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PREFACE TO LAWYERS IN YOUR LIVING ROOM
POPULAR CULTURE MATTERS

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Lawyers in your living room! Eeek! Most people would rather find vampires with chainsaws in their living rooms than lawyers. But the fact is that the lawyers have always been there and they always will be. Lawyers have been a fixture on television since the 1960's and lawyer shows (fictional, documentary, and reality-based) continue to proliferate today. This book contains eight somewhat arbitrarily divided Parts that cover numerous aspects of legal television, domestic and foreign, civil and criminal.

This book contains essays about many dramatic lawyer shows of the past and present. It contains chapters on TV shows not primarily devoted to law but in which lawyers played important roles, such as *The West Wing*. It includes a set of articles about the law on TV genre, including discussions about writing for TV and furnishing technical advice. It covers the *Judge Judy* phenomenon. All in all, the essays in this book convey a sense of the richness and vigor of legal television, past and present, foreign and domestic.

It has been a pleasure and a privilege to have brought together the authors of the essays in this book.¹ I would like to express my gratitude for the dedicated work of all of those volunteer-authors who produced their chapters under unreasonable time pressure and restrictive word limits, yet met the highest standards of scholarship. I also would like to thank Justin Smith, my research assistant who helped greatly in the editing process and in assembling the photographs. Justin was so enthusiastic about the project that he wrote the chapter on *JAG*. I would also like to thank my wife, Merrie Asimow, who, in addition to engaging in countless spirited discussions on the subject and enduring many

hours of watching legal shows on television, was able to untangle numerous computer problems. Tal Grietzer was also a huge help when it came to word processing. All of us who have worked on this book hope that it will entertain and inform the legions of fans of law on television around the world.

You'll be reading about dozens of television lawyers and judges. Most of the chapters will tell you about the *character* of the lawyers who've been hanging out in your living room. What kind of human beings are they? Heroic role models—or miserable, dysfunctional, greedy sleaze bags? What kind of lawyers are they? Ethical, competent and dedicated—or unethical, conniving, and incompetent? Or somewhere in between? We hope you'll get some good ideas about buying (or borrowing) DVDs of old television shows to revisit the shows you once enjoyed or that you missed the first time around or that disappeared long before your time. But we'd also like to educate you about the medium and the importance of popular cultural representations of lawyers. And I'd like to make a few remarks on the subject of media effects.

Why should we care about pop culture—meaning, for present purposes, entertainment media (including but not limited to film and television) that is produced for profit and intended for mass consumption? Most of us enjoy pop culture and consume quite a lot of it, but we usually regard it as fluff—trivial entertainment that is quickly forgotten. Indeed, much of it is trash by any reasonably objective measure. Yet, in my opinion and that of my co-authors, pop culture is important and well worth studying. Why is this?

First, popular culture serves as a mirror of what people actually believe (or at least what the makers of pop culture believe that they believe). Of course, the mirror is always

distorted, given the biases of filmmakers and their need to entertain people and turn a profit. Still, pop culture products often furnish tantalizing clues about public attitudes and beliefs. Looked at in this way, we can learn a lot about what the public thinks about lawyers and justice. If, for example, most current film and television shows depict lawyers as unethical and greedy scoundrels, those representations reflect the stereotypes that people carry around with them. Very few movies and television shows concern dysfunctional grandmothers, rabbis, or algebra teachers, but a great many of them show dysfunctional lawyers. If people expect their justice system to deliver the truth, rather than merely adversarial combat between lawyers, we'll see many movies and TV shows in the familiar (and trite) mold of *Perry Mason* and *Matlock* in which crafty lawyers overcome the odds to acquit the innocent. We'll also see many others like *Law & Order* and *Shark* in which tenacious prosecutors convict the guilty.² If people wish they could denounce others as irresponsible creeps, they enjoy watching *Judge Judy* do it for them. People like to consume media that echoes and reinforces their preferences and preconceptions.

Second, pop culture serves as a powerful teacher, instructing millions of its consumers about what lawyers do and how legal institutions function. Media *always* influences and affects those that consume it, just as they are influenced by personal experiences or by the news, commercials or political advertisements. As a thought experiment, ask yourself what it was like to fight in Vietnam or in World War II. Undoubtedly you have a lot of information on that subject, but where did it come from? For most people, such information could have been derived only from pop culture treatments of those wars. Similarly, do you know anything about the lives of cowboys or

detectives? Undoubtedly, you do—and that information (or misinformation) probably came exclusively from pop culture narratives. How is that in France when people are arrested they demand their *Miranda* warnings—even though this concept is unknown to French law? Or that French people, even lawyers, frequently address judges as “your honor” when this is completely inappropriate?³ They could only have picked up this misinformation from American television shows.

My barber told me recently that he was part of a jury panel that was being questioned by the lawyers. A defense lawyer asked a juror whether one police officer would lie to protect another officer. “Of course,” the juror replied, “I’ve seen it on television many times.” Elayne Rapping, in her introductory chapter, reports that a student said that he didn’t need to read newspapers. “I watch *Law & Order* every week and since their stories are drawn from the headlines, that’s how I keep up with current events.” Perhaps many readers could recount similar anecdotes—or even recognize themselves in these little stories.

What is the mechanism that allows us to internalize information from media? The best documented approach is called “cultivation theory,” which was developed by theorists in the fields of social and cognitive psychology.⁴ Cultivation theorists treat film and especially television as the common story-teller of our age. Pop culture media (especially television) is consumed in massive amounts by nearly all members of the general public. It transmits a consistent set of images and messages about social reality into nearly every home.

Numerous studies indicate that people’s opinions are influenced by long-repeated, consistent themes in fictitious pop culture. If the question is, will you get mugged if you

go to New York, people who watch a lot of television are more likely to say yes than those who watch little or none. People who watch a lot of TV believe in a meaner world—more crime, more drugs, more prostitutes, than people who don't.⁵ Heavy watchers of *Judge Judy* have entirely different beliefs about the appropriate role of a trial judge than those who don't.⁶ Heavy watchers of TV crime dramas are more favorably disposed toward capital punishment than light watchers. Many believe that a “CSI effect” predisposes jurors to acquit unless the prosecutor presents forensic evidence.⁷ Studies indicate that jurors are heavily influenced by news media coverage of trials.⁸ Other studies indicate that media exposure to information about particular crimes (such as rape) influences the way potential jurors assess evidence.⁹

The cultivation effect works because people soak up the “information” conveyed by pop culture media without being critical about its source. We maintain “files” or “schema” in our brain on every conceivable subject and constantly add materials to the files from our personal experiences, conversations with others, or what we read or see in the news and entertainment media. According to cultivation theory, when we respond to a question like “do you trust lawyers,” we access material in the “lawyers” file in order to give a quick answer. Whether we access a particular bit of information in the file depends on how recently it was filed, how many similar items are lodged in the file, and the vividness of the experience that put it there. Most importantly, we don't “source discount” very well. This means that we store and retrieve data in the file that we've extracted from popular culture, failing to recall that it was a fictitious story that provided the material.¹⁰ We are also more heavily influenced by stories about subjects with which we have little or no personal experience and which seem to be “realistic.”¹¹

Another approach to media effects is sometimes referred to as viewer response or reception theory.¹² The viewer response approach contends that viewers are not passive sponges who soak up whatever pop culture comes their way. Instead, media is subject to interpretation and consumers construct their own personal interpretations, make their own meanings, from the materials in a film or TV show. The emphasis in viewer response theories is what the viewer does to the text, not the other way around. Such interpretations may be the same as the ones intended (or “encoded”) by the persons who wrote and directed the film or television show, but they may also be quite different (or “opposed”), particularly in the case of minority or other non-mainstream viewer communities. In her article in this book, Cynthia Cohen provides an example of viewer response theory in action. Contrary to what one might expect, her studies show that people who watch the rather dysfunctional lawyers on *Ally McBeal* or *Boston Legal* have *more* confidence in their own lawyers because they seem so unlike the characters on television.

The two approaches to media effects (the more passive cultivation theory and the more active viewer response theories) are not inconsistent with each other. Each describes different media consumers (and most of us probably fall into each of the groups at different times). Whether one prefers the cultivation or viewer response frames for analyzing media effects, the bottom line is that pop culture images are exceptionally powerful. In this book, Barbara Villez, Anja Louis, and Stefan Machura discuss the educational function of lawyer shows in France, Spain, and Germany. In Spain, for example, the show *Anillos de oro* helped Spanish viewers understand and appreciate the new divorce law in the post-Franco transition period; in France, the show *Avocats et*

Associés taught viewers that French law and legal procedure is very different from the American version that people had absorbed from TV.

In so many ways, what people learn about law and lawyers from pop culture seeps right back into law and legal practice. Jurors are going to apply this knowledge in evaluating cases. Prosecutors believe that jurors won't convict without forensic evidence, because they've learned it's essential from the many CSI-type shows.¹³ Legislators will draw information and opinion from media in deciding what laws to pass. Clients have learned from pop culture what to expect from their lawyers. Litigants in small claims learn from *Judge Judy* that the judge will ask the questions and present their case for them. Lawyers have learned that their case must be backed up by a good story—preferably one familiar from pop culture. And they must use plenty of visual aids and keep their closing arguments punchy and concise. It is said that a group of young lawyers started a firm and held a meeting each morning to discuss their cases. Of course, it was a total waste of time, but they had learned it from *L.A. Law*. And we can only hope that young lawyers won't learn their ethics from watching *Shark* or the many other corner-cutting lawyers Carrie Menkel-Meadow describes in her essay.

So, esteemed reader, browse through this book and read about your favorite legal television shows. Get acquainted or reacquainted with the golden oldies, such as *Perry Mason*, *The Defenders*, *Matlock*, and *L.A. Law*. Enjoy the pleasures of more recent but nearly forgotten shows like *Picket Fences*, *girls club*, or *Murder One*. Spend time with all the lawyer friends that you've made while watching the shows of the present or recent past like *Law & Order*, *Boston Legal*, *The Practice*, *Damages*, *Ally McBeal*, *JAG*, *Judging Amy*, or *Shark*. Cringe at the antics of *Judge Judy* and her many clones as well

as the different versions in Germany and Brazil. Chuckle at the lawyer spoofs on *The Simpsons*, *Green Acres*, and *Seinfeld*. Get to know the foreign series in Spain, France, and the U.K., like *Rumpole of the Bailey*, *Avocats et Associés*, or *Anillos de oro* and many other foreign shows discussed in the chapters on *Matlock* and *Judge John Deed*. But don't stop thinking about tomorrow and don't forget about the potent media effects of lawyer narratives from film or television.

¹ I would also like to acknowledge an earlier book about law on television, *Prime Time Law*, edited by Paul Joseph and Robert Jarvis and published by Carolina Academic Press in 1998. Paul Joseph, tragically, has passed away, but Bob Jarvis wrote the chapter in this book on *Seinfeld*. We have tried to build on the foundations that Paul and Bob laid ten years ago. Finally, I would like to thank the ABA Press, particularly Sarah Orwig and Rick Paszkiet, for suggesting this project and for wholeheartedly supporting it.

² We might even see numerous movies and television shows in which lawyers sell out clients they know to be guilty in order to protect the public from vicious criminals or evil corporations. See Michael Asimow & Richard Weisberg, *When the Lawyer Knows the Client is Guilty: Client Confessions in Legal Ethics, Popular Culture, and Literature*, 18 SO. CALIF. INTERDISCIPLINARY L. J. __ (2009).

³ See the essay by Barbara Villez in this volume about *Avocats et Associés*.

⁴ George Gerbner is generally credited with pioneering cultivation theory. See generally George Gerbner, et. al., "Growing Up With Television: Cultivation Processes," in Jennings Bryant & Dolf Zillman, eds., *MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH* 43 (2d ed. 2002). See also Michael Morgan & James Shanahan, *Two Decades of Cultivation Research: An Appraisal and Meta-Analysis*, 20 COMMUNICATIONS YEARBOOK 1 (1997).

⁵ Gerbner, *supra* note 4 at 52-53.

⁶ Kimberlianne Podlas, *Please Adjust Your Signal: How Television's Syndicated Courtrooms Bias Our Juror Citizenry*, 39 AMER. BUS. L. J. 1 (2001).

⁷ See Tom R. Tyler, *Viewing CSI and the Threshold of Guilt: Managing Truth and Justice in Reality and Fiction*, 115 YALE L.J. 1050, 1056-63 (2006) (indicating that anecdotal accounts of a CSI effect are plausible in light of existing juror research). Tyler points out that an offsetting CSI effect may work in the opposite direction: based on watching CSI, jurors may overestimate the probative value of the prosecution's scientific evidence. *Id.* at 1063-76.

⁸ *Id.* at 1057-63.

⁹ *Id.* at 1057-60.

¹⁰ See L. J. Shrum, *Media Consumption and Perceptions of Social Reality: Effects and Underlying Processes*, in Bryant & Zillman, *supra* note 4 at 69-91.

¹¹ See Michael A. Shapiro & T. Makana Chock, *Media Dependency and Perceived Reality of Fiction and News*, 48 J. OF BROADCASTING AND ELECTRONIC MEDIA 675 (2004).

¹² For accessible treatments, see LAWRENCE GROSSBERG, ELLEN WARTELLA, & D. CHARLES WHITNEY, *MEDIAMAKING: MASS MEDIA IN A POPULAR CULTURE* 235-57 (1998); Alan M. Rubin, *The Uses-and-Gratification Perspective of Media Effects*, in Bryant & Zillman, *supra* note 2 at 525-48.

¹³ See Tyler, *supra* note 7.