References to Television Shows in Judicial Opinions and Written Advocacy (Part II)

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REFERENCES TO TELEVISION SHOWS IN JUDICIAL OPINIONS AND WRITTEN ADVOCACY (PART II)

Douglas E. Abrams

IN THE JOURNAL’S JANUARY-FEBRUARY ISSUE, PART I OF THIS ARTICLE BEGAN BY SURVEYING TELEVISION’S PROFOUNDD INFLUENCE ON AMERICAN CULTURE SINCE THE EARLY 1950S, A STURDY FOUNDATION FOR FEDERAL AND STATE JUDGES WHO CITE OR DISCUSS WELL-KNOWN TELEVISION SHOWS IN THEIR OPINIONS. PART I PRESENTED TELEVISION DRAMA SHOWS.

This Part II picks up where Part I left off. The discussion below presents television situation comedies (“sitcoms”) and reality TV shows that appear in judicial opinions. The discussion concludes by explaining why advocates should feel comfortable following the judges’ lead by carefully using television references to help make written substantive or procedural arguments (as Justice Scalia put it) “more vivid, more lively, and hence more memorable.”

Situation Comedies
The 1950s “Big Three”

“The duty of comedy,” wrote Moliere, “is to correct men by amusing them.” In both civil and criminal cases, television sitcoms often enable judges to provide perspectives on a variety of substantive and procedural issues. Recent decisions invoke, for example, the timeless “Big Three” 1950s-era sitcoms — The Adventures of Ozzie and Harriet, Leave It to Beaver, and Father Knows Best — to contrast the trio’s conceptions of the harmonious traditional nuclear American family with realities that characterize many families that appear in court today.1

“By the mid-fifties,” Pulitzer Prize-winner David Halberstam explained, “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.”

Especially idealized, said Halberstam, was television’s portrayal of the two-parent household: “There was no divorce. . . . Families liked each other, and they tolerated each other’s idiosyncrasies. . . . The dads were, above all else, steady and steadfast. The 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.”

“Particularly on television,” adds historian Elaine Tyler May in her study of Cold War America, “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.”

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.” In 1993, Halberstam offered an explanation for why Americans remained nostalgic for the fifties and the Big Three family sitcoms: “One reason . . . 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.”

The popularity of the three 1950s-era family sitcoms continued with reruns on cable television, but many judges and other Americans remained skeptical about the sitcoms’ portrayal of “a vast middle class of happy Americans who had already made...
it to the choicer suburbs.” The skepticism dates at least from 1961, when Federal Communications Commission chairman Newton N. Minow criticized television as a “vast wasteland” strewn with, among other things, “formula comedies about totally unbelievable families.”

Harkening to “the illusory ‘happy days’ of the 1950s,” the Big Three family sitcoms have enabled judges in more recent years to contrast sanitized fictional family life with the stresses that beset many contemporary households. “We are living a fable, both morally and legally,” wrote a Pennsylvania Supreme Court judge in a concurring and dissenting opinion, “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.”

Courts stress that for many Americans, the Big Three 1950s-era sitcoms never reflected domestic realities. For example, in a 2009 decision that upheld admission of a profane statement attributed to the plaintiff 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 society.” It is no longer, and never was for most, a Leave It To Beaver world.

Judicial skepticism about the Big Three family sitcoms may surface today in domestic relations cases that expose the challenges that frequently face 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. “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 aren’t really Ozzie and Harriet.”

The scale tipped differently in In re J.M., which affirmed a juvenile court order removing eight children from their parents’ custody. The California Court of Appeal rejected the parents’ contention that removal stemmed from poverty rather than from bad parenting. “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.”

Without questioning whether the 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. In a child custody battle between the biological father and the deceased mother’s 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.”

More Recent Sitcoms

As “television’s greatest sitcom” and “an American icon,” Seinfeld (which aired from 1989 to 1998) has appeared in several judicial opinions. In Schneider v. Molony, for example, the patient alleged that for 17 years the defendant dermatologist negligently treated him for eczema by prescribing a drug that caused osteopenia (low bone density). The U.S. Court of Appeals for the 6th 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 assail[s] his girlfriend’s bona fides, calling her a ‘pimple-popper,’ only to discover that dermatological medicine can in fact be a ‘lifesaver.’”

Courts express little tolerance for the so-called “Sgt. Schultz Defense,” which describes 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. In Ortho Pharmaceutical Corp. v. Sonia Distributors, Inc., for example, the federal district court found for the plaintiffs on their fraudulent misrepresentation claim. “No matter how many times this Court reviews the factual essence of this case,” the court explained, “one cannot resist a comparison between the Defendants’ professed ignorance of unlawful conduct, and perhaps the most memorable refrain of Hogan’s Heroes.”

“For those too young to remember,” Ortho Pharmaceutical explained, “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.” References to the “Sgt. Schultz Defense” have resurfaced in judicial opinions ever since.

Other popular comedies featured in court decisions include The Brady Bunch, The Andy Griffith Show, The Beverly Hillbillies, Gilligan’s Island, Get Smart, Bewitched, Barney Miller, Murphy Brown, Taxi, The Mary Tyler Moore Show, Green Acres, Mr. Ed, and The Many Loves of Dobie Gillis.

Reality Shows

Most Americans have never retained a lawyer except to write a will, and most have never walked into a courtroom except to serve jury duty. Their most lasting impressions of the judicial process come primarily from fictional televised dramas such as the ones discussed in Part I of this article; from the cable channel Courtroom Television Network (“Court TV”), which began in 1991 and became “truTV” in 2008; and from daytime televised “judge shows,” the subject here.

At its inception, Court TV presented 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.” TruTV now broadcasts only sensational trials, among other fare designed to hold viewers’ attention.

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 small claims court. Judge Judy and similar judge shows began gaining traction by the late 1990s. Judge Wapner wore robes on the bench but essentially acted as an arbitrator, a private decision maker who, pursuant to the parties’ agreement, reaches a final, binding decision. He enjoyed
such popularity on television that some commentators, “speaking only half in jest, suggested him for appointment to the Supreme Court.”

He would have found at least one receptive colleague because Justice Thurgood Marshall reportedly often watched *The People’s Court* in his chambers. Judge Wapner would also have been the most visible justice because, in a 1989 *Washington Post* survey, only nine percent of respondents could identify William H. Rehnquist as the Chief Justice of the United States, yet 54 percent identified Joseph Wapner as the judge on *The People’s Court*.

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 “apparent intransigence,”

In a divorce case marked by “trivial” disputes and the wife’s television.

these cases are rather dull. If Judge Wapner had to worry about for the 7th Circuit commented that “the legal issues raised in

because Justice Thurgood Marshall reportedly often watched

People’s Court.

Only half in jest, suggested him for appointment to the Supreme

Conclusions: Advocates’ Careful Use of Television References

As a dominant source of popular entertainment and public information for the past several decades, television has helped shape the outlook that readers bring to briefs and judicial opinions. When used carefully, references to a television series can help advocates and judges connect with one another on substantive or procedural issues.

Television references, however, raise judgment calls for advocates and courts alike. Invoking these cultural markers familiar to many Americans may find a place in submissions or opinions, but invocation may fail if the show remained a hit only briefly, or left the air years ago without later syndication. Decades beyond the grasp of some readers, the advocate or judge should understand what the television reference means, but the key to effective written communication is whether readers will also likely understand.

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

Legal writers, after all, earn the best opportunity to persuade readers when they fortify lines of communication, not fracture them. When she won the Academy Award for Best Actress for

Come Back, Little Sheba* in 1952, Shirley Booth set the balance right: “[T]he audience is 50 percent of the performance.”

Endnotes

1 Douglas E. Abrams, a University of Missouri law professor, has written or co-written six books. Four U.S. Supreme Court decisions have cited his law review articles. His latest book is *Effective Legal Writing: A Guide for Students and Practitioners* (West Academic Publishing 2016). Portions of this article were previously published in Douglas E. Abrams, *References to Television Programming in Judicial Opinions and Lawyers’ Advocacy*, 90 Marquette L. Rev. 993 (Summer 2016).


5 See, e.g., *Travel v. Gaviria*, 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.”).


7 Id. at 509 (emphasis in original).


10 David Halberstam, supra note 6, at 514.

11 David Marc, *Comedy Visions: Television Comedy & American Culture* 43 (2d ed. 1997); see also Stephanie Coontz, supra note 9, at 23 (“Our most powerful visions of traditional families are still delivered to our homes in countless reruns

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of 1950s television sitcoms.


13 Newton N. Minow, Chairman, F.C.C., Address to National Association of Broadcasters: Television and the Public Interest (May 9, 1961).


17 Id. (footnote omitted); see also, e.g., Hernandez v. Alonso, 2017 WL 6055429 *3 (Nev. Ct. App. Nov. 16, 2017) (Tao, J., concurring) (“The generation of Americans about to come of age will be the first in American history in which a majority wasn’t raised in a two-parent nuclear family. For better or worse, ‘Leave It to Beaver’ has come to symbolize an entire era and state of mind.”); Michael S.SetName25, 25 25 See, e.g., Snetsinger v. Mont. Univ. Sys., 2001 Meldrum v. Novotny, 701 A.2d 176, 185 (Pa. 1997) (“What does Petitioner . . . have in common with ‘Seinfeld’s’ Stabke, supra note 23, at 160 (“The Brady Bunch “has become one of the phenomenons of modern American culture”).

34 Companhia Energética Paulista v. Caterpillar Inc., 307 F.R.D. 620, 621-22 (S.D. Fla. 2015) (denying certification that discovery request constituted a “fishing expedition”; reciting the fishing song that opened the Andy Griffith Show; Eden Elec., Ltd. v. Amavco Co., 258 F. Supp. 2d 958, 974 n.16 (N.D. Iowa 2005); aff’d, 370 F.3d 824 (8th Cir. 2004) (“Sheriff Andy Taylor of fictional Mayberry, North Carolina, also recognized that if a fine is effectively punish and deter an individual, the individual’s financial status must be considered.”); Acme News Corp. v. City of Ames, 736 N.W.2d 255, 260-61 & n.4 (Iowa 2007) (footnotes omitted) (“the ordinance would allow the Beverly Hillbillies to live in a single-family zone while prohibiting four judges from doing so”). See generally Steven D. Stark, supra note 23, at 111 (“The Beverly Hillbillies was the first telltale sign on television that the cultural unity of the fifties was splintering”).


37 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 method and activities of an R-rated movie, and the antics imagined in high school locker room”).

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


43 Gebauer v. Lake Forest Prop. Owners Ass’n, 2015 So. 2d 1288, 1290 (Ala. Civ. App. 1990) (“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.”)

44 People v. Walker, 53 Cal. Rptr.2d 435, 437 (Cal. App.) (“The theme song for the 1960’s television comedy Mr. Ed instructed us that ‘a horse is a horse. So too, a horse is a house. A boat is not a house.’”;

45 id., vacated on other grounds, 924 P2d 995 (Cal. 1996).

46 In re Jasmine G., 98 Cal. Rptr.2d 93, 97 n.5 (Cal. App. 2000) (“the inability of the parents to ‘understand’ their teenage children is simply part of the human condition,” citing Debbie Collins, “Empirical evidence demonstrates that the primary way most people learn about lawyers is through watching television. . . . When people turn to television, . . . they turn to fictionalized portrayals of lawyers. . . .”) (emphasis in original).


48 Sipman v. Parker, 628 So.2d 406 (Fla. 1993).


51 Id.

52 Id. at 94.


54 Hall’s Specialties, Inc. v. Schupbach, 578 F.2d 214, 215 (7th Cir. 1985).

55 Id.


57 See, e.g., Vacante v. Trivision LLC, 728 F.3d 592, 600 (6th Cir. 2013) (citing Reader’s Digest Trust Pub., The 100 Most Trusted People in America, Reader’s Digest (2013), http://www.rkd.com/culture/trust/index-trust-top-100-most-trusted-people-in-america, which showed that “Judith Shemdin, ‘Judge Judy,’ is more trusted than all nine Supreme Court Justices”); Lippert Tile Co. v. Int’l Union of Bricklayers & Allied Craftsmen, 724 F.3d 930 (7th Cir. 2013) (a party “could have consented to have Judge Judy resolve the dispute”) (citation omitted).

58 ELIZABETH LIND, DOWN IN FRONT, DALLAS OBSERVER, Jan. 6, 2005 (quoting Booth).
DISCIPLINARY ACTIONS

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3/5/19 Michael D. Sanders  
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1/29/19 Shayne W. Healea  
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**Probations**

1/15/19 R. Scott Gardner  
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2/13/19 Kevin M. Bright  
#56021  
5314 Lakecrest Dr.  
Shawnee, KS 66218

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