

The Rise and Fall of *Bad Judge*: Lady Justice Is No Tramp

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"The court is not the post office. It is the common thread that holds the social fabric of this country together."
Justice Sandra Day O'Connor³⁶⁵

I. Introduction: The Popular Legal Culture Two-Step

"[T]here is no gainsaying that the medium [of television] has permeated every corner of public and private space, shaping consciousness, defining our "reality", drawing us together and pulling us apart, in ways that will uniquely enshrine this historical period as The Age of Television."³⁶⁶

Much of the fabric of the modern world

is woven on the loom of popular culture. While scholars have defined pop culture differently,³⁶⁷ there is a general consensus as to its strong influence on modern society.³⁶⁸ Broadly, it has been described as consisting of "the aspects Electronic



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³⁶⁵ Judge Linda Palmieri, *How Courts Work: The Human Side of Being a Judge*, available at http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/humanelement.html.

³⁶⁶ JAMES SHANAHAN AND MICHAEL MORGAN, TELEVISION AND ITS VIEWERS: CULTIVATION THEORY AND RESEARCH (1999).

³⁶⁷ JOHN STOREY, CULTURAL THEORY AND POPULAR CULTURE 1-10 (3d ed. 2001).

³⁶⁸ Richard K. Sherwin, *Picturing Justice: Images of Law and Lawyers in the Visual Media*, 30 U.S.F. L. Rev. 891, 897 (1996); James R. Elkins, *Popular Culture, Legal Films, and Legal Film Critics*, 40 Loy. L.A. L. Rev. 745, 746 (setting forth a set of "basic propositions" which are "uncontested" and include "[t]he popularity thesis: 'television shows, movies, and books about the law are widely popular in America.' The effects thesis: popular culture (film, TV, dramas, novels, and traditional and non-traditional new sources) 'teach Americans about the civil justice system.'" And "[t]he reality thesis: the depictions of law and lawyers we find in popular culture are sometimes at a variance with and at other times faithful representations of lawyers we find in the 'real world.'"; Victoria S. Salzmann, *Here's Hulu: How Popular Culture Helps Teach the New Generation of Lawyers*, 42 McGeorge L. Rev. 297, 301(2011) (noting that "[l]egal scholars are starting to recognize the positive impact of using popular-culture references as a mechanism of communication in legal discourse" and that "popular culture has become a powerful force in many lawyers' practices.").

copy available at: <http://ssrn.com/abstract=2653891> of attitudes, behaviors, beliefs, customs, and tastes that define the people of any society.³⁶⁹ It has also been described more narrowly as “the body of cultural commodities and experiences” commercially produced by the “culture industries” to be consumed by the average person.³⁷⁰ Combining these definitions, it would follow that the term “legal popular culture” refers to society’s perception of the legal profession and the judicial process formed after partaking of cultural commodities such as film, literature, song lyrics, lawyer advertising, and television.³⁷¹ In other words, legal popular culture is everything people

know, or think they know, about the law from their consumption of popular culture.³⁷² Of all the mediums disseminating cultural commodities, television is the certainly the most pervasive,³⁷³ persuasive,³⁷⁴ and, depending on the content of a particular legal show, the most pernicious.

As television has become our society’s principal means of storytelling,³⁷⁵ its offerings concerning the world of lawyers have become a staple of the popular culture consumed by Americans.³⁷⁶ According to a “Cross-Platform Report” released by the Nielsen media ratings company in March of 2014, the average American watches more than 5 hours of

³⁶⁹ Ray B. Brown, *Folklore to Populore*, in POPULAR CULTURE STUDIES ACROSS THE CURRICULUM 24, 25 (Ray B. Brown ed., 2004).

³⁷⁰ David Ray Papke, *From Flat To Round: Changing Portrayals of the Judge in American Popular Culture*, 31 J. Legal Prof. 127, 128 (2007). See also, Kimberlianne Podlas, *The Tales Television Tells: Understanding the Nomos Through Television*, 13 Tex. Wesleyan L. Rev. 31, 37 (2006) (defining popular culture as “any product —such as television shows, movies, and popular music— that is commercially made for the consumption of ordinary people.”) (citations omitted).

³⁷¹ Michael Asimow, *Embodiment of Evil: Law Firms in the Movies*, 48 UCLA L. Rev. 1339, 1341 (2001).

³⁷² Shea Esterling, *Indiana Jones and the Illicit Trafficking and Repatriation of Cultural Objects in COURTING THE MEDIA: CONTEMPORARY PERSPECTIVES ON MEDIA AND LAW* 149, 164 (Geoffrey Sykes ed., Nova Science Publishers, Inc.) (2010); MICHAEL ASIMOW & SHANNON MADER, *LAW AND POPULAR CULTURE* 8 (2d ed. 2013).

³⁷³ Kimberlianne Podlas, *Guilty on All Accounts: Law & Order’s Impact on Public Perception of Law and Order*, 18 Seton Hall J. Sports & Ent. L. 1, 8-9 (2008) (“Because of its centrality in American Life, television is both our mainstream or popular culture and our primary storyteller.”); Michael Pfau, Lawrence J. Mullen, Tracy Deidrich, and Kirsten Garrow, *Television Viewing and the Public Perception of Attorneys*, 21(3) Human Communications Research, 307 (1995) (“Because network prime-time programming is so pervasive, it constitutes a potentially powerful source of shared images... .”); JEFF GREENFIELD, *TELEVISION: THE FIRST FIFTY YEARS* 11 (Lory Frankel ed.

1977). With the single exception of the workplace, television is the dominant force in American life today. It is our marketplace, our political forum, our playground, and our school; it is our theater, our recreation, our link to reality, and our escape from it. It is the device through which our assumptions are reflected and a means of assaulting those assumptions. *Id.*

³⁷⁴ Cynthia R. Cohen, *Media Effects from Television Shows - Reality or Myth* 27, 31 in *LAWYERS IN YOUR LIVING ROOM! LAW ON TELEVISION* 15, 23 (Michael Asimow ed., 2009) (“[L]aw-themed movies do not produce the same contrast effect on lawyers’ image as a... character in a weekly series. While both movies and television have extreme characters, the weekly series has a stronger influence, because character development comes over time.”).

³⁷⁵ 11 Roger Silverstone, *Television, Rhetoric, and Return of the Unconscious in Secondary Oral Culture*, in *MEDIA, CONSCIOUSNESS, AND CULTURE* 147-159 (Bruce E. Gronbeck et al., eds. 1991). It has been maintained that this storytelling phenomenon has fundamentally changed American culture. MARSHALL MCLUHAN, *UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN* (1964).

³⁷⁶ L.J. Shrum, *Effects of Television Portrayals of Crime and Violence on Viewers’ Perceptions of Reality: A Psychological Process Perspective*, 22 Legal Stud. F. 257(1998) (“noting that “[f]ew would argue that television is not a powerful medium” with “its ability to capture both our attention and our imagination. Empirical evidence of this power is demonstrated not only by the sheer frequency with which Americans view television... , but also by its centrality in American Life.”).

television every day.³⁷⁷ Although this number may vary according to ethnicity, television viewing time increases steadily as people get older irrespective of their ethnic background.³⁷⁸ In the aggregate, the average person watched about 141 hours of live television per month in the third quarter of 2014.³⁷⁹ While television viewing may eventually decline, that doesn't mean that the public consumption of TV and film will decrease.³⁸⁰ As viewers move away from watching traditional television, they are moving to streaming services. According to a 2014 Nielsen in-depth report, "forty percent of households now subscribe to a subscription video on demand such as Netflix or Amazon Prime Instant Video" and viewing of online videos on the computer has increased "to 10 hours and 42 minutes" per month.³⁸¹ Clearly, whatever medium may be used for viewing, television series constitute one of the most significant disseminators of legal popular culture in America.³⁸²

This rampant dissemination raises two important issues for the legal profession. First, how much of "the law" to which the viewing public is exposed while watching legal television shows constitutes a true reflection of reality? And, second, does verisimilitude really matter? If viewers of a fictional, legal television series can discern pure entertainment from reality, then it would be irrelevant whether the networks and studios are accurate in their portrayals of the legal profession. That, however, is infrequently the case.³⁸³ There is a legitimate concern that a correlation exists between what viewers see and what they believe about the law and about lawyers; that the content of legal television shows affects the perceptions of audience members.³⁸⁴

Arguably, one of the reasons that legal television shows are so popular is because there is an aura of mystery about the practice of law for the virginal viewer. Much of what lawyers do occurs outside of public purview. The wall of confiden-

³⁷⁷ David Hinkley, *Average American Watches 5 Hours of TV Per Day, Report Shows*, NY DAILY NEWS (Wednesday, March 5, 2014, 5:27 PM), <http://www.nydailynews.com/life-style/average-american-watches-5-hours-tv-day-article-1.1711954>.

³⁷⁸ *Id.*

³⁷⁹ Victor Luckerson, *Fewer People than Ever Are Watching TV*, Time Dec. 3, 2014, available at <http://time.com/3615387/tv-viewership-declining-nielsen/>.

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² See Podlas, *supra* note 9 at 1 (noting that television "is American culture's most persuasive medium").

³⁸³ Robin P. Malloy, *Introduction to the Symposium*, 53 Syracuse L. Rev. 1161, 1162 (2003); Angelique M. Paul, *Turning the Camera on Court TV: Does Televising Trials Teach Us Anything About the Real Law?*, 58 Ohio St. L.J. 655, 655 (1997) ("So what influences the public's perception of justice? Television. For the majority of Americans, television is the most important source of information, and for many it is the only source of information. This is particularly true when it comes to gathering information about the law. Because

the majority of Americans have had no personal experience with the legal system, and because the majority of Americans get their information about the world solely from television, the portrayal of justice on television is extremely important not only to the continued viability of the legal system, but also to the individual's understanding of that system." (citations omitted)); see also Kimberlianne Podlas, *Please Adjust Your Signal: How Television's Syndicated Courtrooms Bias Our Juror Citizenry*, 39 Am. Bus. L.J. 1, 2-3 (2001) ("Most individuals, however, have little direct contact with the justice system and its rules. Consequently, they learn about the law and courts through the media, such as portrayals in film, newspaper coverage, and television broadcasts of trials." (citations omitted)).

³⁸⁴ See, e.g. Asimow, *supra* note 7 at 1341; Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 Yale L.J. 1579, 1579 (1989) (discussing the ways in which legal culture and societal norms intersect with one another); Brent Kitei, *The Mass Appeal of The Practice and Ally McBeal: An In-depth Analysis of the Impact of These Television Shows on the Public's Perception of Attorneys*, 7 UCLA Ent. L. Rev. 169, 170 (1999).

tiality which necessarily surrounds a lawsuit in conjunction with the inherent nature of legal practice requiring that most of an attorney's work be conducted in private places such as the lawyer's office or a firm conference room³⁸⁵ creates an enigma and perpetuates a legal mystique.³⁸⁶ When a lay person does enter the legal realm, it is usually only for a brief encounter as a litigant, a witness, or perhaps a juror.³⁸⁷ Consequently, the "legally virginal" viewer, whose exposure to the justice system may rely heavily, if not exclusively, on television, is extremely susceptible to equating the legal system of portrayed by prime-time television to that of the real world.³⁸⁸

It is also important to consider the symbiotic relationship that exists between popular legal culture and the legal system. An inaccurate portrayal of the legal system on television may result not only in misconceptions by much of the viewing public, but might affect the legal process itself.³⁸⁹ Not only does television shape the viewers' perceptions of attorneys and the legal process, the law and members of the profession will eventually be transformed to conform with the viewers' expectations.³⁹⁰ Just as the impact of waves on the sand will ultimately change the shape of the beach, so too will the force of legal popular culture mold the world of law.³⁹¹

³⁸⁵ See Malloy, *supra* note 19 at 1162 (noting that "the law operates in places and spaces that are partially hidden from public view.")

³⁸⁶ *Id.* ("For many, if not most lay people the law appears visible in fragmented ways that are abstract and to a certain extent incomprehensible.")

³⁸⁷ *Id.*; Naomi Mezey & Mark C. Niles, *Screening the Law: Ideology and Law in American Popular Culture*, 28 Colum. J. L. & Arts 91, 95 (2005) (Except "for occasionally scripted appearances on the legal stage, individuals generally remain isolated and intermittent participants in the legal system.")

³⁸⁸ See Jessica M. Silbey, *What We Do When We Do Law and Popular Culture*, 27 Law and Soc. Inquiry 139, 142 (2002) (reviewing RICHARD K. SHERWIN, *WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE* (2000)); Michael Pfau, Lawrence J. Mullen, Tracy Deidrich, and Kirsten Garrow, *Television Viewing and Public Perception of Attorneys*, 21 (3) Human Communications Research 307, 310 ("In other words, television programming's depictions are influential mainly in those circumstances in which people have limited opportunity to confirm or deny television's symbolic images firsthand."); Victoria S. Salzmann, *The Film Law Abiding Citizen: How Popular Culture Is Poisoning People's Perceptions Of Pleas*, 41 Sw. L. Rev. 119, 121 (2011).

Of course, not only virginal viewers are susceptible to the influence of television. In a seminal article about the effects of violence in television, the authors beautifully illustrate this point with an entertaining anecdote concerning an exchange between a lawyer and the judge during a trial in a California state court. During an overly

heated cross-examination of a witness, the defense counsel jumped to his feet, shouting his objection, 'Your Honor, Prosecution is badgering the witness!!' The judge calmly replied that he also had in fact seen that objection raised often on *Perry Mason*, but unfortunately, such an objection was not included in the California code. See Shrum, *supra* note 12 at 267 (citing George Gerbner & Larry Gross, *Living with Television: The Violence Profile*, 26 J. Comm. 178 (1976)).

³⁸⁹ Kimberlianne Podlas, *Funny or No Laughing Matter?: How Television Viewers Interpret Satires of Legal Themes*, 21 Seaton Hall J. Sports & Ent. L. 289, 290 ("Research demonstrates that television plays a part in both cultivating public opinion about the law and constructing legal culture."); See Asimow, *supra* note 7 at 1341 (noting that those who write in the area law and popular culture "believe that the public learns most of what it thinks about law, lawyers and the legal system from works of popular legal culture.")

³⁹⁰ Naomi Mezey, *Law As Culture*, 13 Yale J. L. & Human. 35, 37 (2001) (noting that it is intuitive and common sense to recognize that the relationship of law to culture is one where law partakes of culture-by reflecting it as well as by reacting against it-and where that culture refracts law.);

³⁹¹ David M. Spitz, *Heroes or Villains? Moral Struggles vs. Ethical Dilemmas: An Examination of Dramatic Portrayal of Lawyers and the Legal Profession in Popular Culture*, 24 Nova L. Rev. 725,734 (2000) ("The interplay between television and culture has been analogized to waves on the beach, where over time, the beach clearly changes shape under the impact of the waves.")

The symbols of Lady Justice are not skimpy lingerie, a tequila bottle, and a used pregnancy test. They are the sword, the scales, and the blindfold. We need to restore them to her.

Ultimately, the “feedback loop”³⁹² between law and popular culture is self-perpetuating. Popular culture influences the viewing public’s perception of the law, which in turn affects the public’s expectations, which are reinforced by the misconduct of actual members of the legal profession, which affects what the networks will portray as popular legal culture.³⁹³ This cause and effect scenario is the result of what might be referred to

in dance parlance as the “Popular Legal Culture Two-Step.”

First, television’s version of legal popular culture influences the lay public’s perceptions about the legal profession.³⁹⁴ This influence is most effectively exercised in situations where viewers have little opportunity to learn first-hand whether their perceptions are accurate and where the assumptions being made are not grounded in pre-conceived notions or entrenched convictions.³⁹⁵ Of course, every viewing experience or interpretation will differ from person to person depending upon individual experiences, including a viewer’s social status and economic background.³⁹⁶ While legal popular culture does not impose “a monolithic view of law”, a number of characters and plots do emerge out of the multitude of legal images portrayed by television, which seem familiar to a

³⁹² Susan Bandes, *We lost it at the Movies: The Rule of Law Goes from Washington to Hollywood and Back Again*, 40 Loy. L.A. L. Rev. 621, 626 (2006-2007) (“Popular notions of what law is and ought to be, in turn, ‘contribute[] to the production of law’ in manifold ways.”) (citations omitted); Susan Bandes and Jack Beerman, *Lawyering Up*, 2 Green Bag 2d 5, 6 (1998) (discussing how the American public is educated about its *Miranda* rights and that “television has become... our culture’s principal storyteller, educator, and shaper of the popular imagination. It not only transmits legal norms, but also has a role in creating them. Media images of law enforcement are, in the minds of many viewers, synonymous with reality.” *Id.* The result of this feedback loop is that “the continual repetition of certain stock characters, certain story lines, certain messages, has the ability to shape [viewer] expectations about the ways in which real cops, real suspects and real citizens act - and ought to act - in the real world.” *Id.* (citations omitted).

³⁹³ Susan Bandes, *We lost it at the Movies: The Rule of Law Goes from Washington to Hollywood and Back Again*, 40 Loy. L.A. L. Rev. 621 (2006-2007).

³⁹⁴ See Podlas, *supra* note 9 at 1 (“Sometimes television’s narratives supplement understandings gleaned from other sources, but oftentimes they substitute for direct experience. The later is true

with regard to law. Although most individuals have little direct experience with the legal system, legal themes pervade television. Consequently, research has shown that the public relies on television as its primary source of information about the legal system.”) (citations omitted). See also, Connie L. McNeely, *Perceptions of the Criminal Justice System*, 3 J. Crim. Just. & Popular Culture 1 (1995); Eugene D. Tate and Larry F. Trach, *The Effects of United States Television Programs upon Canadian Beliefs about Legal Procedure*, Canadian Journal of Communication, available at <http://www.cjc-online.ca/index.php/journal/article/viewFile/238/144>. To the extent then that television programming content is the only information available to the individual about courtroom activity, to the extent that these beliefs are new or tentatively held, or to the extent that television information is similar to information received from other interpersonal sources and mass media source, television programming content will be influential in establishing beliefs, attitudes, and values about the legal system. *Id.*

³⁹⁵ G. Gerber & L. Gross, *Living with Television: The Violence Profile*, 26 J. of Comm’n. 173, 191 (1976).

³⁹⁶ Cynthia D. Bond, “We the Judges”: *The Legalized Subject and Narratives of Adjudication in Reality Television*, 81 UMKC L. Rev. 1, 54 (2012).

majority of viewers.³⁹⁷ These almost universal symbols are then absorbed, construed, and assimilated to varying degrees by viewers as they form their own perspective of the legal profession.³⁹⁸

Next, after the assimilated, legal popular culture perceptions have taken root, viewers' perceptions cultivated from television portrayals are usually amplified and solidified by the cultivation process known as resonance.³⁹⁹ This process is triggered by viewers learning by a direct experience, or from what they consider to be a reputable source,⁴⁰⁰ that actual members of the legal profession or the judiciary have comparable negative traits and/or engage in unethical actions that are the mirror image of those they consistently view on legal television series.

When such reverberation and reinforcement occurs, the repercussion for the legal profession is that it will have no choice but to at least partially adapt to the version of the legal world now held by the Two-Stepping viewers.⁴⁰¹ For example, attorneys need to be aware that what a jury will ultimately determine is true will be the result not only of their version of the case presented at trial, but by similar cases with which the jurors are familiar.⁴⁰² A majority of these narratives are the brainchild of the television

industry.⁴⁰³ Whether or not such stories are accurate or propaganda is immaterial.⁴⁰⁴ What is key is understanding their potential for influencing jury deliberations and verdicts.⁴⁰⁵ Prime-time portrayals become the standard by which viewers will compare actual attorneys and their instruction manual as to how attorneys, litigants and members of the judiciary should behave.⁴⁰⁶

In terms of the judiciary, the populist portrait resulting from the Legal Popular Culture Two-Step illustrating proper judicial behavior, speech, and dress will not only affect the attitudes and conduct of viewers who eventually participate in the legal system.⁴⁰⁷ Such perceptions will also influence the voting choices made by prime-time viewers in judicial elections, or their positions when discussing the pros and cons of judicial candidates, or perhaps even the extent to which they feel bound to abide by a new law resulting from a particular judicial ruling.⁴⁰⁸ Ultimately, the popular notions of viewers about the bench will influence "who becomes a judge, who stays a judge, and the permissible scope of judicial power."⁴⁰⁹ Viewer perceptions of the judiciary formed by dancing the Two-Step may even impact judicial conduct on the bench, the manner in which judicial opinions are received, and perhaps even

³⁹⁷ See Bandes, *supra* note 28 at 626; See also Bond, *supra* note 32 at 4-5 (examining "embedded narratives of legality in reality TV" to analyze what type of legal community is "constructed or suggests" and noting that the images of law in reality TV shows is not "unitary or monolithic. Rather, "the fragmentation of adjudicatory narratives across different show scenarios... suggests a multiplicity of visions of adjudicatory process.")

³⁹⁸ *Id.*

³⁹⁹ See *infra* notes and accompanying text discussing the process of resonance in greater detail.

⁴⁰⁰ See *infra* notes and accompanying text discussing how syndi-court judges may be viewed as a reputable source or even a direct experience.

⁴⁰¹ *Id.* ("Popular notions of what law is and ought to be, in turn, 'contribute[] to the production of law' in manifold ways.")(citations omitted);

⁴⁰² Kimberlianne Podlas, *Impact of Television on Cross-Examination and Juror "Truth"*, 14 *Widner L. Rev.* 479, 506 (2009).

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ See Bandes, *supra* note 28 at 626 ("[p]opular notions of how a judge looks and acts and sounds - will affect not only those who find themselves in the courtroom as litigants, witnesses or jurors.")

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

the content of opinions themselves.⁴¹⁰ Clearly, the Legal Popular Culture Two-Step can have significant negative ramifications for the legal profession by affecting public opinion, positively or negatively, of not only attorneys and the justice system, but also of members of the judiciary.⁴¹¹

Finally, the perceptions and beliefs engendered by the Two-Step will be perpetuated by the airing of legal shows which mirror the now entrenched, skewed perceptions of the lay “virginal” viewer about the legal profession because audiences are more comfortable watching shows which comport with and reaffirm their version of reality.⁴¹²

In light of the self-perpetuating nature of the Popular Legal Culture Two-Step, the burning inquiry must be whether there is any way to interrupt or ameliorate the ramifications of the relationship between law and televised legal popular culture in instances where what is broadcast defaces the law as an honorable profession.

The urgency of addressing this query was highlighted with the airing of a new series during the fall of 2014, *Bad Judge*.⁴¹³ The starring character in the show, Rebecca Wright, is a tire slashing, hard-drinking, unapologetic, and eccentric wild child. She also happens to be a judge

at the fictitious Van Nuys Municipal Court in California.⁴¹⁴ According to the byline of the series, Rebecca upholds the rules by day and breaks them by night.⁴¹⁵ A more honest byline would have been “justice is a never-ending joke” or “all is fun at the Van Nuys’ Municipal Criminal Court.”

Bad Judge serves as a prototype for the type of legal shows which television should not be broadcasting and is a perfect platform on which to illustrate the harm which may result from the cultivation effect. To delve a bit deeper into the underpinnings of the Popular Legal Culture Two-Step put forth in this piece, Part II of this essay will discuss “cultivation theory,”⁴¹⁶ “heuristic processing,”⁴¹⁷ and the cultivation process known as “resonance,”⁴¹⁸ the lynchpins for the premise that television viewing does affect the viewer’s perception of reality. To demonstrate the influence of “resonance” the process will be specifically examined in the context of “syndi-court” shows and actual incidents of judicial misconduct. Part III will critique a number of episodes of *Bad Judge* and evaluate the actions and conduct of Judge Rebecca Wright in light of various cannons of judicial ethics.⁴¹⁹ It will also focus upon a written entreaty to NBC made by the Miami-Dade chapter of the Florida Association for Women Lawyers

⁴¹⁰ *Id.* (citation omitted) (noting that viewer perceptions may “affect the way judges conduct themselves on the bench, and, in ways both salutary and unfortunate, the reception and even the content of their opinions.”)

⁴¹¹ Charles B. Rosenberg, *27 Years as a Television Legal Advisor and Counting...* in *LAWYERS IN YOUR LIVING ROOM! LAW ON TELEVISION* 15, 22 (Michael Asimow ed., 2009).

⁴¹² See Asimow, *supra* note 7 at 1341.

Those who write in this field believe that the public learns most of what it thinks about law, lawyers and the legal system from the works of popular legal culture. They believe that information or misinformation gleaned from popular culture has a significant impact on “law” in the legal realist

sense: what judges, jurors, attorneys, legislators, voters, and ordinary consumers or producers actually do in their contracting, fact-finding, law-applying, and law-making functions. They are convinced that popular culture mirrors, often in an exaggerated and caricatured form, actual popular attitudes and beliefs about the institutions and characters that it describes. *Id.*

⁴¹³ *Bad Judge* (NBC 2014).

⁴¹⁴ Comedy Series airing on Thursday’s on NBC.

⁴¹⁵ *Bad Judge*’s Promotional tag line.

⁴¹⁶ See *infra* notes and accompanying text.

⁴¹⁷ See *infra* notes and accompanying text.

⁴¹⁸ See *infra* notes and accompanying text.

⁴¹⁹ See *infra* notes and accompanying text.

requesting cancellation of the show.⁴²⁰ Finally, the paper will explore possible responses to the demeaning portrayal of the judicial system and female judges and attorneys conveyed in *Bad Judge* in order to ameliorate the influence of television's cultivation of viewer perceptions of the legal world and to prevent such perceptions from becoming viewer reality.⁴²¹

Part II - The Symbiotic Relationship Between The Law & Television

*"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."*⁴²²

a. The Cultivation Theory & Heuristic Reasoning

In modern society, almost from the moment they are born, people are thrust

into a milieu dominated by mediums and devices which disseminate popular culture.⁴²³ The first of these which is usually encountered is television. Even children who cannot yet talk, let alone read, begin watching television.⁴²⁴ The medium is a force which can shape, define, and support certain attitudes and chosen ways of life.⁴²⁵ It serves as a link between the individual and an expansive, if fabricated, world that is the brainchild of the television industry.⁴²⁶ Certain viewers, who find their own lives mundane or prosaic, especially in comparison to the captivating and seductive world of television, come to rely on the medium as their primary source for cultural interaction.⁴²⁷ When it also becomes their primary source of information, "continued exposure to its messages is likely to reiterate, confirm, and nourish (i.e. "cultivate") their values and perspectives."⁴²⁸ This process is described as the "cultivation theory."⁴²⁹

⁴²⁰ See *infra* notes and accompanying text.

⁴²¹ See *infra* notes and accompanying text.

⁴²² Lisa Scottoline, *Get Off the Screen*, 24 Nova L. Rev. 655, 656 (2000).

⁴²³ George G. Gerbner, Larry Loss, Michael Morgan, and Nancy Signorielli, *Living with Television: The Dynamics of the Cultivation Process*, in PERSPECTIVES ON MEDIA EFFECTS 23 (Jennings Bryant ed. 1986) available at http://postjournalist.org/wp/wp-content/uploads/2014/06/LivingWithTelevision_TheDynamicsOfTheCultivationProcess.pdf.

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ *Id.* (noting the viewers "with certain social and psychological characteristics, dispositions, and world views-and fewer alternatives as attractive and compelling as television-use it as their major vehicle of cultural participation.").

⁴²⁸ *Id.*

⁴²⁹ The "cultivation theory" is also sometimes referred to by various scholars as the "cultivation effect" or the "cultivation hypothesis". See, e. g., David Ray Papke, *The Impact of Popular Culture on American Perceptions of the Courts*, 82 Ind. L.J. 1225, 1227 (2007) (using the terminology "cultivation effect"); W. James Potter & Ik Chin Chang, *Television*

Exposure Measures and the Cultivation Hypothesis, 34 J. Broad. & Elec. Media 313 (1990). While scholars have advanced a number of theories to explain the influence of television on a viewer's perceptions, beliefs, and attitudes, the "cultivation theory" or "cultivation effect" has established itself as most prominent. See Steven Eggermont, *Television Viewing, Perceived Similarity, and Adolescents' Expectations of a Romantic Partner*, 48 J. Broad. & Elec. Media 244, 248 (2004). Paul Devendorf, *Yada, Yada, Yada: Seinfeld, the Law and Mediation*, 11 Cardozo J. Conflict Resol. 197, 204 (2009). One alternative approach to the cultivation theory to determine how viewers process legal popular culture is the Elaborative Likelihood Model. For an excellent discussion of this method see Richard E. Petty and John C. Cacioppo, *The Elaborative Likelihood Model of Persuasion in 11 ADVANCES IN CONSUMER RESEARCH* 673-675 (Thomas C. Kinnear & Association for Consumer Research Communication, eds. 1984) (discussing the central and peripheral routes to persuasion to explain how attitudes are shaped, formed and reinforced by persuasive arguments to determine the effectiveness of persuasive communication), available at <http://acrwebsite.org/volumes/6329/volumes/v11/NA-11>; See Podlas, *supra* note 25 at 312-14.

The mental processes underlying the cultivation theory is the heuristic reasoning model.⁴³⁰ Heuristic reasoning occurs when a viewer makes a social judgment relying upon “rules of thumb” instead of engaging in an in-depth memory search to make a decision or form a judgment.⁴³¹ Examples of using such simple decision rules to make judgments would be “experts can be trusted,’ or ‘attractive people are sociable’ or ‘consensus implies correctness’, etc.”⁴³² Application of the cultivation and heuristic processing effects theories results in prime-time television legal series serving as the prisms through which individual viewers learn to craft or conceive the ability to parse out or distinguish what is fact from what is fiction. In its most basic form, the cultivation/heuristic reasoning theory suggests that exposure to television, over time, subtly “cultivates” or influences viewers’ perceptions of reality.⁴³³ Essentially, the more the general population watches legal based television shows, the more likely it is to hold out to be true what is

seen on the screen.⁴³⁴ Consequently, popular culture’s impact on the lives of its consumers is directly correlated to the amount of the person’s exposure to television programming.⁴³⁵

Where viewers repeatedly absorb a particular television portrayal, their perceptions of social reality are “cultivated” and ultimately the viewer will presume that the television depiction is not a product of someone’s imagination, but rather is a reflection of the truth.⁴³⁶ When viewers also engage in heuristic reasoning by employing “rules of thumb” as mental short-cuts to come up with quick answers, they will rely upon what is most readily available to them in their minds.⁴³⁷ Often, the information stored in their memories which is easily accessed came from television viewing.⁴³⁸ Depending on how recently a legal TV show was seen, how often it is watched, and the extent of its “dramatic nature” and the “vividness” of particular television depictions, the more accessible this popular culture information will be to the viewer when forming an opinion or making

⁴³⁰ See Shrum, *supra* note 12 at 262. (Heuristic reasoning or the heuristic process model “refers to a limited mode of processing that is relatively effortless and expends few cognitive resources.”) (citation omitted).

⁴³¹ *Id.* When viewers make “an exhaustive search of memory for information pertaining to a particular decision,” they are engaging in “systematic processing” in order to “scrutinize a great deal of information in an effort to form a judgment.” *Id.* (citing Shelley Chaiken et al., *Heuristic and Systematic Processing Within and Beyond the Persuasion Context*, in UNINTENDED THOUGHT 212-252 (James S. Uleman & John A. Bargh eds. 1987)).

⁴³² *Id.* (citing ALICE H. EAGLY & SHELLY CHAIKEN, *THE PSYCHOLOGY OF ATTITUDES* (1993)).

⁴³³ See Papke, *supra* note 62 at 1227 (“Cultivation theorists argue that regular viewers of television programming or avid consumers of other varieties of popular culture come to see social reality differently. The argument is not so much that popular culture creates views of social reality but rather that popular culture prompts, encourages,

and refines views of social reality.”); See George Gerbner, Larry Gross, Michael Morgan, Nancy Signorielli, & James

Shanahan, *Growing Up With Television: The Cultivation Processes*, in MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH 43, 46-47 (Jennings Bryant & Dolf Zillman eds., 2d ed. 2002) and JAMES SHANAHAN & MICHAEL MORGAN, *TELEVISION AND ITS VIEWERS: CULTIVATION THEORY AND RESEARCH* (1999).

⁴³⁴ Potter & Chang, *supra* note 62 at 5 (discussing “that within mass media studies, [the] social construction of reality perspective has been called the cultivation hypothesis” and that “[i]ts proponents argue that the more people are exposed to the mass media, especially television, the more they will come to believe that the real world reflects media content.”)

⁴³⁵ Michael Asimow, *Law and Popular Culture: Bad Lawyers in the Movies*, 24 *Nova L. Rev.* 533, 553-554 (2000); See Devendorf, *supra* note 62 at 204.

⁴³⁶ *Id.*

⁴³⁷ See Shrum, *supra* note 12 at 263.

⁴³⁸ *Id.*

a judgment.⁴³⁹ Of key importance to this process is the omission by viewers to consistently store the information learned as fact or fiction.⁴⁴⁰ This failure to “source discount” means that the viewer may not recall that the information being accessed to make a judgment came from a fictional television legal series. Instead, viewers tend to treat the information as truth.⁴⁴¹ The greater the amount of legal television consumed, the more viewers will adopt the simulated “values, attitudes, beliefs, and perceptions” portrayed on television as their own.⁴⁴²

The ramification of this “internalization” of the legal images and messages of a television series is that viewers now see this information as fact.⁴⁴³ Ultimately, the result is that the realities of the judiciary and the practice of law must then align themselves and mirror the viewer’s perceptions or be found false.⁴⁴⁴ Consequently, if the writers of a show portray a judge in a negative and undermining way, it can profoundly affect society’s perceptions of members of the judiciary and courtroom conduct. The public is receptive of such negative viewpoints because they validate ideas already held by the viewers.⁴⁴⁵

b. Resonance and an Intensified Effect on Viewer Perception

There are three primary ways that the population may gain knowledge about lawyers, judges, and the practice of law. First, is by direct experience. Second, if first-hand knowledge is unavailable, this knowledge may be acquired through television viewing.⁴⁴⁶ As previously discussed, over time, heavy consumption of popular legal culture by a viewer with little or no direct experience with the legal profession results in long-term effects which, while small, gradual and indirect, are cumulative and significant. Ultimately, viewer “beliefs, feelings, and attitudes” about those in the legal profession are altered.⁴⁴⁷

Finally, certain audience members will gain their knowledge about the legal profession from a combination of direct experience and television. When viewer perceptions formed by the consumption of popular legal culture are reinforced by actual incidents of judicial misconduct, the result is another facet of the cultivation process known as “resonance.”

In essence, resonance refers to an intensified effect on viewers when what they see on television confirms what they have already experienced in real life.⁴⁴⁸

⁴³⁹ *Id.*

⁴⁴⁰ See Asimow & Mader, *supra* note 8 at 56.

⁴⁴¹ *Id.*

⁴⁴² L.J. Shrum, James E. Burroughs and Aric Rindfleisch, *A Process Model of Consumer Cultivation: The Role of T.V. is a Function of Type of Judgment*, in THE PSYCHOLOGY OF ENTERTAINMENT MEDIA: BLURRING THE LINES BETWEEN ENTERTAINMENT AND PERSUASION 179 (L.J. Shrum, Mahwah, NJ: Erlbaum eds 2004).

⁴⁴³ *Id.*

⁴⁴⁴ See Shrum, *supra* note 12 at 263.

⁴⁴⁵ Dolores Albarracín, William Hurt, Inge Brechan, Lisa Merrill, Alice H. Eagly, and Matthew J. Lindberg, *Feeling Validated Versus Being Correct: A Meta-Analysis of Selective Exposure to Information*, 135 (4) *Psychological Bulletin* (2009) (The researchers found that people are about twice as likely to select information that supports their

own point of view (67 percent) as to consider an opposing idea (33 percent). Certain individuals, those with close-minded personalities, are even more reluctant to expose themselves to differing perspectives... . They will opt for the information that corresponds to their views nearly 75 percent of the time.), available at <http://www.apa.org/news/press/releases/2009/07/like-minded.aspx>

⁴⁴⁶ See Michael Pfau, Lawrence J. Mullen, Tracy Deidrich & Kirsten Garrow, *Television Viewing and Public Perception of Attorneys*, 21(3) *Human Communication Research* 307, 310 (1995).

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.* (“[W]hen experiences and television images are consonant, people’s experiences ‘resonate and amplify’ cultivation patterns. This involves the cultivation process termed “resonance,” and explains the way that direct experience and TV play off of each other, thus reinforcing the social order and the power structure.”) (citations omitted).

This confirmation by television's depictions and images amplifies the cultivation effect. While viewers may not have directly witnessed the misconduct of a judge arriving to court in an inebriated state, when such factual information is learned from a reliable news source, arguably it is basically synonymous to a viewer gaining first-hand knowledge. Consequently, when popular culture's fictional portrayal of inappropriate judicial behavior is reinforced by knowledge of actual judicial misconduct learned from the news media, the fictional portrayal will be amplified and solidified. The fact that only a few actual judges engage in misconduct will be ignored. Instead, television will cultivate viewer perception that most, if not all, judges engage in some sort of unethical behavior.

c. Resonance and the Syndi-Court

A valid area of concern in terms of resonance is the effect upon audience members who consistently view reality court television, often referred to as "syndi-court" shows.⁴⁴⁹ Such shows not only have an entertainment value, their "impact... on viewer's perceptions of the legal system, including attitudes about the judiciary, should not be underestimated."⁴⁵⁰

In light of the almost burlesque nature of reality court TV, it might be thought that viewers would recognize that the often crude, crass and demeaning behavior of the syndi-court judges is simply entertainment and does not represent acceptable judicial demeanor.⁴⁵¹ Unfortunately, however, this may not be the case. As Leah Ward Sears, the former Georgia Supreme Court Chief Justice, warned "[b]ecause the sets are dressed to look like courts of law and are presided over by lawyers in black robes who at least used to be judges" and the parties "have agreed by contract to have their real court cases settled on television," viewers "tend to take these shows very seriously."⁴⁵² This is extremely problematic considering that "there are too many Americans who can get a lasting impression of the law and the courts from what they see on television..."⁴⁵³

It is hard to blame viewers for forming such impressions. In light of the cultivation theory, it is unrealistic to expect heavy television viewers who have little or no direct experience with actual members of the judiciary to discern that the personae of syndi-court judges seen on daytime television bear little resemblance to acceptable judicial behavior in an actual

⁴⁴⁹ See, e.g., Steven A. Kohm, *The People's Law versus Judge Judy Justice: Two Models of Law in American Reality-Based Courtroom TV*, 40 *Law & Soc'y Rev.* 693, 694 (2006) (noting that "American television programming focusing on the law forms a significant part of the cultural legal landscape for many Americans... . The result of this can be unrealistic expectations about the nature of future careers in law and a more simplistic outlook on legal ethics."); Erika Lane, *The Reality of Courtroom Television Shows: Should the Model Code of Judicial Conduct Apply to T.V. Judges?*, 20 *Geo. J. Legal Ethics* 779, 780-85 (2007) (noting that while such shows have entertainment value, syndi-court reality TV creates a risk of misleading viewers into believing that the shows are an accurate portrayal of judges, the U.S. judicial system, and even an individual's legal rights.) Kimberlianne Podlas, *Please Adjust Your Signal: How Television's*

Syndicated Courtrooms Bias Our Juror Citizenry, 39 *Am. Bus. L.J.* 1 (2001) (discussing how juror attitudes may be impacted by syndi-courts).

⁴⁵⁰ Taunya Lovell Banks, *Here Comes the Judge! Gender Distortion on TV Reality Court Shows*, 39 *U. Balt. L.F.* 38, 42 (2008) (offering a feminist critique that focuses on the changing gender and racial make-up of reality TV court judges).

⁴⁵¹ *Id.* at 41 ("Some people dismiss the influence of reality court shows by labeling them low-brow and assume that most people do not take them seriously.")

⁴⁵² Leah Ward Sears, *Those Low-Brow TV Court Shows*, *Christian Science Monitor*, July 10, 2001, available at <http://www.csmonitor.com/2001/0710/p11s1.html> (last visited June 18, 2015).

⁴⁵³ *Id.*

court of law.⁴⁵⁴ When syndi-court judges are perceived to be actual members of the judiciary, they can serve as resonators just as direct experience with a member of the judiciary can resonate for viewers when it matches a fictional portrayal from a television series. Viewers substitute and equate their viewing experience to actually meeting and watching a real judge in court. This is perhaps the greatest harm resulting from syndi-court viewing; the creation resonance. Ultimately, the syndi-court judge serves to intensify a matching fictional television portrayals as would an actual, direct experience.

d. Resonance and Recent Examples of Actual Judicial Misconduct

Unfortunately, judicial misconduct which may undermine “public confidence in the integrity and impartiality of the judiciary”⁴⁵⁵ is a reality within the American legal system.⁴⁵⁶

For example, during 2014, the media had a field day with a number of incidents of judicial misconduct. First, it had the pleasure of describing in detail the altercation between Brevard County Judge John C. Murphy and assistant public defender Andrew Weinstock which resulted in fisticuffs taking place just outside a courtroom in Viera, Florida.⁴⁵⁷ At last report, the judge had taken a leave of absence to seek anger management counseling.⁴⁵⁸

Then there was a Nevada Family Court judge, Steven Jones, who pled guilty to one count of conspiracy to commit federal wire fraud.⁴⁵⁹ In addition to disbarment and losing his seat on the bench, Jones was sentenced to serve 26 months in prison and to pay \$2.9 million in restitution damages to the victims of the fraudulent investments scheme.⁴⁶⁰ Ironically, Jones will retain his annual pension of up to \$150,000 while serving

⁴⁵⁴ David Zurawik, *Beware—Reality TV Has Escaped From the Set*, Balt. Sun, Dec. 14, 2003, at 8F, (“Television is supposed to help viewers get the kind of information they need to act as responsible citizens in a democracy—not confuse them. But how are we to expect clarity in a genre that is built on making the artificial seem real?”), available at http://articles.baltimoresun.com/2003-12-14/entertainment/0312140209_1_reality-tv-reality-shows-green-acres

⁴⁵⁵ CANONS OF JUDICIAL CONDUCT FOR THE STATE OF VIRGINIA Canon 2 (2015), available at http://www.courts.state.va.us/agencies/jirc/canons_of_judicial_conduct.pdf.

⁴⁵⁶ Arguably, however, the extent of such misconduct by actual members of the judiciary is greatly over-emphasized by the love of the media for sensationalism. A judge who faithfully carries out the duties of her office is not news. *But c.f.* JONATHAN SOEHARNO, THE INTEGRITY OF THE JUDGE: A PHILOSOPHICAL INQUIRY 6, 18 (Ashgate 2008) (expressing that the “Independent media are a powerful check in a democratic society and their influence on public scrutiny from open internet sources, televised broadcasts of trials or investigative journalism is indisputable.” As such “[t]he media promote the awareness of adjudication:

they may force judges to formulate clearly and to treat litigants respectfully. In developing democracies it is often the media that expose corrupt judges.”)

⁴⁵⁷ Stacey Barchenger and Andrew Ford, *Brevard judge will take leave after courtroom scuffle*, FLORIDA TODAY 9:06 a.m. EDT June 6, 2014, available at <http://www.floridatoday.com/story/news/local/2014/06/02/judge-lawyer-tussle-in-brevard-courtroom/9886361/>

⁴⁵⁸ *Id.*

⁴⁵⁹ Ken Ritter, *Judge Steven Jones Pleads Guilty to Federal conspiracy Charges*, Las Vegas Sun (Sept. 17, 2014, 5:34 p.m.), available at <http://lasvegassun.com/news/2014/sep/17/indicted-las-vegas-area-judge-enter-federal-plea/>; Martha Neil, *Ex-judge Likely Headed to Prison Is Expected to Get Pension of UP to \$150K*, ABA Journal (Sept. 25, 2014 01:25 PM CDT Annually), available at http://www.abajournal.com/news/article/ex_judge_likely_headed_to_prison_is_expected_to_get_pension_of_up_to_150k_a.

⁴⁶⁰ Associated Press, *Ex-Family Court Judge Steven Jones Sentenced to Prison*, Las Vegas Sun (Feb. 25, 2015, 6 p.m.), available at <http://lasvegassun.com/news/2015/feb/25/ex-family-court-judge-jones-sentenced-prison-fraud/>.

his prison sentence because Nevada state law has no provision for forfeiture.⁴⁶¹

And who could forget the “Facebooking judge,” Florida Circuit Judge Linda Schoonover who resigned prior to facing the Judicial Qualifications Commission, the state agency that polices judges.⁴⁶² In doing so, she avoided having to answer over a dozen charges of unethical and incompetent professional conduct ranging from the improper use of Facebook to communicate with a party whose divorce case she would soon rule upon to disruptive and frequent paranoid behavior.⁴⁶³

After failing to attend her own legal ethics trial,⁴⁶⁴ Detroit District Judge Brenda Sanders, resigned from the bench after being suspended without pay for the third time.⁴⁶⁵ After also failing to keep appointments with the psychiatrist set by the Michigan Judicial Tenure Commission, she “complained to the Detroit News in an email that ‘the psychiatrist that made the findings that I was delusional and mentally impaired, has never interviewed me or evaluated me for mental disability in any way.’”⁴⁶⁶

One of the most egregious incidents of judicial misconduct was that of Maryland Court of Appeals Judge Robert Nalley who “ordered a deputy to shock a ‘rude’ and ‘non-responsive’ pro se defendant who wouldn’t stop talking.”⁴⁶⁷ Apparently, as jury selection began in the defendant’s gun possession case, he was talking over the judge and paid no attention to the judge’s instructions to “shut up.”⁴⁶⁸ The judge then ordered a sheriff’s deputy “to activate an electronic Stun-Cuff” that the defendant wore on his ankle.⁴⁶⁹ Such a device is designed to be used “to control violent defendants and prevent escape.”⁴⁷⁰ When the defendant was shocked by the Stun-Cuff, “he screamed and fell to the floor writhing.”⁴⁷¹ The Maryland Court of Appeals found there was “good cause” to “remove” Judge Nally’s “authority to hear cases...”⁴⁷²

Moving into the first half 2015, the most appalling example of judicial misconduct may have been by an apparently racist Mississippi judge, William “Bill” Wiesenberger, who was suspended with pay after he allegedly slapped an African-American man who was mentally

⁴⁶¹ Martha Neil, *Ex-judge Likely Headed to Prison Is Expected to Get Pension of UP to \$150K*, ABA Journal (Sept. 25, 2014 01:25 PM CDT Annually), available at http://www.abajournal.com/news/article/ex_judge_likely_headed_to_prison_is_expected_to_get_pension_of_up_to_150k_a.

⁴⁶² Rene Stutzman, *‘Facebooking’ Judge Linda Schoonover Resigns Amid Inquiry*, Orlando Sentinel (May 27, 2015, 9:56 a.m.), available at <http://www.orlandosentinel.com/news/breaking-news/os-judge-linda-schoonover-facebook-resigns-20150526-story.html>.

⁴⁶³ Rene Stutzman, *Facebooking Judge Asks State To Toss Out Ethics Charges Against Her* (August 31, 2014, 7:53 PM), available at <http://www.orlandosentinel.com/news/breaking-news/os-judge-linda-schoonover-facebook-resigns-20150526-story.html>.

⁴⁶⁴ Martha Neil, *Judge Is a No-show at Legal Ethics Trial Over Claims She Has Psychotic Delusions*, ABA Journal (Dec. 08, 2014 01:44 PM CST), available at <http://www.abajournal.com/news/>

[article/judge_is_no_show_at_hearing_about_her_claimed_psychotic_delusions/](http://www.abajournal.com/news/article/judge_is_no_show_at_hearing_about_her_claimed_psychotic_delusions/).

⁴⁶⁵ Martha Neil, *Ethics Trial Continues for Judge Claimed to Be Delusional, Even After She Announces Her Retirement*, (Dec. 11, 2014 05:50 PM CST), available at http://www.abajournal.com/news/article/ethics_trial_continues_for_judge_claimed_to_be_delusional_even_after_she_an.

⁴⁶⁶ Id.

⁴⁶⁷ Martha Neil, *Judge Who Ordered Deputy to Shock ‘Rude’ Pro Se Defendant Has Been Taken Off the Bench*, ABA Journal (Sept. 10, 2014 11:45 AM CDT), available at http://www.abajournal.com/news/article/public_defender_seeks_removal_of_judg_who_ordered_deputy_to_shock_rude_pro.

⁴⁶⁸ Id.

⁴⁶⁹ Id.

⁴⁷⁰ Id.

⁴⁷¹ Id.

⁴⁷² Id.

disabled and when the victim fled, yelled “Run, [N-word], run.” The judge faces another lawsuit which claims “he arrested and charged an African American man on the nonexistent charge of ‘roaming livestock.’”⁴⁷³

Regrettably, there are frequent reports about members of the judiciary who have run ins with the law due to substance abuse problems. The year 2015 started out with the sad report of a Florida judge, who had been sober for 20 years, relapsing and taking the bench while intoxicated.⁴⁷⁴ Despite Judge Gisele Pollack’s request that “her alcoholism be treated as a disability,” the Judicial Qualifications Commission recommended that she be permanently removed from the bench. While admiring the judge’s resolve and “her apparent commitment to recovery”, the Commission ruled that it owed its “allegiance... to the people of Florida, not any individual judge... . Judge Pollack is being disciplined for her public conduct on and off the bench, not for being an alcoholic.”⁴⁷⁵

The public was next apprised of a former Arkansas judge admitting to taking

a bribe in the form of campaign contributions to reduce a verdict from \$5.2 to \$1 million in a lawsuit against a nursing home for the death of a patient.⁴⁷⁶ Michael A. Maggio had previously been removed from the bench in 2014 after using a pseudonym to make online comments on a Louisiana State University fan website which included discussing details actress Charlize Theron’s private adoption of a child.⁴⁷⁷

Judicial misconduct was even the focus of a recent U.S. Supreme Court decision, *Williams-Yulee v. The Florida Bar*.⁴⁷⁸ The case stemmed from the 2009 actions of Lanell Williams-Yulee (“Yulee”) who, to announce her candidacy for County Judge in Hillsborough County, wrote a letter which also solicited contributions to help launch her campaign.⁴⁷⁹ The correspondence with her signature was both posted on Yulee’s website and mailed to local constituents.⁴⁸⁰ After losing the primary, she was charged by the Florida Bar for violating a bar rule which “requires judicial candidates to comply with the applicable provisions of Florida’s Code of Judicial Conduct” which includes Canon 7C(1)

⁴⁷³ Debra Cassens Weiss, *Judge Accused of Hitting Man and Yelling N-Word Gets to Keep His Pay While on Interim Suspension*, ABA Journal (Jun 5, 2015 7:57 a.m.), available at http://www.abajournal.com/news/article/judge_accused_of_hitting_man_and_yelling_n_word_gets_to_keep_his_pay_while.

⁴⁷⁴ Martha Neil, *Removal From Bench Is Recommended for Judge Who Went to Work at Drug Court While Intoxicated*, Jan. 06, 2015 06:20 AM CST), available at http://www.abajournal.com/news/article/removal_is_recommended_for_judge_who_went_to_work_at_drug_court_while_intox.

⁴⁷⁵ *Id.* It will be up to the Florida Supreme Court to decide whether or not to follow the recommendation of the Judicial Qualifications Commission that the judge be removed from her job. *Id.* See also Mirelsa Modestti Gonzalez, *Judges in Distress: When To Seek Help*, The Judicial Family Institute (2010), available at <http://www.judicialfamilyinstitute.org/judges-in-distress.html>. See also

Isaiah M. Zimmerman, *Helping Judges in Distress*, 90 *Judicature* 10 (2006) (discussing how judges are plagued by an number of emotional and physical problems and stresses, including alcohol and substance abuse, for which they rarely seek the assistance they need.)

⁴⁷⁶ Martha Neil, *Former Judge Pleads Guilty, Admits Taking Bribe to Cut Jury Verdict from \$5.2M to \$1M* (Jan. 12, 2015 12:05 PM CST), available at http://www.abajournal.com/news/article/former_judge_pleads_guilty_admits_taking_bribe_to_reduce_verdict_from_5.2m.

⁴⁷⁷ Associated Press, *Ex-Judge Who Posts Details of Charlize Theron’s Adoption Loses License* (April 17, 2015), available at <http://www.foxnews.com/entertainment/2015/04/17/ex-judge-who-posted-details-charlize-theron-adoption-loses-license/>.

⁴⁷⁸ *Williams-Yulee v. The Florida Bar*, 135 S. Ct. 1656 (2015).

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.*

that prohibits the “personal solicitation of campaign funds... .”⁴⁸¹

Yulee contended that she was not subject to disciplinary actions by the Bar because her actions in signing and sending the campaign funds solicitation letter as a judicial candidate were protected by the First Amendment. The Florida Supreme Court disagreed, finding that Yulee had violated Canon 7C(1).⁴⁸² In so ruling, the Florida Supreme Court recognized that in order for Canon 7C(1) to be constitutional and not infringe upon Yulee’s First Amendment rights, the Canon had to be “narrowly tailored to serve a compelling state interest.”⁴⁸³ However, in light of Florida’s “compelling state interest in preserving the integrity of [its] judiciary and maintaining the public’s confidence in an impartial judiciary,”⁴⁸⁴ and the fact that the judicial ethics Canon did not completely bar Yulee “from soliciting campaign funds,” it merely required the utilization of “a separate campaign committee to engage in the task of fundraising,”⁴⁸⁵ the Florida Supreme Court held that the Canon satisfied the demanding First Amendment inquiry.⁴⁸⁶ Ultimately, Yulee was publicly reprimanded by the publication of the Florida decision and was required to pay the Florida Bar \$1,860.00 to cover the costs of the suit.⁴⁸⁷

In a 5-4 decision, the U.S. Supreme Court agreed.⁴⁸⁸ Writing for the majority, Chief Justice Roberts emphasized that even when judges are elected, they are not politicians.⁴⁸⁹ Therefore, “a state’s decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office”⁴⁹⁰ Echoing the Florida Supreme Court, the Chief Justice reasoned that because the Canon’s restrictions “were narrowly tailored to avoid unnecessarily abridging speech” and advanced “the State’s compelling interest” in maintaining “public confidence in the integrity of the judiciary,” the result was “one of the rare cases in which a speech restriction withstands strict scrutiny.”⁴⁹¹

As the *Williams-Yulee* decisions emphasize, it is of paramount importance to our society that the integrity of our judiciary be preserved. As John Marshall stated in his address to the Virginia State Convention 1829-1830, judges are required to “observe the utmost fairness,” endeavoring to be “perfectly and completely independent, with nothing to influence or control [them] but God and his conscience.”⁴⁹² Consequently, repeated misconduct by members of the judiciary, such as exhibiting uncontrolled anger,⁴⁹³ engaging in fraud,⁴⁹⁴ exhibiting paranoid⁴⁹⁵ or sadistic behavior,⁴⁹⁶ taking the bench while intoxicated,⁴⁹⁷ accepting

⁴⁸² *The Florida Bar v. Williams-Yulee*, 138 So.3d 379, 381 (Fla. 2014).

⁴⁸³ *Id.* at 384.

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.* at 387.

⁴⁸⁶ *Id.* (“We conclude that Canon 7C(1) promotes the State’s compelling interests in preserving the integrity of the judiciary and maintaining the public’s confidence in an impartial judiciary, and that it is narrowly tailored to effectuate those interests.”).

⁴⁸⁷ *Id.*

⁴⁸⁸ *Williams-Yulee*, 135 S. Ct. at 1666 (“Here, Canon 7C(1) advances the State’s compelling state interest in preserving public confidence in the integrity of the judiciary, and it does so through

means narrowly tailored to avoid unnecessarily abridging speech. This is therefore one of the rare cases in which speech restriction withstands strict scrutiny).

⁴⁸⁹ *Id.* (“Judges are not politicians, even when they come to the bench by way of the ballot.”).

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.* at 1666.

⁴⁹² *Id.* at 1667 (quoting Address of John Marshall, in *Proceedings and Debates of the Virginia State Convention of 1829-1830*, p. 616 (1830)).

⁴⁹³ See *supra* notes and accompanying text.

⁴⁹⁴ See *supra* notes and accompanying text.

⁴⁹⁵ See *supra* notes and accompanying text.

⁴⁹⁶ See *supra* notes and accompanying text.

⁴⁹⁷ See *supra* notes and accompanying text.

a bribe to reduce a jury verdict⁴⁹⁸ or directly soliciting campaign donations,⁴⁹⁹ is slowly eroding public confidence in our judicial system. When such judicial and unprofessional misconduct is replicated or reflected by fictitious depictions on television, such as that of Judge Rebecca Wright in *Bad Judge*, the real and the fictitious cavort with each other to the tune of the Legal Popular Culture Two-Step, thereby imbedding a negative judicial image into the memory of virginal viewers who will access that memory as a belief about the character of judges in the United States justice system. This result is nothing short of noxious.

Part III: The Penultimate Oxymoron: The Honorable Rebecca Wright

“Everywhere you look on television today, you see them: Lawyers. TV’s lousy with them... What’s most disturbing... is not that TV is trying to make lawyers look sympathetic; it’s that TV is trying to make them look sexy.”⁵⁰⁰

The extraordinary power which the legal system places in the hands of members of the judiciary demands the highest standards of behavior. While the specific language may vary, the various state and federal codes governing the ethical conduct for judges uniformly require that judges must ensure that the “integrity and independence of the judiciary” is upheld⁵⁰¹ and “avoid

impropriety” or “the appearance of impropriety in all their activities.”⁵⁰² The admonishment against impropriety is applicable not only to the professional conduct of the judge, but also to personal conduct.⁵⁰³

Enter the character of Rebecca Wright, a fiery redhead who drives a worthless van with a Native American mural painted on the side, a bumper sticker which reads, “If you are rich, I am single,” and who has a penchant for breaking the rules and causing a scene wherever she goes. A sexually unapologetic party gal, she also happens to be a fictitious judge at a California Municipal Criminal Court and the lead character in the sitcom *Bad Judge*.⁵⁰⁴ According to the show’s tagline, Rebecca will be seen “Upholding the rules by day. Breaking them at night.”⁵⁰⁵ In the pilot, Rebecca aptly describes herself, explaining:

I am not a suitable anything, okay? I’m a workaholic freak show. I eat crap all day, I drink until I drop, you know? I might binge-watch *Lockup*, ‘cause I put half of those guys in there. I mean, sometimes I have to tie a rope from my ankle to the bed ‘cause I don’t even know what I do at night.⁵⁰⁶

The premise of the show is that her “wild-child” ways are to be forgiven because of her exceptional ability on the bench. The NBC website devoted to the series describes the show as:

⁴⁹⁸ See *supra* notes and accompanying text.

⁴⁹⁹ See *supra* notes and accompanying text.

⁵⁰⁰ J. Jarvis, *Lawyers Get Out of Their Briefs and Into Our Homes*, *Rolling Stone* 79-80 (May 30, 1991).

⁵⁰¹ CANONS OF JUDICIAL CONDUCT FOR THE STATE OF VIRGINIA Canon 1 (2015), available at http://www.courts.state.va.us/agencies/jirc/canons_of_judicial_conduct.pdf.

⁵⁰² Ga Code of Judicial conduct Canon 2 (2008), available at http://www.gabar.org/handbook/georgia_code_of_judicial_conduct/ (1 sur

14)2008-10-02.

⁵⁰³ *Id.*

⁵⁰⁴ *Bad Judge* aired for an additional excruciating 12 episodes after the pilot premiered on October 2, 2014. *Bad Judge* (NBC October 2, - January 22, 2015).

⁵⁰⁵ *Bad Judge* Taglines, available at <http://www.imdb.com/title/tt2769470/taglines>

⁵⁰⁶ *Bad Judge* Episodes Scripts, available at http://www.springfieldspringfield.co.uk/view_episode_scripts.php?tv-show=bad-judge-2014&episode=s01e01.

No excuses, no apologies, no compromises. Wild child Rebecca Wright... knows how to have a good time, but she also happens to be one of LA's toughest and most respected criminal court judges. She has a reputation for unorthodox behavior in the courtroom, including creative rulings and saying exactly what's on her mind. Her private life, on the other hand, is anything but innocent. While there's no shortage of male admirers who would love to spend time with her, she's not ready to settle down.⁵⁰⁷

While some viewers may have found the show to be entertaining,⁵⁰⁸ the Miami-Dade chapter of the Florida Association for Women Lawyers ("FAWL") did not. After only two episodes had aired, FAWL sent a letter to network CEO, Steve Burke, urging NBC to remove the show from its fall prime-time line-up.⁵⁰⁹ The author of the letter, Chapter President Deborah Baker, described the show as "a step in the wrong direction" in light of FAWL's mission to advance the position of women lawyers and jurists.⁵¹⁰ Even though the show was intended as hyperbole, its depiction of "a female judge as unethical, lazy, crude, hyper-sexualized, and unfit to hold such an esteemed position of power" was nonetheless "damaging to women in the legal profession."⁵¹¹

Noting that FAWL recognized that the show was meant to be a comedy, Baker admonished that the series was still "not only offensive to the many women judges who serve with the highest levels of integrity" but also posed a danger.⁵¹² When viewing the show, audience members who "hold preconceived notions about women judges will find their sexist beliefs reaffirmed. A misogynist who believes that women in power cannot control their sexuality, their bodies and their professional or personal conduct would have their views endorsed by this show."⁵¹³

While the letter did not address the cultivation theory or resonance, it is the theory of the Legal Popular Culture Two-Step which underlies and supports Ms. Baker's concerns. In her missive, Ms. Baker compared the potential effects *Bad Judge* may have on viewers to studies which focused on viewer perceptions after exposure to the "Archie Bunker Show".⁵¹⁴ This 1970s series "was a comedy intended to 'make fun of bigotry' it included 'jokes' that included racist language such as 'coon' and 'n***ger."⁵¹⁵ According to study results, "the program reaffirmed bigoted viewers' racist opinions about Black Americans."⁵¹⁶ For a viewer who was already a racist, the show was not

⁵⁰⁷ *About the Show*, available at <http://www.nbc.com/bad-judge>

⁵⁰⁸ According to The Hollywood Reporter, while the "freshman comedy *Bad Judge*" opened "to a respectable 4.8 million (viewers) in its Oct. 2 debut, the half-hour series [has] since seen its ratings drop week over week. Its most recent episode on Oct. 30 averaged just over 2.5 million and a 0.7 rating in adults 18-to-49 — the lowest-rated program in its time slot among the Big 4." Philiana Ng, *NBC to End 'A to Z', 'Bad Judge'* (October 31, 2014 3:22 pm PT), available at <http://www.hollywoodreporter.com/live-feed/nbcs-a-z-bad-judge-745470>.

⁵⁰⁹ Deborah Baker ESQ., Letter from Miami-Dade FAWL Chapter (October 16, 2014), available at http://ncwba.org/wp-content/uploads/2014/10/Miami-Dade_FAWL_letter_to_NBC.pdf.

⁵¹⁰ *Id.* ("Over the past 35 years, the mission of Miami-Dade FAWL has been to promote the advancement of women in the legal profession; unfortunately, *Bad Judge* is a step in the wrong direction.")

⁵¹¹ *Id.*

⁵¹² *Id.*

⁵¹³ *Id.*

⁵¹⁴ The name of the show was actually *All in the Family* (CBS January 12, 1971-April 8, 1979). It starred Carroll O'Connor in the main role of Archie Bunker, a loudmouthed, uneducated bigot who believed in every stereotype he ever heard.

⁵¹⁵ Deborah Baker ESQ., Letter from Miami-Dade FAWL Chapter (October 16, 2014), available at http://ncwba.org/wp-content/uploads/2014/10/Miami-Dade_FAWL_letter_to_NBC.pdf.

⁵¹⁶ *Id.*

seen as mocking or ridiculing bigotry. Rather, they perceived the show as “funny and speaking truths.”⁵¹⁷ In the same vein, comedy shows, such as *Bad Judge*, which “depict[] women in such a negative light, even in the name of ‘humor,’ have no proper place.”⁵¹⁸

Despite the promise of the network, the series’ crude portrayal of Judge Rebecca Wright’s free-wheeling attitude towards swearing, drinking, drugs, and promiscuity was not tempered by the fact that she was one of the “most respected criminal court judges” in LA.⁵¹⁹ Instead, an examination of several of the episodes of the show reveals that her unrestrained attitude also encompassed the duties of her office. Traditionally, popular culture has presented female attorneys as either being good at their profession, but having a terrible personal life; or good at relationships, but terrible at their job.⁵²⁰ As the 2014 poster child for female members of the judiciary, Judge Wright failed to even rise to the pathetic level of

the traditional popular culture female attorney stereotype.

The most problematical aspect of the show is that between the choices Judge Wright makes in her personal life and her conduct on the bench as she dispenses her unorthodox version of justice, she managed to contravene almost every Judicial Canon and ethical rule ever written. While each episode of *Bad Judge* contains numerous ethical violations, here are a few examples which stand-out as particularly egregious. Because the series is set in Van Nuys, California, the first three Canons of that state’s Code of Judicial Ethics will be relied upon in highlighting Rebecca Wright’s inappropriate behavior.⁵²¹

In *The Pilot*, the viewer is first introduced to Rebecca Wright as a prone figure, passed out on her bed in a fetal position, in her underwear and still wearing some of the clothing she must have worn the night before, including her jewelry and boots.⁵²² Clearly she was

⁵¹⁷ Id.

⁵¹⁸ Id.

⁵¹⁹ *About the Show*, available at <http://www.nbc.com/bad-judge>.

⁵²⁰ Because of the popularity of the courtroom drama, the character of the judge is not new to American legal popular culture. While the judge may have had a presence in early television series or films, rarely was the character fully developed or central to the storyline. See Papke, *supra* note 5 at 131. Rather, the role of the judge was usually peripheral to the main action. He was usually a “faceless” person, “sitting behind the bench who occasionally nodded sagely when an attorney would ask to approach a witness or introduce a piece of evidence.” Judge J. Howard Sunderman, Jr., *Judges in Film*, Picturing Justice (March 13, 2002). He rarely showed emotion of any kind. Beginning in the 1970’s, the portrayal of judges began to change. Unfortunately, this new portrayal was generally not positive. While judges are now often found in starring or featured roles, they are often “portrayed as lazy, corrupt, biased and arrogant.” *Id.* See, e.g., *And Justice For All* (Columbia Pictures 1979)(where two judges are key figures in the film; one is basically portrayed as crazy and suicidal, while the other is a thoroughly despicable

egomaniac guilty of rape) or *The Verdict* (Twentieth Century Fox 1982) (where the judge is portrayed not only as lazy, but heavily biased against the plaintiff and in collusion with the defense).

In contrast to the almost stoic male judge found in early works of popular culture, the earliest portrayals of female judges highlighted details of the judge’s personal life and played to emotion and passion. Since the woman judge first debuted on screen in 1939 until today, the recurring theme surrounding the female jurist has been one which pits the ability of a woman to exercise judicial authority against her attaining a successful personal life. Laura Krugman Ray, *From the Bench to The Screen: The Woman Judge in Film*, 60 *Clev. St. L. Rev.* 681, 682(2012)(tracing the emergence of the woman judge in film and the conflict which between reconciling “professional and personal identities.”). Christine Alice Corcos, “*We Don’t WANT Advantages*”: *The Woman Lawyer Hero and Her Quest for Power in Popular Culture*, 53 *Syr. L. Rev.* 1225, 1227-1228 (2003).

⁵²¹ California Code of Judicial Ethics (2015), available at http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf

⁵²² *Bad Judge: Pilot* (NBC television broadcast Oct. 2, 2014).

partying hard the night before. Her cell phone goes off, she wakes, looks at her phone and panics as she realizes she is late. She checks her medicine cabinet for headache medicine for her massive hangover and realizes she is out. She throws on some cut-offs and a flannel shirt, spits some mouthwash into a cup, and is out the door.⁵²³ She screeches into the parking lot of a pharmacy in a beat up van with a Native American mural on it. She goes to the local pharmacy and buys a pregnancy test and headache medicine. She pulls up in front of a building and, although she has a handicapped rearview hang tag, she is clearly parking illegally in a handicapped space. She pretends she has a limp when a man in a wheelchair goes by.⁵²⁴ We next see her in a bathroom administering the pregnancy test. She then throws on an item of clothing pulls her hair into a pony tail.⁵²⁵ The following dialogue exchange and actions then take place:

Bailiff: Superior Court is now in session. The Honorable Rebecca Wright, Judge presiding. (Judge Wright enters and takes her place on the bench. note: It is at this point that the viewer becomes aware that she is the “Bad Judge”)

Rebecca: (looking at pregnancy test results) Yes! Ahem. (holds out used test to her Bailiff)

Bailiff: Oh, come on. Are you serious?

Rebecca: Go on, take it.

Bailiff: What am I supposed to do with that?

Rebecca: I don't know. Be glad that it's negative - I am. Come on.

Bailiff: Oh, God. (the bailiff takes the test)

Rebecca: (to the bailiff) Go. (To the court) Please be seated. Do it quietly. I've got a headache. Can somebody get me some Gatorade?⁵²⁶

In just this brief portion of *The Pilot*, which occurs before the title of the series even flashes on the screen, the character of “the Honorable Rebecca Wright, Judge” has already contravened⁵²⁷ the first Canon of the California Code of Judicial Ethics.⁵²⁸

According to Canon 1 “A Judge Shall Uphold the Integrity and Independence of the Judiciary.” Judge Wright fails to “participate in establishing, maintaining, and enforcing high standards of conduct “ and also fails to “personally observe those standards” as dictated by Canon 1. Passing a used pregnancy test to her bailiff in open court is not exactly the kind of conduct which will encourage public confidence in the integrity of the court, one of the primary goals of Canon 1.

The Advisory Committee Commentary to Canon 1 also discusses how judges are required to comply with the law.⁵²⁹ Clearly this would prohibit Rebecca from having an illegal rearview hang tag and from parking in a handicapped spot. An honorable member of the judiciary should not be faking a handicap in an effort to fool a man who is genuinely physically challenged. It would also mean that she should serve on a jury if summoned. However, in Episode 5, *Judge and Jury*, Judge Wright does everything in her power to avoid jury duty, including faking

⁵²³ *Id.*

⁵²⁴ *Id.*

⁵²⁵ *Id.*

⁵²⁶ Bad Judge (2014) Episode Scripts - Pilot, available at http://www.springfieldspringfield.co.uk/view_episode_scripts.php?tvshow=badjudge2014&episode=01e01.

⁵²⁷ Canon 1 California Code of Judicial Ethics (2015), available at http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf.

⁵²⁸ California Code of Judicial Ethics (2015), available at http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf.

⁵²⁹ *Id.* (“Although judges should be independent, they must comply with the law and the provisions of this code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility.”)

illness, passing out pickled eggs and sardines, and pandering to the judge, in order not to miss the annual games at her favorite bar, Serpicos.⁵³⁰

Canon 1 would also prohibit her conduct in the finale episode of the series, *Case Closed*.⁵³¹ During a court recess, Rebecca meets her best friend, Michelle, for lunch at a restaurant where they spot an old high-school friend who has been dating Michelle's ex-husband. The two confront the old high school chum, who responds by dumping a margarita into Michelle's lap.⁵³² Rebecca then proceeds to deliver a strong right hook into the old friend's face.⁵³³ As a result, Rebecca finds herself in handcuffs, and charged with assault. Once again, Judge Wright is failing to follow the Judicial Canons and doing little for the judiciary in terms of viewers perceiving judges as persons of honor and integrity.

Canon 2 instructs that "A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities." The Advisory Committee Commentary to Canon 2 make it clear that "[t]he prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge."

In *The Pilot*, after hearing her first case, Judge Wright informs an expert witness, Dr. Gary Boyd, who just testified that she would like a word with him in her chambers. Once alone, Rebecca and Gary proceed to have a sexual encounter which the viewer learns is their third time on the desk in her chambers that month. When Tedward, her bailiff, walks in on

them with the judge still in her underwear, this is his response:

Tedward: Hey, Your Honor oh, damn! - Hey.

Rebecca: DA-ha-ha-Mn.

Tedward: Not bad, Your Honor. Not bad at all. And, Dr. Boyd, hey, you been in the gym? Two-a-days? You look good, man.

Gary: We were just reenacting a case scenario.

Rebecca: Yeah.

Gary: Mm-hmm, yeah, a case.

Tedward: I know that case. I've seen it late-night on Cinemax.

Gary: Oh, which one? Witness For The Sexecution or Sequester Sister - wait, no, I remember. Juror's Box.⁵³⁴

Once again, the judge fails to meet the high standards that come with her office. According to the Advisory Committee Commentary to Canon 2,⁵³⁵ members of the judiciary are required to "avoid all impropriety or appearance of impropriety."⁵³⁶ Further, judges "must expect to be the subject of public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly."⁵³⁷ The message the character of Judge Rebecca Wrights sends to the viewer is that she believes in basically no restrictions on her personal life. The best defensive spin that can be put on the sex scene with Gary is that it took place in the privacy of the judge's chambers and was only witnessed by her bailiff. Not so her unseemly conduct in episode 11, *Naked and Afraid*.⁵³⁸

⁵³⁰ *Bad Judge: Judge and Jury* (NBC television broadcast Oct. 30, 2014).

⁵³¹ *Bad Judge: Case Closed* (NBC television broadcast Jan. 22, 2015).

⁵³² *Id.*

⁵³³ *Bad Judge: Case Closed* (NBC television broadcast Jan. 22, 2015).

⁵³⁴ *Bad Judge* (2014) Episode Scripts - Pilot, available at http://www.springfieldspringfield.co.uk/view_episode_scripts.php?tvshow=badjudge2014&episode=01e0.

⁵³⁵ California Code of Judicial Ethics, Canon 2, Advisory Committee Commentary (2015), available at http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf.

⁵³⁶ *Id.*

⁵³⁷ *Id.*

⁵³⁸ *Bad Judge: Naked and Afraid* (NBC television broadcast Jan. 8, 2015).

One evening after work, Rebecca is bored and so decides to entice Gary to come over for the night by texting him a “selfie” of herself totally nude. A hacker Rebecca previously convicted and sent to jail, gains access to her phone and uploads her naked picture onto the court’s website.⁵³⁹ Due to the serious nature of the event, the situation has to be evaluated by the Judicial Review Board.⁵⁴⁰ At her hearing before the board, Rebecca expresses that she is not sorry for taking and sending the naked “selfie.”⁵⁴¹ She argues that she was the one victimized by the hacker and takes the position that anyone who is over the age of 40 and can still pull off a naked “selfie” should receive the key to the city.⁵⁴² Ultimately, the judicial board issues her a warning and she is allowed to return to her courtroom.⁵⁴³ Clearly, Judge Wright’s indiscretion and complete impropriety contravenes both the spirit and the law of Canon 2.

The tenets of Canon 2 are repeatedly flaunted as the judge is portrayed as a serious party girl in the majority of the episodes. Her “fun” includes a lot of drinking and even some illegal drug use. For example, in episode two of the

season, *Meteor Shower*, after Gary Boyd turns down her offer of a date night of “special brownies” and a 3-D movie, she eats both brownies herself and ends up having to call 911 after a bit of a “freak out.”⁵⁴⁴ In Episode 7, *Communication Breakdown*, she wakes up on the lawn after a crazy night of partying celebrating her friend Michelle’s recent divorce⁵⁴⁵ and in episode 10, *The Fixer*, to help the same friend get over “her ex”, Rebecca gets them invited to a pool party with a lot of hot dudes that are half their age and lots of drinking games.⁵⁴⁶

It is true that some of Judge Wright’s sentences are creative, rather unconventional, and focus on deterrence. For example, after the two wives of a convicted bigamist read statements asking Judge Wright to drop the charges against their husband and show mercy, Rebecca rules that rather than jail, the defendant must attend a course on feminism while wearing a T-shirt (which she designed) with the word “I’m a Convicted Bigamist” printed on the front.⁵⁴⁷ In a case involving a young, female pop star who breaks the law to gain public attention, the sentence was four weeks of community service at a

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.*

⁵⁴² *Id.*

⁵⁴³ *Id.*

⁵⁴⁴ *Bad Judge: Meteor Shower* (NBC television broadcast Oct. 9, 2014).

⁵⁴⁵ *Bad Judge: The Fixer* (NBC television broadcast Jan. 1, 2015).

⁵⁴⁶ *Id.* Throughout the thirteen episodes of *Bad Judge*, liquor plays an inordinately prominent role in both the judge’s personal and professional life. Judge Wright even has a penchant for her “special brownies” while watching 3-D movies. See, e.g., *Bad Judge: Pilot* (NBC television broadcast Oct. 2, 2014) (where the judge wakes up with a terrible hang-over, barely makes it to court on time, and has to ask for Gatorade from the bench due to cotton mouth); *Bad Judge: Communication Breakdown* (NBC television broadcast Nov. 13, 2014) (where the judge wakes up with a terrible hang-over,

sprawled with a friend on her front lawn); *Bad Judge: Meteor Shower* (NBC television broadcast Oct. 9, 2014) (Rebecca eats two “special brownies” and end up having to call 911 due to delusions.) The choice of the network to highlight drinking & drugs is particularly disturbing due to the number of lawyers and judges who have a serious problem with alcohol and substance abuse. See, e.g. Alexander O. Rovzar, *Putting the Plug in the Jug: The Malady of Alcoholism and Substance Addiction in the Legal Profession and a Proposal for Reform*, 10 U. Mass. L. Rev. 426 (2015); Anonymous, *A View From the Bench*, Florida Lawyers Assistance Program (2009) (in which a circuit judge discusses what it is like to be an alcoholic while serving on the bench and offers advice as to how to help alcoholic attorneys and judges), available at <http://fla-lap.org/literature/1299-bar-journal/a-view-from-the-bench/>.

⁵⁴⁷ *Bad Judge: The Pilot* (NBC television broadcast (Oct. 2, 2014).

convent outside of cell phone reach. The goal was to force the young woman to figure out who she is and what is really important to her.⁵⁴⁸ And in Episode 7, *Communication Breakdown*, Rebecca uncovers the truth about a deaf defendant, Mr. Lin, who has been charged with loitering and who can only communicate via Mandarin sign language.⁵⁴⁹ After requiring that an interpreter be brought in, it is discovered that the defendant was not loitering, but attempting to start a shoe-shine business.⁵⁵⁰ Judge Wright provided Mr. Lin with a sign, so that his customers would not think he was trying to steal their shoes, and a designated space for the enterprise.⁵⁵¹

Perhaps the best example of Judge Wright's unique rulings is illustrated in Episode 9, *Face Mask Mom*, when a woman, whose husband recently left her and who is having a hard time spending her first family Christmas without him, is sentenced to undergo six months of counseling and a court-ordered Beach Christmas.⁵⁵² On Christmas day, Judge Wright picks up the woman, takes her to the beach, where the judge proceeds to also "order" the prior defendant to join her in drinking shots of tequila and skinny dipping in the cold ocean water.⁵⁵³ While her motives in these instances indicate that Judge Wright is a caring person, her rulings in each of these episodes do not come close to compensating for her conduct and comments during each of these episodes which greatly sullied the reputation of the judiciary.

As in *The Pilot*, when the pregnancy test is handed to Tedward in open court,⁵⁵⁴ three of the episodes of *Bad Judge* are particularly problematic not only in terms of inappropriate and unseemly conduct, but for actual ethical violations occurring in the courtroom. A prime example is Episode 6, *What is Best in Life?*, where the atmosphere of Judge Wright's courtroom is closer to that of a three-ring circus, than a place of order and decorum.⁵⁵⁵ The courtroom itself is not a place where justice will be dispensed. It is simply the setting for a personal "cat fight" between Rebecca and her old law school nemesis, Dana McCoy.⁵⁵⁶ Dana is appearing before Judge Wright as defense counsel for a Mr. Latardo, a college jock who allegedly mooned a woman, Ms. Mayhew, who is now claiming \$3 million in psychological damage.⁵⁵⁷ After Ms Mayhew testifies that there were no distinguishing marks on the defendant's buttocks, Dana presents photographic evidence that one of the defendant's buttock has a prominent tattoo of Alec Baldwin's face.⁵⁵⁸ The next day in court, Rebecca notices the defendant's sensitivity to his buttocks and comes up with her own theory of the case.⁵⁵⁹

Rebecca: I have a theory, Mr. Latardo. Yeah, I think your Alec Baldwin's new. I think you got it for your defense, and I think Alec Baldwin's infected.

Latardo: Nope, next witness.

⁵⁴⁸ *Bad Judge: Meteor Shower* (NBC television broadcast Oct. 9, 2014).

⁵⁴⁹ *Bad Judge: Communication Breakdown* (NBC television broadcast Nov. 13, 2014).

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.*

⁵⁵² *Bad Judge: Face Mask Mom* (NBC television broadcast Dec. 11, 2014).

⁵⁵³ *Id.*

⁵⁵⁴ See *supra* notes 157-158 and accompanying text.

⁵⁵⁵ *Bad Judge: What is Best in Life?* (NBC

television broadcast Nov. 6, 2014). See Sears, *supra* note 85 ("Courtrooms must be places of order and decorum, places where justice is meted out. Judges must preserve this environment, lest the public comes to see the courts as an uncaring and ineffectual circus, not to mention an entertainment bonanza.").

⁵⁵⁶ *Bad Judge: What is Best in Life?* (NBC television broadcast Nov. 6, 2014).

⁵⁵⁷ *Id.*

⁵⁵⁸ *Id.*

⁵⁵⁹ *Id.*

Rebecca: No, I call the next witness, and I call Alec Baldwin to the stand. Mr. Latardo, come on. Come on.

Latardo: [Shuddering] Okay, yeah, it's a new tattoo, and it's pretty frickin' infected.

Rebecca: Okay, so just to be clear, you got this new tattoo during these court proceedings, you put something on it to make it look old for the evidence photos, and whatever that was, probably talcum powder, I'm guessing, caused the infection? How did you know? Because I got a tattoo myself. Upper right thigh.

Dana: Objection relevance and nauseousness, Your Honor.

Rebecca: Overruled, Counselor. Anyway, I changed my mind halfway through, so I got yin but no yang. So I know a little something about infections in bad places.

Dana: Yes, we're all very aware of that.

Rebecca: All right, Counselor, approach.

Dana: Oh. Yes?

Rebecca: One more comment like that, and I will find you in contempt.

Dana: [Gasps] Well, I find it contemptible that you bring your sordid little personal life into the courtroom. And just so you know, I will be filing a formal complaint with the judicial board of review...⁵⁶⁰ Ultimately, Rebecca throws the case out and confirms her authority by holding Dana in contempt after she lets loose another "zinger." (to the plaintiff)

Rebecca: Ms. Mayhew, you saw an ass. I'm sorry you fell into a bush, but you

don't get \$3 million for it. You don't even get 1. People have been showing one another their asses since the dawn of time. We do it because it's hilarious. (to the court) All right? I'm throwing the case out. I'm not finished. (to the defendant) Mr. Latardo, you took a small thing and made it worse by getting that tattoo. You tampered with evidence, and you lied to a judge. Luckily for you, I have personal knowledge of how a terrible tattoo can be its own form of punishment, so I will sentence you to nothing more.

Dana: Glad you finally did your job, Rebecca.

Rebecca: Actually, Dana, if you were doing your job, you would have known that your client was lying to you, and I warned you about calling me Rebecca. I'm finding you in contempt. Tedward, cuff her and get her out of my courtroom.⁵⁶¹

According to Canon 3 of the California Code of Judicial Ethics, "A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently."⁵⁶² The Advisory Committee Commentary (3) states that "[a] judge shall require order and decorum in proceedings before the judge"⁵⁶³ and Advisory Committee Commentary (4) explicitly requires that "[a] judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of all staff and court personnel under the judge's direction and control."⁵⁶⁴ Obviously,

⁵⁶⁰ Bad Judge (2014) Episode Scripts - What Is Best in Life?, available at http://www.springfield.springfield.co.uk/view_episode_scripts.php?tv-show=bad-judge-2014&episode=s01e01.

⁵⁶¹ Bad Judge (2014) Episode Scripts - What Is Best in Life?, available at http://www.springfield.springfield.co.uk/view_episode_scripts.php?tv-show=bad-judge-2014&episode=s01e01

⁵⁶² California Code of Judicial Ethics Canon 3, available at <http://www.courts.ca.gov/documents/>

[ca_code_judicial_ethics.pdf](#)

⁵⁶³ California Code of Judicial Ethics, Canon 3, Advisory Committee Commentary (3) (2015), available at http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf

⁵⁶⁴ California Code of Judicial Ethics, Canon 3, Advisory Committee Commentary (4) (2015), available at http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf

Rebecca failed to uphold these judicial tenets.

The Advisory Committee Commentary (5) also instructs that “[a] judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (2) sexual harassment.”⁵⁶⁵

In episode 4, *Knife to a Gunfight*, the defendant, Charlie Lewis while guilty, is a rather sympathetic and dimwitted character.⁵⁶⁶ He is now facing his third offense and, as the district attorney points out to Judge Wright, her only decision is a “slam dunk.”⁵⁶⁷ Under the law, a third conviction or “third strike” carries a mandatory minimum sentence of 25 years to life.⁵⁶⁸ Rebecca, however, does not believe that the defendant’s crimes warrant such a steep sentence.⁵⁶⁹ His first strike was for Grand Theft Auto after he stole a man’s lawnmower and rode it down the road.⁵⁷⁰ His second strike was Grand Larceny after he opened and ate a \$300 can of caviar in a grocery.⁵⁷¹ The current charge against the defendant was for attempting to steal a knife from a shop which predominately sold guns.⁵⁷² After entering the shop and asking to see a mother of pearl handled knife on display

he announced to the owner and other patrons of the shop that he was “taking the pretty knife” and warned them not to “do anything stupid.”⁵⁷³ In response they all proceeded to pull out their various guns of choice, aim them at Charlie, creating a standoff.⁵⁷⁴ As Judge Wright aptly noted “[t]he guy literally brought a knife to a gun fight. I mean, the only person he endangered was himself.”⁵⁷⁵

After Charlie informs the judge that he intends to defend himself, she attempts to help him by advising him of his right to waive a jury trial:

Rebecca: Mr. Lewis, please approach the bench.

Charlie: That’s a great color on you.

Rebecca: Thank you....You are aware of your right to waive a jury trial. I mean, one very reasonable judge versus 12 unpredictable jurors...⁵⁷⁶

Of course, Charlie fails to pick up on her “suggestion” and, because he believes in the strength of his case, stands firm with his desire for jury trial and with his decision to represent himself.⁵⁷⁷ At trial, the judge engages in several instances where she inappropriately engages in conduct that would reasonably be perceived as pro-defendant bias. In his opening statement, Charlie promises that “[t]he defense will illustrate that there is no possible way that the defendant could have attempted to steal this knife.”⁵⁷⁸ He then attempts to support his assertion with an embarrassing demonstration to the

⁵⁶⁵ California Code of Judicial Ethics, Canon 3, Advisory Committee Commentary (2015), available at http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf

⁵⁶⁶ *Bad Judge: Knife to a Gunfight* (NBC television broadcast Oct. 23, 2014).

⁵⁶⁷ *Bad Judge (2014) Episode Scripts- Knife to a Gun Fight*, available at http://www.springfield.springfield.co.uk/view_episode_scripts.php?tv-show=bad-judge-2014&episode=s01e04

⁵⁶⁸ *Id.*

⁵⁶⁹ *Id.*

⁵⁷⁰ *Id.*

⁵⁷¹ *Id.*

⁵⁷² *Id.*

⁵⁷³ *Id.*

⁵⁷⁴ *Id.*

⁵⁷⁵ *Id.*

⁵⁷⁶ *Bad Judge (2014) Episode Scripts- Knife to a Gun Fight*, available at http://www.springfield.springfield.co.uk/view_episode_scripts.php?tv-show=bad-judge-2014&episode=s01e04

⁵⁷⁷ *Bad Judge: Knife to a Gunfight* (NBC television broadcast Oct. 23, 2014).

⁵⁷⁸ *Id.*

jury reminiscent of the O. J. Simpson Trial defense.⁵⁷⁹

Charlie: [Knife clattering] It doesn't fit. The handle is too small for my hand. If the knife doesn't fit, you must acquit."⁵⁸⁰

Seeing that the defense will be a complete failure, Judge Wright tries to subtly help him out. Asking Charlie to approach the bench, she reminds him that they do have witnesses and a video of him holding the knife.⁵⁸¹ She then provides more blatant assistance in leading him to raise the question of criminal intent and in helping him cite to the correct section of the California Penal Code by coughing out the numbers four and five, taking a drink of water, and then saying "nine" with an explanation to the jury that she just loves the German language.⁵⁸²

Rebecca: You know, you seem to be an avid student of film and television. Perhaps you've seen the, uh, Law & Order show (with emphasis) *Criminal Intent*. Okay.

Charlie: Huh? Ladies and gentlemen of the jury, I will show that my client had no Law & Order: Criminal Intent of stealing said knife until after he entered the gun store. And in accordance with California penal code, uh Ooh....

Rebecca - [Coughs] 45. . - [High-pitched voice] - 9 (nine/nein). I love the German language, don't you?

Charlie: Uh, code 459 without prior criminal intent, an act of theft shall not be considered felony burglary.⁵⁸³

Clearly, Judge Wright contravened the Canon by "engag[ing] in speech,

gestures, or other conduct that would reasonably be perceived" as indicating pro-defendant bias.

Perhaps the most egregious example of ethical misconduct in the show occurs in episode three, *One Brave Waitress*, when Rebecca Wright engages in ex parte communications.⁵⁸⁴ Rebecca is in her chambers talking with Tedward, her bailiff, when Tom, the District Attorney comes in:

Tom: Rebecca . Your Honor, I was wondering if maybe we could have a little tête-à-tête, off the record, about a woman who might have been a waitress at BJ Knockers.

Rebecca: That you would ask a judge to discuss a case right before trial is highly unethical, and you know it, Tom.

Tedward : BJ Knockers? Man, halter tops, short skirts Even the white girls have long brown legs. - [Laughing] - It is crazy. But, yeah. Nah, like, that's a rough job.

Tom: I just want to make sure that we're all up to speed here about this.

Tedward: She cannot talk to you, Tom.

Rebecca: - [Snaps fingers] - Tedward travel with me, if you will, to a parallel universe. [Imitates Sci-Fi music] We're on a plane. I'm a stranger. You find out that I'm a judge. I'm sitting right next to you. You can tell me anything you want. What do you tell me?

Tedward: I would say that I do not want to be stuck on a plane next to a chatterbox.

Tom: Not me. Total opposite. Like, I might tell this judge on the plane that I

⁵⁷⁹ Linda Deutsch, *The OJ Simpson Case" 20 Years Later - OJ Simpson Murder Trial: "If It Doesn't Fit, You Must Acquit"*, NBC Southern California (Wednesday, Jun 11, 2014 7:05 p.m.), available at <http://www.nbclosangeles.com/news/local/OJ-Simpson-20-Years-Later-Glove-Fit-Darden-Dunne-Murder-Trial-of-the-Century-262534821.html>.

⁵⁸⁰ Id.

⁵⁸¹ *Bad Judge: Knife to a Gunfight* (NBC television broadcast Oct. 23, 2014).

⁵⁸² Id.

⁵⁸³ *Bad Judge (2014) Episode Scripts- Knife to a Gun Fight*, available at http://www.springfield.springfield.co.uk/view_episode_scripts.php?tv-show=bad-judge-2014&episode=s01e04

⁵⁸⁴ *Bad Judge: One Brave Waitress* (NBC television broadcast Oct. 16, 2014).

have a star witness in a sexual-battery case who has a roommate that kept a very detailed diary.

Rebecca: Do you have the diary?

Tom: Yeah. But the witness has not responded to her summons.

Rebecca: Okay, well, you need that testimony.

Tom: I know, but I think the owner, Chad Forbes, is paying her not to talk. (looking at the file)

Rebecca: Mm, is the witness, Hannah, is she any good on the stand?

Tom: I don't know. I'm on a plane.

Rebecca: Well, from where I am sitting on the plane, which is in seat 4-A first class, warm towels, hot nuts, a hot stewardess, a nice stewardess. - Remember when they were nice?

Tedward: Yep.

Rebecca: From where I'm sitting, I would tell you that if you came into my courtroom, I would have your back.

Tom: So we're on the same side? You and me? The eagle flies at dawn.

Rebecca: Ca-caw! That's my best eagle..

Advisory Committee Commentary (7) to Canon 3 specifically states the "[a] judge shall not initiate, permit, or consider ex parte communications, that is, any communication to or from the judge outside the presence of the parties concerning a pending or impending proceeding, and shall make reasonable efforts to avoid such communications... ."585 There is no

question that the ensuing conversation concerning the waitress' diary, which the judge certainly permitted and even encouraged with her 'travel to a parallel universe' hypothetical and sci fi musical accompaniment, is a flagrant breach of the prohibition against ex parte communications.

Part IV. Conclusion: Will the Real Judge Please Stand Up

*"Justice does not depend upon legal dialectics so much as upon the atmosphere of the courtroom, and that in the end depends primarily upon the judge."*⁵⁸⁶

Judge Learned Hand

a. The Importance of Discerning the Demarcation Between the Real and the Cultivated

With the dawn of each new pilot season, hope springs eternal that the networks may have repented their past false images of those in the legal profession and will have decided to invoked a new code of legal authenticity and ethics. The Fall of 2014 was replete with new legal series showcasing female attorneys⁵⁸⁷ and even a female law professor.⁵⁸⁸ However, one show had the opportunity to provide the viewing public with the rare opportunity of learning about the legal profession from the perspective

⁵⁸⁵ California code of Judicial Ethics Canon 3, Advisory Committee Commentary (7), available at http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf.

⁵⁸⁶ Brown v. Walter, 62 F.2d 798, 799-800 (2d. Cir. 1933) (Hand, J.)

⁵⁸⁷ In the fall of 2014, ABC launched *Cristela*, the story of a young woman who is finishing her sixth and final year of law school who is on the brink of landing her first big internship at a prestigious firm while her Mexican-American parents find her lofty career aspirations more ambitious than they think appropriate. *Cristela* (ABC October 10, 2014

- April 17, 2015). USA brought the viewer *Benched*, which told the tale of Nina Whitley, a high-powered corporate lawyer who has a meltdown at a firm gathering when she learns that she won't be a partner at her firm and ends up as a public defender in an office that is understaffed and underfunded. *Benched* (USA October 28, 2014 - December 30, 2014)

⁵⁸⁸ *How to Get Away with Murder* (ABC first aired September 25, 2014) The show has been renewed for a second season which will commence September 24, 2015.

of a female judge.⁵⁸⁹ Unfortunately, this opportunity was completely wasted with the prime-time comedy *Bad Judge*, and its portrayal of Judge Rebecca Wright.⁵⁹⁰ Arguably, the producers and writers of *Bad Judge* believed that a depiction of a female judge as a dishonorable, unrefined, oversexed party animal who was clearly unfit to serve as an esteemed member of the judiciary would not be harmful, but found merely humorous by the viewers. In light of the Popular Legal Culture Two-Step,⁵⁹¹ it is equally, if not more, probable that the show cultivated a false perception that the professional and personal conduct of the fictitious Rebecca Wright is an accurate representation of the life of an actual female member of the judiciary.⁵⁹² If after watching the show, the viewer was to learn about comparable, actual misconduct on the part of a real woman judge the two would resonate to move the viewer from simply having misguided perceptions about women judges, to holding actual false beliefs.⁵⁹³ These false beliefs about whether women are suitable candidates for the judiciary and the way female judges are treated at trial by lay witnesses and jurors. In situations where viewers already held preconceived ideas,

watching any, let alone all, of the thirteen episodes of the show would certainly have reaffirmed their on-going misogynist views à la the “Archie Bunker syndrome” discussed in the FAWL letter.⁵⁹⁴

Further, over time, the Popular Legal Culture Two-Step will not only shape viewers perceptions of social reality, it will ultimately influence our culture as a whole. The way judges are portrayed in popular legal culture will affect the public’s attitude toward members of the judiciary, which may then in turn affect the conduct of actual members of the judiciary. Therefore, producing, airing, and extending a bourgeois show like *Bad Judge* to thirteen episodes is nothing less than unconscionable. It is demeaning to female attorneys and undermines the judiciary as a cultural symbol of the rule of law.

b. Possible Solutions: Creating a Clash Between Reality and Fiction Through Education.

If an attempt to change such television programming is to be successful, it is of paramount importance to never lose sight of the fact that what creates, drives and fashions televised popular legal culture is not a thirst for sharing legal truths or imparting knowledge about the legal

⁵⁸⁹ While there are certainly female judges to be found on daytime television, such as *Judge Judy* (Syndicated, Paramount Pictures, 1996 - present) or *People’s Court* (Syndicated, Edwards/Billet, 1981-present), prior to *Bad Judge*, the only long-running T.V. series with a female judge in the starring role was *Judging Amy* (CBS 1999-2005). The show’s star, Amy Brenneman, played Amy Gray, who left New York City behind and now works as a family court Amy Gray, a New York attorney who found herself a single mother after a recent divorce. With her young daughter Lauren in tow, she moves back to Hartford, Connecticut and in with her very opinionated mother, a retired social worker. While Amy is selected to become a Juvenile Court Judge and portions of episodes did deal with the courtroom, the show was primarily a family drama where the family issues were plentiful. See Chris Jackson, *Judging “Judging Amy,”* Picturing

Justice, available at <http://usf.usfca.edu/pj//amy.htm> (last visited May 1, 2015)(noting that “Amy’s professional world of the courthouse is only high school, and all these new people are just cliques in the cafeteria. For courtroom role models, better watch *The Practice* or Sam Waterston and Angie Harmon in *Law and Order*.”); But see David Ray Papke, *From Flat to Round: Changing Portrayals of the Judge in American Popular Culture*, 31 J. Legal Prof. 127(2007)(expressing that the show had a certain depth and that over time “Judge Gray became a more than competent and quite engaging jurist.”

⁵⁹⁰ *Bad Judge* (NBC 2014).

⁵⁹¹ See *supra* note and accompanying text.

⁵⁹² See *supra* note and accompanying text.

⁵⁹³ See *supra* note and accompanying text.

⁵⁹⁴ See *supra* note and accompanying text.

profession or the desire to portray the judicial process as an art form. The bottom line can be summed up in one word - profit. Market realities drive network as to what shows will be renewed, cancelled and slated for next year. What matters is what will sell. Viewers, however, are usually under the misconception that they are the buyers in the selling equation. They are not. So, in addition to recognizing the market realities of the television industry, it is of equal importance to educate viewers that, to a television executive, they are certainly a source of income, but only in terms of how the audience may be sold, not served.⁵⁹⁵ "Selling the audience to advertisers is the network's sole source of revenue."⁵⁹⁶ As Les Brown, a one-time television editor of *Variety*, so aptly stated, "People are the merchandise, not the shows. The shows are merely the bait. The consumer, whom the custodians of the medium are pledged to serve, is in fact served up."⁵⁹⁷ A network's primary, if not sole goal, is to create programming that will "snare" the viewer's attention which is then "sold to advertisers for a multibillion-dollar annual price tag."⁵⁹⁸

Consequently, the television industry will continue to create legal series which portray the trials and tribulations of a

female judge in whatever manner is needed to produce a product that will result in profit. The fact that it is imperative that members of the judiciary be held in the highest regard by members of our society in order for the American justice system to function properly is totally irrelevant to the aims of the industry.⁵⁹⁹ Further, "[t]he unique profit structure of network television" based almost entirely on corporate advertisers "helps account for the fairly narrow ideological range in its legal programming"⁶⁰⁰ and may be the most logical answer as to why television's credos will continue to be often crass, if not downright offensive.

Despite sometimes comedic screenwriting, the character of Rebecca Wright is a product of this "narrow ideological range" which is why the show erodes the prestige, honor, and respect that is owed to members of the judiciary and to the rule of law. It turns lady justice into a tramp. The argument could be made that if viewers were to contrast Judge Wright with a real judge, it might boost the public trust in the judiciary and our legal system. Research psychologist and jury consultant, Dr. Cynthia Cohen, makes a comparable argument in terms of TV lawyers. In her opinion, extreme TV lawyers such as Denny Crane on *Boston Legal*⁶⁰¹ or Calista Flockhart's eccentric

⁵⁹⁵ JIB FOWLES, WHY VIEWERS WATCH-A REAPPRAISAL OF TELEVISION'S EFFECTS 6, (Sage Publications 1992)("It doesn't make people feel more comfortable about the medium to learn that television executives think of the audience in callous and economic terms. Television is not so much in the business of audience-serving as it is in the business of audience-selling.")

⁵⁹⁶ *Id.*

⁵⁹⁷ LES BROWN, TELEVISION: THE BUSINESS BEHIND THE BOX 16 (Harcourt Brace 1971).

⁵⁹⁸ See Fowles, *supra* note 187 at 6.

⁵⁹⁹ ABA Model Code of Judicial Conduct (2011), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html. The Preamble to the Code states:

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law" and "judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system." *Id.*

⁶⁰⁰ Naomi Mezey & Mark C. Niles, *Screening the Law: Ideology and Law in American Popular Culture*, 28 Colum. J.L. & Arts 91, 170 (2005).

⁶⁰¹ *Boston Legal* (ABC television broadcast Oct. 3, 2004 - December 8, 2008).

Ally McBeal⁶⁰² boost public confidence by serving as contrasts to actual attorneys.⁶⁰³

This theory however, does not comport with the Legal Popular Culture Two-Step. One of the key underpinnings for the theory is that it requires viewers who have had little or no direct contact with the judiciary so there is no actual judge to afford a comparison. But Dr. Cohen's contrast argument does have merit in terms of requiring a clash between fiction and reality.

If viewer perceptions cultivated by watching legal series were to be contrasted with a different actuality, there would be no resonance. There would be a clash. To resolve this dilemma, viewers would either have to abandon their beliefs cultivated by television's fictional portrayals of female judges and accept that the actual judge is the true representation or cling to their cultivated perceptions and perceive the actual judge as an anomaly. The key to enabling the clash between fiction and reality to result in the abandonment, or at least the amelioration, of cultivated, false perceptions is knowledge.

Knowledge is gained through education. Consequently, to prevent or diffuse the effect of the Popular Legal Culture Two-Step, virginal viewers need to be better educated about the reality of legal practice, the judiciary, and the

courtroom. Members of the legal profession need to be pro-active and create such educational opportunities. Such efforts are already underway. In 2004, a group of lawyers, business owners, and civic leaders in North Carolina got together and formed Justice Initiatives, Inc., a non-profit organization dedicated to educating the community "about the court system and to advocate, support and advance its needs and interests."⁶⁰⁴ The organization supports and sponsors a variety of projects geared toward educating various groups about the judiciary. Two of the most intriguing are "Court Camp" which the group supports to educate high school students about one of the judicial districts⁶⁰⁵ and "Jury Appreciation Week."⁶⁰⁶ The "hands-on" day camp runs for a week from 9 a.m. - 4 p.m. and instructs the students using a variety of method to assist them with their learning, including "lecture, writing, artwork, group work, videos, mock trial, visiting speakers (judges, court officials, and deputies), research via the internet, observation of live trials, and a guided tour of the [] courthouse and []jail."⁶⁰⁷ The students also tour a law firm and a local law school and there is even a graduation ceremony, to which parents are invited.⁶⁰⁸

The goals of "Juror Appreciation Week" are to assist with "educat[ing] the public about the judicial system, enhance

⁶⁰² *Ally McBeal* (Fox television broadcast Sept. 8, 1997 -May 20, 2002).

⁶⁰³ Cynthia R. Cohen, *Media Effects from Television Shows - Reality or Myth? in LAWYERS IN YOUR LIVING ROOM* (Michael Asimow ed. 2009)("Think Denny Crane hurts lawyers' image at trial? Think again. Series like *Boston Legal* and *Ally McBeal* improve public trust in real lawyers." Such "extreme characters...create a contrast effect when compared to a real lawyer" which "boost[s] competence perceptions."). See also Ronald M. Sandgrund, Esq., *Dialogue: Does Popular Culture Influence Lawyers, Judges, and Juries - Part I*, 44-Jan Colo Law. 55 January 2015)(exploring how

popular culture may influence juror perceptions of trials, lawyers and judges).

⁶⁰⁴ *Justice Initiatives, Inc.- About Us*, available at <http://www.justiceinitiatives.org/aboutus.php>.

⁶⁰⁵ *Justice Initiatives, Inc.- Court Camp*, available at <http://www.justiceinitiatives.org/courtcamp.php>.

⁶⁰⁶ *Justice Initiatives, Inc - Projects*, available at <http://www.justiceinitiatives.org/projects.php>.

⁶⁰⁷ *Justice Initiatives, Inc - Projects*, available at <http://www.justiceinitiatives.org/projects.php>.

⁶⁰⁸ *Justice Initiatives, Inc.- Court Camp*, available at <http://www.justiceinitiatives.org/courtcamp.php>.

public awareness of the importance of jury service and to show appreciation to citizens who perform their civic duty.”⁶⁰⁹

The State Bar of Georgia has started the “Cornerstones of Freedom program” which is committed to fostering “public understanding of the law and its role through a public education program about democracy, the rule of law, the legal profession, and the judicial system.”⁶¹⁰ The program encourages judges and attorneys to participate by locating speaking opportunities at “schools, civic groups and local bars” and then providing the speaker with the necessary educational materials such as “speeches, talking points, [and] Powerpoint presentations.”⁶¹¹

Members of the judiciary are also being proactive in creating the clash between reality and fiction through education. The Maryland Judiciary offers numerous ways by which to help educate children, students and teachers. These range from courtroom tours, where groups can “watch a trial unfold in person” to hosting mock trial competitions, to judges opening their courtroom to students as part of a “three-hour program designed to educate students about the legal system while warning them about the consequences of making wrong choices - namely drinking and driving, drug use, and other crimes.”⁶¹² The students then watch a “live, unscripted case” and have the opportunity to discuss the issues raised with leaders of the community, members of the judiciary and “actual drunk driving offenders.”⁶¹³

Of course the best way to educate and diffuse popular culture’s cultivation effect may be with other forms of popular culture. In April 2015, over 200 people joined Judge Alex Kozinski of the Ninth Circuit Court of Appeals for one of his movie nights.⁶¹⁴ These events, which happen three or four times a year, entail not only refreshments, a screening and discussion of a particular film, but a guided tour of the court’s headquarters as well. Judge Kozinski started movie night after learning that a number of the law clerks had never seen the classic film “12 Angry Men.”⁶¹⁵

The importance of educating the lay public and of providing virginal viewers with direct experience with members of the legal profession to combat the cultivation effect cannot be overstated. Lawyers, law professors, and members of the judiciary must heed the call for action and never turn down an invitation to speak to a group of citizens to debunk television’s cultivated perceptions about the law. We need to go into the schools on Career Day or Law Day to help educate the younger members of our society. We need to be available to speak with the press about high profile cases and to write op-ed pieces or letters to the network as did the ladies of FAWL. It is only by providing alternative visions of the legal profession, judges and courtroom activity that the lay viewer will have competing choices about which view of the law they choose to believe - that of the impersonal world of television or one

⁶⁰⁹ *Justice Initiatives, Inc - Projects*, available at <http://www.justiceinitiatives.org/projects.php>.

⁶¹⁰ *State Bar of Georgia, committees, Programs & Sections: Cornerstones of Freedom Project, Cornerstones of Freedom*, available at <http://www.gabar.org/committeesprogramssections/programs/>.

⁶¹¹ *Id.*

⁶¹² *Maryland Courts: Education*, available at <http://www.courts.state.md.us/education/>

⁶¹³ *Id.*

⁶¹⁴ Maura Dolan, *After Court Adjourns, 9th Circuit Judge’s Movie Nights Are A Hit*, LA Times (April 23, 2015 3:00 AM), available at <http://www.latimes.com/local/great-reads/la-me-c1-kozinski-movie-night-20150423-story.html#page=1>.

⁶¹⁵ *Id.*

stemming from human interaction with lawyers and judges.⁶¹⁶

Members of the television audiences also need to take much greater responsibility for the perceptions which they are cultivating by their viewing. As a culture, we need to “guard the avenues to our hearts and minds.”⁶¹⁷ The forms and content of the entertainment we value is a reflection of who we are as a society.⁶¹⁸ When a television show such as *Bad Judge* becomes part of mainstream popular culture by its inclusion in the fall, prime-time line-up of a major network, it is time “to take a critical look at ourselves.”⁶¹⁹ We need to demand not only higher quality entertainment from the networks, but more of ourselves as viewers. Extrapolating James Snead’s advice to film-goers to those who thrive on TV, “we have to be ready, as [TV viewers], not only to [watch TV series], but to see through them; we have to be willing to figure out what the [show] is claiming to portray, and also scrutinize what the [series] is actually showing. Finally, we need to ask from whose social vantage point any [TV offering] becomes credible or comforting, and ask why.”⁶²⁰

In real life, it would certainly be unreasonable to demand perfection from members of the judiciary. They, too, “are human beings with the attendant strengths and weaknesses. Judges should aspire to objectivity, but they cannot avoid being shaped by their background and life experiences.”⁶²¹ So, too, television does not need to paint the judge as perfect or create a fairy tale judiciary. However, viewers need to insist that Hollywood create shows with characters portraying judges who aspire to comply with the various Canons of Judicial Ethics as they objectively dispense justice and rule on challenging cases with wisdom and fairness.⁶²²

All shows do not have to be serious dramas because the lead character is a judge. There is certainly room, and even a need, for the comic relief that humorous judicial characters can provide.⁶²³ Occasionally, there should be a guest star role for a judge who contravenes the ethical rules and is sanctioned for her unethical actions.

This highlights proper judicial conduct and helps educate lay viewers about judicial ethics. However, it is of paramount

⁶¹⁶ As a study conducted to determine how Canadian viewers’ beliefs about the law had been affected by U.S. legal popular culture shows found:

As the individual grows and is educated other information sources concerning the legal system become available. Information received from these sources replaces and corrects the information received from television legal programs. As the individual visits the courtroom and interacts with persons within the legal profession the inaccurate ideas accepted from television content are replaced by information derived from this interaction. To the extent that there are competing sources of legal information in the individual’s environment it can be expected that television information will be viewed as false and irrelevant to the individual’s understanding of the legal system.

See Tate & Trach, *supra* note 30.

⁶¹⁷ Leah Ward Sears, those low-brow TV Court Shows, *The Christian Science Monitor* (July 10, 2001), available at <http://www.csmonitor.com/2001/0710/p11s1.html>.

⁶¹⁸ *Id*

⁶¹⁹ *Id*

⁶²⁰ JAMES A. SNEAD, *WHITE SCREENS/BLANK IMAGES* 142 (Blackwell 1994).

⁶²¹ A. Wayne MacKay, *Judicial Ethics: Exploring Misconduct and Accountability for Judges* 4 (unpublished manuscript 1995)(copy on file with the Commonwealth Judicial Education Institute), available at <http://cjei.org/publications/mackay.html>.

⁶²² *Id*

⁶²³ For example, the sitcom *Night Court* (Warner Bros television broadcast 1984-1992) provided a humorous view of the judiciary with the character of Judge Harry T. Stone, played by Harry Anderson. During the 193 episodes of this satire, viewers met all sorts of crazy characters who came at night and ended up before a judge who was both a lawyer and a magician. While Judge Stone’s rulings were often unconventional, his character did not flaunt the Canons of Judicial Ethics.

consequence that actions of fictional judges with recurring or starring roles do not flagrantly flaunt the ethical and professionalism standards demanded of actual members of the judiciary. This hold true for the scripting of both their private lives and their performances on the bench. Due to the direct correlation between the public's perception of judicial conduct and its confidence in the judicial system as the guardians of the rule of law, conscientious viewers should demand no less. Once Hollywood recognizes that the only way to continue to sell its viewers to the higher bidder, and thereby satisfy the golden god of profit, is to pander to viewers' desire for portrayals of an ethical judiciary, it will create shows that not only entertain, but also set a new standard of excellence for popular culture legal television offerings.

In closing, as the letter which FAWL sent to NBC illustrates, those who work to achieve gender diversity and increase the number of female members of the judiciary still have an arduous journey ahead of them.⁶²⁴

In this country, (i) only four of the 112 Justices ever to serve on the Supreme Court have been women; (ii) less than

35% of the active judges sitting on the thirteen federal courts of appeal are women; (iii) only 32% of the active U.S. district court judges are women; and (iv) there are still nine federal district courts around the country where there has never been a female judge.⁶²⁵

The thirteen episodes of *Bad Judge* did nothing to assist women judges in their crusade for recognition. Instead, they confirm that things are not improving in Hollywood and that the devolution of the images of the female lawyers, even after they are appointed or elected to the bench, continues. If the networks choose not to assist female attorneys and judges in support of women in judicial roles, at least they should "not make it even harder for women to be taken seriously in leadership positions!"⁶²⁶ The symbols of Lady Justice are not skimpy lingerie, a tequila bottle, and a used pregnancy test. They are the sword, the scales, and the blindfold. We need to restore them to her.

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⁶²⁴ National Women's Law Center, *Women in the Federal Judiciary: Still a Long Way to Go* (May 27, 2015) ("Over the past three decades, an increasing number of women have joined the legal profession. since 1992, women's representation in law school classes has approached 50%. Despite record numbers of female judicial nominees and confirmations, the percentage of female federal judges is far lower."), available at <http://www.nwlc.org/resource/women-federal-judiciary-still-long-way-go-1>.

⁶²⁵ Deborah Baker ESQ., Letter from Miami-Dade FAWL Chapter (October 16, 2014), available at http://ncwba.org/wp-content/uploads/2014/10/Miami-Dade_FAWL_letter_to_NBC.pdf.

⁶²⁶ Bunny Cunningham, *Female Lawyers Group Asks NBC to Put Bad Judge Out of Its Misery*, Jezebel (10/26/14 2:45 p.m.) (emphasis in the original), available at <http://jezebel.com/female-lawyers-group-asks-nbc-to-put-bad-judge-out-of-its-misery-165096671>.