

PRAISE FOR *CHANGING LAWS, SAVING LIVES*

“One of the best trial lawyers in America has written a unique trial book—one that manages to be both entertaining and educational. The chapters on sex in the courtroom and losing at trial are the best ever written on these subjects and alone are worth the price of the book.”

—Rick Friedman, coauthor of *Rules of the Road*,
president of the Inner Circle of Advocates

“A riveting read! This is why I went to law school, this is why I work 24/7 for my underdog clients: because I, like Randi McGinn, give a damn. *Changing Laws, Saving Lives* is required reading for lawyers who not only want to help ordinary people fight powerful companies, but who want tips on how to win.”

--Lisa Bloom, New York Times bestselling author of *Suspicion Nation*,
and legal analyst for CNN, CBSNews

“This book ruined a perfectly good night’s sleep, but that was my fault for picking it up after sundown. Little did I suspect that a ‘law book’ would glue my eyeballs to every page. Suspense, awe, thrills, bad guys galore, and justice at the end. Along the way, a compelling autobiography, and a generous trove of secrets for trial lawyer success, told with panache and New Mexican spice. This book has it all.”

—Patrick Malone, co-author of *Rules of the Road*, author of *Winning Medical Malpractice Cases*, member of the Inner Circle of Advocates

“As captivating as a legal thriller and as informative as any textbook, *Changing Laws, Saving Lives* is the rare work that manages to mix concrete guidance with encompassing insights—leaving the reader entertained, informed, and inspired. It is a must-read for trial lawyers, law students who aspire to join their ranks, and all those who care about the on-the-ground operation of the American civil justice system.”

—Nora Freeman Engstrom, Professor of Law, Stanford Law School

“This book will engage and inform you, whatever your level of experience. It is a rich, informative, and compelling story told by a master storyteller. No wonder her verdicts are legendary!”

—Roxane Barton Conlin, first woman president of the American Association for Justice, member of the Inner Circle of Advocates

“This book reads like a novel while exposing trial techniques, tactics, and strategies. [It’s] better than a half-day CLE, and faster.”

—Roger Dodd, coauthor of *Cross-Examination Skills for Law Students*, listed in *Superlawyers* for both Florida and Georgia

“Superb trial strategies delivered in a story like a John Grisham thriller. A must-read for the serious trial lawyer.”

—Judith Livingston, Lawyer of the Year in 2011 and 2013, *Best Lawyers Magazine*, New York

“Randi writes like she tries a case—with drama, compassion, and surprise endings. Read this book to learn from it and for sheer enjoyment!”

—Nancy Hollander, past president of the National Association of Criminal Defense Lawyers, 1992–93, one of America’s Top Fifty Women Litigators, 2001, *National Law Journal*

“Full of plain-spoken, heartfelt, and inspiring litigation techniques. Randi provides hundreds of invaluable tips on being a better lawyer, and wraps that advice inside compelling stories that stick with you. Not only is it easy to read, Randi writes as if she is speaking frankly to a jury in a courtroom. You will be swept up by her passion and creativity!”

—Zoe Littlepage, member of the Inner Circle of Advocates, and named one of America’s Premiere Lawyers by *Fortune* and *American Lawyer* magazines

“Randi McGinn is fierce and compassionate. A fearless attorney who can recognize her own strengths and foibles, she is also one mighty fine woman. *Changing Laws, Saving Lives* should be required reading for trial lawyers, men and women alike! The best kind of book—thoroughly engaging while educational.”

—Rikki Klieman, author of *Fairy Tales Can Come True*, legal analyst for *CBS This Morning*

CHANGING LAWS, SAVING LIVES

How to Take On Corporate Giants and Win

RANDI MCGINN



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ALSO BY RANDI MCGINN

Creating Magic in Trial (CD/DVD)

In the last short story published before his death, Mark Twain imagined heaven as a place where a cobbler who had the soul of a poet wouldn't have to make shoes and where a procession of the greatest people in the world included not just Shakespeare and Buddha and Homer, but a line of unknown people whose greatness had never been recognized on earth because they had to work to take care of their families.¹

I imagine there were many unknown, unsung women in that celestial line—women who, because of the century or country into which they were born, were never allowed to use their prodigious intellect, business acumen, or political savvy to help their communities. This book is for them.

1. Mark Twain, "Captain Stormfield's Visit to Heaven," *Harper's Magazine*, December, 1907 and January, 1908.

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PUBLISHER'S NOTE

This book is intended for practicing attorneys. This book does not offer legal advice and does not take the place of consultation with an attorney or other professional with appropriate expertise and experience.

Attorneys are strongly cautioned to evaluate the information, ideas, and opinions set forth in this book in light of their own research, experience, and judgment; to consult applicable rules, regulations, procedures, cases, and statutes (including those issued after the publication date of this book); and to make independent decisions about whether and how to apply such information, ideas, and opinions to a particular case.

Quotations from cases, pleadings, discovery, and other sources are for illustrative purposes only and may not be suitable for use in litigation in any particular case.

The cases described in this book are real cases. Sometimes the details are taken from transcripts, pleadings, and other court documents, and sometimes they are based on the author's trial notes and recollections.

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FOREWORD

Since I graduated in 1966, I have tried hundreds of civil and criminal cases over a career spanning nearly fifty years. I have met many brilliant trial lawyers over those years, but none more brilliant than the author of this book, Randi McGinn. On every page of this book, there are suggestions and insights which will be useful to not only the new lawyer, but also the seasoned lawyer.

Of particular value is Randi's handling of problems unique to women trial lawyers. What do you wear? What do you say? How do you react to sexism? Do women bring something special to the table? How do we make use of whatever we can bring?

One of the failures of many books by lawyers is the total lack of photos. Apparently, attorney-authors who generally understand the rules of persuasion do not apply those rules when writing for other lawyers. Randi shows us what the murdered mother looked like, how her children and her mother looked, how the convenience store was configured, and many other things that enrich our experience and help us to understand and visualize what happened to this young woman. The addition of relevant photos enhances not only our understanding of the story but also of the losses this family suffered.

Transformative law is another unusual and important topic Randi covers. Like Randi's clients, mine are not particularly interested in money. Most of them want to hold the wrongdoer accountable so that, in so far as possible, whatever happened to them or their loved one does not happen to anyone else. It is inevitably the one thing every single client mentions every single time in our first meeting. Like Randi, we often include as a part of settlement some positive action that will help to protect others.

In the first third-party criminal case I ever filed, my client was a good friend who was raped in her own apartment, in her own bed, by an assailant who came through a sliding window which would not lock and about which she had complained in writing

three times and orally many more. In Iowa, we could have filed the case anonymously, but instead, we called a press conference, and in her own name and her own voice, she called for increased safety for single women living in apartments.

In a case involving the sexual molestation of four young children, we found that the molester, who was on the sexual offender list, was hired as a maintenance man at a low-income family apartment complex. The management had actual notice that he had been convicted of sexual assault on two children under the age of thirteen. As part of our settlement with the landlord, we insisted that the agreement include a requirement that every employee, full- and part-time, have a complete criminal background check.

In employment discrimination cases, it is common to require an apology. In bullying cases, transformative law may include a training program, an independent investigation, and written document of the findings.

This book will engage and inform you, whatever your level of experience. It is a rich, informative, and compelling story told by a master storyteller. No wonder her verdicts are legendary!

—Roxane Barton Conlin

ACKNOWLEDGMENTS

Any lawyer stands upon the shoulders of others who are generous enough to share what they have learned in the courtroom. All I am, I owe to others—my professors at UNM Law School, my brothers and sisters in the Inner Circle, my friends at NITA, NCDC and AAJ's NCA, my creative and talented law partners and staff, and my true love and sounding board, Charles Daniels. And then there are my children, who taught me the lesson of unconditional love.

This book would not have happened without the encouragement of Rick Friedman, the faith of publisher Aaron DeShaw and the enthusiastic support of editor Tina Ricks.

DOWNLOADABLE CONTENT

This book references a number of items such as affidavits, documents, PowerPoint slides, video clips, and other items that you can download and read or watch. These files give you concrete examples of Randi McGinn's methods and techniques.

To download these files to your computer, smartphone, or tablet, go to the following link:

<http://www.trialguides.com/resources/downloads/changing-laws>

INTRODUCTION

It was the biggest case our all-woman law firm had ever handled.

Our clients were the three surviving children of Elizabeth Garcia. She was a twenty-six-year-old woman who, on the second night of her new job working alone on the graveyard shift in an Allsup's convenience store, was robbed, kidnapped, raped, stabbed fifty-six times, and left for dead in a dark, lonely field in Hobbs, New Mexico.¹

For six long years since her death, the five New Mexico attorneys on the other side of the case had done everything in their power to prevent us from getting the evidence we needed, and tried to make sure a jury never heard the case. After finding witnesses, gathering the evidence on our own, responding to—and arguing—a mountain of written motions in court, we were just ten days away from trial. Ready, we thought, to finally hold this convenience store chain accountable for years of forcing its minimum-wage clerks to work alone at night without any security.

Then came the e-mail from a friend, Paul Luvera, a marvelous trial attorney from Seattle, Washington, who had recently tried a case defended by the same insurance company, AIG, one of the largest in the country. His e-mail went something like this:

1. *Mary Ann McConnell, as personal representative of the Estate of Elizabeth Garcia, deceased, and as next friend of Xavier Mendoza, Jerome Mendoza, and Gene Mendoza, minor children*, First Judicial District Court, County of Santa Fe, New Mexico, case number D-0101-CV-200500045.

I hear you are about to try a case against a corporation insured by AIG insurance. I thought you might like to know what you can expect. Without warning, a week before trial, they will bring in a team of attorneys from a large Atlanta, Georgia, law firm to take over the defense alongside your local lawyers. Backing up the five to six lawyers in the courtroom [there would be nine in our case], there will be an army of other attorneys back at the office cranking out written motions every night to distract you from your trial preparation.

The Friday before trial, they will, for the first time, let you know they are bringing in a shadow jury [something I had never heard of until this e-mail]. Hired by a jury consultant and paid \$150 to \$250 a day [far more than the fourteen real jurors were paid], the shadow jury will sit in the back of the courtroom and, without ever knowing which side hired them, will report their impressions every night to the other side so they can adjust their witnesses and their defenses while the trial is going on.²

How did I feel when this e-mail arrived? You know the scene from the 2007 movie *300*, where King Leonidas and his three hundred Spartan warriors look out from the pass they are defending to get their first glimpse of the Persian horde, an army of more than a million warriors, which they will have to fight in the battle of Thermopylae? It was like that.

How could a small law firm like ours ever get justice for this family when the nation's largest insurance company was willing to throw unlimited financial resources against us? Given those odds, were we really ready for battle? What in the world made me think a girl who graduated from high school in Alamogordo, New Mexico, and attended a state college and law school could ever stand up in a courtroom and be a trial lawyer against people like this?

2. Paul Luvera, e-mail message to the author.

And then my friend provided the answer. “Don’t worry,” he said. “By the end of the case, they will be more afraid of you than you are of them.”

It turns out he was right.

1

FINDING A STORY WORTH TELLING

Being a trial lawyer is the greatest job in the world. This is especially true for women, who have an advantage in the courtroom.¹ Of course, I didn't know that in 1976 when I was trying to find a story worth telling—about my own life and the lives of others.

After getting my undergraduate degree in journalism from New Mexico State University in Las Cruces, I was working as a reporter for the *Ruidoso News*, a biweekly small-town newspaper. In addition to covering local stories, I would write spec articles for national magazines at night and send them off in hopes of breaking into the big time. Instead of national fame, rejection letter after rejection letter came back in the mail. All of it in the same printed format—an indication that the editors hadn't read past the first paragraph, if at all.

My stack of failures drove me to consult the smartest man I knew, my uncle Noel McGinn, a professor at Harvard.

“Why won't anyone read my articles?” I asked him.

1. See chapter 21, “You Don't Know a Woman until You've Met Her in Court.”

“Why should they?” he said.

Taken aback by his question, I said, “Well, these are good stories I’m writing, plus I’m reasonably bright, insightful, and maybe even a little funny.”

“How would they know that?” he asked. “To them, you’re just some kid from a place they’ve never heard of in a state they’re not even sure is part of the United States. Now, I know it’s probably not fair, but if you had some kind of advanced degree, they might think what you had to say was worth reading. At least it might get you in the door and cause them to read your article.”

That’s right, I did not go to law school because, like an Olympics gymnast, I knew from the age of three what I wanted to be. I did not start law school with the noble heart of a social crusader who wanted to change the world. I did not even go to law school because it might provide a respectable career path that would make my parents proud. I committed myself to three years of grueling graduate school for the ridiculously suspect reason that a law degree might make people read the stories I wanted to write.

For those of you who are adrift and not sure yet what you want to do in life, the good news is sometimes, by continuing to stumble forward, you find the thing you were always meant to do.

PEOPLE LOVE STORIES

Telling stories is the thing I was meant to do. As the oldest of five children, with just seven years between the first of us and the last, some of my early memories are of storytelling. One summer night when visiting our cousins, we were allowed to run unsupervised through the neighborhood after dark while our parents sipped cocktails. Drunk on the exhilaration of freedom in the warm night air, when we were finally called into the house, none of us could settle down. As the oldest, I was told to keep the kids quiet in a back bedroom while the adults played cards. Outnumbered, I could not wrestle them all into submission. The only thing that worked was telling them a story.

On this night there were no books to read from, so I made up a tale of terror. A tale of boys and girls like those in the bedroom, wandering through dark woods and perilous caves, faced with moral choices between good and evil, and facing terrible consequences when they chose the wrong path. As the story went on, my brother, sisters, and cousins grew quieter and quieter. The younger ones covered under the covers during the really scary parts of the story, but when I asked if I should stop, their small muffled voices, often tinged with a thrill of fear, would call out, “No, go on, go on!”

Human beings, young and old, love a good story.

LAW IS STORYTELLING

It turns out that being a trial lawyer is storytelling on steroids. As a trial lawyer, not only do I write the script for my opening and closing, but I get to direct the production and play one of the starring roles. If I tell my client’s story truly and well, through a miraculous kind of verbal alchemy, I can convince a jury of real people to turn that story into justice.

When you first start out in the practice of law, particularly if you hang up your own shingle, you are just grateful for any case or anyone who walks in the door and trusts you with her legal problem. Once you are past the stage of being able to pay your rent, a successful law practice is built by recognizing the clients who have stories worth telling, who have suffered a wrong worth righting, who have a case that will make a difference not just for one person, but for the community as a whole. These are stories, like the one I told in that bedroom long ago, where those listening (the jurors) can see themselves in the client’s predicament and will care about fixing the problem so it will not happen to them.

The problem in selecting a good story to tell, or a good case to take, is that when you are representing the person bringing the lawsuit, you have the burden of proof on the three main legal issues and a fourth unnamed “X” factor not found in any jury instruction:

The Four Factors of a Case

Liability	Did the defendant do something wrong?
Causation	Did the wrong cause the injuries claimed?
Damages	How much will make the person whole?
The "X" Factor	Does this person deserve the money?

If you lose on any one of these issues, you lose the case. The defendant has to prove absolutely nothing. To make the life of a trial lawyer even tougher, if you win all these elements at trial, you may still lose the case through an appeal, which can last an average of two to five years after the verdict. I never said the greatest job in the world didn't come with a few challenges. All the more reason to try and increase your potential client's chances of success by evaluating the case carefully, balancing the four issues you have to prove, and selecting or rejecting the case.

FIND A STORY WORTH TELLING

Connecticut lawyer Mike Koskoff passed on to me the advice of his father, the legendary trial lawyer Ted Koskoff: "You make more money from the cases you turn down than the cases that you take."

So how do you follow that sage counsel and recognize the cases you should take and the cases you should turn down? How do you find out if the person who phones or walks in your front door has a story worth telling?

There are a few basic elements to every story worth telling:

- ◆ A violation of safety rules involving a danger to the community.
- ◆ A villain or villains.
- ◆ A hero or heroine.
- ◆ A solution from the jury that makes us all safer.

These elements, and how to recognize and develop them, are what this book is all about.