from a simple song to a full-blown rock video, from an online subscription-based version of a story to an app for a smartphone.

We, writers, are no longer limited to a two-dimensional vision of our story. We can think outside the box to imagine ways to keep readers engaged in our worlds during the "down" time between releases, to increase our fan loyalty, and to provide ourselves with multiple revenue streams.

*Ka-ching.*

Admittedly, the transmedia approach isn't right for every story. It makes more sense for writers who have strong story-worlds (paranormal, fantasy, etc.) though it could easily work on another scale with stories set around a particular community or family.

Transmedia elements should add something to the overall storytelling, not be added simply as "filler" or fluff. And it makes sense to branch out this way if you have fans who are clamoring for more.

Imagine a mystery or thriller that provides readers with the opportunity to come to your website and view crime scene photos. Read the actual autopsy report. Perhaps watch the protagonist interview a suspect in an interrogation room.

Quality content is important. Just like you wouldn't put out a book that isn't up to your standards, you wouldn't want to include transmedia content that isn't up to those same high standards.

The technology tsunami is changing the marketplace for books, and the growth in demand for digital content in all forms is exploding. E-book growth rose 202% from February 2010 to February 2011. E-book sales are set to triple by 2015 and will reach almost \$3 billion in sales. By 2015, tablet users are predicted to number 82 million. Add to all of this the fact that the average teen sends/receives 3,339 texts per month.

The next generation is growing up familiar with and addicted to digital content.

If you decide to jump on the transmedia train, you have to understand that it's long-term. It takes time and commitment. You have to build a team; it's not something you can do all by yourself. And you have to be willing to share your intellectual property with others.

But start thinking beyond the book. Beyond the text. Experiment with other ways to engage your fans.

Because we're not in the book business.

We're in the storytelling business.

*Susan Gable loved the 2011 NINC Conference, and is excited about the new possibilities open to writers. Her most recent traditionally published novel, *As Good as His Word*, from Harlequin Superromance, came out in May of 2011, but lives (probably forever?) in e-book form, along with the two other Hawkins brothers books, *A Kid to the Rescue* and *The Family Plan*.*

# Who Controls eBook Rights?

## *The Court Battle that Could Determine the Fate of the Book Industry: A Review & Analysis (Updated)*

BY LLOYD JASSIN

The picture of publishing economics has changed dramatically. Since the middle of 2011, Amazon is selling more eBooks than hardcover and paperback books combined. What this trend makes clear is, it is becoming increasingly difficult to publish a book profitably based solely on bound book sales. This article looks at HarperCollins' recently filed lawsuit against eBook publisher Open Road, and the role legacy publishing contracts, and contract ambiguity, plays in the battle over lucrative eBook rights.

Let us consider HarperCollins' legal position that the term "in book form" in a pre-Internet age contract includes eBook rights—a technological achievement that wasn't invented when the contract was signed. By way of background, the publisher filed a complaint in the United States District Court for the Southern District of New York on December 23, 2011, against eBook publisher, Open Road Integrated Media. Open Road, founded by Jane Friedman, former CEO of HarperCollins, publishes eBook versions of print books otherwise controlled by major publishers. In its complaint, HarperCollins seeks damages and injunctive relief against Open Road because Open Road intends to publish an eBook edition of Jean Craighead George's YA classic, *Julie of the Wolves*.

In its complaint for copyright infringement, HarperCollins argues that its contract for *Julie of the Wolves*, a book first published in 1972, gives it the sole right to publish George's novel in eBook form. It bases its argument on its interpretation of the term "in book form," which it argues encompasses eBook rights.

### Old Wine in New Bottles

By filing its complaint, HarperCollins follows a well-established pattern in the entertainment industry. Cases addressing whether older entertainment industry contracts granted rights for new uses such as player piano rolls, radio, motion pictures, television, and videocassettes are plentiful. Like HarperCollins, motion picture studios once claimed that they already had the right to exhibit films on television and to distribute them as home videos.

When a contract is ambiguous, the job of ascertaining the parties' intent is left to the courts. To determine the parties' intent, a court will consider the precise language of the grant (e.g., the existence of any "future technologies" clause, the inclusion or exclusion of a "reserved rights" clause), whether the parties contemplated "new uses" when the contract was entered into, and the sophistication of the parties. Since contracts are not drafted in a vacuum, courts may also look at industry practice. What this case makes very clear is that a contract is a private body of law between two parties. Ideally, a contract between an author and publisher anticipates potential problems by clearly setting down in writing both parties' rights and obligations. If done properly, future readers of that contract will be able to discern what was intended.

Most likely, the court will ask whether the distribution of books in digital form was recognized by knowledgeable people in the publishing industry in 1972. The court will also analyze the contract to see if there are any provisions that tend to limit the "exclusive right to publish . . . in book form." If the court finds there is no clear intent—which is often the case in dealing with a later developed technology—the court may decide the matter based on social policy considerations. [1] That is, when the intent of the parties—the *Holy Grail* in contract interpretation—cannot be ascertained, courts apply "off the rack" rules to decide what *they* feel the proper result should be. In other words, if there's no *Rosetta Stone* to help decipher the parties' intent, the court will decide the matter for the parties.

New York courts have adopted one rule of contract interpretation that favors large entertainment companies. The rule states that if there's a broad and general grant of rights, an ambiguous grant will be interpreted to apply to technologies that were known at the time of the grant. The seminal case for this proposition is *Bartsch v. Metro-Goldwyn Mayer, Inc.* [2]

*Bartsch* involved an agreement entered into in 1930, in which plaintiff's predecessor in interest granted Warner Bros. Pictures all of its motion picture rights in a popular musical play. [3] The issue in *Bartsch* was whether a grant of motion picture rights included the right to broadcast the film, based on the play, on television. The court focused on the grant of rights to "copyright, vend, license, and exhibit . . . the motion picture photoplay throughout the world." In holding that the grant *did* include television rights, the court observed that "if the words are broad enough to cover the new use, it seems fairer that the burden of . . . negotiating an exception should fall on the grantor," at least when the new medium is not completely unknown at the time of contracting. [4] ▶

Notwithstanding *Bartsch*, which can be limited to its facts (a film producer's expectations are different than a book publisher's or author's expectations), when a contract is susceptible to two reasonable interpretations, with each party knowing or having reason to know of the other party's understanding of the term, courts, as a policy matter, will often construe the agreement against the party that drafted the contract. The *Restatement (Second) of Contracts* states that an agreement susceptible to more than one interpretation should be construed against the party who drafted the language. [5] Here, since HarperCollins was in a stronger bargaining position, the burden of negotiating new ways to exploit their exclusive rights should have fallen on them. [6] If the court follows the *Restatement*, as opposed to the *Bartsch* line of cases, it would appear, then, that unless the author's representative had an equal hand in drafting the agreement, which is almost never the case, the contract should be interpreted in the light most favorable to Ms. George, and, in turn, Open Road.

When an agreement is equally susceptible to either interpretation, the author or grantor often wins. [7]

In *Cohen v. Paramount Pictures Corp.*, the Ninth Circuit Court of Appeals, held that "television viewing" and "videocassette viewing" were not "coextensive" terms. [8] And, that a license which included the right to exhibit a film on TV did *not* include the right to distribute the film on home video. In resolving this "old wine in a new bottle" dilemma, the court placed primary emphasis on the fact that videocassette recorders were not invented when the license was signed. Focusing on the means by which videocassettes were viewed and distributed (i.e., by sale or rental), the court emphasized that exhibition of a film on television differed fundamentally from the exhibition by a videocassette record/player. [9] A similar argument—persuasive or not—can be made for printed books sold in bookstores, and eBooks downloaded and displayed on a screen. eBooks were neither invented nor reasonably foreseeable when the HarperCollins contract was signed.

### Future Tense Publishing

Where things get interesting, is the impact of HarperCollins' "future technologies" or "now known or hereinafter" clause. Here the book publisher's claim seems stronger, although, not all courts have enforced these provisions. For example, in *Tele-Pac, Inc. v. Grainger*, the court held that the license to distribute films for "broadcasting by television or any similar device *now known or hereinafter to be made known*" did not encompass videocassette rights. [10] The Appellate Division of the New York Supreme Court, rejecting the lower court's attempt to equate broadcasting with the grant of videocassette rights, held that distribution of a film by videocassettes was not analogous to broadcasting by television.

If the Southern District of New York adopts the *Tele-Pac* analysis, it could determine that "in book form" does not encompass eBooks. Just as broadcasting by television is not analogous to the sale of videocassettes, distribution of physical books is not analogous to the sale of downloadable eBooks. That is, a plausible argument can be made to suggest eBooks and bound books are two distinct media. Whereas a book is a book, an eBook—whether downloadable or accessible from a cloud—is a community. If the batteries run low on your Kindle, Nook, or smart phone, the screen goes black, and your ability to link beyond the book is lost. Unlike an ad-supported Kindle or Nook you can synch with various electronic devices, bound books are low tech, and can survive fire and ice. Run an iPad below 32 degrees, or above 95, and it's likely to shut down, whereas, legible writing on papyrus over two thousand years old has been rescued from the fiery ruins of Pompeii. When it comes to fire and ice, tree-based books trump plastic and silicon-based readers. And, have you ever tried to read an iPad in the sunlight?

There are other arguments—some favor HarperCollins' interpretation while others would support Open Road. Richard Curtis, for example, in an excellent piece on his eReads blog (<http://ereads/tag/random-house>), addresses the significance of the phrase "Computer Storage and Retrieval" found in many legacy contracts. It's a solid piece of reporting and legal analysis.

### Good Contracts Make Good Neighbors

While HarperCollins pleads only one count of copyright infringement, the complaint also raises breach of contract and state law unfair competition claims. Reference is made to a provision in George's contract that requires HarperCollins to ask George to consent to the license of "computer, computer-stored, mechanical or other electronic" rights. It's unclear if this provision supports the publisher or Open Road. If the publisher is incapable of exploiting these rights without the author's prior approval, does HarperCollins possess an exclusive right or something less? What exactly is this evidence of? What distinguishes this case from other "old contract–new technologies" cases is the complaint states that George's ability to withhold consent does not give her the ability to grant a third party the right to publish an eBook edition. A court could reason that since neither the 1972 advance paid for the book, nor the P&L for the book, placed any value on eBook rights, the publisher did not bargain for those rights. The significance of the case, however, is the exploding market for eBooks and the very real danger Open Road, and others, pose to old school



print publishers. That danger recognized in several places in the complaint, but no more poignantly than in paragraph 29:

*Open Road's unlawful exploitation of those rights is directly competitive with sales of the Work in paper format and HarperCollins' own plans to publish Julie of the Wolves as an e-book. Open Road is understandably content to allow HarperCollins to have made its considerable investments in the Work, only now to reap where Open Road has not sown, by seeking to divert sales of the Work from HarperCollins in the rapidly expanding e-books market.*

HarperCollins' attorneys may be accused of trying to stretch the definition of "in book form," but it is harder to take issue with the proposition that a publisher should be able to protect its investment in an author's work. While the grant of primary rights does not mention eBook rights, the court may find it unfair for Ms. George to collect royalties from her print publisher, while, at the same time enjoying a royalty stream for the same work from Open Road. However, there's scant case law on the enforceability of non-compete clauses found in publishing contracts. Even in the absence of a non-compete clause, there is an implicit duty in every publishing agreement that neither party will do anything that will destroy or injure the right of the other party to enjoy the benefits of the contract. [11] While this doctrine is riddled with exceptions, is not without force. [12]

### **A Battle Over Words on Paper Will Determine the Digital Future**

Because many in the book trade were not thinking about future technologies that would enable readers to license or purchase digital books, old contracts are being dusted off and ambiguous language scrutinized by lawyers like myself to answer the question, "Who controls eBook rights?" In the case of pre-Internet contracts, author and publisher often ascribe different meanings to the phrase "in book form." Where the grant of rights can be interpreted in more than one way, it can lead to disputes, and, in the case of Jane Friedman's Open Road, expensive and distracting litigation.

Depending upon how the case brought by HarperCollins is decided or resolved, the big six multinational, New York-based publishers (and their cousin to the north, Harlequin) could either score a copyright and unfair competition protection windfall or meet their digital Waterloo. Only time will tell.

### **Footnotes**

1. See *Dolch v. Garrard Publishing Company*, 289 F.Supp. 687 (S.D.N.Y. 1968) (exclusive right of publication of books" held to encompass right to publish in paperback form). But see, *Field v. True Comics*, 89 F. Supp. 611, 614 (S.D.N.Y. 1950) ("the sole and exclusive right to publish, print and market in book form" did not include the right to publish the work in "comic book" form).

2. *Bartsch v. Metro-Goldwyn Mayer, Inc.*, 391 F.2d 150 (2d Cir.1968), cert. denied, 393 U.S. 826 (1968).

3. *Id.* at 152.

4. *Id.* at 154.

5. RESTATEMENT (SECOND) OF CONTRACTS § 206 (1981).

6. See, e.g., *US Naval Inst. v. Charter Communications, Inc.*, 875 F.2d 1044,1050,1051 (2d Cir. 1989) (interpreting ambiguous copyright grant against party preparing agreement); See, also, *Rey v. Lafferty*, 990 F.2d 1379, 1390 (1st Cir.) (ambiguity should be construed against drafter-grantee, especially given relative expertise of parties); *67 Wall Street Co. v. Franklin National Bank*, 37 N.Y.2d at 249, 333 N.E.2d at 187, 371 N.Y.S.2d at 918; *Rentways, Inc. v. O'Neill Milk & Cream Co.*, 308 N.Y. at 348, 126 N.E.2d at 273-74.

7. *Cohen v. Paramount Pictures Corp.*, 845 F.2d 851,854 (9th Cir. 1988).

8. *Id.* at 854.

9. *Id.* at 853,854.

10. *Tele-Pac, Inc. v. Grainger*, 168 A.D.2d 11,13, 570 N.Y.S.2d 521, 522 (1st Dept. 1991), appeal dismissed, 79 N.Y.2d 822, 588 N.E.2d 99 (1991).

11. *Van Valkenburgh v. Hayden Pub. Co.*, 30 N.Y.2d 34, 281 N.E.2d 142, cert. denied, 409 U.S. 875 (1972).

12. See *Wolf v. Illustrated World Encyclopedia*, 34 N.Y.2d 834, 316 N.E.2d 342, 359 N.Y.S.2d 59 (1974) (author can license same illustration to another publisher absent a contractual prohibition against doing so).

© 2011 Lloyd J. Jassin. All rights reserved.

*Lloyd Jassin is an attorney who focuses on publishing, entertainment, and IP law. He analyzes, negotiates, and drafts entertainment contracts and consults for other attorneys on IP and business issues. He began working in publishing at St. Martin's Press. Later, he joined Simon & Schuster, where he was Publicity Director of the Prentice Hall Reference Group. Before forming his firm he was an IP associate with Cowan, Liebowitz & Latman. He sits on the advisory board of The Beacon Press, America's oldest indie press, and is counsel to the Independent Book Publishers Association. He is an adjunct professor at NYU and coauthor of The Copyright Permission & Libel Handbook. Contact: jassin@copylaw.com, 212.354.4442.*

*This article first appeared on the CopyLaw blog on December 28, 2011 and is reprinted with the author's permission. The information contained in this blog is of a general nature & is not intended as legal advice. It does not create an attorney-client relationship or any other expectation of representation.*

# In Memoriam: Garda Parker

BY THEA DEVINE

I knew the name Garda long before I met our own wonderful Garda Parker. That Garda was a fictional character, the wife of a would-be Nick Charles-ian detective, in a series of 1930's mystery novels.

My Garda was a lovely talented writer; and she could have been a heroine: she was charming, flirty, funny, sensitive, kind, pragmatic, gracious, inquisitive, and so beautiful. She always asked names. She invariably had questions. It felt like she was always on the run. Funnily, we'd never roomed together at a conference before RWA/Orlando. I found out one thing about Garda I never knew. She had the energy of a ten year old in that merciless Florida heat—I was constantly dragging, she was always running.

The thing was, Garda and I could never quite remember when we met, or where, although it was probably at a Kensington event when we both wrote for Zebra (she for "To Love Again," I, then, for Lovegram). It didn't matter. It felt as if we'd known each other forever, one of those wonderful friendships that we in this writing community are so fortunate to experience.

People loved her. She had a network of friends that stretched from Colgate University to Ellenton. She seemed to know everyone. She was once walking out the door with the guest speaker at a conference we attended together—I looked askance, she pointed and mouthed, "Colgate." It almost seemed as if everyone in the world had gone to Colgate and Garda knew every last one of them.

And she loved Disney. If she could have lived at Disney World, I think she would have. In the castle. But you can understand why: it's magical, full of fairy dust, fairy tales and hope. I think she's living in the castle now.

We never saw each other often. We spoke several times a month about the stuff we all share: our lives, our families, life in general, and especially the exigencies of the writing life. She kept me sane, I probably drove her crazy. Even now, I find myself reaching for the phone, thinking, I need to call Garda. I don't know when I'll ever stop feeling that.

When we ended a conversation, she always said, "Good-bye, my friend." And now I, for the last time, must say, "Good-bye my dear, loved and treasured friend. I'll never forget you."

*Thea Devine's books defined erotic historical romance. Her latest, The Darkest Heart, was released in June 2011 from Gallery Books. She's currently working on a sequel.*

## ***NINC Bulletin Board***

### **JOT—Just One Thing. . . We still need volunteers—**

If you're interested in ensuring that we continue to have industry guests blogging every Wednesday on the NINC Blog, please contact Patricia Rosemoor (Patricia.Rosemoor@gmail.com)

### **Promote NINC, Promote Yourself—on the NINC Blog**

If you haven't registered, please do so at <http://www.NINC.com/blog/> Fill out the profile, then e-mail Patricia Rosemoor at: Patricia.Rosemoor@gmail.com

# The Mad Scribbler

By Laura Resnick



## Fiction v. Life

**“The readers who want fiction to be like life are considerably outnumbered by those who would like life to be like fiction.”**

**— Sarah Caudwell, *The Sirens Sang of Murder***

The opening quote this month is pulled from a novel by one of my favorite authors, a British mystery writer who died, alas, after completing only four books in her witty series about a group of erudite young London barristers and their eccentric friend, an Oxford don, who solve the murders that cross their paths.

In *The Sirens Sang of Murder*, two of the characters are collaborating on a novel called *Chancery!*, which depicts the barrister’s life as one filled with fast cars, loose women, bank-breaking bets at international casinos, grateful heiresses, and deadly enemies. Hilary Tamar, the Oxford don and series narrator, observes that *Chancery!* is evidently intended to be a novel in the sensationalistic rather than the realistic tradition. The co-authors admit that they thought they should “ginger things up” to attract an audience; and Hilary condones this by making the above observation about life and fiction—one that has certainly always been true of me as a reader.

From my earliest childhood, I understood “story” as something larger than life, as an enchanted world peopled by heroes and villains, guts and glory, bold adventures and brave feats. When I was little, my maternal grandmother would tuck me into her bed and read my favorite stories to me over and over: fairy tales, daring voyages, and books with talking animals. My father, a science fiction writer, would improvise bedtime stories about Tarzan of the Apes or John Carter of Mars in which I rescued those heroes from their misadventures. I was a very busy child, also rescuing Batman, Superman, and Spider-Man in my dad’s nightly tales.

When I started learning to read at school, I had trouble with it. I realize now this is probably, in part, because I was one of the youngest kids in class, and six months makes a significant difference in brain development at that stage of life. But I also think my slow start as a reader was in large part because I was so *bored* by the text we were learning to read. I mean, who *cared* if Sally ran, or if Dick saw Jane? Are you *kidding* me? This was someone’s idea of a *story*? I entered second grade competent enough that no one was worried about me, but still struggling with reading because I found it so deadly dull...

Until a classmate stuck a Nancy Drew novel into my hands. It was *The Witch Tree Symbol*, and it had a mysterious mansion, a sinister hex symbol, a trip to Amish country, and a clever teenage girl trying to catch a cunning thief. I struggled with mastering the text; I read and re-read sentences, sounded out words, and asked for help. It took me a *long* time to get through that book. But I stuck with it, because this was a book that suited my idea of a *story!*

When I finished it, I started reading another Nancy Drew novel. And another after that. By the end of the school year, I was a voracious reader. I eventually read all fifty Nancy Drew mysteries (which was how many there were at the time) over the next few years. I also regularly combed the local library and various bookstores for other thrilling reads. One of my favorite discoveries in those years was Beverly Gray, the heroine of another multi-book mystery series from the same era. While Nancy Drew remained eternally in her teens, Beverly started off as a college freshman, graduated after a few books, and went on to have a career, travel the world, and get engaged. ▶

As a child, I wasn't interested in reading about kids who went to school, cleaned kennels, washed the dishes, did their homework, and watched TV. I already knew what *that* life was like, after all; and it often didn't even engage my imagination while I was actually living it, so why would I want to read about it? I wanted to read about solving mysteries, fighting villains, sailing down the Nile, chasing ghosts, and finding buried treasure—none of which I got to do as a child... Well, we played at chasing ghosts and hunting for treasure; but we never actually found either thing—whereas characters in books *did!*

This desire for life to be more like fiction, rather than for fiction to be more like life, persisted in my teenage years and followed me through into adulthood.

As a shy and moody teen, I wanted to *escape* from being one, not immerse my reading imagination in a reality just like mine. I spent nearly a year of my adolescence working my way through *The Once and Future King*, T.H. White's ageless Arthurian epic. I fled the mind-numbing boredom of school, the drudgery of kennel chores, and the humiliation of snickering boys by losing myself in the doomed love of Guinevere and Lancelot; in Arthur's idealism, ambition, and tragic choices; and in Merlin the Magician's sorrowful wisdom and amusing eccentricities. A couple of years later I read Mary Stewart's Arthurian books, which was when I began to realize the infinite variety of interpretations that novelists could bring to folklore, mythology, and the blank spaces that exist in between recorded historical events.

By the time I finished high school, I was reading adventure novels, romantic suspense, espionage, fantasy, historical romance, police procedurals, cozy mysteries, mainstream fiction, and classics that weren't being "taught" in school. During college, I crammed pleasure-reading into my summers and vacation breaks; and although I mostly enjoyed college life, it wasn't what I wanted to read about when I picked up a novel—not unless the fictional college kids were doing much more interesting things than *I* was.

As an adult, actually, I've had the opportunity to do many interesting things, including travel around Europe, live in Manhattan, study acting in London, live in Italy, work in Jerusalem, cross Africa overland from northern Morocco to the Cape of Good Hope—oh, yes, and become a writer.

But the inescapable truth about reality, even when real life experiences are interesting enough to write and read about, is that so *much* of real life, even when you're camping deep in the Congo, or exploring an ancient temple in Sicily, or spending the weekend as the guest of an English lord... is still inevitably about sleeping for much of every night; working most days; preparing, eating, and cleaning up after several meals each day; paying bills, balancing the checkbook, and looking for an ATM; doing laundry and tidying your space; finding a bathroom (or a discreet bush) every few hours; driving in bored silence for half a day across bleak desert landscape to get to the next well, or sitting in highway traffic for thirty minutes, or staring off into space for forty minutes on a subway train because you forgot to bring a book.

No matter how good life gets, I always need fiction—and I always wind up wishing life would be more like fiction.

When asked in an interview why he decided to write a novel, film-and-TV actor Hugh Laurie said, "I was inspired to write by the banality of my own life." He had been keeping a journal for several months, and when he looked over it one day, he was "appalled to see what a humdrum documentary it was: no dinners with kings or presidents, no mountains climbed, no cartels busted, no wild animals stared down, no inside straights filled with a five hundred thousand dollar pot," and so on. So he decided to make up a life. "I just wanted to fantasize an adventure," he concluded. And so he wrote *The Gun Seller*, about the dangerous, sexy, extravagant, madcap adventures of a globetrotting soldier of fortune with a heart of gold.

Which is pretty much why I write novels, too. Because even while I was crossing Africa—where I *did* stare down wild animals, fell into a crocodile-infested river, fought off bandits, met chieftains and sorcerers, walked among gorillas in the wild and accompanied Mbuti pygmies on a hunt—a substantial percentage of the journal I kept on that epic voyage is about looking for a discreet bush, doing laundry, preparing and cleaning up meals, putting up and taking down tents, running out of toothpaste... and running out of novels to read.

So decades after Grandma read and re-read my favorite fairy tales and my dad recounted to me how *I* rescued Tarzan, I find that in the contest between fiction and life... fiction invariably emerges as the winner and still *champeeeeeen!*

*Laura Resnick took a break from reading and writing fiction to deliver this month's column.*

# On Fandom: I Love You, I Love Your Book, We're Soul Sisters, I Hate Your Hair

BY NICHOLE BERNIER

An author-friend who wrote a hauntingly beautiful book once told me that a reader expressed surprise upon meeting her in person. “Funny, you don’t look dark and depressing!”

Those readers, they say the darndest things.

Authors I know have been offered all sorts of unsolicited opinions from readers—told, for example, that wearing brighter colors would be more flattering, or that they should hurry up and have children. Authors I know have also been showered with great kindness, and received long heartbreaking letters from people for whom the novel was a sort of benediction on their pain. Being an author is to be doubly exposed, I suppose: first through your words on the page, and again in front of an audience voicing their reactions to those words.

People are funny in the things they’ll say to strangers, the things they’ll confide and the ways they’ll criticize. In a very small way, I’ve seen this in the odd things people have said when they see me with my five children (“*You are living my nightmare*” is my favorite). With my own first novel coming out in a few months, I’ve become intrigued by writers’ experiences with readers—the awesome breakdown of barriers that can make a stranger presume they know you well enough to ask, *I enjoyed your memoir; how is your relationship with your mother these days?* So I asked a number of authors I know to share the most extraordinary thing a reader has said or done, and compiled their responses (below).

But first, the burning question behind my curiosity. What is it about books that makes readers reach out authors in such a personal way?

Is there something proprietary that takes place in a reader’s mind once he or she has spent hours and hours reading a writer’s words?

Or is it because authors deal in words as opposed to a musical instrument, and hey, the alphabet is my medium too?

Is it because so many people feel they too have a book in them, if they could just find the time to write it—more often than, say, folks feel like they have an inner Swan Lake performance just itching to bust out *en pointe*?

Or maybe it’s partly because in this tough publishing climate, writers have to make themselves so accessible—not just at bookstore readings, but on Twitter, Facebook, and Skyping into people’s living rooms for book clubs. There seems to be a growing chumminess, or at least expectation of chumminess, that exists between readers and writers.

In other words, are we asking for it?

The authors’ anecdotes scrolled down my Facebook page, and the excerpts below show, among other things, that some audience members have real *cojones*.

It also suggests that putting yourself and your art out there passionately as an artist—parachuting into someone’s life for a brief moment, lit up about your creativity—can override whatever edit mode a stranger might otherwise possess. And that perhaps that anonymity—the connection of a kindred thought or experience (yes, from a novel or memoir)—encourages candor. And even sometimes, a rare communion.

**Helen Simonson:** A man emailed me to say he had not read my book (it’s surprising how many fan emails begin this way), but that he had once lived in England, where *Major Pettigrew’s Last Stand* is set, and that his wife ran off with a retired British army Major. He said his long and burning rage against the British was largely gone, but his girlfriend thought he should read my book to deal with his lingering resentment issues. What did I think? I thought, this once, I should not reply to fan mail. ▶

**Dawn Tripp:** At a reading once, during the Q and A, a woman raised her hand: “I’ve read your first two books, and I love them. You are a wonderful writer. But you really should do something a little more interesting with your hair.”

**Chris Cleave:** Best thing ever said to me on the mic at a public event: “When I read your book I \*really\* wanted to sleep with you, but now not so much.” And I can’t work out to this day whether it was the way I looked or some unsexy thing I said about plot or the use of apostrophes.

**Tayari Jones:** A (Caucasian) man once asked me: “Are there black people in this book?” Me: “Yes.” Him: “Well, that’s okay. I am going to buy it anyway. When I was young I read a lot of science fiction, so I am used to reading things that are \*out there\*.” So... in his mind, being black is the same as being an alien.

**Jenna Blum:** I was floored this past summer when a reader sent me a photo of her favorite *Those Who Save Us* quote tattooed on her shoulder. Considering my novel is about the Holocaust era, I was maybe 1% squeamish about a reader choosing to honor it the book this way... until I realized that this is precisely the crux: choice. She CHOSE to tattoo the quotation on her skin. Those who were in the camps, not so much. I was then able to see the tattoo homage for what it was, and I was and am so deeply, deeply grateful that my words moved somebody so much she would inscribe them permanently on her skin.

**Jon Clinch:** I called in to a book group who’d read *Finn*, and their first question was: “What’s wrong with you?”

**Emily St. John Mandel:** At a reading at a bookstore in California, a woman raised her hand and asked if I have any kids. When I told her that I don’t, she asked if I’m planning on having any. Which was awesome, because really, who WOULDN’T want to discuss the finer nuances of one’s marriage/reproductive plans into a microphone before a roomful of strangers?

**Julia Glass:** I often visit high school English classes to talk about the so-called writing life, and sign books if asked. One time, a strapping, brawny guy lingered to chat about his love of acting, the link between literature and theater. When I reached to sign his book, he handed me a Sharpie and said, “Actually, would you sign my arm?” He rolled up his sleeve and flexed his biceps. I laughed (me the shy one now). “What do you want me to write?” I asked. “Write, ‘Make it real,’” he told me. And I did. Later, it occurred to me, Isn’t that what the best fiction writers do? We make it all up, of course, but our stories are powerful only if we know how to tell the truth: how to make it real.

**Beth Hoffman:** Not long after I finished my book tour, a man contacted me via email and all but demanded that I give him a private tour of the little historic district in which I live. He then went on to tell me where I should pick him up and what he’d be wearing... a bra and tiara.

**Leah Stewart:** A man in his seventies said to me at a recent book festival: “Youth is boring. Do you expect your books to have anything to say to me?”

**Luis Urrea:** A giddy young woman stepped up laughing and hopping up and down. “I wrote down what I want you to say.” She handed me a note. I took it and started copying it until I burst out laughing. She jumped up and down with her hands on her face. It said: “Dear \_\_\_\_\_, my literary love, although life has kept us apart from each other, we will always be connected by *la poesia*.” Awesome.

**Dani Shapiro:** Just last week I was asked a) if I speak with my half-sister, b) why I don’t write more about my husband, and c) whether I’m at peace about my relationship with my mother. On the other hand, I’ve received boxes of a) designer jeans, b) beautiful yoga jewelry, and most recently c) some very nice make-up.

**Carolyn Parkhurst:** One guy wrote a lovely song, inspired by my book *The Dogs of Babel*... Just last week, I received an email that included the line “I live in a mental institution, and I have written a short story.” And about a year ago I was at a restaurant with my kids. My husband nudged me and pointed out a woman sitting at the bar. It was a hot August evening, and she was wearing a tank top that left the top half of her back exposed. Written across her back were words from my book. It was so completely serendipitous that I should be there that night at all, and that I should happen to see the woman with the tattoo. It was one of those moments where you feel like maybe the universe has some plan, after all.

**Elinor Lipman:** A very nice, very enthusiastic woman told me that she’d become a fan because her mother—with whom she was very close, and whose taste in books she shared—had been reading *The Inn At*

*Lake Devine* when she died. I mean, in an armchair, book in hand. Thus she, the daughter, started reading my books, beginning with that title...

**M.J. Rose:** At a reading someone asked me if I was Jewish. I said yes. Then she asked me if I was pro-choice. I said, yes. She then threw her coffee cup (empty, thank goodness) at me and said, "I knew it." And walked out.

**Randy Susan Meyers:** At least once after each reading I'm told, "You're so funny! I never thought you'd be funny." This is always said with a shocked tone—as though, because my novel deals with family homicide (with some autobiographical background) I should walk in weeping. When they say this I explain about the special miracle of New York Jewish humor.

**Caroline Leavitt:** After my first novel, I got a thick letter from a woman with photographs. The letter said, "Although I have not read your book, I read the article about you and I feel as though we are soul sisters. I know you will love my family and we're getting the guest room ready." On the back of a picture of her husband she wrote: "This is Jake. I know you two are going to get along like gangbusters. Behind him is the pool where you can swim."

**Joseph Wallace:** After my first book on dinosaurs was published, I became the object of affection of a persistent creationist group. They used to send me charming little comic books about the adventures of Josh and Janice and their discovery that the world was only 4000 years old, that people rode dinosaurs, and so on. These folks were never rude or even pushy; they just thought I needed to see the error of my scientific ways.

**Robin Black:** I have been asked: "Why do you know so much about grief?" At which point of course I launch into the story of all the most wrenching events of my life... Or not. A man in Austin asked me why there are so many stories in my book about difficulties in father/daughter relationships. There's pretty much no good answer to that.

**Sarah McCoy:** I've had many well-meaning readers tell me with a big smile, "You don't look Puerto Rican." Not sure how I'm supposed to interpret that.

*Nichole Bernier is author of the novel The Unfinished Work Of Elizabeth D, has written for magazines including Elle, Self, Health, Men's Journal, Boston, Yankee, and This Old House, and was a contributing editor for Condé Nast Traveler for 14 years. She received her master's degree from the Columbia Graduate School of Journalism, and has taught creative writing at Boston Center for Adult Education and Grub Street Writing Center. She lives outside Boston with her husband and five children, and can be found on the Web at [www.nicholebernier.com](http://www.nicholebernier.com) and on Twitter at @nicholebernier.*

*This article first appeared on January 13, 2012, on the Beyond the Margins blog (<http://beyondthemargins.com>). It is reprinted with permission.*

## ***NINC Bulletin Board***

### **Upcoming Conferences/Festivals of Note**

- ▶ **2012 Association of Writers & Writing Programs Conference & Book Fair:** February 29-March 1, Chicago, IL [www.awpwriter.org/conference/2012reg.php](http://www.awpwriter.org/conference/2012reg.php)
- ▶ **Tennessee Williams / New Orleans Literary Festival:** March 21-25, New Orleans, LA <http://www.tennesseewilliams.net/>
- ▶ **Maine Festival of the Book:** March 29-April 1, Portland, ME [www.MaineReads.org](http://www.MaineReads.org)

**It's Dues Renewal Time...Don't Make This Your Last Issue...Renew Today!**

Renew easily online at the NINC website: <http://www.ninc.com>. Remember to fill in the Authors Coalition form, too.



## **WRITING is TAXING**

*By Diane Kelly*

# **And the Two Shall Be as One ... Sort Of**

Although federal law pre-empts state law with regard to marital status, federal tax law defers to state law in determining who is legally entitled to items of income and thus legally required to report the income. In the vast majority of states, the answer is clear: Whoever earned the wages or self-employment income must report it, just as the owner of income-producing property must report the income earned on the property. But in community-property states, where a couple is essentially considered a single unit, the rules are a bit more complicated. The community property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. The rules are even more confusing for same-sex couples in community-property states that recognize registered domestic partners or same-sex marriage. These states include California, Nevada, and Washington.

### **Filing Status**

Opposite-sex married couples in all states have the option of filing married joint or married separate tax returns. While the states that recognize same-sex marriages or registered domestic partners may allow these spouses/partners to file joint returns for state tax purposes, federal law does not recognize same-sex unions and therefore does not allow a married joint or married separate return to be filed by a same-sex couple. Those in same-sex marriages or registered domestic partnerships must file under either single status or as a head-of-household if the individual has a qualifying dependent.

### **Division of Income**

In community-property states, each spouse or partner has a community interest in one-half of the earnings of the other spouse/partner.

For opposite-sex couples who file a married joint tax return, it's easy. Simply report all the wages, self-employment earnings, and all other items of income on the one tax return and you are good to go. Opposite-sex spouses who file married separate returns should each report one-half of his or her own income and one-half of the other spouse's income. Similarly, same-sex spouses should each report one-half of the unit's income. Schedule C income, such as the income from a writing business, is thus split down the middle, which means each spouse/partner must report half of the gross receipts and half of the expenses from the writing business on his or her own Schedule C.

An exception to this 50-50 split exists for both opposite-sex and same-sex couples, however, if one spouse/partner treats an item of income as if only he or she is entitled to it and does not notify the other spouse/partner of the nature and amount of the income by the due date for filing the return. An example of this type of situation would be if you do not provide your spouse/partner information about your royalties and you do not allow your spouse/partner access to your royalty income, or your spouse/partner deposits his or her wages in a separate bank account and does not tell you how much the earnings were. In such cases, that particular item of income should be reported only by the stingy spouse/partner claiming to be entitled to it. The IRS won't impose an obligation on a taxpayer to report an item of income that the taxpayer's spouse/partner treated as his or her own and didn't inform the taxpayer about. It's only fair.



So far it's not so bad, huh? But here's where it gets a little tricky. Even though earnings from self-employment are treated as community income for *income tax* purposes, the employment tax rules generally prohibit spouses from treating net earnings from self-employment as community income for *Social Security tax* purposes. This means that if an opposite-sex married couple files married separate returns, each spouse should report one-half of the self-employment earnings for income tax purposes, but the spouse who earned the self-employment income must pay self-employment tax on the entire net earnings. On the other hand, because same-sex spouses/partners are not recognized as spouses for federal law purposes, they should each report self-employment tax on the one-half of the net earnings from the Schedule C income that was allocated to them for income tax purposes.

In other words, same-sex couples split the income down the middle for both income tax (Schedule C) and self-employment tax (Schedule SE) purposes. Each partner would file a Schedule C reporting half of the income and expenses, as well as a Schedule SE reporting self-employment tax on one-half of the net earnings. On the other hand, male/female married couples split the income and expenses down the middle only for purposes of income tax (Schedule C), and the spouse who earned the income reports the entire net earnings for self-employment tax (Schedule SE). Thus, they will each file a Schedule C, but only the spouse earning the income will file a Schedule SE. See Schedule SE instructions.

### **Withholding and Estimated Taxes**

In community-property states, tax withholding, like income, is also split down the middle, with each spouse/partner getting credit for one-half of the total tax withheld by the unit. Estimated taxes, however, are not split, and are credited only to the spouse/partner in whose name and Social Security number the estimated taxes were paid. Both opposite-sex and same-sex couples are thus treated alike for purposes of allocating withholding and estimated taxes. Because estimated taxes are credited only to the party in whose name they were paid, when the parties file separate returns it may be necessary for both spouses/partners to file estimated taxes to ensure enough tax is credited to everyone involved.

### **Allocation Worksheet**

Opposite-sex couples who live in community-property states and file separate returns must attach to their returns the allocation worksheet in Table 2 of IRS Publication 555. All same-sex couples who live in community-property states must attach the allocation. See IRS Publication 555 *Community Property* for more details.

### **Dependent Exemption**

While an opposite-sex spouse is never considered a dependent for federal tax purposes, a same-sex spouse/partner can qualify as a dependent so long as:

- ▶ the spouse/partner was a member of the same household as the taxpayer for the full year (with some exceptions for education, vacation, illness, or military service);
- ▶ the spouse/partner does not earn more than the gross income threshold for the applicable year (\$3,700 for 2011 and \$3,800 for 2012 ); and
- ▶ the spouse/partner who claims the other as a dependent provides over half of the financial support for the dependent.

See Publication 501 *Exemptions, Standard Deduction, and Filing Information*.

### **Deductions**

One benefit that same-sex couples enjoy that opposite-sex couples do not is the right for one spouse/partner to itemize deductions while the other claims the standard deduction. Opposite-sex couples who file married separate returns must either both claim the standard deduction or both claim itemized deductions.

*Diane Kelly is a CPA and tax attorney, and the author of the Death & Taxes humorous mystery series from St. Martin's Press.*

# Not Your Usual Writing Advice — Revisiting Feng Shui

BY JOANN GROTE

**“It’s not the barrenness of an empty room or an empty life that we seek. We should get rid of clutter, and thus get room for fullness.”**

— Robert Henri, *The Art Spirit*, 1960



Photo by Sabrina Ingram

Last January and February, I devoted this column to the discussion of “Feng Shui for Career Success.” At least a few NINC members instituted or revived a practice of Feng Shui in relationship to their writing after reading about other writers’ experiences.

“For a number of years I’ve tried to pay attention to Feng Shui,” NINC member Jo Beverley says, “because some of it, especially the practical bits, are very useful. I’ve kept an eye on the elements in my office, but generally neglect my desk. The *Nink* articles reminded me to pay attention to the desk, also, and I do think the work went more smoothly. Of course, part of that could have been that Feng Shui requires getting rid of clutter!”

Most of the NINC members I’ve heard from find removing clutter a powerful tool. Sasha White told me regarding her Feng Shui experiences, “The one thing I found most helpful in keeping me productive and feeling positive in my work environment is keeping things uncluttered—not just the room, but the desk as well. I notice a direct correlation between my organization and my productivity. Less clutter makes it easier to focus on the work. I make sure when I’m done at the end of the day to leave my desk in such a way that when I come back to it the next day I don’t shudder at the thought of trying to do more work.”

Feng Shui expert Tera Kathryn Collins, in her book *The Western Guide to Feng Shui*, reminds us that our work area is often “in chaos” as we work. That’s a normal part of putting our energy into active creation. “What’s important here is to keep your Career area cycling through chaos and back into order again.”

NINC member Dara Girard discovered even small changes appeared to make a big impact on her writing career. “In ‘Using Feng Shui for Career Success, Part I’ (*Nink*, January 2011), the concluding words really stuck out to me: ‘Don’t wait to become an expert. You can begin today by organizing your desk and study with the intention of improving clarity and productivity.’ I decided to give it a try. I cleared the clutter from my desk to open myself up to new ideas and experiences. I also purchased a wooden dragon and placed it in my office. The sight of the dragon holding the pearl made me feel optimistic and fearless.

“Soon after, my lawyer told me that I was in a good position to get the rights back to a book I’d been trying to obtain. I was also stunned to learn that Jayne Ann Krentz (an author I’ve admired for years!) had recommended me for an interview with a freelance journalist for *USA Today*. I was later featured with both Jayne and Susan Elizabeth Phillips in a major article highlighting romance. Two other amazing opportunities also came my way.”

Jo Beverley asks, “Did you know that there’s a theory of Feng Shui that the places in the home that naturally attract clutter—I think we all have some—are probably problem areas in our lives? Cause or effect, that’s the interesting question.”

Dara found a similar correlation between areas of life and areas that attract clutter. “Removing clutter reveals a lot of truths and I discovered several habits and relationships that were holding me back. I work to keep this kind of clarity because it helps me to remain focused on my goals.”

We tend to think of clutter as material things that collect willy-nilly, but clutter can refer to other aspects of our lives, as indicated by Dara’s comments. Relationships can become cluttered with people who don’t respect our boundaries. Time can become cluttered when we say “yes” to too many requests that don’t honor our priorities. Too many magazine subscriptions, or membership in too many e-mail loops, can clutter time, too. Receiving too many opinions on a manuscript by critique partners can clutter a writer’s vision of his/her story.

Perhaps you’d like to look at your desk and/or study for hints of areas that might be problems in your writing career, as Jo’s above comment suggests. Feng Shui uses a Bagua map as a tool to break any space into equal energy areas similar in form to a tic-tac-toe board: three rows of three equal squares. Though the format is the same for any space, I will use a desk as an example. When you sit in front of your desk, the center “square” immediately in front of you is the career section. To the left of the career section is the knowledge and self-cultivation section. To the right of the career section is the travel and helpful people section. The next “row” of squares, from left to right, includes the health and family section, the center section, and the children and creativity section. The final “row,” from left to right, includes the wealth and prosperity section, the fame and reputation section, and the love, relationships, and marriage section. The term “Bagua” means “eight trigrams.” These eight trigrams are basic to the *I Ching*, or *The Chinese Book of Changes*. The center “square” in the map is the area around which the energy of the other eight squares flows.

Which areas of your desk and/or study, in terms of the Bagua map, are most cluttered? As Jo’s comment above indicates, these are the areas to expect the energy around your writing and career to be most stifled. Clear the tangible clutter from that area and watch what happens in your life. There may be an immediate positive result. Or an event that seems less than positive, even aggravating, may occur, which indicates an area of your career or writing habits that needs attention and improvement.

Dara had such an experience. “As Kay Hooper mentioned in Part II of ‘Using Feng Shui for Career Success’ (Nink, February 2011), ‘When you stir up energy it’s not necessarily going to be all good—or at least seem that way at the time.’ Boy, was she right!

Things were rustled up and some major upheavals happened—the green-eyed giant of envy entered the picture. Those I’d thought of as friends turned out not to be, and one business associate tried to sabotage my efforts on a project. As painful as those revelations were, I later learned they were all for the best—but, trust me, that didn’t seem so at the time.”

In addition to clearing clutter, consider placing an item that inspires you on your desk or nearby, as Dara did with her dragon. You may wish to place something in an area of the Bagua map in which you wish to increase positive *Ch’i*, or energy. For instance, if you feel blocked or sluggish in moving your current manuscript forward, a full pencil and pen holder that appeals to you could be placed in the creativity area of your desk with the intention of increasing your creative energy.

Though one Feng Shui change can have immediate and long-lasting benefits, more applications of intention will likely be necessary in the future. Life always brings change. Jo Beverley recently experienced a major ▶



life change. “Last summer we moved into a new house, hence a new study, and I confess a desk that seems to slide into mess whenever I look away, but I’m trying. The house is befuddling me for Feng Shui, however, as it’s a reverse level, built down a hill. But it does give us fabulous views along the Devon Coast.”

Seldom is a house or room perfect in terms of Feng Shui, but once one understands the principles, they can be applied to balance the energy in any environmental situation. The inspiration supplied by Jo’s beautiful views are definitely worth the challenge of balancing the rest of the energy in her home, and there are many Feng Shui tools at her disposal. I find it interesting that the *I Ching* trigram related to career is *K’an*, which means “deep water.” Is it a coincidence that the Devon Coast views attract Jo?

In the January 2011 column, NINC’s past president Kay Hooper stated that she didn’t always rely on outside Feng Shui guidance, but did some things by instinct. Sasha finds that approach works well for her. “I think the most important thing is to understand the principles enough so that they can be applied in a way that works for *you*. I first tried out Feng Shui principles about four years ago, and since then I’ve moved my furniture around a lot. I’ve tried to stick to Feng Shui guidelines, but I don’t really like the way the room looks when I do that, so instead, I’ve found some of the principles that I can make my own, that work well for me. For instance, the principles discourage placing a desk up against a wall. I tried working with my desk in different positions, but facing a wall sometimes seems to work best for me. I do, however, keep my desk and other furniture away from the walls so that energy can flow around the room. I also keep natural elements in my office space: a plant, a couple of crystals I play with when thinking, a candle.” (For more on Sasha’s experiences with Feng Shui, see her blog at <http://www.genreality.net/office-feng-shui>.)

Practicing Feng Shui can lift our spirits and expectations. Dara says, “Now I think of my office like a garden and clutter like weeds. With the clutter gone, I know amazing things will grow!”

*Note:* Clearing clutter is only one Feng Shui tool. For more hints on Feng Shui tools and for suggestions on where to find more information on Feng Shui, see “Feng Shui for Career Success,” Parts I and II, in the January and February 2011 editions of *Nink*. Back issues are available in the *Nink* archives in the members only section of the NINC website at [www.NINC.com](http://www.NINC.com).

*JoAnn Grote is the award-winning author of 38 books, including inspirational romances, middle-grade historical novels, and children’s nonfiction. Contact her at [jaghi@rconnect.com](mailto:jaghi@rconnect.com).*

## It’s Dues Renewal Time....Don’t Be Left Out!

Renew easily online at the NINC website: <http://www.ninc.com>

Remember to fill in the Authors Coalition form so that NINC can receive its fair share of the ACA funds. You need NINC, and NINC needs you. Please renew now.

*Publishing Services by Huseby Agency, Ltd.*

**NINK** a publication of Novelists, Inc.  
An Organization for Writers of Popular Fiction  
P.O. Box 2037  
Manhattan KS 66505