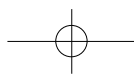
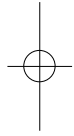
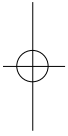
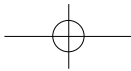
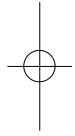
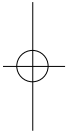




Prime Time Law





Prime Time Law

*Fictional Television as
Legal Narrative*

Edited by
Robert M. Jarvis
and
Paul R Joseph

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For television viewers everywhere

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On the jacket/cover (clockwise from bottom left): Richard Brooks as Paul Robinette ("Law & Order"), Jill Hennessy as Claire Kincaid ("Law & Order"), Harry Hamlin as Michael Kuzak and Susan Dey as Grace Van Owen ("L.A. Law"), Richard Dysart as Leland McKenzie ("L.A. Law"), and (center) Calista Flockhart as Ally McBeal ("Ally McBeal"). Images courtesy of Photofest.

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Preface

Most of us will never meet a cowboy, or an atomic scientist, or a private detective, yet we feel that we know how such persons think and act because we have seen them, or their caricatures, in countless television shows. By the same token, most of us have only limited experience with the legal system, yet we feel we know what lawyers and judges do, and how they do it, because we have “appeared” in court with Perry Mason, “attended” a deposition with Arnie Becker, “investigated” a case with Ben Matlock, and “counseled” a client with Ally McBeal.

Television’s ability to shape our view of the world in general, and the legal system in particular, makes it a powerful cultural force. More than just another form of entertainment, television serves at once as teacher, companion, and friend, influencing both what we see and how we see it.

Of course, television shows, particularly legal shows, must “look right.” That is, characters and storylines must “make sense” and be “realistic,” even if they do so only by reflecting earlier television shows. In this respect, the public and television occupy a symbiotic association in which neither side is able to move very far ahead of the other.

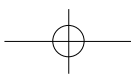
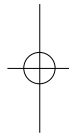
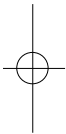
Because of this unique relationship, studying the myriad ways in which television presents lawyers and deals with legal issues provides us with an important opportunity to gauge the public’s feeling about, and understanding of, the justice system. Although this can also be accomplished in other ways as well, television, as a recyclable medium, offers a vast amount of both contemporary and historical data to analyze and, as in the case of this book, write about.

Robert M. Jarvis

Paul R Joseph

Fort Lauderdale

April 1998



Foreword

CHARLES B. ROSENBERG

The stone structures of ancient Greece are mostly dust. Even the Parthenon lies in near-ruin. Greek dramatic structures, by contrast, are alive and well and living in your television set. You can see them every night on prime time: dramatic stories which feature a conflict, a prompt resolution of the conflict by story's end and what Aristotle called "denouement"—the tag scene at the very end that wraps things up emotionally for the audience.

Law is a natural stage for this type of drama. Criminal prosecutions and civil suits are conflicts by definition. At core, they are about who should win and who should lose. In dramatic terms, legal dramas heighten conflict even further by pitting protagonists one against the other in a confined space, usually a court room. Resolution arrives in the form of a verdict. The setting for denouement is ever present in court hallways, offices, jail cells, and execution chambers.

Criminal law has long been a favorite for dramatic legal stories because criminal cases have what dramatists refer to as "high stakes." If the state wins, the defendant is deprived of life or liberty. If the defendant wins, the victim's opportunity for vengeance is shattered. And win or lose, there is the ever present opportunity for wrenching self-examination, confession, and expiation.

The use of civil cases as the focus of television drama is a more recent phenomenon, as John Brigham points out in his essay on "L.A. Law." Perhaps the earlier dearth of civil legal dramas reflects the fact that during the 1950s, when dramatic television was in its formative years, civil cases had not yet become the almost blinding mirror of our social concerns that they are today. In 1954, the year *Brown v. Board of Education* was decided, the Civil Rights acts, the abortion debate, and the conflict over the right to die, among many others, were all at least a decade away. It is perhaps no accident that "The Defenders," which used social issues as its thematic material, albeit still in a criminal context, first went on the air in the Fall of 1961. The social topics explored on "The Defenders" pre-saged, in many ways, our long and ongoing national social debate about



everything from civil rights to sexual mores. David Ray Papke explores “The Defenders” and delves deeply into its liberal social mores.

Today, television legal drama has matured to take in almost everything that is a matter of societal debate—the death penalty, gay rights, abortion, adoption, gang violence, drugs, mass murder, race relations, children’s rights, sexual harassment, and disability rights, among many others. If “Perry Mason,” so nicely described in this book by Norman Rosenberg, was primarily a 1950s detective dressed up to look like a lawyer, today’s legal characters are, by contrast, veritable social engineers. As Douglas E. Abrams points out in his essay on “Picket Fences,” during the show’s run from 1992 to 1996 just about every issue in the world, civil and criminal, wandered into Judge Bone’s courtroom in the fictional town of Rome, Wisconsin. My own favorite, by the way, was when the Pope was subpoenaed as a witness in connection with a domestic auto accident he had witnessed while on a trip to Wisconsin, thus bringing the concept of sovereign immunity to television viewers everywhere.

If television is a mirror of our time, however, we should not lose sight of the fact that the dramas it presents are bounded not only by ancient conventions of story telling, but by modern constraints as well. Chief among these is the very high cost of making dramatic television. The typical one-hour prime time television drama costs between one and two million dollars per episode to produce. So a season’s worth (typically twenty-two episodes) costs well in excess of twenty million dollars.

Small wonder, then, that a critically well-reviewed show such as “Murder One,” whose attractions as potent drama are described here by Jeffrey E. Thomas, doesn’t last long if its audience isn’t large. Advertisers won’t usually pay big bucks to talk to small audiences, and networks want to sell their prime time ad slots for more, not less. Shows like “Rumpole of the Bailey,” which, as John Denvir notes, is well into its second decade, may survive to old age, but, in my view, it’s only because they run on small-audience, viewer-subsidized PBS.

The need for a very large audience in network prime time has many consequences. One consequence is the frequent triumph of character over plot. Classically, plot drives character, and character is illuminated by the way in which the protagonist resolves the issues raised by the plot. But people tend to remember character more easily than plot—they can recall Jean Valjean long after the plot of “Les Misérables” has faded. Most of us can recall the characters of Superman, Batman, Perry Mason, and Arnie Becker long after we have forgotten individual plot lines. Character is especially important in episodic drama, when viewers must be enticed to tune in week after week. Antigone might have been quite a dif-

ferent person had she needed to show up on television twenty-two times a year for five years straight.

As a result, many prime time television shows are at pains to create memorable characters. That is why a show like “L.A. Law,” where the characters’s personal lives are very much on display, tends, on average, to generate higher ratings than a more plot-driven show like “Law & Order.” As Dawn Keetley points out in her essay on “Law & Order,” the show has traditionally not delved much into the personal lives of its characters. Indeed, “Law & Order’s” recent trend towards exploring its characters’s personal lives more fully may be driven, at least in part, by a search for higher ratings.

Another consequence of the emphasis on character is the development in the last fifteen years of so-called “ensemble” casts—shows in which there is no single star, but, instead, many. If Perry Mason was clearly the star of his eponymously named show, “L.A. Law” could not easily have been called “Arnie Becker” or “Grace Van Owen” or “Victor Sifuentes.” The use of many more-or-less equally featured characters in an episodic television show is thought to give maximum opportunity for viewers to identify with at least one character in the show. If interest in a character is classically generated by a viewer’s feelings of sympathy (“I feel sorry for that person”) or antipathy (“I hate that person”) or empathy (“I feel like that person”), then empathy is clearly best because viewers who feel empathetic towards a character will tune in week after week to see what “they” themselves are doing in their other life on television. An ensemble cast maximizes this phenomenon, because there are more character-types with whom members of the audience can potentially identify.

Every rule is, of course, made to be broken. The recent success of David Kelley’s “Ally McBeal,” on the upstart Fox network, is a case in point. The show is a study in character rather than plot, and we have returned, in a sense, to the days of “Perry Mason,” with a popular legal show named for its star.

Popularity, though, is fleeting, as the essays in this book demonstrate. Lawyer shows, like all episodic television dramas, come and go. “Matlock,” “Civil Wars,” and “Paper Chase” (analyzed here by, respectively, Gail Levin Richmond, Christine Alice Corcos, and Walter A. Effross) are all long gone, despite the viewers who loved them.

Given the number of such shows that come and go, many people ask a question that is essentially a question of leavings: When popular shows about lawyers are gone, what is left behind? Does television create attitudes and perceptions about lawyers or simply deliver and embellish attitudes and perceptions that already exist? Put more broadly, does television create culture or is it simply created by the culture around it?

To me, these questions, put this way, have always seemed of the begging sort. Television and culture are like waves on a beach. Over time, the beach clearly changes shape under the impact of the waves. But it is difficult to tell whether television is mostly the waves or mostly the beach—whether attitudes about lawyers and law are being changed by television or changing television. Perhaps it is some of each.

Happily, the essays in this book examine these issues in a creative rather than a didactic fashion. Whether analyzing the traditional lawyer shows, or exploring the ways in which legal culture has been represented in such far-flung areas as science fiction (Paul R. Joseph), westerns (Francis M. Nevins), soap operas (Rod Carveth), and comedy (Robert M. Jarvis), the essays shed real light on the intricate and subtle interactions between popular notions of the legal system and legal television.

Charles B. Rosenberg is a shareholder in the Los Angeles office of Heller, Ehrman, White & McAuliffe. He was the credited outside legal consultant to “Paper Chase” when it ran on Showtime and to “L.A. Law” during its eight years on NBC.