

References to Television Programming in Judicial Opinions and Lawyers' Advocacy

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REFERENCES TO TELEVISION PROGRAMMING IN JUDICIAL OPINIONS AND LAWYERS' ADVOCACY

DOUGLAS E. ABRAMS*

“Think of the poor judge who is reading . . . hundreds and hundreds of these briefs,” says Chief Justice John G. Roberts, Jr. “Liven their life up just a little bit . . . with something interesting.”

Lawyers can “liven up” their briefs with references to television shows generally known to Americans who have grown up watching the small screen. After discussing television’s pervasive effect on American culture since the early 1950s, this Article surveys the array of television references that appear in federal and state judicial opinions. In cases with no claims or defenses concerning the television industry, judges often help explain substantive or procedural points with references to themes and fictional characters from well-known dramas or comedies. The courts’ use of television references invites advocates to use these cultural markers in the briefs they submit.

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I. INTRODUCTION

“Think of the poor judge who is reading . . . hundreds and hundreds of these briefs,” says Chief Justice John G. Roberts, Jr.¹ “Liven their life up just a little bit . . . with something interesting.”²

Justice Antonin Scalia similarly advised brief writers to “[m]ake it interesting.”³ He said, “I don’t think the law has to be dull.”⁴ “Legal briefs are necessarily filled with abstract concepts that are difficult to explain,” he continued.⁵ “Nothing clarifies their meaning as well as examples,” which “cause the serious legal points you’re making to be more vivid, more lively, and hence more memorable.”⁶

Brief writers can “liven up” their court filings with memorable examples drawn from television programs generally known to Americans. In written opinions that decide cases with no claims or defenses concerning television programming or the television industry, judges often help explain substantive or procedural points with references to themes and fictional characters from well-known dramas or comedies.⁷ In civil and criminal cases alike, the courts’ own use of television references (and references to other cultural stimuli such as music, literature, and sports)⁸ invites advocates to use television in the briefs they submit.

1. Bryan A. Garner, *Interviews with United States Supreme Court Justices: Chief Justice John G. Roberts Jr.*, 13 SCRIBES J. LEGAL WRITING 5, 18 (2010).

2. *Id.*

3. ANTONIN SCALIA & BRYAN A. GARNER, MAKING YOUR CASE: THE ART OF PERSUADING JUDGES 112 (2008).

4. Jan Crawford Greenburg, *Justices Scalia and Breyer: Little in Common, Much to Debate*, ABC NEWS (Dec. 6, 2006), <http://abcnews.go.com/Politics/story?id=2704898> [<https://perma.cc/GU9C-EK9Q>]; see also RUGGERO J. ALDISERT, WINNING ON APPEAL: BETTER BRIEFS AND ORAL ARGUMENT § 9.2, at 152 (rev. 1st ed. 1996) (“[I]t is not unconstitutional to be interesting.”); Wiley B. Rutledge, *The Appellate Brief*, 28 A.B.A. J. 251, 254–55 (1942) (“It helps to break the monotony of the printed legal page to add a bit of life now and then. . . . A dull brief may be good law. An interesting one will make the judge aware of this.”).

5. SCALIA & GARNER, *supra* note 3, at 111.

6. *Id.* at 111–12.

7. See, e.g., *Spotted Cat, LLC v. Bass*, No. 13–6100, 2014 WL 4072024, at *3 & n.32 (E.D. La. Aug. 18, 2014).

8. See, e.g., *Sprint Commc’ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 301 (2008) (Roberts, C.J., dissenting) (quoting BOB DYLAN, LIKE A ROLLING STONE (Columbia Records

Some judges “liven up” their opinions by discussing reality programming and television dramas that regularly feature lawyers and law enforcement; other judges discuss dramas and situation comedies (sitcoms) that rarely mention the law. Some of the shows (such as *Perry Mason* and *Dragnet*) feature characters and themes that appeared earlier in novels or on radio, but it is fair to assume that today’s recollections come primarily from their hit television series.

Television references may appear in opinions handed down years after the cited show left the air. Typical is *Spotted Cat, LLC v. Bass*, which disqualified the plaintiff restaurant’s counsel in a damage action alleging that the defendant’s false representations interfered with the restaurant’s efforts to prepare for Hurricane Isaac in 2012.⁹ The federal district court found that counsel, one of the restaurant’s two members, would be a necessary trial witness (and indeed perhaps the sole witness on the liability issue) because he had the critical face-to-face exchanges with the defendant.¹⁰

In *Spotted Cat*, Judge Jane Triche Milazzo applied Rule 3.7 of the ABA’s *Model Rules of Professional Conduct*,¹¹ which provides that, with exceptions that the court found inapplicable, “[a] lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness.”¹² The court rejected the plaintiff’s speculation that the defendant “may, upon taking the oath at trial, suddenly decide to fully agree with Plaintiff’s version of events.”¹³ Judge Milazzo found the speculation remote because it depended “on the occurrence of a ‘Perry Mason’ moment in the courtroom. . . . [I]n the Court’s experience, such moments are usually confined to fictional courtrooms.”¹⁴

Part II of this Article discusses television’s pervasive influence on American culture since the early 1950s, the foundation for evident

1965)); *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 247 (2002) (discussing WILLIAM SHAKESPEARE, *ROMEO AND JULIET* act 1, sc. 2); Douglas E. Abrams, *Sports in the Courts: The Role of Sports References in Judicial Opinions*, 17 *VILL. SPORTS & ENT. L.J.* 1 (2010); Adam Liptak, *Dylan Tribute Band in Robes, with Chief Justice as Lead*, *N.Y. TIMES*, Feb. 23, 2016, at A12 http://www.nytimes.com/2016/02/23/us/politics/how-does-it-feel-chief-justice-rob-erts-to-hone-a-dylan-quote.html?_r=0 [<https://perma.cc/WH9B-J92N>] (discussing the Supreme Court’s quotations of Dylan and other singers).

9. *Spotted Cat, LLC*, 2014 WL 4072024.

10. *Id.* at *3.

11. *Id.* at *4.

12. MODEL RULES OF PROF’L CONDUCT r. 3.7 (AM. BAR ASS’N 2011).

13. *Spotted Cat, LLC*, 2014 WL 4072024, at *3 & n.32.

14. *Id.*

judicial confidence that readers will connect with well-conceived references to popular programs. This confidence began in earnest as the first television generation grew into adulthood by the 1980s, and the confidence has continued ever since.

Part III surveys the broad array of television dramas, sitcoms, and reality shows that appear in federal and state judicial opinions. Part IV explains why advocates should feel comfortable following the courts' lead by using these sources carefully to help make arguments (as Justice Scalia put it) "more vivid, more lively, and hence more memorable."¹⁵

II. TELEVISION AND CONTEMPORARY AMERICAN CULTURE

National Humanities Medal-winning writer William Manchester reported that "[t]elevision became a major industry and cultural force in 1950."¹⁶ Only 9.0% of U.S. households owned at least one television set that year, but two historians say that "television was finding its place in the American living room (and bedroom and dining room and kitchen and den and basement and hospital ward and bus station . . .)."¹⁷ The percentages of ownership grew steadily each year throughout the 1950s, reaching 64.5% of American households in 1955 and 85.9% in 1959.¹⁸ By 1955, 13% of households owned two or more sets and some owned as many as six.¹⁹

Manchester wrote that "[a]s early as 1950 one study had found that some junior high school students were spending an average of nearly thirty hours a week in front of tubes."²⁰ By the end of the 1950s, households with television sets watched an average of five hours and two minutes a day,²¹ and the United States had raised what Manchester called "the first television generation."²² Television had become "[o]ne of the most powerful of all postwar entertainments,"²³ indeed "an American

15. SCALIA & GARNER, *supra* note 3, at 112.

16. 1 WILLIAM MANCHESTER, *THE GLORY AND THE DREAM: A NARRATIVE HISTORY OF AMERICA 1932-1972*, at 716 (1974) (quoting *Time*).

17. DAVID MARC & ROBERT J. THOMPSON, *PRIME TIME, PRIME MOVERS: FROM I LOVE LUCY TO L.A. LAW—AMERICA'S GREATEST TV SHOWS AND THE PEOPLE WHO CREATED THEM* 4 (1992).

18. COBBETT S. STEINBERG, *TV FACTS* 142 (1980).

19. MANCHESTER, *supra* note 16, at 717.

20. *Id.* at 717-18.

21. STEINBERG, *supra* note 18, at 150.

22. MANCHESTER, *supra* note 16, at 714.

23. ELAINE TYLER MAY, *HOMEWARD BOUND: AMERICAN FAMILIES IN THE COLD WAR ERA* 171 (1988).

habit and a virtual necessity”²⁴ and an “electronic prodigy endowed with the capacity to influence an entire nation.”²⁵

Television’s influence on American culture grew steadily throughout the 1960s and 1970s. The percentage of U.S. households owning at least one television set rose from 87.1% in 1960 to 95.0% in 1969 and from 95.2% in 1970 to 98.0% in 1978.²⁶ The average amount of time per day spent watching television rose from five hours and six minutes in 1960 to five hours and forty-eight minutes in 1969.²⁷ By 1978, the average daily amount stood at six hours and ten minutes,²⁸ and “America’s infatuation with television”²⁹ led adults to spend about 28% of their leisure time watching the set.³⁰

The pace of judicial references to television shows has continued since the 1980s, when Americans—including writers and readers of judicial opinions—had either grown up with television as children and adolescents or had become increasingly familiar with its programming throughout adulthood. By the end of the 1980s, more than half of American households owned video cassette recorders (VCRs),³¹ which provided unprecedented flexibility by allowing viewers to record their favorite programs for later watching according to their personal schedules. In 1989, one cultural commentator wrote that “[g]iven the sheer breadth of its appeal, television tends to address—and help create—widely held beliefs that permeate the culture.”³²

In 1996, former Federal Communications Commission chair Newton N. Minow lamented that many parents and children spend more time with television than with one another.³³ In the twenty-first century, digital video recorders (DVRs) have replaced VCRs as even more convenient

24. STEVEN D. STARK, *GLUED TO THE SET: THE 60 TELEVISION SHOWS AND EVENTS THAT MADE US WHO WE ARE TODAY* 25 (1997).

25. RICHARD N. GOODWIN, *REMEMBERING AMERICA: A VOICE FROM THE SIXTIES* 61 (1988).

26. STEINBERG, *supra* note 18, at 142.

27. *Id.* at 150.

28. *Id.*

29. A. FRANK REEL, *THE NETWORKS: HOW THEY STOLE THE SHOW*, at xii (1979).

30. *Id.* at xi; *see also* STEINBERG, *supra* note 18, at 150.

31. ROBERT J. THOMPSON, *TELEVISION’S SECOND GOLDEN AGE: FROM HILL STREET BLUES TO ER* 98 (1996).

32. ELLA TAYLOR, *PRIME-TIME FAMILIES: TELEVISION CULTURE IN POSTWAR AMERICA* 1 (1989).

33. Newton N. Minow, *Television Values and the Values of Our Children*, 6 *DEPAUL-LCA J. ART & ENT. L.* 193, 195 (1996).

devices to record shows for later personal viewing. By 2007, the average household's daily dosage of television had risen to more than eight hours³⁴ as the term "TV addiction"³⁵ entered the American lexicon.

By the time today's average American child reaches seventy, he or she will have spent the equivalent of about seven to ten years watching television.³⁶ The average child graduates from high school after spending "13,000 hours in school and 25,000 hours in front of the TV set."³⁷ More than "98% of American households own at least one television set," which are more households "than have indoor plumbing."³⁸ These imposing numbers, climaxing more than a half century of steady growth, enable legal writers to treat television references as cultural markers familiar to readers.

III. TELEVISION REFERENCES IN JUDICIAL OPINIONS

With television's influence on American culture assured by the 1980s, more and more federal and state judicial opinions sought to connect with readers by citing a broad array of dramas, sitcoms, and reality shows.³⁹ Particularly noteworthy is the courts' use of television references to help explain why the movant or claimant loses on a motion or at final judgment.⁴⁰ Parties may argue for a decision based on ideal visions of American society, but courts use television references to illustrate

34. Jeff Jacoby, *Silence That Idiot Box!*, BOS. GLOBE, Sept. 27, 2009, at A.9, http://archive.boston.com/bostonglobe/editorial_opinion/oped/articles/2009/09/27/silence_that_idiot_box/ [<https://perma.cc/UZN4-CW97>].

35. See Robert Kubey & Mihaly Csikszentmihalyi, *Television Addiction Is No Mere Metaphor*, SCI. AM. MIND, Jan.-Feb. 2004, at 48.

36. See Comm. on Comm'ns, Am. Acad. of Pediatrics, *Children, Adolescents, and Television*, 96 PEDIATRICS 786, 786 (1995) (citing NIELSEN MEDIA RESEARCH, 1992-1993 REPORT ON TELEVISION 9 (1993)).

37. Manfred Spitzer, *Violence on TV: We Must Stop Watching*, OECD (Jan. 2005), <http://www.oecd.org/edu/ceri/manfredscolumnjanuary2005violenceontvwemuststopwatching.htm> [<https://perma.cc/LZD6-KFUT>].

38. Larry A. Viskochil, *Foreword* to LLOYD DEGRANE, TUNED IN: TELEVISION IN AMERICAN LIFE (1991).

39. Scattered earlier decisions employing references to television shows include *United States v. Butenko*, 494 F.2d 593, 611 (3d Cir. 1974) (*The Lone Ranger*), and *Crawford v. State*, 264 So. 2d 554, 558 (Ala. Crim. App. 1972) (*Perry Mason*).

40. See, e.g., *Crawford*, 264 So. 2d at 558-59.

(according to two federal district courts) that “perfection . . . exists only in fiction”⁴¹ and that “[r]eal life does not work that way.”⁴²

In what William Manchester called “The Age of Television,”⁴³ courts give contemporary meaning to English Romantic poet Samuel Taylor Coleridge’s advice to readers of literature nearly two centuries ago. Because fiction writers frequently take measured license with reality, Coleridge said that readers enjoy literature most when they bring a “willing suspension of disbelief for the moment.”⁴⁴ Similar license and suspension enable viewers to enjoy television, yet enable judges to use television dramas and sitcoms to distinguish fiction from reality in the cases they decide.

A. Dramas

1. Perry Mason

Perhaps because most judicial opinions communicate primarily to litigants, and to lawyers who represent them or analyze precedents in future cases, courts have most often cited television shows that portray lawyers and the courtroom. “Ever since the days of Perry Mason, viewers have always flocked to shows about lawyers.”⁴⁵ Prominent among the viewing “flock” are lawyers themselves, including Justice Sonia Sotomayor who, during her 2009 Senate confirmation hearings for a Supreme Court appointment, cited Perry Mason as the childhood influence that led her to pursue a career in law.⁴⁶

Perry Mason has been called “America’s lawyer,”⁴⁷ and his dramatic series ranks as the lawyers show discussed most often in judicial

41. Mitchell v. Scully, No. 82 Civ. 8773, 1983 U.S. Dist. LEXIS 14906, at *12 (S.D.N.Y. Aug. 4, 1983) (“the fictional Perry Mason”).

42. Jimenez v. City of Chicago, 830 F. Supp. 2d 432, 444–45 (N.D. Ill. 2011) (“a Perry Mason-like world”).

43. MANCHESTER, *supra* note 16, at 715.

44. 2 SAMUEL TAYLOR COLERIDGE, BIOGRAPHIA LITERARIA (1817), reprinted in 7 THE COLLECTED WORKS OF SAMUEL TAYLOR COLERIDGE 5, 6 (James Engell & W. Jackson Bate eds., 1983).

45. Michael O’Rourke, *A TV Series that Appeals to Everybody*, SAN ANTONIO EXPRESS-NEWS, Oct. 22, 2011, at 1E, <http://www.mysanantonio.com/life/article/O-Rourke-A-TV-series-that-appeals-to-everybody-2229907.php> [<https://perma.cc/ERE5-KJ2H>].

46. Joan Biskupic & Kathy Kiely, “Perry Mason” Helped “Mold” Sotomayor, USA TODAY, July 16, 2009, at 4A, http://usatoday30.usatoday.com/printedition/news/20090716/sotomayor16_st.art.htm [<https://perma.cc/2DLA-7GA3>].

47. THOMAS LEITCH, PERRY MASON 3 (2005); see also STARK, *supra* note 24, at 97 (“[B]efore audiences of millions, *Perry Mason* presented a view of police and lawyers that did

opinions.⁴⁸ To Americans from all walks of life, the term “Perry Mason” remains almost synonymous with the term “lawyer.”⁴⁹ Indeed, in a *National Law Journal* poll conducted in 1993 (nearly thirty years after the show left prime time for syndication), the fictional Mason finished second to F. Lee Bailey as the nation’s most admired lawyer,⁵⁰ although Bailey might not have won the honor after his controversial, well-publicized role as a defense counsel in the O.J. Simpson criminal trial shortly afterwards.⁵¹ Nor would Bailey’s lofty stature have been helped by his disbarment in Florida in 2001.⁵²

Defense counsel Perry Mason’s character originated in Erle Stanley Gardner’s detective novels⁵³ and had a successful run in four movies and on radio⁵⁴ before Raymond Burr played the title role in 271 television episodes that aired from 1957 to 1966.⁵⁵ Representing clients whose guilt appeared likely for much of the hour, Mason would defeat prosecutor Hamilton Burger with dogged personal investigation, usually climaxed by Mason’s dramatic cross examination that led a key witness or a spectator to breakdown in the courtroom, often with a tearful confession.⁵⁶ The U.S. Court of Appeals for the First Circuit observed that Mason also

more to give people the verdict on how the legal system operates than any grade-school civics course or news article ever could.”).

48. Cf. LEITCH, *supra* note 47, at 3–4.

49. See, e.g., *Rose v. Lundy*, 455 U.S. 509, 529–30 (1982) (Blackmun, J., concurring in judgment) (discussing “the Perry Masons of the prison populations,” inmates who file pleadings and briefs that they often draft in prison libraries while serving their sentences).

50. Randall Samborn, *Who’s Most Admired Lawyer?*, NAT’L L.J., Aug. 9, 1993, at 24; Raymond Burr, *Heart as Big as His Body*, CHI. TRIB., Sept. 14, 1993, at 9.

51. David L. Hudson, Jr., *A Long Fall: In a Futile Effort to Practice Law Again, F. Lee Bailey Loses His Last Big Case*, A.B.A. J., Dec. 2014, at 22, http://www.abajournal.com/magazine/article/f_lee_bailey_loses_his_quest_to_practice_law_again_after_past_misdeeds/ [<https://perma.cc/5PKJ-C52W>].

52. Fla. Bar v. Bailey, 803 So. 2d 683, 685 (Fla. 2001) (disbarment); see also Bailey v. Bd. of Bar Exam’rs, 90 A.3d 1137, 1141 (Me. 2014) (denying admission to the Maine Bar).

53. See, e.g., DOROTHY B. HUGHES, *ERLE STANLEY GARDNER: THE CASE OF THE REAL PERRY MASON* (1978).

54. See, e.g., RON LACKMANN, *THE ENCYCLOPEDIA OF AMERICAN RADIO: AN A–Z GUIDE TO RADIO FROM JACK BENNY TO HOWARD STERN* 221 (2000).

55. Norman Rosenberg, Perry Mason, in *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* 115, 115 (Robert M. Jarvis & Paul R. Joseph eds., 1998) [hereinafter *PRIME TIME LAW*]. *Prime Time Law* is an excellent collection of informative essays concerning the leading television lawyer shows and their influence on popular culture over the years. See also Stephanie Francis Ward, *The 25 Greatest Legal TV Shows*, A.B.A. J. (Aug. 2, 2009), http://www.abajournal.com/magazine/article/the_25_greatest_legal_tv_shows [<https://perma.cc/YB3D-28SG>].

56. See *Devine v. Wal-Mart Stores, Inc.*, 52 F. Supp. 2d 741, 744 n.4 (S.D. Miss. 1999).

“possessed an uncanny aptitude for exonerating clients by casting blame elsewhere.”⁵⁷

The enduring image of Perry Mason as the “idealized,”⁵⁸ “flawless”⁵⁹ lawyer who “never lost a case”⁶⁰ has become so engrained in American popular culture that most judicial opinions discussing the show follow *Spotted Cat*’s approach of presuming readers’ understanding, without explanation in text or footnote.⁶¹ Only a few decisions accompany a citation with a brief explanation to orient readers who might be too young to recall, or who might not follow today’s reruns.⁶²

During cross-examination in real-life criminal and civil proceedings, witnesses do sometimes breakdown on the stand with key concessions, unanticipated information, or tearful confessions.⁶³ Away from the small screen, however, courts perceive such dramatic Perry Mason-style climaxes as “very rare”⁶⁴ because well-prepared counsel normally anticipate the course of the trial in the relatively few cases that do not settle and because contemporary procedure emphasizes pretrial discovery and favors conferences with the court outside the jury’s presence or earshot when surprise does surface.⁶⁵ Counsel’s hopeful

57. *United States v. Noah*, 130 F.3d 490, 493 n.1 (1st Cir. 1997).

58. *Id.*

59. *Freeman v. Leapley*, 519 N.W.2d 615, 619 (S.D. 1994), *petition for habeas corpus granted sub nom. Freeman v. Class*, 911 F. Supp. 402 (D.S.D. 1995), *aff’d*, 95 F.3d 639 (8th Cir. 1996).

60. *People v. Castillo*, No. E039686, 2007 WL 3151689, at *1 (Cal. Ct. App. Oct. 30, 2007).

61. *See supra* notes 11–14 and accompanying text; *see also Sallee v. Tenn. Bd. of Prof’l Responsibility*, 469 S.W.3d 18, 41 (Tenn. 2015) (“[A] lawyer who represents criminal clients may be interested in watching *Perry Mason* . . . on television, and may even pick up a useful tidbit or two from doing so.”).

62. *See, e.g., Noah*, 130 F.3d at 493 n.1; *Devine v. Wal-Mart Stores, Inc.*, 52 F. Supp. 2d 741, 744 n.4 (S.D. Miss. 1999).

63. *United States v. Hinkson*, 585 F.3d 1247, 1254 (9th Cir. 2009) (en banc) (calling a courtroom scene a “Perry Mason court-room drama”); *State v. Norwood*, 706 N.W.2d 683, 692 (Wis. Ct. App. 2005) (describing the defendant’s “on-the-stand, virtually Perry Mason-style confession”).

64. *Midwest Canvas Corp. v. Cantar/Polyair Corp.*, No. 01 C 7055, 2003 WL 22053582, at *4 (N.D. Ill. Sept. 3, 2003); *see also Daniels v. Holman (In re Holman)*, 536 B.R. 458, 467 (Bankr. D. Or. 2015) (“It is a truism (Perry Mason aside) that parties virtually never admit at trial that they acted with an intent to deceive or defraud the opposing party.”).

65. *Johnson v. Hix Wrecker Serv., Inc.*, No. 1:08-cv-50-WTL-TAB, 2012 U.S. Dist. LEXIS 138232, at *2 n.1 (S.D. Ind. Sept. 26, 2012) (“While the Court acknowledges Plaintiff’s counsel’s desire to be a modern day Perry Mason, the fact is that ‘litigation under the Federal Rules of Civil Procedure is not supposed to be merely a game, a joust, a contest; it is also a quest for truth and justice.’” (quoting *Ash v. Wallenmeyer*, 879 F.2d 272, 275 (7th Cir. 1989))); *United States v. Schneider*, 157 F. Supp. 2d 1044, 1069 (N.D. Iowa 2001) (“[T]his type of a

“prayer”⁶⁶ for victory through courtroom surprise does not drive decision making because (as the Minnesota Court of Appeals put it) so-called Perry Mason defenses⁶⁷ and Perry Mason moments⁶⁸ “tend only to happen on late night TV if your station carries reruns.”⁶⁹

Because courts consider counsel’s hope for dramatic courtroom surprise “pure fantasy,”⁷⁰ appellate courts citing the fictional Mason normally affirm the trial court’s exercise of discretion to exclude a witness or otherwise to limit cross-examination. In *United States v. Beck*, for example, the convicted defendant contended that the trial court violated the Sixth Amendment by limiting his counsel’s questioning of a hostile witness.⁷¹ However, the U.S. Court of Appeals for the Seventh Circuit found harmless error⁷² because “[i]t is unlikely that counsel expected [the witness] to break down on the stand and admit that his perjury was part of an elaborate scheme to frame the defendants. Only Perry Mason enjoyed such moments.”⁷³

Courts also cite Perry Mason to reject claims that assigned counsel’s ineffective assistance denied the defendant a fair trial. One federal district court explained that “the Constitution guarantees only representation which is reasonably competent, not the perfection which exists only in fiction.”⁷⁴ In yet another case, a dissenting judge observed

‘Perry Mason’ moment, replete with the elements of surprise and prejudice, is precisely the type of matter that should be taken up with the court outside the presence of the jury.’”)

66. *United States v. Leary*, No. CRIM.A. 04–81–KAJ, 2005 WL 1385142, at *1 (D. Del. Apr. 5, 2005) (discussing trial counsel’s “prayer for a Perry Mason moment” when he could break down the witness on cross examination).

67. *United States v. DeNoyer*, 811 F.2d 436, 440 (8th Cir. 1987) (defendant’s offer of proof that someone else committed the crime “fall[s] far short of establishing a ‘Perry Mason defense’”); *United States v. Saintil*, 753 F.2d 984, 987 (11th Cir. 1985) (“[T]here is nothing to indicate that these witnesses would, as if in a ‘Perry Mason’ rerun, confess on the witness stand that they were, indeed, the criminals.”); *Minn. Fair Plan v. Neumann (In re Neumann)*, 374 B.R. 688, 700 n.16 (Bankr. D. Minn. 2007) (“The efforts in cross-examination to point the blame to another, unidentified person, somewhat in *Perry Mason* fashion, badly misfired.”).

68. *See, e.g., In re Osejo*, 447 B.R. 352, 354 (Bankr. S.D. Fla. 2011) (discussing the debtor’s failure to “break down on the stand *a la* Perry Mason . . . and confess”); *Bearden v. State*, 62 So. 3d 656, 660 (Fla. Dist. Ct. App. 2011) (“In seeking to recall [a witness], the defense was clearly not anticipating a dramatic, Perry Mason-style moment during which [the witness] would confess that it was he and not Bearden who [committed the crime].”).

69. *State v. Weatherspoon*, 514 N.W.2d 266, 281 (Minn. Ct. App. 1994).

70. *Arcaro v. Silva & Silva Enters. Corp.*, 91 Cal. Rptr. 2d 433, 437 (Ct. App. 1999).

71. 625 F.3d 410, 412 (7th Cir. 2010).

72. *Id.* at 422.

73. *Id.* at 420.

74. *Mitchell v. Scully*, No. 82 Civ. 8773, 1983 U.S. Dist. LEXIS 14906, at *12 (S.D.N.Y.

that on ineffectiveness claims, courts “compare counsel’s performance not to an ideal, Perry Mason-style defense . . . but to what a reasonably competent counsel could accomplish under the circumstances of the case.”⁷⁵

The U.S. Court of Appeals for the Fifth Circuit has even invoked defense counsel Mason to discuss prosecutors’ professional responsibilities: “[T]he prosecutor’s aim is justice. . . . [W]hen it becomes apparent during the trial of a criminal case, a la the celebrated fictional career of Perry Mason, that the accused is innocent of the crime with which he stands charged, the prosecutor has not ‘lost.’”⁷⁶

2. Other Television Dramas About Lawyers and Law Enforcement

Among television shows about lawyers and law enforcement, the runner-up to *Perry Mason* for the number of citations in federal and state court opinions is undoubtedly *L.A. Law*, a drama that also leads courts to distinguish fiction from reality. Observers suspected that during its run from 1986 to 1994,⁷⁷ the show’s fictional portrayal of law practice not only left Americans with unrealistic visions about what lawyers do but also induced many applicants to attend law school based on unrealistic visions of careers in the fast lane.⁷⁸

Law school applications rose while *L.A. Law* presented the practice, according to one writer, as “a lifestyle package that involved clothes, friends, relationships, social status and that elusive ingredient: getting paid for championing social justice causes” where “[t]here was never a

Aug. 4, 1983).

75. *Richie v. Mullin*, 417 F.3d 1117, 1136 (10th Cir. 2005) (McConnell, J., dissenting).

76. *Edmonson v. Leesville Concrete Co.*, 895 F.2d 218, 225–26 (5th Cir. 1990), *rev’d on other grounds*, 500 U.S. 614 (1991); *see also* *United States v. Fletcher*, 62 M.J. 175, 182 (C.A.A.F. 2005) (“Although we might expect a character in a Perry Mason melodrama to point to a defendant and brand him a liar, such conduct is inconsistent with the duty of the prosecutor to ‘seek justice, not merely to convict.’” (quoting *United States v. White*, 486 F.2d 204, 206 (2d Cir. 1973))).

77. *See* JANE FEUER, *SEEING THROUGH THE EIGHTIES: TELEVISION AND REAGANISM* 60–81 (1995).

78. Michael Orey, *Sex! Money! Glitz! In-House at L.A. Law*, *AM. LAW.*, Dec. 1988, at 32; *see also* *Bible v. Schiro*, 497 F. Supp. 2d 991, 1023 (D. Ariz. 2007) (saying the prosecutor’s closing arguments were “an attempt to characterize his personal style (in contrast to what the jurors might have seen on television shows like *L.A. Law*)”); Leonor Vivanco, *Chicago Legal: Chicago Lawyers Find TV Guilty of Excess Drama*, *RED EYE*, Oct. 20, 2008, at 6, http://articles.chicagotribune.com/2008-10-20/news/0810200362_1_law-order-open-court-trial [<https://perma.cc/Y5WB-6Y3N>] (“When I was in high school . . . , it was all about ‘L.A. Law.’ And it presented such a glamorous courtroom-centered vision of what being a lawyer was like that you couldn’t help but want to be one.”).

dull client, never a boring case and in court they were poised and articulate.”⁷⁹ Law school application numbers fell nationwide once the show left the air.⁸⁰

Law practice bears little resemblance to the unstinting “adrenaline rushes that have dominated television drama for decades because tedium and petty annoyances pass unseen when days, weeks, or even months are compressed into an hour on the screen.”⁸¹ Decisions accenting *L.A. Law*’s unrealistic visions include *United States v. Prince*, which affirmed the defendant’s convictions for bank robbery and unlawfully using a firearm during commission of a violent crime.⁸² The U.S. Court of Appeals for the Tenth Circuit began with words of caution:

[T]he would-be lawyer raised on the hit television series, *L.A. Law*, to believe a law degree is that golden ticket to a glamorous career of big money, fast cars and intimate relationships among the beautiful people may think twice before sending in his or her law school application when word of this case gets out.⁸³

Prince’s words of caution were well-founded. After the trial court twice denied the assigned federal public defender’s requests to withdraw from the case because defendant Prince refused to talk to him, the defendant dropped his pants and urinated in front of the jury as the panel was being sworn.⁸⁴ A court-ordered psychological examination found the defendant competent to stand trial, and the court of appeals held that the district court did not abuse its discretion by refusing to order a second examination.⁸⁵

“[F]or the one-time budding lawyer whose hopes for a dazzling life have now been dashed by the facts of this case,”⁸⁶ the *Prince* panel suggested “an alternative career in screenwriting.”⁸⁷ The panel concluded that “[u]nusual stories like this one are apparently standard fare for the

79. Brigid Delaney, *In Law, the Practice Bears Little Resemblance to The Practice*, SYDNEY MORNING HERALD, Apr. 30, 2002, at 18, <http://www.smh.com.au/articles/2002/04/29/1019441344914.html> [<https://perma.cc/WGX5-HX7C>].

80. John Brigham, *L.A. Law*, in *PRIME TIME LAW*, *supra* note 55, at 21, 21.

81. Douglas E. Abrams, *Picket Fences*, in *PRIME TIME LAW*, *supra* note 55, at 129, 142.

82. 938 F.2d 1092, 1096 (10th Cir. 1991).

83. *Id.* at 1093.

84. *Id.*

85. *Id.* at 1094–95.

86. *Id.* at 1096.

87. *Id.*

fictional television lawyers of *L.A. Law*, who face many obstacles before cashing their paycheck and speeding off to another intimate dinner-party.”⁸⁸

In addition to *Perry Mason* and *L.A. Law*, courts have discussed other television shows about lawyers and law enforcement. In *State v. Taylor*, for example, the Missouri Court of Appeals concluded that the trial court committed no error when it permitted the prosecutor to question prospective jurors about their willingness to convict the defendant on eyewitness testimony alone.⁸⁹ The court of appeals explained that “[g]iven the prevalence of television shows such as *CSI* and *Law and Order*, a trend exists wherein juries expect the State to present physical evidence on every issue. The trial court does not err in allowing the State to ferret out such juror biases during voir dire.”⁹⁰

When the convicted defendant asserted his lack of knowledge about the underlying crime because a witness at trial never referred to stolen tractors as “hot” or “stolen,” the U.S. Court of Appeals for the Sixth Circuit concluded that the witness’ characterizations “mean[t] nothing”⁹¹ because “[d]iscreet thieves often sell obviously stolen properly without using the lingo of the stereotypical ‘Law & Order’ or ‘N.Y.P.D. Blue’ villain.”⁹²

In *Clingman v. State*, the Wyoming Supreme Court rejected the convicted defendant’s claim that the prosecutor had improperly commented to the court about facts that did not concern the crimes to which the defendant had pleaded.⁹³ Concluding that the prosecutor’s comments approached impropriety, two concurring justices cited *Hill*

88. *Id.* at 1096 n.4.

89. 317 S.W.3d 89, 94 (Mo. Ct. App. 2010).

90. *Id.* at 95 n.2; *see also* Gray v. Gelb, No. 14-14065-GAO, 2015 WL 6870048, at *1 (D. Mass. Nov. 6, 2015) (“[T]he trial judge’s goal was probably weeding out the so-called ‘CSI effect,’ the theory that because of the proliferation of crime investigation television dramas, jurors hold prosecutors to an unrealistic standard of proof and require that every crime be proven irrefutably by high-tech gadgetry and scientific analysis.” (footnote omitted)); THE *CSI* EFFECT: TELEVISION, CRIME, AND GOVERNANCE (Michele Byers & Val Marie Johnson eds., 2009); Simon A. Cole & Rachel Dioso-Villa, *Investigating the ‘CSI Effect’ Effect: Media and Litigation Crisis in Criminal Law*, 61 STAN. L. REV. 1335, 1338–39 (2009); Jenny Wise, *Providing the CSI Treatment: Criminal Justice Practitioners and the CSI Effect*, 21 CURRENT ISSUES CRIM. JUST. 383, 383–84 (2010).

91. *United States v. McCarley*, 70 F. App’x 854, 858 (6th Cir. 2003).

92. *Id.*; *see also* Dawn Keetley, *Law & Order*, in *PRIME TIME LAW*, *supra* note 55, at 33; Richard Clark Sterne, *N.Y.P.D. Blue*, in *PRIME TIME LAW*, *supra* note 55, at 87.

93. *Clingman v. State*, 23 P.3d 27, 30 (Wyo. 2001).

*Street Blues*⁹⁴ and repeated the advice of the show's morning roll-call police sergeant who would end his daily briefing with, "Let's be careful out there."⁹⁵

Courts frustrated with verbosity or extraneous argument sometimes issue opinions that relay the classic instruction of non-nonsense Los Angeles police Sgt. Joe Friday (played by Jack Webb) on *Dragnet*, which aired from 1951 to 1959: "Just the facts, m'am."⁹⁶

In *Privitera v. Town of Phelps*, the appellate court affirmed dismissal of a slander claim against the defendant who had charged the plaintiff with membership in the Mafia.⁹⁷ The panel dispensed with lengthy explanation about potential harm to the plaintiff's reputation, stating instead that "[t]hose unaware of the criminal ventures of Al Capone have now been educated by the long-running TV series 'The Untouchables,' based on his life."⁹⁸

Judicial opinions have discussed one foreign show about law and lawyers. *Rumpole of the Bailey* aired on the British Broadcasting Company (BBC) and on the Public Broadcasting System (PBS) in the United States. Deftly combining drama and comedy, the series concerned a fictional London barrister who usually represented criminal defendants in the Old Bailey, a court building in central London.⁹⁹ Horace Rumpole, played by Leo McKern, often referred to his sometimes overbearing wife, Hilda, as "she who must be obeyed."¹⁰⁰ Courts in the United States have quoted barrister Rumpole to illustrate

94. *Hill Street Blues* (NBC television broadcast 1981–1987).

95. *Clingman*, 23 P.3d at 30–32 (Golden, J., concurring); see also *Dean v. Harris Cty.*, No. H-13-00073, 2013 WL 5214351, at *2 n.5 (S.D. Tex. Sept. 17, 2013) ("*Miranda* prescribes . . . four warnings familiar to every student of criminal procedure and police procedural dramas from *Hill Street Blues* to *Law & Order*"). See generally THOMPSON, *supra* note 31, at 59–74; Susan Beth Farmer, *Hill Street Blues*, in PRIME TIME LAW, *supra* note 55, at 17.

96. *Counts v. Bryan*, 182 S.W.3d 288, 293 (Tenn. Ct. App. 2005); see also *In re Gordon*, 484 B.R. 825, 831 & n.17 (Bankr. N.D. Okla. 2013); *Aquifer Guardians in Urban Areas v. Fed. Highway Admin.*, 779 F. Supp. 2d 542, 550 n.33 (W.D. Tex. 2011); *Abernathy v. Comm'r of Corr.*, No. CV134005187, 2015 WL 4430375, at *7 (Conn. Super. Ct. June 16, 2015). See generally STARK, *supra* note 24, at 31–37 (*Dragnet* "redefined the image of law enforcement in the culture at large").

97. 435 N.Y.S.2d 402, (App. Div. 1981).

98. *Id.* at 407 (Cardamone, J., concurring).

99. *Jackson v. United States*, 638 F. Supp. 2d 514, 538 (W.D.N.C. 2009) (noting that defense counsel "exude[d] the persona of 'Rumpole of the Bailey'" and was "dogged and zealous in his representation" of the defendant). See generally John Denvir, *Rumpole of the Bailey*, in PRIME TIME LAW, *supra* note 55, at 145.

100. Denvir, *supra* note 99, at 145–47.

why administrative agency regulations must be obeyed,¹⁰¹ why lower courts must apply (and hence “obey”) mandates from higher courts,¹⁰² and why persons must heed (and hence “obey”) contractual obligations.¹⁰³

3. Reality Television

Most Americans have never retained a lawyer or walked into a courtroom unless they have written a will or served jury duty. Their most lasting impression of the judicial process comes primarily from fictional, televised dramas, such as the ones discussed above,¹⁰⁴ from the cable channel Courtroom Television Network (Court TV), which began in 1991 and became “truTV” in 2008;¹⁰⁵ and from daytime televised “judge shows,” which is the subject here.¹⁰⁶

At its inception, Court TV departed from the fictional by presenting what one federal district court called actual “complete, extended coverage of trials, both civil and criminal, as well as coverage of oral arguments on motions and in appellate proceedings.”¹⁰⁷ TruTV now broadcasts only sensational trials, among other fare designed to hold viewers’ attention.¹⁰⁸

Beginning in 1981 with *The People’s Court*, which starred retired California Superior Court Judge Joseph A. Wapner, daytime televised judge shows feature actual parties who, with relatively minor disputes understandable to viewers, agree to argue orally in a setting resembling a

101. *Harriscom Svenska, AB v. Harris Corp.*, 3 F.3d 576, 577 (2d Cir. 1993).

102. *Standard Inv. Chartered, Inc. v. Fin. Indus. Regulatory Auth., Inc.*, 684 F. Supp. 2d 407, 409 (S.D.N.Y. 2010); *State v. Drakeford*, 777 A.2d 202, 211 & n.3 (Conn. App. Ct. 2001) (Landau, J., concurring), *aff’d*, 802 A.2d 844 (Conn. 2002).

103. *Horner v. Bagnell*, No. FSTCV106002982S, 2015 WL 3522513, at *9 & n.8 (Conn. Super. Ct. May 11, 2015).

104. Ronald D. Rotunda, *Epilogue to PRIME TIME LAW*, *supra* note 55, at 265, 265 (“Empirical evidence demonstrates that the primary way that most people learn about lawyers is through watching television. . . . [W]hen people turn to television, . . . they turn to fictionalized portrayals of lawyers . . .”).

105. Laurie Ouellette, *Real Justice: Law and Order on Reality Television*, in *IMAGINING LEGALITY: WHERE LAW MEETS POPULAR CULTURE* 152 (Austin Sarat ed., 2011).

106. *See, e.g., People v. M.R.*, Fam. No. SX-10-CS-01, 2015 WL 5272332, at *9 (V.I. May 21, 2015) (“[T]he legal imagination is fueled by court TV and courtroom dramas where it seems that attorneys—who enjoy the most success, take command of the ‘stage’ in a dramatic, high energy performance of their knowledge of law, language and people.”); Ouellette, *supra* note 105, at 156.

107. *Sigmon v. Parker Chapin Flattau & Klimpl*, 937 F. Supp. 335, 336 (S.D.N.Y. 1996).

108. Ouellette, *supra* note 105, at 156.

small claims court.¹⁰⁹ In *The People's Court*, Judge Wapner wore robes on the bench but essentially acted as an arbitrator¹¹⁰ (a private decision maker who, pursuant to the parties' agreement, reaches a final, binding decision).¹¹¹

Judge Wapner established such popularity among television viewers that "[s]ome commentators, speaking only half in jest, suggested him for appointment to the Supreme Court."¹¹² If so, he would have found at least one receptive colleague because Justice Thurgood Marshall reportedly often watched *The People's Court* in his chambers.¹¹³ Judge Wapner would also have been the most visible Justice because, in a 1989 *Washington Post* survey, only 9% of respondents could identify William H. Rehnquist as the Chief Justice of the United States Supreme Court, yet 54% identified Joseph Wapner as the judge on *The People's Court*.¹¹⁴

Judge Judy and similar judge shows began gaining traction by the late 1990s.¹¹⁵ As they do with *Perry Mason* and the other televised dramas portraying the legal process, federal and state courts sometimes cite judge shows to contrast fiction from reality. In an action marked by pre-trial skirmishing about "confusing and contradictory" case law,¹¹⁶ for example, the U.S. Court of Appeals for the Seventh Circuit commented that "the legal issues raised in these cases are rather dull. If Judge Wapner had to worry about personal jurisdiction, 'The People's Court' would not be on television."¹¹⁷ In a divorce case marked by "trivial" disputes and the wife's "apparent intransigence,"¹¹⁸ the Florida Court of Appeals wrote that the case "would tax the patience of Judge Wapner"¹¹⁹ who appeared unflappable on the small screen.

109. HELLE PORSDAM, LEGALLY SPEAKING: CONTEMPORARY AMERICAN CULTURE AND THE LAW 91 (1999).

110. *Id.* at 94 (quoting Alan Dershowitz, *The Verdict*, AM. FILM, Dec. 1987, at 15, 15).

111. *Arbitrator*, BLACK'S LAW DICTIONARY (10th ed. 2014).

112. PORSDAM, *supra* note 109, at 91.

113. *Id.* at 94.

114. Richard Morin, *Wapner v. Rehnquist: No Contest: TV Judge Vastly Outpolls Justices in Test of Public Recognition*, WASH. POST, June 23, 1989, at A21.

115. E.g., Ron Miller, *The Trials of Courtroom TV Judge Judy Is One of Many Trying to Educate and Entertain*, SAN JOSE MERCURY NEWS, Sept. 2, 1998, at 11E.

116. *Hall's Specialties, Inc. v. Schupbach*, 758 F.2d 214, 215 (7th Cir. 1985).

117. *Id.*

118. *Langford v. Langford*, 445 So. 2d 1083, 1085 (Fla. Dist. Ct. App. 1984).

119. *Id.* at 1084; see also *Seaton v. TripAdvisor LLC*, 728 F.3d 592, 600 (6th Cir. 2013) (citing *Reader's Digest Trust Poll: The 100 Most Trusted People in America*, READER'S DIG. (June 2013), <http://www.rd.com/culture/readers-digest-trust-poll-the-100-most-trusted-people-in-america> [<https://perma.cc/SXN3-37VV>], which showed that "Judith Sheindlin, 'Judge Judy,'

4. Television Dramas Unrelated to Lawyers and Law Enforcement

Federal and state judicial opinions have also cited television dramas that treat legal topics only sporadically, if at all. In *Mason v. Smithkline Beecham Corp.*, for example, the plaintiffs—the parents of a 23-year-old woman who committed suicide two days after taking Paxil, an anti-depressant drug similar to Prozac—alleged negligence by the defendant manufacturer for not warning that taking Paxil increased the risk of suicide.¹²⁰ The Seventh Circuit described Prozac this way: “Anyone who has ever watched *The Sopranos* knows that it’s the drug Dr. Jennifer Melfi prescribed for Tony Soprano after telling him ‘no one needs to suffer from depression with the wonders of modern pharmacology.’”¹²¹

Over the years, judges have cited *Marcus Welby, M.D.* (played by Robert Young in a hit drama that aired from 1969 to 1976)¹²² as the model family practice physician.¹²³ The fictional physician, who was known for his house calls and soothing bedside manner, helped one judge discuss whether the defendant physician’s demeanor toward an allegedly demanding patient fell short in a medical malpractice action.¹²⁴ Visions of Dr. Welby also helped another court explain that jurors weighing expert testimony tended to give more weight to physician witnesses than to psychologists because of “‘the Marcus Welby Effect’ from the 1970’s television series of the same name.”¹²⁵

Rod Serling’s science-fiction drama, *The Twilight Zone* (which aired from 1959 to 1964)¹²⁶ helped popularize the term that describes the often murky “gray area” between two extremes.¹²⁷ In *Larsen v. State*

is more trusted than all nine Supreme Court Justices”); *Lippert Tile Co. v. Int’l Union of Bricklayers*, 724 F.3d 939, 945 (7th Cir. 2013) (“[A] party ‘could have consented to have Judge Judy resolve the dispute’” (quoting *Roughneck Concrete Drilling & Sawing Co. v. Plumbers’ Pension Fund*, 640 F.3d 761, 766 (7th Cir. 2011))).

120. 596 F.3d 387, 389–90 (7th Cir. 2010).

121. *Id.* at 393 & n.5 (quoting *The Sopranos: The Sopranos* (HBO television broadcast Jan. 10, 1999)); see also *United Bhd. of Carpenters & Joiners v. Bldg. & Constr. Trades Dep’t*, 770 F.3d 834, 839 (9th Cir. 2014) (discussing a “no show job” portrayed in *The Sopranos: No Show* (HBO television broadcast Sept. 22, 2002), in a civil RICO action); *Lu v. Lezell*, 45 F. Supp. 3d 86, 99 (D.D.C. 2014) (discussing the “Sopranosque figure that RICO’s framers contemplated”).

122. Morgan Brown, *From Dr. James Kildare to Dr. John Carter: The History of Medicine on Television over the Past 50 Years*, 9 HIST. MED. DAYS 201, 202 (2000).

123. *Id.* at 205.

124. *Wozniak v. Lipoff*, 750 P.2d 971, 991 (Kan. 1988) (McFarland, J., dissenting).

125. *Coble v. State*, 330 S.W.3d 253, 273–74, 274 n.46 (Tex. Crim. App. 2010).

126. STARK, *supra* note 24, at 85.

127. See generally GARY GERANI & PAUL H. SCHULMAN, FANTASTIC TELEVISION 34–

Employees' Retirement System, a former state supreme court justice alleged that state agencies had improperly calculated his retirement benefits.¹²⁸ Citing the television series, the federal district court determined that the action “lies somewhere in the twilight zone of Eleventh Amendment jurisprudence.”¹²⁹

To illuminate procedural and substantive points, courts have cited characters and themes from a host of other television dramas, including *Star Trek*,¹³⁰ *The Lone Ranger*,¹³¹ *The Adventures of Superman*,¹³²

39 (1977); STARK, *supra* note 24, at 85–86 (*The Twilight Zone* “somehow permeated the consciousness of the entire culture”).

128. 553 F. Supp. 2d 403 (M.D. Pa. 2008).

129. *Id.* at 413; *see also* Walsh v. Comey, 118 F. Supp. 3d 22, 26 (D.D.C. 2015) (discussing “cases involving scenarios more appropriate to Rod Serling’s ‘The Twilight Zone’”).

130. *Aquifer Guardians in Urban Areas v. Fed. Highway Admin.*, 779 F. Supp. 2d 542, 559 & n.62 (W.D. Tex. 2011); *Nittany Outdoor Advert., LLC v. College Twp.*, No. 4:12-cv-00672, 2014 U.S. Dist. LEXIS 99300, at *2 (M.D. Pa. July 22, 2014) (describing plaintiff’s eligibility for attorneys’ fees as “[b]oldly going where no party in this case had gone before, always a dangerous enterprise”); *In re Personal Restraint of Dalluge*, 177 P.3d 675, 678 & n.2 (Wash. 2008) (Sanders, J., dissenting) (interpreting a plural noun in a statute saying that plural indicates that the statute refers to more than just the temporal length in custody “unless the offender is subject to community custody in multiple temporal dimensions,” as in *Star Trek: Mirror, Mirror* (NBC television broadcast Oct. 6, 1967)); *In re Marriage of Ross*, No. D048515, 2007 WL 1632365, at *4 (Cal. Ct. App. June 7, 2007) (rejecting an argument that all California statutes are void under the Northwest Ordinance of 1787 saying, “With apologies to the former television series *Star Trek*, we decline ‘to boldly go where no [rational analysis] has gone before.’” (citing *Star Trek* (NBC television broadcast 1966–1969) (opening monologue))). *See generally* STARK, *supra* note 24, at 258–61 (“The *Star Trek* Galaxy and Its Glimpse of TV’s Future”).

131. *Gaiman v. McFarlane*, 360 F.3d 644, 661–62 (7th Cir. 2004) (upholding validity of copyright on a work whose character had a distinctive appearance but no name; “the Lone Ranger doesn’t have a proper name either (at least not one known to most of his audience—actually he does have a proper name, John Reid), so that can’t be critical”); *Aquifer Guardians*, 779 F. Supp. 2d at 546 n.13 (“The Lone Ranger is a fictional masked Texas Ranger who . . . has become an enduring icon of American culture.”).

132. *In re Rahndee Indus. Servs.*, No. 13–11210–M, 2015 WL 6160288, at *13 (Bankr. N.D. Okla. Sept. 18, 2015) (“[W]hen Superman steps out of the phone booth, Clark Kent is still alive.”); *Williams v. State*, 79 A.3d 931, 941 n.6 (Md. 2013) (“[The defendant] does not resemble even vaguely Lex Luthor, the human criminal mastermind and nemesis of Superman”); *Aquifer Guardians*, 779 F. Supp. 2d at 546 n.14 (discussing the “Superman” television show’s introductory announcement).

Branded,¹³³ *Dallas*,¹³⁴ *The Six Million Dollar Man*,¹³⁵ *The Bionic Woman*,¹³⁶ *Hopalong Cassidy*,¹³⁷ *Roy Rogers*,¹³⁸ and *The Millionaire*.¹³⁹

B. Situation Comedies

1. Periscope to the 1950s

“[T]he duty of comedy,” wrote Moliere, “is to correct men by entertaining them.”¹⁴⁰ In civil and criminal cases alike, sitcoms often enable judges to offer perspectives on a variety of legal issues. Recent decisions invoke, for example, the “Big Three” 1950s-era sitcoms¹⁴¹—*The Adventures of Ozzie and Harriet*, *Leave It to Beaver*, and *Father Knows Best*—to contrast the trio’s conceptions of the harmonious nuclear

133. *State v. Schad*, 206 P.3d 22, 34–35 (Kan. Ct. App. 2009) (reversing a sentence that required the defendant, as a condition of his probation, to post signs informing the public that he was a sex offender saying that the condition was “reminiscent of *Branded*, a television Western series [about] . . . a United States Army captain who had been court-martialed for cowardice and forced to leave the Army”).

134. *Maximus, Inc. v. Lockheed Info. Mgmt. Sys. Co.*, 47 Va. Cir. 193, 200 (Cir. Ct. 1998) (saying that both bidders on the contract at issue “engaged in the type of concealment and sharp practices that would make television’s J.R. Ewing of ‘Dallas’ fame proud”), *aff’d in part and rev’d in part*, 524 S.E.2d 420 (Va. 2000). See generally STARK, *supra* note 24, at 218–22 (*Dallas* “not only reflected its times but also helped define them”).

135. *Llanes v. Frontera*, No. 2:07-cv-197, 2008 WL 623796, at *4 (W.D. Mich. Mar. 4, 2008) (dismissing a prisoner’s civil rights claim and noting that the “[p]laintiff seeks a ‘bionic’ leg. . . . [I]n the 1970s ‘bionic’ limbs and body parts were addressed in the fictional television series ‘The Six Million Dollar Man’ and ‘The Bionic Woman.’ . . . Given the State of Michigan’s current budget constraints, such a surgery would not be fiscally responsible or feasible.”).

136. *Id.*

137. *Lewis v. Woodford*, No. CIV–S–02–0013 FCD GGH DP, 2007 WL 196635, at *25 (E.D. Cal. Jan. 23, 2007) (“[T]he once-upon-a-time ‘quick-draw’ practicing with a buck knife reasonably says nothing about one’s state of mind years later. If it did, every child who ever played quick-draw, a la Hopalong Cassidy or Roy Rodgers [sic], with a toy cap gun would do so at his own later peril in demonstrating an intent to rob.”).

138. *Id.*

139. *Val-Pak of Cent. Conn. N., Inc. v. Comm’r*, 670 A.2d 343, 347 (Conn. Super. Ct. 1994) (discussing whether Direct Marketing is “like John Beresford Tipton in *The Millionaire*. (*The Millionaire*, it might be recalled, was a television program . . . in which a wealthy philanthropist, John Beresford Tipton, would each week give one million dollars to a total stranger and watch to see what was done with the money.”), *aff’d*, 669 A.2d 1211 (Conn. 1996).

140. First Petition from Moliere to Louis XIV on *Tartuffe*, quoted in Jan Herman, “*Miser*” *Is Updated but Still Keys on Obsession*, L.A. TIMES, May 22, 1990, at F2.

141. BARBARA MOORE ET AL., PRIME-TIME TELEVISION: A CONCISE HISTORY 85 (2006).

American family with emerging realities that characterize many families that appear in court today.¹⁴²

“By the mid-fifties,” Pulitzer Prize-winner David Halberstam wrote nearly four decades later, “television portrayed a wonderfully antiseptic world of idealized homes in idealized, unflawed America. There were no economic crises, no class divisions or resentments, no ethnic tensions, few if any hyphenated Americans, few if any minority characters.”¹⁴³ Especially idealized, said Halberstam, was television’s portrayal of the “typical” two-parent American household:

There was no divorce. . . . Families *liked* each other, and they tolerated each other’s idiosyncracies. . . . The dads were, above all else, steady and steadfast. They symbolized a secure world. Moms in the sitcoms were . . . at once more comforting and the perfect mistresses of their household premises Above all else, the moms loved the dads, and vice versa, and they never questioned whether they made the right choice.¹⁴⁴

In her study of Cold War America, historian Elaine Tyler May adds:

Particularly on television, . . . fatherhood became the center of a man’s identity. Viewers never saw the father of “Father Knows Best” at work or knew the occupation of the Nelson’s lovable dad, Ozzie. They were fathers, pure and simple. Whatever indignities and subordination they might suffer at their unseen places of employment, fathers on television exercised authority at home.¹⁴⁵

Recalling fond memories remains one of the great faculties of the human mind, even when (as historian Stephanie Coontz writes) “[n]ostalgia for a safer, more placid past fosters historical amnesia.”¹⁴⁶ In 1993, as “the rise of the fifties nostalgia . . . continue[d] to grip our culture,”¹⁴⁷ Halberstam explained the lasting popular appeal of the Big Three family sitcoms:

142. *See, e.g.*, Foster v. Schares, 766 N.W.2d 649 (Iowa Ct. App. 2009) (unpublished table decision).

143. DAVID HALBERSTAM, THE FIFTIES 508 (1993).

144. *Id.* at 509.

145. MAY, *supra* note 23, at 146.

146. STEPHANIE COONTZ, THE WAY WE NEVER WERE: AMERICAN FAMILIES AND THE NOSTALGIA TRAP, at xiii (2000).

147. STARK, *supra* note 24, at 2.

One reason that Americans as a people became nostalgic about the fifties more than twenty-five years later was not so much that life was better in the fifties (though in some ways it was), but because at the time it had been portrayed so idyllically on television. It was the television images of the era that remained so remarkably sharp in people's memories, often fresher than memories of real life.¹⁴⁸

The popularity of the three 1950s-era sitcoms continued with reruns on cable television,¹⁴⁹ but many judges and other Americans remain skeptical about the sitcoms' portrayal of "a vast middle class of happy American families who had already made it to the choicer suburbs."¹⁵⁰ The skepticism dates at least from 1961, when FCC Chair Newton N. Minow blasted television as a "vast wasteland" strewn with, among other things, "formula comedies about totally unbelievable families."¹⁵¹

The Big Three 1950s-era sitcoms have enabled judges to contrast sanitized fictional family life with the stresses that consume many contemporary households. "We are living a fable, both morally and legally," wrote a Pennsylvania Supreme Court judge, "if we think that a family is typified by 'Father Knows Best,' where parents and children love and respect each other and where husband and wife are faithful to each other and adultery is merely a figment of one's imagination."¹⁵²

Courts stress that for many Americans, the Big Three 1950s-era sitcoms never reflected domestic realities. For example, in a decision that rejected the plaintiff's contention that the trial court had improperly admitted testimony of a profane statement attributed to her at the scene of an automobile accident, the Iowa Court of Appeals reasoned that "today's culture has coarsened to the point where the profanity in question has become commonplace throughout all segments of

148. HALBERSTAM, *supra* note 143, at 514.

149. DAVID MARC, *COMIC VISIONS: TELEVISION COMEDY & AMERICAN CULTURE* 43 (2d ed. 1997); *see also* COONTZ, *supra* note 146, at 23 ("Our most powerful visions of traditional families derive from images that are still delivered to our homes in countless reruns of 1950s television sitcoms.").

150. TAYLOR, *supra* note 32, at 25.

151. Newton N. Minow, Chairman, Fed. Comm'ns Comm'n, Address to National Association of Broadcasters (May 9, 1961), *quoted in* JONATHAN W. EMORD, *FREEDOM, TECHNOLOGY, AND THE FIRST AMENDMENT* 198 (1991).

152. *Brinkley v. King*, 701 A.2d 176, 185 (Pa. 1997) (Newman, J., concurring and dissenting).

society.”¹⁵³ “It is no longer, and never was for most, a *Leave It to Beaver* world.”¹⁵⁴

Judicial skepticism about the Big Three 1950s-era sitcoms surfaces today in domestic relations cases that expose the challenges facing distressed households. In *David B. v. Superior Court*, for example, the California Court of Appeal held that the state child protective agency had not established sufficient grounds for continued separation of father and daughter before a likely termination of parental rights proceeding.¹⁵⁵ “We do not get ideal parents in the dependency system,” the court acknowledged, “[b]ut the fact of the matter is that we do not get ideal parents anywhere. Even Ozzie and Harriet weren’t really Ozzie and Harriet.”¹⁵⁶

The scales tipped differently in *In re J.M.*, which affirmed the juvenile court order removing eight children from their parents’ custody.¹⁵⁷ The California Court of Appeal rejected the parents’ contention that removal stemmed from poverty rather than from bad parenting.¹⁵⁸ “Certainly poverty is not a crime and children cannot be removed from their parents simply because the parents lack the wherewithal to provide an Ozzie and Harriet existence.”¹⁵⁹

Without questioning whether the Big Three 1950s-era family sitcoms mirrored American life in their day, other courts cite one or more of the trio to illustrate ongoing changes in American family life.¹⁶⁰ In a child custody battle between the biological father and the deceased mother’s

153. *Foster v. Schares*, 766 N.W.2d 649 (Iowa Ct. App. 2009) (unpublished table disposition).

154. *Id.*; see also *Young v. Red Clay Consol. Sch. Dist.*, 122 A.3d 784, 853 (Del. Ch. 2015) (“a seemingly simpler era culturally stereotyped by *Leave It To Beaver* and *Father Knows Best*”).

155. 20 Cal. Rptr. 3d 336, 338–39 (Ct. App. 2004).

156. *Id.* at 352; see also *State v. Sapps*, 820 A.2d 477, 484 (Del. Fam. Ct. 2002) (speculating that the state legislature “viewed our children as residing in the home of the classic Ozzie and Harriet family of the working father and the stay-at-home mother” (footnote omitted)); *Snetsinger v. Mont. Univ. Sys.*, 104 P.3d 445, 465 (Mont. 2004) (“[T]he ‘*Ozzie and Harriet*’ and ‘*Leave it to Beaver*’ genre of television shows are historical artifacts . . .”).

157. No. C054508, 2007 WL 4564871, at *1 (Cal. Ct. App. Dec. 31, 2007).

158. *Id.* at *12 (Raye, J., concurring).

159. *Id.*; see also *In re Gerson B.*, Nos. DND03CP03002052 & DND03CP03002053, 2005 WL 3047245, at *6 (Conn. Super. Ct. Oct. 13, 2005) (“[S]tandard parenting’ does not necessarily rise to the level of ‘Father Knows Best.’”).

160. *E.g.*, *Troxel v. Granville*, 530 U.S. 57, 63 (2000) (plurality opinion) (“The demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household.”).

boyfriend, for example, the South Dakota Supreme Court distinguished the parties' family from "the traditional 'Leave It To Beaver' family where mom, dad and kids all ate supper together under the same roof each evening. . . . [T]he traditional 'Cleaver' family is becoming less and less common in contemporary society."¹⁶¹

2. More Recent Sitcoms

As "television's greatest sitcom"¹⁶² and "an American icon,"¹⁶³ *Seinfeld* (which aired from 1989 to 1998)¹⁶⁴ has made its way into several judicial opinions.¹⁶⁵ In *Schneider v. Molony*, for example, the patient alleged that for seventeen years the defendant dermatologist negligently treated him for eczema by prescribing a drug that caused osteopenia (low bone density).¹⁶⁶ The U.S. Court of Appeals for the Sixth Circuit illustrated the seriousness of the skin condition this way: "In an episode of the classic comedy series, *Seinfeld*, Jerry and Elaine disparage the gravity of Jerry's girlfriend's dermatology practice. Much to Jerry's chagrin, he assails his girlfriend's bona fides, calling her a 'pimple-

161. *Meldrum v. Novotny*, 640 N.W.2d 460, 473 (S.D. 2002); *see also In re Townsend*, 344 B.R. 915, 918 (Bankr. W.D. Mo. 2006) ("'Father Knows Best' and 'Leave It to Beaver' are off the air, and the modern household is far more egalitarian than the ostensibly autocratic, male-dominated households of yore."); Michael B. Kassel, *Mayfield After Midnight: Images of Youth and Parenting in Leave It to Beaver*, in *IMAGES OF YOUTH: POPULAR CULTURE AS EDUCATIONAL IDEOLOGY* 112 (Michael A. Oliker & Walter P. Krolikowski eds., 2001); STARK, *supra* note 24, at 81 (calling *Leave It to Beaver* an "icon in American culture" that "has come to symbolize an entire era and state of mind").

162. SEINFELD, MASTER OF ITS DOMAIN: REVISITING TELEVISION'S GREATEST SITCOM (David Lavery ed., 2006) [hereinafter SEINFELD].

163. JERRY OPPENHEIMER, SEINFELD: THE MAKING OF AN AMERICAN ICON (2002).

164. David Lavery & Sara Lewis Dunne, *Preface: "Part of the Popular Culture": The Legacy of Seinfeld*, in SEINFELD, *supra* note 162, at 1, 2.

165. *See, e.g., Crisp v. Sears Roebuck & Co.*, 628 F. App'x 220, 222, 224 (5th Cir. 2015) (rejecting a claim of workplace national origin discrimination saying, "Think of the 'Soup Nazi' from *Seinfeld* who earned that nickname not for his national origin, but instead for his tyrannical management of his soup line."); *Parish Oil Co. v. Dillon Cos.*, 523 F.3d 1244, 1251 (10th Cir. 2008) (quoting *Seinfeld: The Strike* (NBC television broadcast Dec. 18, 1997), in an action alleging a violation of the Colorado Unfair Practices Act); *United States v. Harper*, 463 F.3d 663, 664 n.1 (7th Cir. 2006) (citing *Seinfeld: The Bottle Deposit: Parts 1 & 2* (NBC television broadcast May 2, 1996), in a decision affirming defendant's convictions for committing and abetting mail fraud and conspiracy); *Orlando Residence, Ltd. v. Hilton Head Hotel Inv'rs*, No. 9:89-cv-0662, 2013 WL 1103027, at *13 (D.S.C. Mar. 15, 2013) ("The court will not allow [the defendant] to escape liability for the debts he incurred years before... *Seinfeld* premiered...").

166. 418 F. App'x 392, 394 (6th Cir. 2011) (affirming judgment for the defendant).

popper,' only to discover that dermatological medicine can in fact be a 'life-saver.'"¹⁶⁷

Courts express little tolerance for the so-called "Sgt. Schultz Defense," which provided a recurrent theme on *Hogan's Heroes*, a comedy that aired from 1965 to 1971 and concerned a group of Allied soldiers interned in a World War II German prison-of-war camp.¹⁶⁸ In *Ortho Pharmaceutical Corp. v. Sona Distributors, Inc.*, for example, the federal district court found for the plaintiffs on their fraudulent misrepresentation claim.¹⁶⁹ "No matter how many times this Court reviews the factual essence of this case," the district judge explained, "one cannot resist a comparison between the Defendants' professed ignorance of unlawful conduct, and perhaps the most memorable refrain of *Hogan's Heroes*."¹⁷⁰ The *Ortho Pharmaceutical* court further explained:

For those too young to remember, each episode featured a scene in which Sergeant Schultz, always unmindful of the clandestine activities of the irrepressible Colonel Hogan and his men, would be found to explain away his incompetence to his superior, the irascible Colonel Klink, by saying, "I know *n-oth-i-n-g*, I see *n-oth-i-n-g*, I do *n-oth-i-n-g*." This dialogue, which each week delighted television viewers across the country, somehow resurfaced once again, this time in my courtroom.¹⁷¹

References to the "Sgt. Schultz Defense" have resurfaced in judicial opinions ever since.¹⁷²

167. *Id.* at 394 n.1 (citing *Seinfeld: The Slicer* (NBC television broadcast Nov. 13, 1997)).

168. *In re Reese*, 482 B.R. 530, 537 & n.9 (Bankr. E.D. Pa. 2012).

169. 663 F. Supp. 64, 68 (S.D. Fla. 1987).

170. *Id.* at 66 n.1.

171. *Id.*

172. *See, e.g., In re Reese*, 482 B.R. at 537; *In re Jonathon C.B.*, 958 N.E.2d 227, 262 & n.3 (Ill. 2011) (Burke, J., dissenting); *Kennedy v. Guess, Inc.*, 806 N.E.2d 776, 786 & n.5 (Ind. 2004); *Delker v. State*, 50 So. 3d 309, 328 n.13 (Miss. Ct. App. 2009), *aff'd*, 50 So. 3d 300 (Miss. 2010).

Other popular sitcoms featured in court decisions include *The Brady Bunch*,¹⁷³ *The Andy Griffith Show*,¹⁷⁴ *The Beverly Hillbillies*,¹⁷⁵ *Gilligan's Island*,¹⁷⁶ *Get Smart*,¹⁷⁷ *Bewitched*,¹⁷⁸ *Barney Miller*,¹⁷⁹ *Murphy Brown*,¹⁸⁰

173. *Hultberg v. Carey*, No. 06–1137, 2009 WL 5698085, at *3 (Mass. Super. Ct. Dec. 1, 2009) (“Whether the combined families were like the Brady Bunch over the next two decades, or dysfunctional, cannot inform the court’s consideration as to [the deed grantors’] intentions . . .”); see also STARK, *supra* note 24, at 160 (“[*The Brady Bunch*] has become one of the phenomenons of modern American culture.”).

174. *Companhia Energetica Potiguar v. Caterpillar Inc.*, 307 F.R.D. 620, 621–22 (S.D. Fla. 2015) (denying contention that discovery request constituted a “fishing expedition” and reciting the fishing song that opened *The Andy Griffith Show*); *Eden Elec., Ltd. v. Amana Co.*, 258 F. Supp. 2d 958, 974 n.16 (N.D. Iowa 2003), *aff’d*, 370 F.3d 824 (8th Cir. 2004) (“Sheriff Andy Taylor of fictional Mayberry, North Carolina, also recognized that if a fine is to effectively punish and deter an individual, the individual’s financial status must be considered.”). See generally DAVID STORY, *AMERICA ON THE RERUN: TV SHOWS THAT NEVER DIE* 15–34 (1993).

175. *Ames Rental Prop. Ass’n v. City of Ames*, 736 N.W.2d 255, 260–61 & n.4 (Iowa 2007) (“[T]he ordinance would allow the Beverly Hillbillies to live in a single-family zone while prohibiting four judges from doing so.” (footnote omitted)); see also STARK, *supra* note 24, at 111 (“*The Beverly Hillbillies* was the first telltale sign on television that the cultural unity of the fifties was splintering.”); STORY, *supra* note 174, at 45–56.

176. *Reuther v. S. Cross Club, Inc.*, 785 F. Supp. 1339, 1340 & n.1 (S.D. Ind. 1992) (quoting in full the *Gilligan’s Island* (CBS television broadcast 1964–1967), theme song); see also STORY, *supra* note 174, at 128–46.

177. *Regions Fin. Corp. v. United States*, No. 2:06–CV–00895, 2008 WL 2139008, at *8 n.13 (N.D. Ala. 2008) (“[T]he privileged documents neither left nor were ever intended to leave the ‘Cone of Silence.’” (quoting *Get Smart: Mr. Big* (NBC television broadcast Sept. 18, 1965))); see also STORY, *supra* note 174, at 198–210.

178. *Ickes v. Flanagan*, No. 3:07–143, 2011 WL 841045, at *5 (W.D. Pa. 2011) (“Neighbors simply prying—reminiscent of Gladys Kravitz’s snooping into the magical mischief of Samantha Stevens on the television show *Bewitched*—does not rise to the level of state action . . .”); *Alexander v. Brown*, 793 So. 2d 601, 604–05 (Miss. 2001) (discussing Gladys Kravitz’s snooping on *Bewitched*). See generally WALTER METZ, *BEWITCHED* (2007); STORY, *supra* note 174, at 64–80.

179. *Reed v. Shepard*, 939 F.2d 484, 486 (7th Cir. 1991) (“[The county jail] resembled a combination of a modern version of TV’s *Barney Miller*, with the typically raunchy language and activities of an R-rated movie, and the antics imagined in a high-school locker room.”).

180. *Brinkley v. King*, 701 A.2d 176, 185 n.6 (Pa. 1997) (Newman, J., concurring and dissenting) (discussing *Murphy Brown* saying, “The conflict between the moral ideals of our society is often demonstrated through the media.”).

Taxi,¹⁸¹ *The Mary Tyler Moore Show*,¹⁸² *Green Acres*,¹⁸³ *Mr. Ed*,¹⁸⁴ and *The Many Loves of Dobie Gillis*.¹⁸⁵

IV. THE PLACE OF TELEVISION REFERENCES IN JUDICIAL OPINIONS AND WRITTEN ADVOCACY

“Television’s ability to shape our view of the world in general, and the legal system in particular, makes it a powerful cultural force.”¹⁸⁶ As a pervasive source of popular entertainment and public information for the past several decades, the medium has helped shape the perspectives that today’s readers bring to briefs and judicial opinions. When used carefully, reference to a television program can help judges and advocates connect with one another on substantive or procedural points that are otherwise (as Justice Scalia put it) “filled with abstract concepts that are difficult to explain.”¹⁸⁷

Television references, however, raise judgment calls for advocates and courts alike. Invoking these cultural markers familiar to many Americans may find a natural place in submissions or opinions, but

181. *Commonwealth v. Fabian*, No. 2009-05786, 2012 Pa. Dist. & Cnty. Dec. LEXIS 50, at *2 n.2 (Pa. Ct. Com. Pl. Jan. 30, 2012) (“Their arguing was very reminiscent of the arguments that took place between the fictional New York City cab drivers and the dispatcher (Danny DeVito) on the late 70’s and early 80’s television show *Taxi*.”).

182. *Saint Consulting Grp., Inc. v. Litz*, No. 10–10990-RGS, 2010 WL 2836792, at *1 n.2 (D. Mass. July 19, 2010) (citing *The Mary Tyler Moore: Will Mary Richards Go to Jail?* (CBS television broadcast Sept. 14, 1974), to help explain why trying to force a news reporter to reveal her source of information “has the ring of a hopeless venture”).

183. *Gebauer v. Lake Forest Prop. Owners Ass’n*, 723 So. 2d 1288, 1290 (Ala. Civ. App. 1998) (“This is not a case in which a family is treating a farm animal like a pet, such as Arnold the pig of television’s ‘Green Acres’ fame.”); *see also* STORY, *supra* note 174, at 160–70.

184. *People v. Walker*, 53 Cal. Rptr. 2d 435, 437 (Ct. App. 1996) (“The theme song for the 1960’s television comedy *Mr. Ed* instructed us that ‘a horse is a horse.’ So too, a house is a house. A boat is not a house.”), *vacated on other grounds*, 924 P.2d 995 (Cal. 1996); *see also* STORY, *supra* note 174, at 35–44.

185. *In re Jasmine G.*, 98 Cal. Rptr. 2d 93, 97 & n.5 (Ct. App. 2000) (“The inability of the parents to ‘understand’ their teenage children is simply part of the human condition.” (citing *The Many Loves of Dobie Gillis* (20th Century Fox television broadcast 1959–1963))). Also occasionally appearing in judicial opinions have been some of the most popular television quiz and game shows. *See, e.g.*, *United States v. Delp*, 31 M.J. 645, 646 (A.F.M.R. 1990) (*To Tell the Truth*); *Caracoglia v. Caracoglia*, No. CV064006063S, 2009 WL 3645642, at *1 (Conn. Super. Ct. Oct. 1, 2009) (*Family Feud*); *Brodie v. Snider*, 536 A.2d 1187, 1192 (Md. Ct. Spec. App. 1988) (*Let’s Make a Deal*); *State Farm Lloyds v. Nicolau*, 951 S.W.2d 444, 453–54 (Tex. 1997) (*Wheel of Fortune*).

186. Robert M. Jarvis & Paul R. Joseph, *Preface* to PRIME TIME LAW, *supra* note 55, at vii, vii.

187. SCALIA & GARNER, *supra* note 3, at 111.

invocation may fail when the show remained a hit only briefly, or left the air years ago without later syndication. Decades after television first became central to Americans' lives, centrality does not guarantee that readers of particular briefs or judicial opinions remain familiar with particular shows that enjoyed only brief public exposure.

Advocates and judges are on safe terrain when they cite iconic shows such as *Perry Mason*, *L.A. Law*, *Leave It to Beaver*, or *Seinfeld*. At least without providing brief background explanation, however, the terrain becomes more slippery when the brief or opinion cites such less remembered shows as *Hopalong Cassidy* or *Taxi*. The writer might understand what the television reference means, but the key is whether readers will also likely understand. Legal writers stand the best chance at persuasion when they fortify lines of communication, not fracture them. Soon after winning an Academy Award in 1952, stage and screen actress Shirley Booth got it right: “[T]he audience is 50 percent of the performance.”¹⁸⁸

When the contemplated television reference might lie beyond the grasp of some readers, the advocate or judge should consider avoiding it, or else providing necessary explanation, unless meaning would emerge from context. In close cases, the benefit of the doubt should favor omission unless the writer also explains the television show briefly in the main text or a footnote.

V. CONCLUSION

Advocacy and official judicial writing each create a dialog between the writer and a relatively small group of readers who are usually readily identifiable in advance. Briefs and other filings normally target the parties and the court but hardly anyone else. A judicial opinion speaks first to the parties and then to future courts and litigants, academic researchers, and (this invites spirited debate) perhaps lay readers when the decision touches on matters of social concern.¹⁸⁹

188. Elaine Liner, *Down in Front*, DALL. OBSERVER (Jan. 6, 2005), <http://www.dallasobserver.com/arts/down-in-front-6382850> [https://perma.cc/R8U7-SKFH] (quoting Shirley Booth, winner for Best Actress in *COME BACK, LITTLE SHEBA* (1952)).

189. Compare ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* 58 (1948) (“The Supreme Court . . . is and must be one of our most effective teachers.”), with William H. Rehnquist, *Act Well Your Part: Therein All Honor Lies*, 7 PEPP. L. REV. 227, 227–28 (1980) (“[T]he Supreme Court does not ‘teach’ in the normal sense of that word at all. In many cases we hand down decisions which we believe are required by some Act of Congress or some provision of the Constitution for which we, as citizens, might have very

Television has helped shape Americans' perceptions of the world, sometimes to the exclusion or diminution of other post-World War II cultural stimuli. "In many ways over the past half-century, the history of television has become the history of America," says historian Steven D. Stark.¹⁹⁰ "[T]his medium's programming," he explains, "has been influential—superseding school, and sometimes even the family, as the major influence on our social and moral development. It is fair to say that there have been two eras in America: Before Television (BT) and After Television (AT)."¹⁹¹

Judges carefully use television references to help explain the law's resolution of disputes brought to their public forums. The courts' lead makes it entirely appropriate for counsel to make similar careful use of these cultural references to (as the Chief Justice says) "liven up"¹⁹² their briefs and other filings.

little sympathy and would not choose to make a rule of law if it were left solely to us.").

190. STARK, *supra* note 24, at 2.

191. *Id.*

192. Garner, *supra* note 1, at 18.