

# WHEN HARRY MET PERRY AND LARRY: CRIMINAL DEFENSE LAWYERS ON TELEVISION

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ABSTRACT [not in original] Most of what people know (or think they know) about law, lawyers, and the legal system—as well as many other subjects of which they have little personal knowledge—is learned in television school. Two different theories explain the impact of pop cultural sources on consumers—the cultivation and viewer response approaches. Both theories have strong explanatory powers, but describe different conditions of consumption. This article describes the numerous television shows involving heroic criminal defense lawyer protagonists, starting with *Perry Mason* and *The Defenders* and continuing to the present with dramas like *Harry's Law*. These shows probably affect the public perception of criminal defense lawyers in a favorable way (contrary to the distrust of lawyers held by the vast majority of the general public). It would be interesting to learn whether viewers take seriously the positive message about criminal defense conveyed by these shows, whether viewers reject this portrayal and view defense lawyers as slimy, or whether viewers enjoy the shows and pay little or no attention to the message. A well-conducted viewer response study could furnish an answer to this question.

Lawyer-based television drama has thrived in the U.S. since *Perry Mason* debuted in 1957. In 1961, *The Defenders*, featuring the father and son team of Lawrence and Kenneth Preston, joined *Perry Mason* on CBS' Saturday night

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programming lineup.<sup>1</sup> In the six decades that followed, countless fictional lawyers harangued juries on the small screen. The vast majority practiced criminal defense and prosecution-based shows were a distant second. During the 2010-2011 season, more than ten law-based television shows held forth, including David E. Kelley's new drama *Harry's Law*.<sup>2</sup> The cycle of creation and destruction of televised lawyer characters will continue, and each new television season will seek fresh ways to tell entertaining stories about law and lawyers.

Part I of this article discusses the effect of television drama on its consumers, concentrating on two conflicting paradigms of media effect—cultivation theory and viewer response theory. Part II discusses criminal defense lawyers on television, particularly *Harry's Law*. It traces the narrative of *Harry's Law* back to its ancestors—*Perry Mason*, *The Defenders*, and *LA Law*. Part III applies the theoretical approaches to media effect discussed in Part I to television shows centering on the criminal defense function. It speculates on the cultural impact of these shows on those who consume them.

#### I. THE CULTURAL IMPACT OF TELEVISION

Why should we care about popular culture? I define the term “popular culture” to mean works of imagination, produced collaboratively for profit and intended for mass consumption, whether in the form of film, television, or other products. In the case of television—by far the most influential of the pop culture media—entertainment programming is, for the most part, a vehicle to keep people watching so they will stick around during the commercials. Most of what appears on television is, by any reasonable standard, mindless entertainment that is intended to be painlessly consumed and quickly forgotten.<sup>3</sup>

Yet this material is interesting and important because it reflects the attitudes and beliefs of those who enjoy and consume it (or at least what the producers of the drama believe those attitudes and beliefs to be). In addition, pop culture serves as a powerful teacher by *always* influencing and affecting those who consume it.

Televised entertainment programs, including those based on law and lawyers, offer stories featuring empathetic characters played by skilled and familiar

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1. The 1960's show *The Defenders* (discussed in text at notes 36-40) has no connection to the vastly inferior show of the same name that debuted in 2010 and was cancelled in 2011. In the title of this article, Lawrence Preston is referred to as Larry for obvious reasons. Older friends and judges frequently called him Larry though more often he was referred to as Mr. Preston or Dad.

2. These include three returning lawyer shows (*The Good Wife*, *Damages* and *Drop Dead Diva*, all of which have been renewed for the 2011-12 season) and seven new shows (*Harry's Law*, *Outlaw*, *Law & Order Los Angeles*, *The Defenders*, *Franklin & Bash*, *Fairly Legal*, and *Suits*). Of the new shows, *Harry's Law*, *Franklin & Bash*, *Suits*, and *Fairly Legal* have been renewed. An update on the rapidly changing status of all the shows (past, present, and future) can be found on Wikipedia.

3. See generally Todd Gitlin, MEDIA UNLIMITED 1-71 (2002); David E. Kelley, *Creating Law Franchises on Television*, 1 BERKELEY J. ENT. & SPORTS L. (forthcoming 2012).

actors to whom members of the audience often bond.<sup>4</sup> These programs provide viewers with pleasurable satisfying experiences because they are suspenseful (what the jury will decide?) and contain built-in conflict (between opposing lawyers, lawyers and clients, or lawyers and judges). In most of these stories, good things happen to good people (such as acquittal of unjustly prosecuted criminal defendants) and bad things happen to bad people (vicious criminals go to prison). These narratives can even provide viewers with the feeling that they have gained knowledge about this mysterious world of law and lawyers.<sup>5</sup>

Law stories on television convey conflicting messages, but one recurring formula reappears constantly: the story of the noble criminal defense lawyer, typified by *Perry Mason* and *Harry's Law*. One message of these series, and many others that contain the same narrative structure, is that the legal system delivers “justice”—meaning correct and appropriate outcomes. Another message is that criminal defense lawyers are ethical, dedicated people with an unflinching commitment to their clients and to the pursuit of justice.

To understand the educational power of media stories, consider the following thought experiment. Ask yourself what it was like to fight in Vietnam or in World War II. Undoubtedly you have a lot of information on that subject, but where did it come from? For most people, such information derives strictly from pop culture treatments of those wars. Similarly, do you know anything about the lives of cowboys or detectives? Or what goes on in the emergency room or the operating room or the forensics lab? Undoubtedly, you do—and that information (or misinformation) probably came almost exclusively from pop culture narratives. How is it that in France when people are arrested they demand their *Miranda* warnings—even though this concept is unknown to French law, or that French people, even lawyers, address judges as “your honor” when this is completely inappropriate?<sup>6</sup> They could only have picked up this misinformation from American television shows.<sup>7</sup>

Psychology and mass communications literature contains two conflicting

4. The relationship between viewer and television protagonist can be described as parasocial and bears a strong resemblance to actual social relationships. Jonathan Cohen, *Mediated Relationships and Media Effects: Parasocial Interaction and Identification*, in *THE SAGE HANDBOOK OF MEDIA PROCESSES AND EFFECTS* 223-36 (Robin L. Nabi & Mary Beth Oliver eds., 2009) (hereinafter *SAGE HANDBOOK*).

5. See Mary Beth Oliver, *Entertainment*, in *SAGE HANDBOOK*, *supra* note 4, at 161-77.

6. See Barbara Villez, *French Television Lawyers in Avocats et Associés*, in *LAWYERS IN YOUR LIVING ROOM! LAW ON TELEVISION* 275 (Michael Asimow ed., 2009) (hereinafter *LAWYERS IN YOUR LIVING ROOM*).

7. A couple of revealing anecdotes: My barber was part of a jury panel that was being questioned by the lawyers. A defense lawyer asked a juror whether one police officer would lie to protect another officer. “Of course,” the juror replied, “I’ve seen it on television many times.” Elayne Rapping reports that a student said that he didn’t need to read newspapers. “I watch *Law & Order* every week and since their stories are drawn from the headlines, that’s how I keep up with current events.” Elayne Rapping, *Introduction—the History of Law on Television*, in *LAWYERS IN YOUR LIVING ROOM*, *supra* note 6, at xxxvii). Perhaps you can recount similar anecdotes—or even recognize yourself in these little stories.

accounts of the process of media effects. The first approach is called “cultivation theory”; the second is often referred to as “viewer response.” “Cultivation theory” is a branch of social psychology.<sup>8</sup> Cultivation theorists treat film and especially television as the common storyteller of our age. Most people consume massive amounts of pop culture media (especially television). The media transmits a consistent set of images and messages about social reality into nearly every home. Those who consume a great deal of this material over a substantial period of time are likely to perceive the world in ways that reflect the most common and recurrent messages of the television world, as compared to people who watch less television but are otherwise demographically comparable.<sup>9</sup> Researchers in this field mostly use quantitative methodology, comparing the opinions of large samples of people who are heavy media consumers to those who are light consumers.

Numerous well-controlled cultivation studies indicate that people’s opinions about social reality are heavily influenced by consistent themes in pop culture. Heavy TV watchers believe in a meaner world—more crime, more police, more drugs, more prostitutes, less trustworthy people—than light viewers.<sup>10</sup> They also vastly overestimate crime rates, and have different personal concerns than light viewers. For example, if the question is, “will you get mugged if you go to New York,” heavy TV watchers are more likely to say yes than light watchers.

“Mainstreaming” is another important media effect identified by cultivation theory. This means that heavy television watchers are pulled more toward “mainstream” or moderate positions on social and political issues than light watchers.<sup>11</sup> Heavy viewers are more skeptical about science, scientists, and environmental concerns than light viewers.<sup>12</sup> Frequent watchers of *Judge Judy* have different

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8. George Gerbner is generally credited with pioneering cultivation theory. See generally George Gerbner, et. al., *Growing Up With Television: Cultivation Processes*, in MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH 43 (Jennings Bryant & Dolf Zillman eds., 2d ed. 2002). For a current update, see Michael Morgan, *Cultivation Analysis and Media Effects*, in SAGE HANDBOOK, *supra* note 4, at 69-82. Cultivation theory was and remains controversial with many theorists questioning its methodology. However, a metadata analysis of many subsequent studies indicates that cultivation theory has held up well. See James Shanahan & Michael Morgan, TELEVISION AND ITS VIEWERS: CULTIVATION THEORY AND RESEARCH, chs. 4, 6 (1999).

9. Shanahan & Morgan, *supra* note 8, at 4.

10. *Id.*, *supra* note 8, ch. 3. Of course, such research is plagued by the problem of correlation vs. causation. Even though TV watching correlates with a particular media effect, some other variable may be responsible for causing the effect. For example, people who like lawyers may watch far more lawyer shows than people who don’t like lawyers. If so, it would be incorrect to conclude that watching shows about good lawyers causes people to like lawyers better. Researchers are well aware of the problem and work hard to establish causation and disprove the effect of other variables. The huge number of studies showing the existence of cultivation effects tends to establish that such effects exist. See generally Itzhak Yanovitzky & Kathryn Greene, *Quantitative Methods and Causal Inference in Media Effects Research*, in SAGE HANDBOOK, *supra* note 3.

11. *Id.*, *supra* note 8, ch. 5.

12. *Id.*, 101-04.

beliefs about the appropriate role of a trial judge than those who don't. For example, the *Judge Judy* fans think the judge asks the questions at a trial rather than the lawyers and is likely to berate the witnesses.<sup>13</sup> Heavy viewers of soap operas have much different beliefs about the prevalence of marital discord than non-viewers.<sup>14</sup> Frequent viewers of German television are more likely than light viewers to visit lawyers if they suffer damages, and more of them expect to be exposed to aggressive behavior in court.<sup>15</sup> Many believe that a "CSI effect" predisposes jurors to acquit unless the prosecutor presents forensic evidence.<sup>16</sup> Studies indicate that media exposure to information about particular crimes (such as rape) influences the way potential jurors assess evidence.<sup>17</sup>

Cognitive psychologists have identified the mechanism by which cultivation may work in the human brain and the role it plays in so-called heuristic reasoning.<sup>18</sup> Heuristic reasoning involves low-stakes decision making, such as answering a survey question or giving a quick opinion in conversation (as distinguished from high-stakes decision making like making a major life decision). According to this account, people soak up the "information" conveyed by pop culture narratives without being critical about its source. They treat facts drawn from television stories as if TV is part of the "real world." People maintain "files" or "schema" in their brains on every conceivable subject. As new data streams in, the existing organization of files guides the mind on where to store the new information. Thus, they constantly add materials to the files from their personal experiences, conversations with others, or what they read or see in the news and entertainment media.

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13. Kimberlianne Podlas, *Please Adjust Your Signal: How Television's Syndicated Courtrooms Bias Our Juror Citizenry*, 39 AMER. BUS. L. J. 1 (2001). Numerous other studies find evidence of a cultivation effect on people's perceptions of law and lawyers. See Kimberlianne Podlas, *Funny or No Laughing Matter: How Television Viewers Interpret Satires of Legal Themes*, 21 SETON HALL J. OF SPORTS AND ENT. L. 289, 295-302 (2011).

14. L. J. Shrum, Psychological Processes Underlying Cultivation Effects, 22 HUMAN COMM. RES. 402 (1996).

15. Stefan Machura, *German Judge Shows: Migrating from the Courtroom to the TV Studio*, in LAWYERS IN YOUR LIVING ROOM, *supra* note 6, at 331.

16. Despite a great deal of anecdotal evidence, empirical validation of the CSI effect has proved to be elusive. See Simon A. Cole & Rachel Dioso-Villa, *Investigating the "CSI Effect" Effect: Media and Litigation Crisis in Criminal Law*, 61 STAN. L. REV. 1335 (2009). Cole & Dioso-Villa found that acquittal rates in many states and the federal courts have not fallen during the years of extensive CSI-type programming, but this methodology is problematic given that numerous other factors can affect acquittal rates. See also Cynthia Cohen, *Media Effects from Television Shows—Reality or Myth*, in LAWYERS IN YOUR LIVING ROOM, *supra* note 5, at 29-30 (jury consultant's study shows that 88% of mock jurors believe that DNA evidence should be introduced in all criminal cases); Tom R. Tyler, *Viewing CSI and the Threshold of Guilt: Managing Truth and Justice in Reality and Fiction*, 115 YALE L.J. 1050, 1056-63 (2006) (indicating that anecdotal accounts of a CSI effect are plausible in light of existing juror research). Tyler points out that an offsetting CSI effect may work in the opposite direction: based on watching *CSI*, jurors may overestimate the probative value of the prosecution's scientific evidence. *Id.* at 1063-76.

17. Tyler, *supra* note 16, at 1057-60.

17. Tyler, *supra* note 16, at 1057-60.

18. See Shanahan & Morgan, *supra* note 8, at 184-97.

When people respond to a question like “do you trust lawyers,” they reach for material in the “lawyers” file in order to give a quick answer. Whether people access a particular bit of data in the file depends on how recently it was filed, how many similar items are lodged in the file, and the vividness of the experience that put it there. Most importantly, people do not “source discount” very well. This means that they store and retrieve data in the file that they have extracted from popular culture narratives, failing to recall that a fictitious story provided the material.<sup>19</sup> Viewers are also more heavily influenced by stories about subjects with which they have little or no personal experience and which seem to be “realistic.”<sup>20</sup>

The second approach to media effects is centered on how specific viewers respond to media texts. These theoretical approaches are referred to generally as “viewer response” theories and are also called reception theory or “uses and gratifications.”<sup>21</sup> The viewer response approach rejects cultivation theory and its image of passive sponges or cultural dopes who soak up whatever messages are encoded in the pop culture that comes their way. Under this theory, media is subject to interpretation and viewers make their own meanings from material coded into a particular media product. These meanings are likely to vary substantially, depending on such variables as gender, sexual orientation, race or class. In order to interpret the content of a particular text, the consumer juxtaposes it with other messages previously received from personal experience, education, conversations with friends, or from other media products. The emphasis in viewer response theory is what the viewer does to the text, not the other way

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19. First year law students in six countries (Argentina, England, Scotland, Germany, Australia and the US) were asked, on the first day of law school, for their opinions on whether lawyers were ethical and trustworthy. Their answers reflected the same distrust of lawyers that is present in the general population. Then they were asked which sources of information were helpful or unhelpful in helping them form that opinion. Popular culture was ranked as helpful or very helpful by 43% of US respondents, about equal to lawyers in the family or discussions with friends, and well ahead of personal experience or classes in school. Only the news (at 53%) was more helpful than pop culture. Despite obvious methodological difficulties, this study indicates a surprising admission by over 40% of a group of educated young people that they relied upon fictitious stories in forming their opinion on a real-world issue (whether lawyers can be trusted). Similar, or even stronger, results were obtained in the other countries surveyed (except Argentina where only 19% found pop culture helpful). Michael Asimow et al., *Perceptions of Lawyers—A Transnational Study of Student Views on the Image of Law and Lawyers*, 12 INT’L J. OF THE LEGAL PROF. 408, 424 (2005).

20. See L. J. Shrum, *Media Consumption and Perceptions of Social Reality: Effects and Underlying Processes*, in MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH 69, 69-91 (Jennings Bryant & Mary Beth Oliver eds. 2009); Michael A. Shapiro & T. Makana Chock, *Media Dependency and Perceived Reality of Fiction and News*, 48 J. OF BROADCASTING AND ELECTRONIC MEDIA 675 (2004).

21. For accessible treatments, see Lawrence Grossberg et al., *MEDIAMAKING: MASS MEDIA IN A POPULAR CULTURE* 253-74 (2d ed. 2006); Stanley Fish, *IS THERE A TEXT IN THIS CLASS* (1980), particularly the Introduction, Chapter 1, and Chapters 13-16; Alan M. Rubin, *Uses-and-Gratification: An Evolving Perspective of Media Effects*, in SAGE HANDBOOK, *supra* note 3 at 147-59; Mary Beth Oliver, *Entertainment*, in SAGE HANDBOOK, *supra* note 3 at 161-77; David Morley, *TELEVISION, AUDIENCES, AND CULTURAL STUDIES*, ch. 3 (1992).

around. Research in the area is often ethnographic; researchers try to ascertain how a particular sub-group of the audience interpreted a particular text.<sup>22</sup>

The textual interpretation by the consumer may be the same as the one intended (or encoded) by the persons who wrote and directed the film or television show (the “preferred” or “dominant” message).<sup>23</sup> However, the viewer may resist the intended interpretation and substitute an opposing view (an “oppositional” interpretation) or may come up with something else entirely (a “negotiated” interpretation). Viewer response theory tends to concentrate on specific political or social messages in particular media episodes, news broadcasts, or commercials, whereas cultivation theory tends to concentrate on recurring messages or systems of messages transmitted over a much longer period of time.

Cohen conducted an interesting viewer-response study of Israeli college students who had watched *Ally McBeal* at least three times.<sup>24</sup> *Ally McBeal* was a popular legally-based show created by David Kelley that ran from 1997-2002 on Fox. The emphasis of the show was less on legal themes than on the romantic lives of its lead characters, including Ally herself.<sup>25</sup> Cohen asked his subjects to select between three paragraphs that seemed like journalistic reviews of the show but presented three possible interpretations of the lead character. The students could pick a dominant approach (Ally is a strong and independent woman in charge of her life), a resistant approach (Ally is neurotic and bewildered), or a negotiated approach (the program is a comic reflection of the dilemmas faced by young professional women). The negotiated approach was selected by 46% of the students, 35% chose the dominant approach, and 19% chose the resistant approach. Single viewers tended to favor the dominant approach, but those in relationships tended to favor the resistant or negotiated readings. Strong feminists tended to choose the dominant reading.

In my view, the passive cultivation model and active viewer response model are not inconsistent with each other. I embrace both of them. Each describes different media consumers (and most of us probably fall into each group at different times). Even for the same program, a viewer might actively decode a

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22. See generally Thomas R. Lindlof, *Qualitative Methods*, in SAGE HANDBOOK, *supra* note 4, at 53-64.

23. Theorists in this area often suggest that the dominant message is likely to reinforce prevailing ideologies that the status quo is good and fair. Presumably, this message is what advertisers and media conglomerates would prefer to convey. See Naomi Mezey & Mark C. Niles, *Screening the Law: Ideology and Law in American Popular Culture*, 28 COLUM. J.L. & ARTS 110-14, 170-76 (2005). However, in this era of multiple media outlets and independent production, the dominant message is likely to be the one that the creator of the program believes, which may not reflect the views of the media distributors or the sponsors. Their goal is to win high ratings and thus maximize the value of advertising, not to peddle any particular political or social view.

24. Jonathan Cohen, *Deconstructing Ally: Explaining Viewers' Interpretations of Popular Television*, 4 MEDIAPSYCHOLOGY 253 (2002).

25. See Cassandra Sharp, *Ally McBeal—Life and Love in the Law*, in LAWYERS IN YOUR LIVING ROOM, *supra* note 6, at 221-32.

message and re-interpret or oppose it, while passively soaking up other messages transmitted by the program. Consumers who are paying close attention to a particular media product and are interested in the issue presented, or are offended by the way it is treated, are more likely to make their own, often oppositional, meaning from that product. Viewers might oppose the messages contained in commercials (“it’s horrible that pharma companies are allowed to peddle prescription drugs on TV”), yet advertisers continue to shell out immense sums to buy commercials on the well-supported assumption that most viewers passively soak up the messages transmitted by the little skits contained in their 30-second spots.

Some viewers are paying relatively little attention, zoning out or multi-tasking while watching TV, or may be half-asleep. These viewers are unlikely to be doing the work necessary to reinterpret the simple messages coded into the story. It is certainly not true that viewers are always passive sponges, but it is also certainly not true that all of them are actively engaged in making their own meanings out of every media product they are consuming.<sup>26</sup> In short, whether one prefers the cultivation or viewer response frames for analyzing media effects—or agrees with both of them—the bottom line is that pop culture images are exceptionally powerful.<sup>27</sup>

## II. PERRY, LARRY AND HARRY

Dramas centering on criminal defense lawyers represent a well-defined sub-genre within the genre of legal television.<sup>28</sup> This section discusses the historical sources for an important current example of the criminal defense lawyer genre—*Harry’s Law*.

### A. Perry Mason

The character of Perry Mason, as played by Raymond Burr, is undoubtedly the most important fictional lawyer in American history, perhaps in world history.<sup>29</sup> Perry was the invention of the prolific Erle Stanley Gardner (1889-1970),

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26. For discussion of the differences in audiences of media products, and the ways these differences translate into passive or active consumption, see W. James Potter, *Conceptualizing the Audience*, in SAGE HANDBOOK, *supra* note 4, at 19-34.

27. As David Morley says in defense of his project to apply viewer response theory to a non-serious human-interest British news show, “[T]here is, in television, no such thing as an ‘innocent text’—no programme which is not worthy of serious attention, no programme which can claim to provide only ‘entertainment’ rather than messages about society. Even though the explicit content of a programme may seem to be of a rather trivial nature—for instance, Tom and Jerry cartoons—it may well be that a number of very important messages about social attitudes and values are built into the programme’s texture...” Morley, *supra* note 21, at 82.

28. See Peter Robson, *Lawyers and the Legal System on TV: The British Experience*, 2 INT’L J.L. IN CONTEXT 333, 341 (2006).

29. Burr considered the show and its central character as a “public trust” and he was its “chief executor.” DENNIS BOUNDS, PERRY MASON: THE AUTHORSHIP AND REPRODUCTION OF A



an attorney and author of pulp fiction. Starting in 1933, Gardner wrote 82 Perry Mason novels.<sup>30</sup> During the 1930s, Warner Brothers made six Perry Mason films which imitated the wise-guy comedic approach of *The Thin Man*. Gardner hated these movies and never again surrendered creative control over his character.<sup>31</sup>

The movies were followed by a radio series consisting of an astounding 3221 15-minute episodes and finally, in 1957, by the television series.<sup>32</sup> There were 271 one-hour episodes running from 1957 to 1966.<sup>33</sup> Later, thirty made-for-television movies revived the character, played by an older and much heavier Raymond Burr. Only after Burr died in 1993, and other actors could not pull an audience in the Perry Mason role, did the character finally perish. But Perry Mason lives on. Six seasons of the TV show are available on DVD. Until recently, *Perry Mason* could be watched on cable every day and all of the shows can be viewed on line.<sup>34</sup>

The great thing about Perry Mason television shows (and made-for-TV movies) is that if you've seen one, you've seen them all, because every episode has the same plot. Mason's clients are *always* innocent. Police lieutenant Arthur Tragg and prosecutor Hamilton Burger *always* have the wrong man.<sup>35</sup> Mason uncovers the truth with skilled detective work by himself, secretary Della Street,

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POPULAR HERO 1 (1996). When Burr died, People Magazine noted that Burr and Mason "had become not only America's lawyer but the world's." *Id.* at 157. Asked to name a lawyer they admired, 52% of respondents to a 1993 National Law Journal poll could not name one. The few respected lawyers cited more than once included Perry Mason and his TV clone Matlock along with Thurgood Marshall, Janet Reno, Abraham Lincoln, and F. Lee Bailey. Randall Samborn, *Who's Most Admired Lawyer?*, 15 NAT'L L. J. 1, 24 (1993).

30. See Frances M. Nevins, *Perry Mason*, in *LAWYERS IN YOUR LIVING ROOM*, *supra* note 6, ch. 5; Francis M. Nevins, *Sumarai at Law: The World of Erle Stanley Gardner*, 24 LEGAL STUDIES FORUM 43 (2000). Nevins' articles contain a literary analysis of all of Gardner's novels, not just the Perry Mason stories. He points out that in the early novels, Mason was much less concerned about whether his clients were guilty. Starting in 1937, when the novels were serialized in the Saturday Evening Post, Mason's character was cleaned up and he represented only clients he thought were innocent. This convention was carried into the television series where every client was innocent.

31. Norman Rosenberg, *Perry Mason*, in Robert M. Jarvis & Paul R. Joseph, *PRIME TIME LAW* 118-20 (1998).

32. Perry Mason was not the first lawyer series on television but the earlier ones had little impact. Rapping, *supra* note 6, at xxx-xxxi; David Ray Papke, *The Defenders*, in *PRIME TIME LAW*, *supra* note 31 at 7.

33. See the Perry Mason TV Show website, which contains synopses of all the episodes and has numerous links to other sites. PERRY MASON TV SERIES WIKI (2008), <http://www.perry-masontvseries.com> (last visited Sept. 21, 2011).

34. See XFINITY TV, <http://xfinitytv.comcast.net/tv/Perry-Mason/97361/full-episodes> (last visited Sept. 21, 2011).

35. See Steven D. Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and Police as Television Heroes*, 42 U. MIAMI L. REV. 229-283 (1987). Stark observes that historically lawyer shows that ridiculed the police have been popular during anti-establishment periods like the 1960's; lawyer shows do less well during conservative eras when police and prosecutors are popular. Although it would seem that we are in a conservative pro-police era at present, anti-establishment lawyer shows like *Harry's Law* have done quite well. Of course the vast number of police and CSI type programs on television have done equally well or better.

and investigator Paul Drake. As a result of devastating cross-examination (usually in California preliminary hearings rather than at trial), Mason *always* reveals the true culprit. Thus the stories reflect the tiresome cliché that the adversarial trial process is capable of systematically revealing the truth such as the identity of the guilty party.

The character of Perry Mason lacks nuance or dimension. He is stolid, humorless, and asexual, apparently lacking any personal life. Although he has a busy law practice (and apparently a successful one as he drives a Cadillac), legal fees are never discussed. Unlike the detectives and cowboys who were staple fare of television in those years,<sup>36</sup> Mason never relied on gunplay or other vigilante alternatives. He always worked through the legal system. No social or ethical issues interfered with the storytelling on *Perry Mason*. The main message of the show is that Mason is a heroic and noble figure, who always rescues innocent defendants from wrongful conviction through his skill and persistence.

Another, and less obvious, message of the show is that the way to truth and justice is through adversarial trials.<sup>37</sup> In American and British Commonwealth countries (unlike most of the rest of the world), the adversary system reigns supreme. This system relies on the contest between conflicting lawyers to achieve justice. The judge is a mostly passive participant who rules on evidence, instructs the jury, and keeps order in the courtroom. The basic idea underlying the adversary system is that the truth about past events is unknowable; instead we strive for “trial truth,” meaning the version that is selected by a lay jury after it watches an adversarial contest. In most other countries, however, the justice system is quite different. A judge is in charge of both the investigation of crime and of the file (or “dossier”) in which all the evidence is written down. The judge’s job is to find out the truth. The attorneys on both sides play a subordinate role and the trial is simply the last step in the investigation.

There are many reasons for the persistence of the adversary system, but in my view one important reason for its popularity is its glorification on television series like *Perry Mason* and his successors. Perry *always* reveals the actual truth of past events. His clients never weasel out of the crime by establishing reasonable doubt, but are found not guilty because they are proved to be factually innocent. This absurd formula, repeated countless times by innumerable television shows, may have caused the public to believe that the American justice system delivers real truth about past events, as opposed to the reality in which it delivers only trial truth.

#### *B. The Defenders: Lawrence and Kenneth Preston*

Lawrence and Kenneth Preston (played by E.G. Marshall and Robert Reed)

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36. Rosenberg, *supra* note 31, at 117-18.

37. See Michael Asimow, *Popular Culture and the Adversary System*, 40 *LOY. L.A. L. REV.* 653 (2007).

were the father and son law firm featured on *The Defenders* which ran on CBS from 1961 to 1965. Strangely, *The Defenders* was programmed right after *Perry Mason* on Saturday night. The productions were of high quality, featuring famous actors and well-written scripts. None of these statements could be made about the assembly-line episodes on *Perry Mason*.<sup>38</sup>

Like *Perry Mason*, neither of the Prestons has much of a personal life.<sup>39</sup> All we learn is what Lawrence and Kenneth are like as lawyers. There is little character arc; the two were always the same. The Prestons also seem indifferent to fees and to the business aspects of law practice. In these respects alone, the Prestons resemble *Perry Mason*.

Each episode of *The Defenders* concentrated on a particular social or legal problem seen through the prism of a lawyer-client relationship (usually but not always criminal defense). The Prestons did not win every case and sometimes were unable to help their client at all. Reginald Rose, the creator of the show and author of numerous episodes, and Herbert Brodtkin, the show's producer, differentiated it sharply from *Perry Mason*. "There will be none of the unconvincing would-be detective work by lawyers and none of the last-minute witness nonsense."<sup>40</sup> Instead, the show tackled subjects that were cutting edge and often far ahead of their time—euthanasia, abortion, women's rights, racial inequality, the insanity defense, the anti-Communist blacklist, defense of a Nazi charged with killing a Jew, acquittal of guilty criminal defendants, and many others—and always from a liberal point of view.<sup>41</sup> Thus, the series was in tune with the "New Frontier" liberalism of the Kennedy and Johnson administrations. *The Defenders* was always thought-provoking and offered up difficult subjects for debate, but it always presented both sides. *The Defenders* never claimed to have all the answers.

Lawrence Preston was a skilled, experienced lawyer. His focus was on trying to find some way to solve the client's problem. On the other hand, Kenneth Preston was impulsive and passionate. He wanted to solve society's problems and compromise was not acceptable. Much of the fascination of the show lies in the byplay between the younger and older lawyers and their conflicting styles.

Tragically, *The Defenders* is lost to history. There are no DVDs, no appearances on cable. I was fortunate to have access to the UCLA Film Archive, where over one hundred *Defenders* tapes can be found. The Museum of Television in

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38. *The Defenders* won thirteen Emmys, *Perry Mason* won four. *The Defenders* employed an amazing selection of famous actors and was linked to the live anthology dramas of the 1950s. David Papke, *supra* note 32, at 5-6 (1998). In one respect, perhaps, *Perry Mason* approached *The Defenders* in quality. *Perry Mason* opened with a famous and catchy musical theme, *The Defenders* with a magnificent trumpet solo.

39. David R. Ginsburg, *The Defenders: TV Lawyers and Controversy in the New Frontier*, in *LAWYERS IN YOUR LIVING ROOM*, *supra* note 6 at 69-70.

40. *Id.* at 66-67.

41. *Id.* at 70-72; Papke, *supra* note 32 at 7-14.

New York and Beverly Hills has a partial collection.<sup>42</sup> One episode, “Iron Man,” is available on YouTube.<sup>43</sup> In 1997, Showtime revived *The Defenders* with several made-for-TV movies with E.G. Marshall starring as the grandfather, Beau Bridges as his son, and Martha Plimpton as his granddaughter. Sadly, Robert Reed was unavailable; he died in 1992.

*The Defenders* attracted a highly respectable 21 million viewers at its peak, most of whom no doubt agreed with its strong liberal bias.<sup>44</sup> The show might have had some impact in reinforcing the prevalent liberal-legalistic views of the time, which coincided with the civil rights movement,<sup>45</sup> and no doubt it strengthened the favorable view of lawyers that then prevailed.<sup>46</sup> However, its biggest impact was on the future of legal television. *The Defenders* taught television writers and producers that they could package important legal and social issues within the bounds of legal drama. Countless future series took this lesson to heart, among them *LA Law* and *Harry's Law*.

### C. *LA Law*

*LA Law* was a hugely successful lawyer drama that ran from 1986 to 1994. In many ways, the show broke sharply from earlier lawyer dramas because it tried to depict law as it was actually practiced. *LA Law* involved a good sized law firm, which had to be managed, suffered serious dissension, and was in business to make money. The firm contained a variety of specialized lawyers and staff members. The lawyers were ethnically diverse and there were numerous successful female lawyers. Some lawyers were inspiring and heroic characters; others were greedy anti-heroes. There were workaholics and playboys. The stories explored numerous difficult ethical issues and ranged over a large mix of civil and criminal matters. As in *The Defenders*, many story lines involved serious and controversial legal, social, moral and ethical issues; other story lines were played for laughs.<sup>47</sup>

*LA Law* had at least three significant narrative impacts on the future of legal television. First, many subsequent dramas were also set in good-sized, profit-seeking law firms, a pattern maintained in *The Good Wife*, *Suits*, *Franklin &*

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42. THE PALEY CENTER FOR MEDIA, <http://www.paleycenter.org/collection/?q=the+defenders&f=all&c=all&advanced=1&p=2> (last visited Mar. 12, 2012); *The Defenders* (CBS television series premiered Sept. 16, 1961).

43. *The Defenders: The Iron Man* (CBS television broadcast Mar. 10, 1962).

44. According to CBS, 90% of the audience approved of “The Benefactor,” the controversial episode about abortion from which all of the show’s advertisers withdrew their sponsorship. Papke, *supra* note 32, at 10. The *Defenders* episode was the subject of an episode on *Mad Men*, also called “The Benefactor.” The ad agency tried to line up new sponsors to fill the holes left by those who withdrew. See *Mad Men: The Benefactor*, AMC, <http://www.amctv.com/shows/mad-men/episodes/season-2/the-benefactor> (last visited Mar. 12, 2012)

45. Papke, *supra* note 32, at 14-15

46. See Michael Asimow, *Bad Lawyers in the Movies*, 24 NOVA L. REV. 533, 537 (2000).

47. See Philip N. Meyer, *Revisiting L.A. Law*, in LAWYERS IN YOUR LIVING ROOM, *supra* note 6, at 92-99.

*Bash* and numerous others. Secondly, the dramas had strong soap opera elements.<sup>48</sup> Unlike Perry Mason or the Prestons, these lawyers had personal lives, often quite unhappy. With the notable exception of *Law & Order* (in which the cops and lawyers apparently had no personal lives), all future legal dramas felt obliged to give their characters lives outside the office. The characters had family, friends, and often-turbulent romantic relationships. As the series progressed, the characters and their relationships developed and changed.<sup>49</sup> Third, many of the stories on *LA Law* foregrounded thorny ethical dilemmas. Frequently, the characters acted in a way that transgressed the mechanical ABA rules of ethics. William Simon characterized their ethical stances as situational or as “moral pluck,” meaning that they did what seemed right in the circumstances, regardless of the rules.<sup>50</sup> Slavish adherence to the ABA rules would have damaged the cause of justice and the best interests of the public, the lawyers, or the clients. Many subsequent shows, particularly *the Practice* and *Harry’s Law*, also involved ethical conundrums resolved by “moral pluck.”

#### D. *Harry’s Law: Harriet Korn*

*Harry’s Law* emerged in the 2010-11 television season to weak reviews but considerable ratings success. It represents an interesting reshuffling of various narrative themes traceable to *Perry Mason*, *The Defenders*, and *LA Law*—with a few original elements as well. The show was created by the astoundingly prolific David E. Kelley and it follows in the footsteps of his numerous previous law-based shows including *LA Law* (for which he was a writer, story editor, and ultimately the executive producer after Steven Bochco left the show), *Ally McBeal*, *Picket Fences*, *The Practice*, and *Boston Legal*—just to mention the legal shows. *Harry’s Law* stars the great actress Kathy Bates in the lead role of Harriet Korn, known to all as Harry, and it seems likely that the show’s commercial success resulted largely from Bates’ star power.

Harry is a burned out patent lawyer who was dumped by her former big firm and starts a storefront law practice in the Cincinnati ghetto. She is rather grouchy but somehow inspires affection and loyalty. Harry is joined by a junior partner, Adam Branch, (Nate Corddry), who is also a refugee from big firm practice. To help pay the bills, secretary Jenna Backstrom (Brittany Snow) sells fine women’s shoes (fortuitously abandoned by a former tenant). *Harry’s Law* is deeply rooted in the narrative structure of many lawyer shows that came before it, as a detailed analysis of some of the stories during the first season will show.

#### 1. *The Influence of Perry Mason on Harry’s Law—The Unjustly Accused*

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48. The creator of *LA Law*, Steven Bochco, pioneered this approach in *Hill Street Blues*.

49. Another likely impact of *LA Law* is that it sparked a boom in law school applications. See Mezey & Niles, *supra* note 23, at 121.

50. William H. Simon, *Moral Pluck: Legal Ethics in Popular Culture*, 101 COLUM. L. REV. 421 (2001).

*Client*

Like Perry Mason, Harry is a positive lawyer role model. She does a great job for her down-at-heel clients and obviously cares deeply for them. She is tough, skilled, and tenacious. Harry can't be intimidated. In the first season, fees are of little importance and Harry and Adam appear to be working for free. In one case, Harry accepts \$26 in quarters in an old sock for an armed robbery defense.<sup>51</sup> On *Harry's Law*, it seems that law is a helping profession and not a business. Their job is not "reasonable doubt for a reasonable fee," but the pursuit of truth and justice.

Like the iconic Perry, Harry and Adam have several factually innocent criminal defense clients. Other clients are not innocent, strictly speaking, but should receive compassion instead of prosecution, or are being radically overcharged for minor crimes, or should receive treatment rather than punishment.<sup>52</sup> In the Pilot episode, Harry makes an unabashed plea for jury nullification on behalf of Malcolm who was guilty of buying cocaine (a third-offense, carrying a 3-year prison sentence).<sup>53</sup> The defense doesn't work with the jury but it does work with the judge who gives Malcolm a suspended sentence. Harry and Adam then hire Malcolm (who wants to go to law school) as their paralegal. In the very next episode, Harry tries jury nullification again, this time on behalf of an 86-year old armed robber who had to resort to crime to avoid starving. This time jury nullification works.<sup>54</sup> In another episode, she wins parole for an innocent man who served 25 years for a murder he didn't commit.<sup>55</sup>

In perhaps the best innocent-client episode, "Send in the Clowns,"<sup>56</sup> Harry represents Ronald Parry, a large and threatening-looking black man charged with armed robbery. She takes over the case from an old friend named Marty Slumach, a bottom-feeding criminal defense lawyer who everybody considers to be "law-trash" and who has been suspended from law practice. Parry is obviously the victim of an erroneous eye-witness identification and a biased police lineup. Harry gets Ronald Parry acquitted in a powerful closing argument based on reasonable doubt. In her closing, Harry includes a stirring statement in support of "law-trash" defense lawyers, like Slumach, who go out every day and fight for their disreputable clients any way they can. Thus, the Ronald Parry case—great

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51. *Harry's Law: Heat of Passion* (NBC television broadcast Jan. 24, 2011). In "The Fragile Beast," Adam actually has a paying divorce client. This is exceptional. *Harry's Law: The Fragile Beast* (NBC television broadcast Mar. 14, 2011).

52. See "With Friends Like These," in which the client killed his law partner and is charged with first degree murder when it is evident that the killing was in self defense or at worst some form of manslaughter. *Harry's Law: With Friends Like These* (NBC television broadcast Mar. 28, 2011).

53. Malcolm had previously fallen on Harry while unsuccessfully trying to commit suicide. *Harry's Law: Pilot* (NBC television broadcast Jan. 17, 2011).

54. *Harry's Law: Heat of Passion*, *supra* note 51.

55. The parole board insists that the prisoner confess guilt for a crime he didn't commit—and then when he does, they don't believe he is sufficiently sorry. *Harry's Law: An Innocent Man* (NBC television broadcast Jan. 31, 2011).

56. *Harry's Law: Send in the Clowns* (NBC television broadcast Mar. 21, 2011).

lawyer gets innocent defendant acquitted—is straight out of the Perry Mason playbook.

The characters of Harry and Adam are far more nuanced than Perry Mason or the Prestons. Today's viewing public would never accept the simple uni-dimensional image of the heroes of old TV shows. Harry and Adam have their flaws and seem like real people, but at bottom the characters and the stories hearken right back to *Perry Mason*.

## 2. *Harry's Law—Involvement with the Community*

Almost all of Harry's clients are drawn from the local community and are mostly black. The prospects for a profitable law practice in that neighborhood are very poor. The community is a dangerous place to work. It has an abundance of urban problems, too many fast food joints, and plenty of street crime. Gangs control the neighborhood and the drug trade is deeply embedded.

The lawyers' close engagement with the black ghetto—and Kelley's obvious sensitivity to its urban problems and compassion for its residents—is an element of *Harry's Law* that seems innovative among modern lawyer shows, although some much older shows, such as *Storefront Lawyers*, embodied that theme. The grittiness of the environment is reminiscent of some police shows like *The Wire*.

In the finest episode of the first season, Louis Epps (who Harry had managed to extricate from his gang in a previous episode) is shot down on the street. Willie Blue, a kid who practices street medicine (and counts many gang members among his clientele) saves Louis' life and is prosecuted for unlawful practice of medicine. The tightly written story resolves in an unexpected and poignant way.<sup>57</sup> In another memorable episode, Harry mediates a dispute between two rival and scary gangs (actually they fire her for being too bossy, but Malcolm pulls it off).<sup>58</sup> Numerous other episodes dwell on the gang and drug problems in the community.<sup>59</sup> Unfortunately, after the first season, Harry and Adam move out of the ghetto and take on a higher class of clients, so that the community involvement theme is downplayed.

## 3. *The Influence of LA Law on Harry's Law—Law Shows As Soap Opera*

Like Perry and Larry, Harry seems to have little personal life (at least in the first season) and is totally dedicated to her law practice. Even she might have a budding friendship with the clownish personal injury lawyer Tommy Jefferson (who is notorious for his flamboyant television commercials). Everybody else on

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57. *Harry's Law: In the Ghetto* (NBC television broadcast Mar. 7, 2011).

58. *Harry's Law: Bangers in the House* (NBC television broadcast Feb. 21, 2011).

59. In "A Day in the Life," the police pressure Malcolm into making a drug buy from an old friend, in return for which they will expunge his prior convictions so he can go to law school. *Harry's Law: A Day in the Life* (NBC television broadcast Feb. 14, 2011).

the show definitely has a personal life. Adam has an affair with Chunhua, a beautiful Chinese woman who was originally a client; then he ditches her for Rachel, an old flame who works at a local big firm and is engaged to somebody else. Jenna and Malcolm also have a troubled romantic relationship. As the first season progressed, various soap-opera type stories developed, lending the story an emotional narrative arc that is borrowed from *LA Law* and many subsequent David Kelley shows, such as *Ally McBeal* and *The Practice*.

#### 4. *The Influence of The Defenders on Harry's Law—Social Issues on Law Shows*

*Harry's Law* is a direct descendant of *The Defenders*.<sup>60</sup> Every show in the first season grappled with one or more thorny political, legal and ethical issues packaged inside a traditional legal drama. The arguments are presented fairly and both sides get to make their point—but viewers are generally not in doubt about which side David Kelley intends them to choose.<sup>61</sup> In the Pilot, for example, Harry makes an impassioned argument for legalizing and regulating cocaine.<sup>62</sup> In other episodes, Harry makes a jury nullification defense based on the fact that the government has abandoned the poor to starve.<sup>63</sup> Adam and his opponent debate China's one-child policy (the client wanted to enforce the one-child policy so he fired an employee for getting pregnant with a second child).<sup>64</sup> One episode debated the problem of erroneous eyewitness identifications, biased police line-ups, and experts for hire.<sup>65</sup> Other episodes tackled PTSD,<sup>66</sup> age discrimination against an employee (done to save the jobs of less financially secure but younger workers),<sup>67</sup> liver transplant policy,<sup>68</sup> the prevalence of fast food outlets in the ghetto and the obesity epidemic—and whether the problem can be corrected by litigation,<sup>69</sup> whether policy toward refugees should be generous or stingy,<sup>70</sup> prosecutors who overcharge defendants,<sup>71</sup> and whether death penalty appeals should

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60. The interpersonal dynamics between Harry and the much younger Adam also seem inspired by the byplay between the younger and older Prestons on *the Defenders*. Harry tends to be more practical and calculating, Adam more brash and emotional.

61. In *Boston Legal*, Kelley's liberal political views were voiced by the protagonist Alan Shore but were balanced by the conservative politics of Denny Crane. However, Denny was a comedic figure whose right-wing views were so over the top that it must have been obvious to nearly all viewers that they were being caricatured. In *Ally McBeal*, the characters frequently debated a variety of social and personal issues, often involving a variety of sexual taboos.

62. *Harry's Law: Pilot*, *supra* note 33.

63. *Harry's Law: Heat of Passion*, *supra* note 51.

64. *Harry's Law: Bangers in the House*, *supra* note 58.

65. *Harry's Law: Send in the Clowns*, *supra* note 56.

66. *Harry's Law: The Fragile Beast*, *supra* note 51.

67. *Harry's Law: Bangers in the House*, *supra* note 58.

68. *Harry's Law: In the Ghetto*, *supra* note 57.

69. *Harry's Law: Wheels of Justice* (NBC television broadcast Feb. 7, 2011).

70. *Harry's Law: American Dreamers* (NBC television broadcast Feb. 28, 2011).

71. *Harry's Law: With Friends Like These*, *supra* note 52.



be foreclosed because of technical errors.<sup>72</sup>

##### 5. *Representation of Guilty Clients on Harry's Law*

It's easy to tell an appealing story about criminal defense lawyers who work for the acquittal of an innocent or unjustly prosecuted client. Obviously, however, the vast majority of a defense lawyer's work is defending clients who are almost certainly guilty. Professional norms require defense lawyers to mount a vigorous defense in these cases, regardless of the lawyer's feeling about the client or the crime. The defense lawyer's job is to force the government to prove its case beyond reasonable doubt, even if the occasional result is acquittal of the guilty.

On this point, the professional norm diverges sharply from the opinion of the general public. Many people loathe criminal defense lawyers for putting vicious criminals back on the street. People would prefer lawyers to protect the public interest by making sure criminals get convicted. Thus, if the goal is to keep the ratings up by making the audience happy (and likely to tune in next week and even buy the sponsor's products), the program creators will dwell on cases in which justice is served by acquittal of the client. The goal is not to accurately describe how real defense lawyers make their living, but to get the series renewed..

What position does *Harry's Law* take on this question? It is ambivalent. As already mentioned, in "Send in the Clowns,"<sup>73</sup> Harry gave a rousing closing argument in praise of trash-lawyer Marty Slumach for getting up every day to fight hopeless cases on behalf of despised defendants. On the other hand, in that very episode and others, Harry articulates the revulsion she feels representing clients who may well be (or who definitely are) guilty.<sup>74</sup> Similarly, as discussed in the next subsection, when Harry was stuck with defending a client that she knew was guilty and wanted her to present perjured testimony, Harry tanked the case, choosing to represent the public's interest over her duty of loyalty to the client.

##### 6. *The Influence of LA Law on Harry's Law—Legal Ethics*

*Harry's Law* frequently derives narrative value from conduct by the attorneys that violates the ABA ethics rules, yet seems to promote justice. For example, the rules require an attorney to present a settlement offer to the client.<sup>75</sup> They

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72. *Harry's Law: Last Dance* (NBC television broadcast Apr. 4, 2011).

73. *Harry's Law: Send in the Clowns*, *supra* note 56.

74. Similarly, on *The Practice*, Kelley's characters often bemoaned the emotional anguish they encountered in having to defend vicious criminals. Numerous episodes involved lawyers securing acquittals for clients who were in fact guilty. See Jeffrey E. Thomas, *Legal Culture and the practice: A Postmodern Depiction of the rule of Law*, 48 UCLA L. Rev. 1495, 1511-16 (2001). One character, Eugene Young, was berated by his ex-wife for setting a bad example for their son by defending criminals. Mezey & Niles, *supra* note 23, at 126.

75. MODEL RULES OF PROF'L CONDUCT R. 1.2(a), R. 1.4(a)(1) (2010).

also prohibit an attorney from contacting a represented party when the party's attorney is not present.<sup>76</sup> In one episode,<sup>77</sup> Tommy Jefferson represents a plaintiff claiming employment discrimination. Tommy expects big bucks from the case (and a big contingent fee). On behalf of the employer, a local small business owner, Adam offers to settle by giving the plaintiff her job back. Tommy refuses to convey this offer to the client. So Adam tells her of the offer directly and she accepts it. Tommy blusters about Adam's ethical violation, but Adam silences him by observing that if Tommy reports it, his own unethical conduct will come to light. Thus, Adam clearly violated the rules—but in the specific circumstances it seemed appropriate for him to do so.

The best ethical story in the first season occurred in the episode *A Day in the Life*.<sup>78</sup> Harry represents Justin Graham who claims he is factually innocent of murdering his wife. After the trial begins, the prosecutor discloses to Harry that the victim's finger has been found in Graham's safe-deposit box. Graham concocts an absurd explanation, so Harry concludes that he is obviously guilty and has been lying to her. Of course, Graham expects Harry to continue to put on a vigorous defense that will include introduction of perjured testimony. The judge will not let Harry withdraw and expects her to go out and do her job.

Harry just cannot handle the situation. Despite the stern warnings from the judge, she tanks the case by acknowledging the client's guilt in open court and is held in contempt. The judge reports her to the Bar's disciplinary committee and she is in jeopardy of losing her license. Fortunately for the continued survival of the series, she manages to talk the committee out of disbaring her and promises never to do it again. But the fact remains that the noble defense lawyer has betrayed her client in order to protect the public from the risk that a vicious criminal will go free.

A lawyer faces extremely difficult ethical issues when a client has confessed to the lawyer, but insists on an all out defense. Although ethicists have long debated the best solution to the problem, there is no firm consensus on what the lawyer should do (especially if withdrawal is not an option).<sup>79</sup> The problem of the client who confessed to the lawyer has often appeared in pop culture narratives and usually with the same outcome—the defense attorney betrays the client by insuring conviction (of this crime or some other crime) or by making sure the client is killed.<sup>80</sup> This is the one approach to the problem that no legal ethicist

76. *Id.*, R. 4.2.

77. *Harry's Law: The Innocent Man* (NBC television broadcast Jan. 31, 2011).

78. *Harry's Law: A Day in the Life*, *supra* note 59.

79. See Michael Asimow & Richard Weisberg, *When the Lawyer Knows the Client is Guilty: Client Confessions in Legal Ethics, Popular Culture, and Literature*, 18 S. CAL. INTERDISC. L.J. 229 (2009). The subject is treated in detail in Deborah L. Rhode & David Luban, *LEGAL ETHICS* 302-23 (5th ed. 2009).

80. See Asimow & Weisberg, *supra* note 79 at 238-48. The issue has arisen in numerous movies, up to and including *Michael Clayton* (2007) and *The Lincoln Lawyer* (2011). In the latter film, a lawyer confronts the ultimate conflict of interest—the client is guilty not only of this crime

would countenance.

While Harry's actions in selling out her client violated the rules of legal ethics, it seems likely that many if not most viewers of the episode believed Harry did the right thing and should not be disbarred. Had she done otherwise, Graham might have been acquitted and a vicious criminal returned to the streets. Harry's action fell squarely within the tradition of situational ethics ("moral pluck" as Simon called it<sup>81</sup>) as taught by *LA Law* and *The Practice*.

In these programs involving the defense of guilty clients, Kelley may have given us insight into his own feelings about the accepted professional role of the criminal defense lawyer. Historically, ethicists have divided between strong and weak adversarialism.<sup>82</sup> Strong adversarialists emphasize zealous representation and protection of client confidences. Weak adversarialists focus on the truth-finding function of trials, the obligations of candor toward tribunals, and the need to protect the reputation of truthful witnesses or other third parties. The weak adversarial approach honors the individual lawyer's conscience and allows space for the lawyer to make tactical choices that honor those values. Although Harry's tribute to trash-lawyer Marty Slumach looks the other way, the first season of *Harry's Law* suggests that Kelley is a weak adversarialist and, perhaps, that Harry did the right thing when she sold out Justin Graham.

#### 7. *Harry's Law and Its Predecessors*

Part II introduced readers to *Harry's Law* and traced the narrative features of *Harry's Law* to its most important ancestors—*Perry Mason*, *The Defenders*, and *LA Law*.

*Harry's Law* draws heavily on the innocent client theme of *Perry Mason* and on *The Defenders*' use of law and legal process as a prism to consider social issues. From *LA Law*, *Harry's Law* inherited its soap opera elements as well as its concentration on the use of puzzles in legal ethics as a narrative theme. However, the concentration of the first season of *Harry's Law* on the urban problems of the African-American community seems quite different from its predecessors.

### III. MEDIA EFFECTS AND TELEVISION LAWYERS

As discussed in Part I, there are two conflicting models that help us understand the effect of media such as television entertainment programming on those

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but also of another murder for which an earlier client is serving time in prison. The lawyer resolves the conflict by betraying the second client.

81. See text at *supra* note 50.

82. See Asimow & Weisberg, *supra* note 79 at 234-38. In Anthony Trollope's epic work, *Orley Farm* (1861), a team of lawyers represents Lady Mason in a forgery case. All are aware that she is almost certainly guilty, although she professes innocence. The lawyers have sharply different views on the merits of strong and weak adversarialism and what tactics are appropriate in Lady Mason's defense. Asimow & Weisberg, *supra* note 79, at 235 n.23.

who consume it. The cultivation approach posits that heavy exposure to oft-repeated themes on television will change or at least reinforce existing beliefs and attitudes among large numbers of consumers. In contrast, the viewer response approach posits that viewers will respond in a variety of unpredictable ways to television programming, making their own interpretations of the narrative elements of the program and sometimes opposing the messages transmitted by the programming. As discussed in Part I, I find both approaches valid and helpful.

There is plenty of anecdotal evidence to support the viewer response thesis that audiences make their own often-oppositional meanings from lawyer-based media products they consume. Many lawyers say they cannot stand lawyer shows because they are so silly and unrealistic (just as many doctors loathe medical shows). David Kelley's funny anecdote about the Texas lawyer, who told Kelley that he couldn't stand to watch lawyer shows, illustrates an oppositional interpretation. When the conversation turned to *Boston Legal*, the lawyer said "Wait. Wait. Boston Legal? I love that show. That has nothing to do with the actual practice of law."<sup>83</sup>

Similarly, jury consultant Cynthia Cohen, who has studied the responses of jurors to television, reports that many lawyers on television actually "improve public trust in real lawyers." *Ally McBeal's* character boosted competence perceptions of female lawyers in the 1990s, just as male lawyers received a boost in perceived trust when compared to Denny Crane [of *Boston Legal*] today.<sup>84</sup> David Papke reports that Francis Ford Coppola intended the *Godfather* movies as an indictment of American society that is like the ugly world of organized crime; the audience interpreted the films as a glorification of the strong family values of the mob.<sup>85</sup>

It would be interesting to conduct ethnographic studies of what viewers—particularly various subcultures of viewers—make of the steady diet of lawyer television. For example, how do frequent viewers of *Harry's Law* interpret the Harriet Korn character? A viewer response study might be structured like Cohen's study of *Ally McBeal*.<sup>86</sup> A researcher might compose a set of faux newspaper reviews setting forth the dominant interpretation ("criminal defense lawyers like Harry are noble fighters for justice"), an oppositional interpretation ("criminal defense lawyers like Harry are bad people who put vicious criminals back on the street), and a negotiated interpretation ("you can't take these lawyer stories seriously, but Harry is a lot of fun"). My guess is that viewers would vote for the negotiated interpretation first, the dominant interpretation second, and the

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83. David E. Kelley, *Creating Law Franchises on Television*, 1 BERKELEY J. ENT. & SPORTS L. (forthcoming 2012).

84. Cohen, *supra* note 16, at 27.

85. David Ray Papke, *Myth and Meaning: Francis Ford Coppola and the Popular Response to the Godfather Trilogy*, in LEGAL REELISM: MOVIES AS LEGAL TEXTS 1-9 (John Denvir ed., 1996).

86. See text at *supra* notes 24-25.

oppositional interpretation law third, but it would be interesting to find out.

The subject of the effect of lawyer shows on consumers might also produce an interesting cultivation analysis. As Part II of this article demonstrated, for over 50 years, we have been fed a steady diet of stories about heroic solo criminal defense lawyers fighting for clients who do not deserve to go to prison. From *Perry Mason* to *Harry's Law*, with numerous stops in between (such as *Matlock* or *The Practice*), we have absorbed countless stories about criminal defense lawyers who uncover the truth and skillfully manipulate the trial process to rescue deserving clients from the clutches of the criminal justice system.

I hypothesize that television has improved the image of criminal defense lawyers among heavy consumers of this programming. Granted, that image was never good to begin with, since many people dislike criminal defense lawyers. But it seems reasonable to assume that many consumers who dislike lawyers in general have learned from television that defense lawyers do good by achieving justice for their deserving clients. No doubt, many viewers have also learned that you need a tough and competent lawyer at your side when you are in trouble.

Of course, the impression conveyed by these shows is utterly false. Anyone who takes the messages of criminal-defense television programs seriously is doomed to frustration and disappointment. The vast majority of people in legal trouble will never have someone like Harriet Korn or Perry Mason at their side. At best, they might have a harried public defender anxious to plead out the case. Accused criminals are unlikely to receive what they perceive as justice (or even a fair fight) because they cannot find a heroic lawyer to work for free and they lack the resources to pay for one.<sup>87</sup> The shows vastly misrepresent the nature of criminal defense practice. There are very few criminal trials, because large numbers (estimated at 95% or even more) of criminal defendants plea bargain rather than takes cases to trial.

But what would cultivation analysis tell us? Does it make people who watch shows like *Perry Mason*, *The Practice*, and *Harry's Law* respect lawyers (especially criminal defense lawyers) more than they would if they didn't watch the shows?<sup>88</sup> Do the shows improve the public perception of lawyers generally? It could certainly use some improvement.<sup>89</sup> Lawyers are the most detested profes-

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87. See Deborah Rhode, *ACCESS TO JUSTICE*, ch. 6 (2004) for a devastating account of the failures of the existing system to afford indigent criminal defendants access to justice. Rhode claims that this situation is in tune with public attitudes, since about three-quarters of Americans believe that too many criminals get off on "technicalities." *Id.* at 124. As a result, there is little political support for additional public investment in indigent criminal defense.

88. One well-controlled cultivation study of heavy watchers of *LA Law* found that their opinion of lawyers was much higher than that of the general public. Michael Pfau et. al., *Television Viewing and Public Perceptions of Attorneys*, 21 *HUM. COMM. RES.* 307 (1995).

89. For discussion of the image of lawyers before and after the 1970s, and the possible effect of negative lawyer movies on that perception, see Asimow, *supra* note 46.

sion in America, only slightly less distrusted than car salesmen, advertising executives and stockbrokers.<sup>90</sup>

However, a cultivation study would present substantial methodological problems. It would be difficult to solve the problem of confusing correlation and causation<sup>91</sup> because people who like lawyers might be disproportionately represented in the audiences for lawyer shows; people who detest lawyers might shun the shows in favor of other entertainment. Moreover, there are so many reasons why people might hate lawyers<sup>92</sup> that the effect of television and movies might be swamped by other influences. Finally, numerous television shows, particularly the very long-running *Law & Order* and its spinoffs, have glamorized prosecutors and treated defense lawyers as unpleasant and untrustworthy weasels.<sup>93</sup> These prosecutor-based shows probably reinforced the prevailing public distrust of criminal defense lawyers and confounded the positive effects on the public perception of lawyers created by other shows running during the same seasons. Consequently, it might be difficult to conduct a rigorous cultivation study about the effect of television shows on the image of lawyers, even though we might suspect that these effects do occur.

#### IV. CONCLUSION

Television is one of the most dominant influences in our lives. Most people consume enormous amounts of television programming, year in and year out, starting with early childhood. The stories told on television shows undoubtedly affect those who consume them. Most of what people know (or think they know) about law, lawyers, and the legal system—as well as many other subjects of which they have little personal knowledge—was learned in television school.

Over many decades, television programmers have fed us a steady diet of televised drama about law and lawyers, particularly shows glamorizing the work of criminal defense lawyers in representing defendants who were innocent (or who did not deserve to be convicted and imprisoned). *Perry Mason* pioneered this narrative structure, which continues in *Harry's Law* as well as in numerous other television shows, past and present. Lawyer shows are often well written

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90. According to the Gallup Poll's 2009 rankings of the public perception of the ethics of various professions, lawyers plunged 5 percentage points from 2008 to 2009. Lawyers are at a miserable 13%, topping only car salesmen (6%), stock brokers (9%), and advertising practitioners (11%). Nurses topped the list at 83% and police officers did very well at 63%, climbing 7 points from 2008 to 2009. See Jeffrey Jones, *U.S. Clergy, Bankers See New Lows in Honest/Ethics Ratings*, GALLUP Economy, Dec. 9, 2009, available at <http://www.gallup.com/poll/124628/clergy-bankers-new-lows-honesty-ethics-ratings.aspx> (last visited Mar. 12, 2012).

91. See Shanahan & Morgan, *supra* note 10.

92. See Asimow, *supra* note 46, at 536-49.

93. See Rapping, *supra* note 6, at xxiii-xxv; 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 (2008). The tremendous number of police and forensic dramas on television also suggest to viewers that those on the law enforcement side are the true guardians of justice, not defense lawyers who are often portrayed as interfering with justified efforts to catch and punish vicious criminals.

with excellent production values. The lawyer characters, like Harriet Korn, are empathetic and played by familiar and well-liked actors. Undoubtedly, these shows affect the public perception of criminal defense lawyers.

I speculate that shows like *Harry's Law* represent lawyers (particularly criminal defense lawyers) in a favorable (though highly misleading) way and that many viewers accept that message. It would be interesting indeed to learn whether viewers actually take seriously the positive message about criminal defense conveyed by these shows, whether viewers reject this portrayal and view defense lawyers as slimy, or whether viewers enjoy the shows and pay little or no attention to the message. Only a well-conducted viewer response study can give us the answer to this question.