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Get Off the Screen

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Get Off the Screen*

Lisa Scottoline

Thank you to Nova Law Center, to Dean Harbaugh, to Professor Paul Joseph for having me, and to all of you for coming tonight. I am thrilled and honored to be speaking to you as part of this Symposium on Law and Popular Culture. Special “kudos” should go to the Law Center for holding such a seminar, on a subject that I think has vital implications for all of us. Nova is the law school in the forefront of examining this issue, and *Prime Time Law*, edited by Professors Robert Jarvis and Paul Joseph of this law school, is the hornbook on the subject.¹ So thanks to Nova—and thanks for letting me play, too.

While I’m thanking people, I want to thank the school especially for inviting me to address you as the Leo Goodwin, Sr. Professor of Law. I can’t tell you what an honor and a thrill this is for me, personally.

In my experience, by the time they turn forty, everybody decides that everybody else has a cooler life than they do, does cooler things, has a cooler job. I was a lawyer before I became a writer (I once was lost but now am found), and lots of people think that being a writer is a very cool job. Though I like it, it’s not.

There is one job that is, as my daughter would say, way cooler. I’m forty-three and I know. The coolest job in the world is being a law professor. I have always thought this and always will. In fact, I wish I was a law professor—truly—and so when Dean Harbaugh asked me to come here and make like a law professor, I accepted immediately. I even get a chair! I feel smarter already.

But though I am professor for a day, I will not test you or put you through the grinder that is law school. Tonight you don’t have to learn anything, you just have to listen, and if you don’t mind, explore with me a thoroughly entertaining topic, which concerns law as entertainment in popular culture, or as I have entitled this talk, *Get Off the Screen*. You’ll see why later.

* Lisa Scottoline delivered this speech at Nova Southeastern University’s annual Goodwin Alumni Banquet on March 9, 1999, as part of the Leo Goodwin Sr. Distinguished Lecture Series. The Editorial Board of the Nova Law Review has added citations for the convenience of the reader.

1. *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* (Robert M. Jarvis & Paul R. Joseph eds., 1998).

I'll talk first about the problem—or the issue—that I see developing. For those of you who remember the sixties, and those of you who read it as history, there was a line from a song: “There’s something happening here. What it is ain’t exactly clear.”² The line applies as much to the revolution of politics in the sixties as the revolution in entertainment of the nineties. It is telling that, in the nineties, politics doesn’t interest us half as much as entertainment does, if the impeachment hearing ratings are an example. Now there’s a phrase. Impeachment hearing ratings. Did you ever think you’d hear that? There’s something happening here, and that’s what I mean.

Part one. What is happening? That’s my first section of this speech. It’s not very law “professor-y”, but neither am I.

What is happening? Well, in my view, the line between the reality of lawyering and its fictional representation on television and in books has gone well beyond blurred. It isn’t really a question anymore of how lawyers and law are portrayed on television and in books, because that depiction is merging daily with reality.

It’s a symbiotic relationship at this point between fiction and reality, not a separate relationship that can be compared and contrasted, like a law school exam. At this point, the wall between fiction and reality is as thin and porous as a cell membrane, with reality passing through it to fiction and fiction flowing backwards to reality, in constant flux.

Almost everywhere we look, right now in the popular culture, there is an almost complete merger of fiction and reality when it comes to the law. Law has become entertainment, and entertainment law. Before we discuss whether this matters, let’s talk more specifically about what is happening here. This is what I mean.

Let’s take television for an example, though later I want to talk about books. At one end of the spectrum are shows about the law that are not fictional, and they are a whole new breed. Does anybody remember the original *Divorce Court*?³ In that show, there were actors that pretended to have real-life conflict over divorces. Now we have real conflicts on *Judge Judy*.⁴

2. BUFFALO SPRINGFIELD, *For What It’s Worth*, on RETROSPECTIVE: THE BEST OF BUFFALO SPRINGFIELD (WEA/Atlantic Records 1969).

3. *Divorce Court* is currently a syndicated show. Listings may be found on the World Wide Web at <www.divorcecourttv.com>.

4. *Judge Judy* is currently a syndicated show. The *Judge Judy* official website may be found on the World Wide Web at <www.judgejudy.com>.

We all know Judge Judy, the uber mother-in-law who lectures, cajoles, and ultimately rules from the bench. The litigants are real, the facts are real, and so is the law. Judge Judy is the new Judge Wapner, who used to preside over *The People's Court*.⁵ You remember that show, it was the same format as *Judge Judy*. Its motto was, "Don't take the law into your own hands, take it to court."⁶

Now, Judge Wapner is still on television handing down rulings, but he does it on *Animal Court* on the cable channel Animal Planet. The jurisdiction of animal court is not as clearly defined as federal jurisdiction, but you get the idea. The conflicts involve animals. Horses, potbellied pigs, cute little kittens; the cuter they are, the higher the ratings. And Judge Wapner rules from the bench, with a bailiff who looks a lot like his sidekick on *The People's Court*.

In addition to Judges Judy and Wapner, there is *Judge Joe Brown, Judge and Jury*, with former Judge Burton Katz, *Judge Mills Lane*⁷—yes, the boxing referee, but let's not go there. If Jesse Ventura can be a governor, then Mills Lane can be a judge. There is even a new version of *The People's Court* with former New York Mayor Ed Koch, who proves daily that you don't even have to be a judge to be a judge, not where your jurisdiction is television.

What is our fascination with The Honorable Judy and Wapner? Why do we watch these shows in record numbers? Why do we find the law in this form so entertaining? I do not pretend to have the right answers, though I do have a few thoughts.

People like to learn about the legal process, but they like their law local. Almost Emanuel on television. It's got to be handed to them in easily digested stories, in which the conflict is clear, and black and white, and the resolution is swift and certain. Judges Judy, Brown, and Wapner are the instant gratification of judicial process. Television provides the only example of a speedy trial in the United States. The rush to judgment is to finish before the credits roll.

Not that I criticize these shows, mind you. On the contrary, I find them highly entertaining. I love television, and no lawyer is immune to the charm of speed. Is there a lawyer who doesn't get some measure of satisfaction when a judge rules from the bench? Ironically, in my experience, the only

5. *The People's Court* is currently a syndicated show. Listings may be found on the World Wide Web at <www.peoplescourt.com/cmp/station.html>.

6. *The People's Court* (Ralph Edwards/Stu Billet Productions 1981–93).

7. *Judge Mills Lane* originally aired on the WB Network.

thing better than a ruling from the bench, in your favor of course, is an extension of time. Go figure.

And there is something else to our television judges, which explains why *Judge Judy* is currently beating out *Oprah*⁸ in the ratings.⁹ To a nation treated to a steady diet of Jerry Springer, Judge Judy and Wapner are a welcome respite, and contrast.

Consider these two types of shows. On the *Jerry Springer Show*,¹⁰ there is plenty of conflict, to be sure. The episodes have titles like “You Stole My Best Friend!” and “You Cheated on my Brother!”. Conflict equals ratings.

But conflict on the Springer show creates disorder and even violence. People shout at each other, curse each other, and ridicule each other. The audience insults the guests and the guests flip the bird to the audience. The conflict goes unresolved, or worse, the person who shouts the loudest—or hits the hardest—wins. Might makes right. And Jerry Springer, who has to be the wimpiest lawyer on the planet, cannot hope to keep order, nor does he try. He wants the fighting, even the violence, so that the black-shirted bouncers can hurry onstage a minute or two late.

Jerry Springer is Geraldo before he stopped wearing his contacts. And like Jerry Springer’s show, Geraldo’s show often had people hitting each other and screaming at each other. Geraldo was proud of the time his nose was broken when he put a white supremacist and an African American on the same stage.¹¹ The ratings went through the roof and so did chairs and tables.

When you think about it, Jerry Springer and Geraldo Rivera are the direct opposite of Judges Judy and Wapner. Jerry Springer is a world without law; he is the “anti-Wapner.” In fact, the *Jerry Springer Show*, where might makes right, is everything a system of laws are designed to prevent. I don’t think I’m making too much of this. I actually think I’m onto something.

8. *Oprah* is currently a syndicated show. Listings may be found on the World Wide Web at <www.oprah.com/tows/program/tows_prog_whenwhere.html>.

9. See Joe Schlosser, *Another Benchmark for ‘Judge Judy’*, BROADCASTING & CABLE, Mar. 29, 1999, at 15; Joe Schlosser, *‘Judge Judy’ Lifts the Bar*, BROADCASTING & CABLE, Mar. 22, 1999, at 16.

10. The *Jerry Springer Show* is currently a syndicated show. Listings may be found on the World Wide Web at <www.universalstudios.com/tv/jerryspringer/listings.html>.

11. *Geraldo!: Young Hate Mongers* (Tribune Entertainment television broadcast, 1988).

There's even something to the fact that Judge Judy and Wapner are clearly from an older, and clearly wiser generation. They behave as authority figures, and they resonate. It's true of all of the television judges. And then there's Ed Koch, who ran New York City. The television judges are, in a sense, the parents, while Jerry and Geraldo are the kids. The judges are the daddies and mommies who set the curfew and pay the bills; the kids borrow the car and crack it up.

Not only in their age and experience, but also in their manner, Judge Judy and Wapner remind us that there are still values and decorum, that by the way, have nothing to do with courtrooms or law. I have watched these shows, and it is fascinating how frequently these television judges admonish and lecture on manners. The law is secondary to good behavior.

Judge Judy is legendary for her insistence on civility between the parties, and she has been known to correct the English of more than a few litigants. Judge Wapner hates it when litigants interrupt him or each other. He stops them if they simply tell their story. They have to answer his questions to elicit it. No one is permitted to talk out of turn. Wapner shouts "Take turns!" as if to toddlers. The parties cannot call names or roll their eyes when the other litigant speaks.

Even the pets have to pay attention. Last week, a toy poodle that was standing there as "Exhibit A" in a dispute over a grooming bill barked out of turn. Judge Wapner said, "If that dog barks one more time, he's outta here!" And this is *Animal Court!* I'm not kidding!

I watch Judge Wapner. I love Judge Wapner. He reminds me that we live in a world not only of laws, but of taking turns. On the criminal courts building in New York it says, "Where law ends, tyranny begins." That may be right. They're smart in New York, and they know a lot of stuff. But to me, where law ends, Jerry Springer begins.

Let's move to the next step in our examination, cable television's own convergence of law as entertainment—Court TV. We begin with the name Court TV, the perfect blend of fiction and reality. It hints at what is to come.

I watch Court TV all day, every day. It's on when I work. I understand firmly the difference between fiction and reality, most of the time. But to most viewers, Court TV is simply the real Judge Judy and Wapner, and sometimes, even I get confused.

The cases on Court TV aren't called by their case names—I guess on the assumption that it is too "law-y" and not "entertainment-y" enough—so they're given catchy names like television episodes: *Murdered Neighbor*

Trial;¹² *Texas Dragging Death*;¹³ *Florida Strangulation Trial*,¹⁴ which was *Florida v. McIntyre* out of Vero Beach. There was also *Potato Gun: Toy or Weapon?* and *The Drug Dealer Murder Trial*.¹⁵ I like that last one. We show that trial in Philly too—every week.

Everyday Court TV runs actual court cases back to back, as if they were fictional television shows. They run one after the other and sometimes the juxtaposition seems, well, as odd as an episode of *Friends*¹⁶ segueing into *20/20*.¹⁷

Sometimes it is worse than odd, it's downright horrific. Two weeks ago, Court TV was running the trial of that awful dragging death in Texas,¹⁸ but when the Texas trial was in recess they shifted back to a case in which a woman shot her neighbor over a small shrub that was growing unpruned onto her property line.

Now both of these cases involve murders, but one is so different in kind from the other, not only in the horror of its fact situation but also in its implications for race and justice in this country, that they are simply worlds apart. To alternate between them, ten minutes here and ten there, is to trivialize the dragging death and magnify the neighbor dispute, or at least it feels strange when you watch it.

The Court TV people didn't make any remarks about the irony. From a strictly programming point of view, the trial shows were equal. Both trials became shows that would interest the viewer, and from the programmer's point of view, alternating between them made sense. But it didn't. Maybe it did in fiction, but not in reality.

12. *Murdered Neighbor Trial* (Court TV television broadcast, 1996) (covering *California v. Palm*, in which a retired Navy commander was tried for murdering a neighborhood bully) <<http://www.courtstv.com/casefiles/verdicts/palm.html>>.

13. *Dragging Death Trial* (Court TV television broadcast, 1999) (covering *Texas v. Brewer*, the capital murder trial of one of three individuals charged with the brutal dragging death of James Byrd, Jr.) <http://www.courtstv.com/trials/brewer/091799_am_ctv.html>.

14. *Florida Strangulation Trial* (Court TV television broadcast, 1999) (covering *Florida v. McIntyre*, a case in which a police officer procured her son's confession to a murder without formally reading him his rights) visited Apr. 7, 2000 <<http://www.courtstv.com/trials/mcintyre/index.html>>.

15. *Drug Dealer Murder Trial* (Court TV television broadcast, 1999) (covering *Michigan v. Taylor*, a case in which a young man was accused of killing his mother's drug dealing boyfriend) <<http://www.courtstv.com/verdicts/dtaylor.html>>.

16. *Friends* originally aired on NBC.

17. *20/20* originally aired on ABC.

18. See *supra* note 13.

By the way, in between the trial, on breaks and such, legal commentary is offered by a variety of television lawyers, television shrinks, television social workers, and Dr. Judy. Dr. Judy is not to be confused with Judge Judy, who has the same last name. During the breaks, real people—viewers—call in with questions and comments. It's telling. Sometimes they comment on the case and the story, as if it could be changed to suit. "This forensic witness is boring," they say. They chirp up about which witnesses they like. They review them as if they were actors. "He did a good job," they say. Sometimes they forget and review the lawyers. One woman called in and said, "I think that lawyer is flat-out lying." Nobody reminded her that it doesn't matter when the lawyers lie, only the witnesses.

When court is not in session, on holidays and such, Court TV shows its other law programming, and that's where the fiction and reality begin to blend in the same show. When court is closed or at night, Court TV runs shows called *Trial Story* and *Prime Time Justice*. I love these titles.

In these shows, a fiction-like story is made out of the reality of the trial and the underlying case. The shows dispense with the trial footage, which can be so dull that people may start turning their dials (query—does anyone turn dials anymore?). Instead of trial footage, there are reenactments. Actors who look like the actual defendants play the bad guy, tracing his steps while he stalks a woman he would later be convicted of killing. Other actors play the witnesses, who stand by open-mouthed.

Now follow this, what is happening here is that reality (the trial) has been transformed to fiction (using actors in a story) and all of it is shown on television, as a "crime story." Is it fiction or reality? Crime or crime story? You tell me.

It gets worse. On January 8, 1999, Court TV ran a miniseries on the making of the movie *A Civil Action*,¹⁹ entitled *A Civil Action: In Pursuit of Justice*, which, as you know is a movie about a real lawsuit.²⁰ Court TV interposed scenes of the movie actors with scenes of the real lawyers and judge. The interviews shifted seamlessly back and forth. If you left the room for a snack and came back, you didn't know who was real and who was fiction. What was happening—Television was broadcasting a show about a movie from a book about a real lawsuit. Still with me? See what I mean?

Where's the line? There isn't one. It's all the same. It flows back and forth. You could poke a hole through the wall and have it close up behind

19. Paramount Pictures (1998).

20. *A Civil Action: In Pursuit of Justice* (Court TV television broadcast, Jan. 8, 1999); see also *Anderson v. W.R. Grace & Co.*, 628 F. Supp. 1219 (D.Mass. 1986).

you, like the little girl in the movie *Poltergeist*²¹—who disappeared into the television by the way.

But back to *A Civil Action*.²² It was a great miniseries about the movie from the book about the case, because a noted legal scholar, John Travolta, was in it.²³ In fact, the show, like the movie, became a vehicle for John Travolta. Soon all toxic waste cases will attract big stars. We can only hope. But in the particular show, John Travolta was interviewed talking about the real lawsuit.²⁴ Get this—John Travolta on Court TV interviewed by a lawyer about his views about a lawsuit. John Travolta, a Scientologist, has blurred his line.

Here's a slightly different example, and for those of you paying very close attention, you'll see that we get closer and closer to actual fiction. Court TV has bought the rights to broadcast the series *Homicide*²⁵ every night. *Homicide* is the television show about homicide detectives in Baltimore. It is a great show. The stories are realistic. The characters are almost human, and ugly so you know they're real people. The camera bumps around so you know it's really happening.

Sometimes Court TV sandwiches its *COPS*²⁶ show between episodes of *Homicide*, as in *Homicide*, then *COPS*, and then another *Homicide*. The *COPS* show, if you haven't seen it, is a show about real homicide detectives. The stories are so realistic. The camera bumps around so you know it's real. By the way, real homicide detectives are much better looking than the actors who play them on television, who are ugly to seem more real. But to my point—if you watch these shows together, you are liable to forget which is the fiction and which the reality. They look identical, talk identical, and both have credits and theme music at the end. How do you know? You need a law degree.

Just to push the point, Court TV also did a special documentary on the real murder cases that *Homicide* fictionalizes. Get it? Start with reality, turn it to fiction, make it real again and put it on television. A real show about a fake show about reality—on television.

Has all of this escaped anyone's attention? Not quite. Some people are concerned about this, but predictably, for all the wrong reasons. The head of Court TV, Henry Schlieff, said of the purchase of *Homicide*, "As 'Homicide'

21. Amblin Entertainment/MGM (1982).

22. *A Civil Action: In Pursuit of Justice*, *supra* note 22.

23. *Id.*

24. *Id.*

25. *Homicide* originally aired on NBC.

26. *COPS* originally aired on FOX.

shows, life is a balancing act, and on balance, this is a perfect compliment to the schedule because it will draw a more diversified audience to our reality programming.”²⁷

I know what he means. An almost real show will make people like the real shows. We need weaning from fictional television. We need a bridge of broadcasting to reality to make the transition go down easier. It just might. Schlieff added that, according to research, Court TV’s adult viewers are fifty-nine percent more likely than average to watch *Homicide*.²⁸ It’s true, it has to be. The shows look and feel identical. Only problem is, one is completely fictional and one is about real crime—and real crime victims. Are we all thoroughly confused? Now you see why I wasn’t a law professor.

Court TV’s founder and former president, Steven Brill, criticized the Court TV’s purchase of *Homicide*, but for a very interesting reason. By the way, the quote here is from *Variety*, the entertainment newspaper (which is also perfect). “‘Homicide’ is a terrific show but I think it’s crazy to do it on Court TV,” said Brill, the CEO of publisher Brill Media Ventures.²⁹ Why did he say that? Because it might confuse people? Because it trivializes real crime? No. Brill said, “It dilutes the brand. [They’re] making Court TV indiscriminate from all of its competition.”³⁰

Hear that? The problem is the brand, that the marketability of the Court TV name may be diluted. But what about the fact that the *reality* gets diluted, too? That some viewers may even be confused by the programming? Or that it lends false credibility to a fictional program if it is sandwiched between true shows, like *Homicide* put between two *COPS* episodes. Conversely, isn’t it possible that fiction, which encases a true show, makes the true shows more fictional?

Think about it. Marshall McLuhan was right of course, the medium really is the message. If an event, even a real murder trial is run on television long enough, it becomes entertainment. Doesn’t broadcasting something on television affect our perceptions of it? Of course.

It does in many other circumstances. Run the same article in the *N.Y. Times* and *The National Enquirer*. The *Times* gets greater weight. Dress a law student in a suit or a pair of shorts and a T-shirt. Which one gets the job? Put a lousy cover on a great book and see if it sells. I can tell you it

27. Richard Katz, *Court TV Sees Fresh Life in ‘Homicide,’* VARIETY, Nov. 9, 1998, at 25.

28. *Id.*

29. Richard Katz, *Court TV to Serve Up ‘Homicide,’* Nov. 6, 1998, at 4.

30. *Id.*

won't. Because I think the principle is roughly the same, I think I'm not half-wrong, which is the best I ever hope for.

"Something's happening here. What it is ain't exactly clear."³¹ Which brings me to Johnnie Cochran.

Johnnie Cochran appears daily in courtrooms around the country, in Armani suits and, if need be, knit caps. He also appears nightly on Court TV, on his own show, *Johnnie Cochran Tonight*. You know what Mr. Johnnie does in courtrooms, and I'll say outright that I like him. I have nothing against him. He's very smart and he communicates with juries like nobody else. He's a great trial lawyer, which is why he makes a great television host.

You may not have seen his show on Court TV, *Johnnie Cochran Tonight*. It is an interview show in which Johnnie questions witnesses—I mean, interviews guests—and they usually end up agreeing with him, laughing with him, or telling him he is great. Johnnie wins every show.

Of particular interest for our purposes is the *Johnnie Cochran Tonight* show which aired on October 27, 1998.³² On that show, Johnnie hosted the cast and head writer for the television soap opera *All My Children*.³³ His reference was particularly the legal aspects of the show, so *Johnnie Cochran Tonight* would have some tenuous tie into the law; but to be frank, watching it I had the distinct sense that Johnnie knew way too much about Pine Valley.³⁴ Way too much. But I digress.

The show was a real lawyer on television interviewing actors about a fake law show. Johnnie spoke first to the head writer of *All My Children*.³⁵ The television writer told him "you're our prototype" for a trial lawyer.³⁶ Eeeek! Johnnie smiled his big Johnnie smile and asked her what the hardest part of writing scripts for the lawyers in the show was.³⁷ She answered, "Characterization. Johnnie, there are real-life people who have to go home and have real lives" in response to her lawyer characters.³⁸ I confess I do not know what she meant. She's only a writer and can't be expected to communicate with any clarity.

31. BUFFALO SPRINGFIELD, *supra* note 2.

32. *Johnnie Cochran Tonight: All My Children* (Court TV television broadcast, Oct. 27, 1998).

33. *Id.*

34. Pine Valley is a fictional setting of the daytime soap opera *All My Children*.

35. *Johnnie Cochran Tonight*, *supra* note 36. *All My Children* originally aired on ABC.

36. *Johnnie Cochran Tonight*, *supra* note 36.

37. *Id.*

38. *Id.*

Johnnie then moved on to talk with the actor who plays a lawyer in the show.³⁹ The actor was tall, blond, muscular, and extremely good-looking. Every inch the lawyer, right? In contrast to the real detectives, who are better looking than television detectives, real lawyers . . . no. The soap actor on *Johnnie Cochran Tonight* talked about how he enjoyed being a lawyer on television and he sounded a good deal cheerier about it than most lawyers I have met. The actor said that he gets mistaken for a real lawyer all the time.⁴⁰ Are you surprised? I'm not a lawyer, I just play one on television.

At the end of the show, for the punch line, Johnnie looked at the camera and said that he was thinking about opening a new law office in Pine Valley.⁴¹ Johnnie has evidently been consulting with John Travolta on the fiction/reality distinction. But it is not news that our favorite television lawyer manifests a fundamental confusion between fiction and reality. He defended O.J.

By the way, at the end of his show, Johnnie announced, "Tune in to the next *Johnnie Cochran Tonight*, I'll interview comedian Chris Rock on life, politics, and the law."⁴² Now what's next? Eddie Murphy on ancillary jurisdiction? Sandra Bernhardt on the abstention doctrine? Robert DeNiro on RICO?

Well enough already. We get it. Courts can be on television. But can television be the court? Yes, in Philadelphia.

Pretend for a minute you are a criminal in Philadelphia. Not a lawyer. You are picked up for, let's say, a drug dealer murder. Here's what happens. You are cuffed and put in a holding cell to wait for your preliminary arraignment hearing, which comes only an hour to two after you are arrested.

As you know, the preliminary arraignment hearing is the first time you are formally charged with a crime and the determination is made of whether you will get bail or not.

When it's time for your hearing, they take you out, still cuffed, and for some reason give you a cheese sandwich. You don't accept. Who likes cheese with nothing to drink? Plus it's hard to eat in handcuffs. Then you go to your hearing. It's not like any hearing you have ever seen.

You are led to a steel chair in a small cell and you are handcuffed to the chair. Directly across from you is a large television monitor on a rickety television table. You are three feet from the television, owing to the size of the cell. On the wall is a black phone, but the cell is otherwise empty, like

39. *Id.*

40. *Id.*

41. *Johnnie Cochran Tonight*, *supra* note 36.

42. *Id.*

the one you came from. Nothing is in the cell but you facing the television, and since you're cuffed to the chair, it's as if you're being forced to watch bad television. *Ally McBeal*⁴³ for example.

But there is no television show on. Gray static blankets the television screen, which emits an electrical crackling noise so loud that you wince. You are still dressed in whatever you were arrested in. The sheriff tells you to sit still so you won't move out of frame. The camera is above the television, but the television is so huge that you don't notice it at first.

Suddenly, the static noise ceases, the gray blanket vanishes, and a full-color picture pops onto the screen, divided into four boxes; the upper right box shows a courtroom made miniature, to fit into the box. The tiny spec at the dais is a bail commissioner. Inside the upper left box is a close-up of the bail commissioner, who, now that you can see him, wears a sweater instead of a robe and looks a lot like Mills Lane. In the lower left box is a lawyer sitting at a desk behind a sign that reads "Commonwealth." In the box next to it is a lawyer sitting at a desk behind a "Public Defender" sign. This is your courtroom for your preliminary arraignment hearing. It's on the television screen. If it weren't your freedom on the line, you'd laugh. It's the *Hollywood Squares*⁴⁴ of justice.

What's it like from the lawyer's side? Located in the basement of the criminal justice center, the courtroom for arraignment hearings looks like the set of a television show for good reason. It is.

The courtroom is the size and shape of a stage, half as large as a standard courtroom. A bulletproof divider protects the gallery behind the bar of court from the public, which sits in black modern pews like an audience. On the day I went nobody was watching the arraignment court show. It is not a successful show. I think because it is too real and you can't call in. Also, there are no reenactments.

The studio courtroom is arranged conventionally—from left to right is defense table, judge's dais, and prosecutor's table—but the scene is dominated by the unusual touch of a large camera affixed to the dais and aimed at the studio audience. Next to the camera sits a massive television screen divided into four boxes, the same view as the defendant sees: judge, courtroom scene, district attorney, and public defender.

If you sit in the gallery behind the divider, you cannot help but keep looking from the real courtroom scene to its doll-sized version on the television. The large brass seal of the Commonwealth of Pennsylvania, that

43. *Ally McBeal* originally aired on FOX.

44. *Hollywood Squares* is currently a syndicated show. Listings may be found on the World Wide Web at <<http://www.hollywoodsquares.com/stations/index.html>>.

looks so dignified as it hangs behind the dais, becomes a copper penny on the television screen. It is odd; reduced and remote; smaller and behind glass.

However, the problem with the television courtroom goes beyond appearances. For the lawyer, when it comes time to represent his client, it gets even odder. For it may be the only criminal proceeding during which the lawyer is one place and the client is in another. The lawyer is in the studio courtroom and the defendant is in the cell, on television.

How do lawyer and defendant consult? Can you say "right to counsel?" Well, lawyers can use a phone at counsel table and pick it up to speak with their client. If the lawyer presses a red button on the phone, the microphone to the gallery will be cut off and the audience cannot hear what the lawyers is saying to his client. But there is no such button to cut off sound to the studio courtroom, so everyone can hear your advice to your client, including the bail commissioner, the district attorney, and the court officers. That is, your adversary and the ultimate arbiter. The public defenders hate it. How could they not?

I can't imagine that the defendants like it either, because on the client's end of the phone line, the turnkey guarding your client hears everything he says, any question he asks, or any advice he seeks. Wake me up when we get to the justice part.

Odder yet is the show you see unfolding on the television screen. I watched the show the other day for three hours. When the cases are called, the four boxes vanish and the defendant's face appears on the screen, one face after the other. The faces, larger than life on the big screen, float in the black frame above the logo reading "Panasonic."

Each face is different from the last, but the thing they all have in common is that they have just been arrested for a major crime. Aggravated assault, murder, rape, car-jacking. There are white faces, black faces, men and women. There are old, young, and way too young. Some need translators; most do not.

Many of them are crying, bloodied, beaten. One man is completely naked from the waist up; he appears on the television screen, at his own bail hearing, that way. Nobody remarks on it in the studio courtroom.

Many of the faces are still high on the drug they were picked up for dealing. One woman, a mother of three, cannot stop weeping. She is worried that her children were home alone when she was picked up, a seven-year old taking care of two younger children. The bail commissioner told her she should have thought of that before she sold crack. The public

defender, on the phone, cannot get her to stop crying. It is not a good show. It doesn't have a happy ending. No wonder nobody watches it.

Each arraignment lasts about four minutes, and so the faces flip through at a pace that can only be described as cinematic. They are arraigned in groups, so there will be fifteen at a stretch, then none at all for ten minutes, and then it will start up again. The bail commissioner speaks to the defendant through a camera mounted at the back of the courtroom, above a monitor. The bail commissioner's lines are these:

This is your preliminary arraignment hearing. You are charged with aggravated assault. Your next court date is March 10, 1999 in Courtroom 1406 of the Criminal Justice Center. I'm assigning you a public defender. Your bail is set at \$5,000. Do not miss your court date. That concludes your arraignment hearing. Now sign the subpoena and get off the screen.

Get off the screen.

Your client—the face, the defendant—vanishes as abruptly as if someone had grabbed the remote and changed the channel, which of course, someone has.

Why do we do this in Philly? Are we making some absurd and rather obvious point about courts and television? No. Not intentionally. In the old days in Philadelphia, those arrested were brought to one of twenty odd precinct houses and arraigned in real courtrooms. Like you see on television. But that cost a lot of money, so now they are all arraigned by a television judge, without the advice of their lawyer, in a courtroom that consists of a cell and a television.

Get off the screen.

Before I leave this topic, I want to address an article which coincidentally appeared in last Friday's *New York Times*. The *Times* piece is called *Night Court Joins the Theatre That Is New York*, and talks about the arraignment court as being "a tourist attraction and [a] cheap date."⁴⁵

It's no surprise, to those who remember the old *Night Court* show, in which night court was fictionalized as comedy. Part of me, given what I have seen, is repulsed by this notion, part of me understands it. But for our purposes, what is most interesting is a small sidebar to the article called *Where to Watch*.⁴⁶ It says, "[f]or those who have an appetite for courtroom

45. Janny Scott, *Night Court Joins the Theater That Is New York*, N.Y. TIMES, Mar. 5, 1999, at E41.

46. *Id.*

drama but who cannot face leaving the living room sofa, the current television season offers plenty of alternatives to a trip to night court” and there is listed Judge Joe Brown, Judge Judy, Judge Mills Lane and of course, Judge Wapner of Animal Court.⁴⁷

I am not making this up. See (hold up paper)? I wrote my speech before this article appeared—I swear it, but it proves my point. Real live arraignment court is entertainment, and so is *Judge Judy*. They are fungible. If the *New York Times* cannot distinguish between fiction and reality, what hope do any of us mere mortals have? Or John Travolta, for that matter?

Which brings me to my next question, which is, is it bad? Well, is it? Having said what I said, I don’t really think so. I’d rather have the shows, all of them . . . as clumsy and strange and even stupid as they are. I wish there were more. I think, sure, there is a danger of confusion, and sure, there is a blending of reality and fiction. It leads the public to think that what they see in fiction is real, there is no doubt about it. And it’s not always to the benefit of the legal profession, whether its watching the lawyer shenanigans of the O.J. trial, or even dopey lawyer shows that are fictional.

I don’t want to bore you with statistics, but *Ally McBeal* is a hit show. Every Monday, millions of people get a weekly dose of lawyers, miniskirts, and lip liner from that show. As happy as I am that there’s a woman lawyer starring on television, it bothers me that her skirts are absurdly short and she does weird stuff with her mouth. I wish television wouldn’t show her—us, me—that way.

But I am ultimately a huge fan of the First Amendment, and I borrow that analysis for these purposes. The proliferation of the lawyer shows and the Judge Judy’s of the world means that they cancel each other out. They counter each other. For every bad, dopey, or tasteless show, there is a good one.

And there are better lawyer shows. *The Practice*⁴⁸ for one, written by David Kelley, the good twin of the guy who writes *Ally McBeal*. I wrote an article on *The Practice* for *TV Guide*—how perfect, huh? The article was called *The Best Show You’re Not Watching*.⁴⁹ Not everybody watches *The Practice*. The skirts are too short and the mouths too small. And of course, it is far too real.

47. *Id.*

48. *The Practice* originally aired on ABC.

49. *The Practice – The Courtroom: The Best Show You’re Not Watching?* (visited Feb. 19, 2000) <http://www.sqx.simplenet.com/thepractice/info/tvg_bestshow.html>. Original on file with the Author.

As for the other lawyer shows, as I mentioned at the outset, they are detailed in *Prime Time Law* by Professors Jarvis and Joseph.⁵⁰ It's the hornbook here, and on the assumption that most of you are familiar with it, I won't go over the same ground. Suffice it to say there are plenty of these shows, the completely fictional shows and the ones in between, on Court TV and elsewhere on the dial—or bandwidth. We have on television and in books exactly what the First Amendment intended, a robust if implicit debate over what a lawyer really is. That is a good thing, especially in a profession in which lawyer jokes abound.

On balance, I am very glad Court TV is on, and I think there should be more cameras in more courtrooms, even given that they can alter the proceedings somewhat. I wish we had cameras in the Supreme Court, which manages, amazingly, not to even permit audiotapes of arguments that were never intended to be secret or confined to the elite because the courts and the law don't belong to the elite.

The judicial process is our own. The courts belong to the public. They were intended to be and should be public forums. The justice that we have, both civil and criminal, is ours.

In my view, the more familiar all of us are with the law and with courts, the better off we all are. The more involved in our system of justice, the more we understand the world around us, and the more we may exercise even the power to change it.

A perfect example of this is the rape shield laws, now in place in Pennsylvania and so many other jurisdictions.⁵¹ As you may remember, in the old days women who brought rape charges were compelled to undergo a degrading cross-examination in court regarding their past sexual history. While this had gone on for years, it wasn't until television and books began to dramatize what the process was like for rape victims.

I remember in particular a television movie starring Elizabeth Montgomery on the subject.⁵² The show was wonderful, and people started talking about the issue. Women's groups raised a ruckus and so did many other people. The public cried out as one. In response, the evidentiary rules, at least in Pennsylvania, were reformed, as a direct result of public perception and continued sentiment that the status quo was unjust. The merger between fiction and reality ultimately did serve the public good. How amazing. And could there be a better result?

50. *PRIME TIME LAW*, *supra* note 1.

51. *See, e.g.*, 18 PA. CONS. STAT. ANN. § 3104 (West 1999).

52. *A Case of Rape* (television broadcast, 1974).

Finally, of course, I think it is good because I am as much a part of this phenomenon as a commentator on it. Like most authors, I will talk about myself here and for once, it may be instructive. I have no business whining about Johnnie Cochran or Mills Lane. I make my living the same way. And having said that, I'm on Court TV next week.

I was a lawyer, and a longtime reader of legal thrillers from the days of Erle Stanley Gardner's *Perry Mason*,⁵³ *Anatomy of a Murder*⁵⁴ by Robert Traver, all the way through to Scott Turow and finally to John Grisham. *People Magazine* calls me "the female John Grisham."⁵⁵ They mean that as a compliment, though it makes me sound like a drag queen.

I quit practicing when my daughter was born and I got divorced, and I saw that there were very few women lawyers writing legal thrillers. All of the books are fictional, though they are set in Philadelphia, which is a very real city. They are thrillers, but they deal with real-life issues of police corruption, legal ethics, and criminal justice.

I use the real buildings in the city and give as much true physical detail as I can to my fictional story. For my new book, *Mistaken Identity*, I took boxing lessons in order to write a realistic boxer.⁵⁶ I watched murder trials in order to write a realistic murder trial. I hung with the homicide detectives and went on a ride-along with the Police Commissioner himself, for a day. In short, as a rule, I do everything I can possibly do to make my fiction seem real. Thus, I stand before you completely guilty as charged, as guilty even as Jerry Springer. Well maybe not that guilty.

Sometimes, as in my new book, even the plot is taken from my real life. In *Mistaken Identity*, a woman lawyer goes to prison to meet a new client, a woman inmate accused of the murder of her boyfriend, a Philly detective.⁵⁷ The defendant looks a lot like the lawyer and talks a lot like her.⁵⁸ The defendant claims, in fact, to be the lawyer's identical twin.⁵⁹

In my life, something very much like this happened to me, not too long ago. I found out that I had a half sister I didn't know about, who was so close to me in age, appearance and manner that she could be my twin. Now I

53. See, e.g., ERLE STANLEY GARDNER, *THE CASE OF THE FOOT-LOOSE DOLL: A PERRY MASON MYSTERY*, VOL. 1 (1999).

54. ROBERT TRAVER, *ANATOMY OF A MURDER* (1983).

55. Lisa Scottoline—*Rough Justice*, (visited Mar. 22, 2000) <<http://scottoline.com/newrpeople.cfm>>.

56. LISA SCOTTOLINE, *MISTAKEN IDENTITY* (1999).

57. *Id.*

58. *Id.*

59. *Id.*

had always wanted a sister, but was surprised to find I actually had one, though we have since become friends, and good ones. But the emotional truth behind my personal experience—being found when you didn't know you were lost—inspired the novel that became *Mistaken Identity*.⁶⁰

So clearly, the truth became fiction. In the novel, the heroine goes on to solve the mystery of the murder as well as of her own identity, and it is, at times, moving.⁶¹ The reviews have been wonderful and if I had to guess, I think my reality makes my fiction truer. That I am a lawyer makes the fiction truer. That I am an Italian American girl from Philly, writing about a heroine who is an Italian American girl from Philly, all of these things make my fiction truer. So who am I to complain about Johnnie Cochran?

Which is why I don't, not really, and not in the end, as they say. Millions of us—maybe not this sophisticated crowd, but the great unwashed—we get ideas about lawyers and the way they conduct themselves, about courts and judges and ultimately about justice in this country from television and books like mine. *Publishers Weekly*, a respected trade magazine, has said that my books “may change the way people feel about lawyers.”⁶² I think that's great but more importantly, it acknowledges that this phenomenon is happening.

All of us lawyers who write are aware of our obligation, I know it is always uppermost in my mind. It doesn't mean that I sugarcoat the profession, it means that I humanize it. To simply remind people that lawyers are human, too, capable of wishing and hoping, of being misunderstood, or making mistakes. I draw the characters from how I would feel or how I imagine a character would. I assign a real heart and mind to a fictional person, and that reality—even as imagined as it is—makes the fiction truer.

In the end, it is a good thing. If it isn't, someone will write a book that shows it isn't. It is just what the law intended, and isn't that remarkable?

Thank you.

60. *Id.*

61. SCOTTLINE, *supra* note 57.

62. *Legal Tender—Book Review*, PUB. WEEKLY, Sept. 9, 1996, at 62.