The Drama of the Courtroom: 
Media Effects on American Culture and Law

Kristin D. Brudy
Psychology Honors Thesis
Professor Norman Finkel

March 31\textsuperscript{st}, 2006

Keywords: Law, psychology, film, television, theatre, narratives, jury decision-making process

Introduction

A strange fact of American life is that people absolutely love the drama of the courtroom. The current primetime lineup (as gotten from network websites) contains the legal dramas of Boston Legal, The Practice, CSI, CSI: Miami, CSI: NY, NCIS, Courting Alex, Cold Case, Close to Home, Medium, Law & Order, Law & Order:
Criminal Intent, Law & Order: Special Victims Unit, Crossing Jordan, Conviction, and The West Wing. In fact, *Law & Order* is the longest running primetime show in America whose reruns can reliably be found on many cable networks (Internet Movie Database), while live courtroom trials are televised around the clock on Court TV. John Grisham has written fifteen novels focusing on law, all of which have had it onto *The New York Times* Bestsellers List and seven of which have been turned into movies (Doubleday, 2006). The wildly popular musical *Chicago* is the longest running revival on Broadway and was freshly remade into a blockbuster film starring major celebrities in 2005. Apparently, the general public loves (or loves to hate) the upstanding Atticus Finch, the befuddled yet dedicated Perry Mason, the sardonic Lennie Briscoe, and the wily Billy Flynn.

Regardless of the medium, mass entertainment is historically imbued with legal theatrics, specifically those pertaining to the courtroom. In fact, the mere mention of a trial is sufficient to conjure up the typical scenario: a somber room adorned with deep mahogany wood accented with brass; an imposing judge’s stand complete with a black robed and stern-faced arbitrator who will guide justice; the attentive jury comprised of completely ordinary-looking citizens; the legal tablets strewn on the tables of the defense and prosecution; and most importantly, the attorneys fighting for their clients’ cases. The general storyline to be presented is also well known: the righteous attorney works to free his client despite a mountain of evidence against them, culminating in a verdict that properly upholds justice and the law, both of which always win out in the end.

As this is undeniably what most Americans imagine law to be, the question leads to the origins of this image. The true legal system is nothing like the unvarying stereotype. Courtrooms, lawyers, and crimes fluctuate greatly: every court does not lend itself to impressive grandeur, not every lawyer has perfect cross-examination skills, and most importantly, homicide cases make up a relatively small portion of trials. Moreover, the average American has little direct experience with the legal system. Therefore, almost all knowledge is directly derived from the legal dramas found in print, television, and film.

But what does this matter? People have the freedom to take in any form of mass entertainment that they
want, regardless of subject matter. Unfortunately, these legal dramas are often representations based on false premises and foundations. They do not adequately show the legal system or its operations, relying instead on fictitious situations and formulas whose sole purpose is the creation of good drama. Legal canon and procedure are ignored, and diversity of people and situation are eliminated in favor of simplified but theatrical formulas. In addition, negative portrayals of lawyers that have painted them as greedy and immoral have become much more prevalent. In this case, entertainment plays a much greater role than just providing enjoyment; it becomes an erroneous source for information that shapes the audience’s realities, altering their view of the real world.

It is my opinion that this is not harmless. Media forwards a perversion of law onto the public for monetary benefit and consumer enjoyment while destroying the integrity of the judicial system. Particularly affected is the profession of the lawyer; while views of the justice system can be ambiguous, the public opinion of lawyers has dipped radically in the past twenty years. This destruction has widespread implications that have been theorized and documented extensively for the past several decades by doctors of law, sociologists, and psychologists. They have found that legal dramas can form unconscious yet lasting biases and preconceptions in potential jurors, who then cannot function impartially within the system. Biases also create mistrust of law, which leads to a failure of justice.

The question becomes: how debilitating is this situation to the integrity of the law? Juries are required to be objective and balanced in their deliberation of the evidence presented, resulting ultimately in a verdict that upholds justice. If the jurors are unable to shake their impressions, then no amount of jury instructions can counteract the extremely compelling narrative in the closing argument of the prosecutor; he appealed to what they are searching for and regardless of content, he sways their judgment. If the juror is expecting a dramatic walnut paneled vaulted courtroom with the traditional judge’s stand and subdued lighting, then a modernized courtroom with blue walls and a more natural setup will definitely confound the juror’s own views of validity and culpability normally signified by a particular atmosphere. In this way, the media that surrounds the population is creating an unfair construction that is directly affecting the capacities of juror and the veracity of justice through propagated preconceptions and falsehoods.
Given this, I have set out to comprehensively examine the effects of media on the average person. I will accomplish this by tracing the evolution of the court and the lawyer figure in media to modern day and mapping out the effects on both culture and the legal system. First, popular opinion about the legal system will be broken down into positive and negative views, and theories will be presented to account for the apparent dichotomy of feeling that exists today. Second, the implications for the legal system will be addressed, tying in investigations into various models of understanding law and research on bias, narrative, and jury decision-making. Finally, I will challenge the traditional scholarly views which have approached the conception of law and media in what I believe in a skewed and incorrect fashion, as well as propose ways to reverse the great influence that media has exerted over the American public in order to level the legal playing field.

**Part I: The Evolution of Law in the Media**

Tracing the evolution of the law through the decades is most easily done by focusing on the role of the lawyer. However, this evolution must be divided between film and television due to opposing trends between the two mediums’ portrayals of law that began in the 1950s and 1960s. A release from censorship allowed the film industry to begin producing negative images of the law in movies played to the public. The negative images would become increasingly worse, reaching a peak in the 1980s and 1990s. Today, cinematic views of law maintain a very diverse mix of legal images and storylines but also rely heavily on the negative lawyer image. Even though the release from censorship happened relatively early in the advent widespread television consumption, television voluntarily retained the virtuous lawyer and triumphant justice system that the censors had demanded. This trend continues today with very little exception, as evidence by the stable expected plot lines and archetypal characters. (Mezey, 2005; Chase, 1986)

This discrepancy can be attributed to several causes. First, the content of the plot differs greatly based on the structure of the medium. Movies derive 60% of their profits from ticket sales and video rentals, which gives them
motivation to sell tickets. Therefore, a movie can be about challenging and controversial matters as long as a particular audience niche exists for it. In fact, people often seek movies with challenging subjects that they can relate to, creating incentive for more complex subjects. Independent film studios further increase diversity because they produce low-budget films whose profit margins are smaller, meaning that a greater number of films can cater to even more exclusive and specialized audiences. Conversely, television’s reliance on advertisers for funding creates a need for huge audiences as well as a need for specialized subject matter that best conveys the advertisers’ messages. This narrows possible plot topics considerably, since only ones with widespread appeal can be utilized. (Mezey, 2005)

Secondly, the narrative structure of the medium heavily factors in. With television, each network has a limited number of slots for broadcast. The goal of each show should be to create a series that will be watched for several seasons to secure possible syndication rights. Thus television plots are more character-driven, offering a range of sympathetic individuals for viewers to identify with. (Mezey, 2005; Asimow, 2000) This identification causes them to truly “buy into” the show and continue to watch. Since the focus is on the people and the time slot is small, the plots in television legal dramas tend to be very simple and prescribed. This sanitized plot format is dictated by the audience’s refusal to empathize with only evil characters or watch a show that is too depressing. Movies rely mostly on plot and thus lack the need for positive and empathetic characters. (Asimow, 2000) This medium is then free to follow negative character arcs. This superior artistic freedom is also a reason why film is used more frequently than television as a tool for political and social statements.

Thirdly, legal dramas with a negative focus are inescapably more complex and deep than positive representations; they usually include a “layering effect” between characters that explains the immoral outcome. Only film can delve into this complex realm because of its longer runtime, greater focus on plot, larger budget, and increased production time. Additionally, convoluted drama requires an emotional commitment that only film audiences have, whereas a typical television viewer expects more immediate gratification.

Lastly, the opposing trends found in the decades after the 1960s are not as separated as they appear. Many
films may portray law negatively but all legal films share a common foundation in the idea of divine American justice, deviations from which create the plot development. Likewise, television and film do not differ in ideology as much as final result, an important distinction to remember in evaluating media influences on law. (Mezey, 2005)

**FILM**

The lawyer has become one of the most potent and overrepresented professions in American drama. Today, there are two typical lawyer images: a virtuous and perspicacious defense lawyer who stands for his client, regardless of the odds and in the face of mounting adversity, and a sleazy and immoral lawyer who is filled with corruption and will betray justice for money. The former can be traced back to 1939 but would not become a part of mass culture until the 1960s. (Chase, 1986) During the Depression-stricken 1930s, both people living in poverty and in the moderate means had little contact with lawyers, who were in turn underpaid and could work only for a wealthier and smaller portion of the population. Thus the primary lawyer figure in very popular novels and theatrical plays was the “New York shyster lawyer” who was usually paired with wealthy business owners and depicted manipulating the poor for his own benefit. In contrast to this figure stood the valiant blue-collar heroes who worked to correct these unfair situations and denounced the corruption-riddled lawyers and the whole justice system. (Chase, 1986) This image was perpetuated long after the Depression due to lingering public distrust and the advent of the pessimistic 1940’s film noir genre that focused on nihilistic and fraudulent crime dramas. (Asimow, 2000)

However, a curious trend can be found in the film of this same time period. The majority of films focused on a more positive character that either carefully counterbalanced the typical negative lawyer figure, or stood without opposition from any evil force at all. This positive lawyer figure was by and large blandly helpful, but lacked the remarkable righteousness and dependability seen in later virtuous lawyer prototypes. This figure was not a reflection of society; rather, his presence can be initially accounted for by an informal set of regulations voluntarily assumed by the film industry to head off governmental censorship of content and keep institutions like the Catholic Church away. Despite their efforts, the Hays Code and Production Code Administration (PCA) would be formed in the early
1930s and demand the power to censor all films released to the public (Asimow, 2000). Under the Hays Code, all studios were compelled to submit scripts to guarantee conformity to code, a policy that was enforced by $25,000 violation fines. Furthermore, movie theaters could only show films that had been approved by the PCA under risk of heavy fines. (Mezey, 2005)

One strict tenet of the Codes was that “law – natural, divine, or human – shall not be ridiculed, nor shall sympathy be created for its violation” and that “special care” should be taken in representing any activity of the legal system or law enforcement (Mezey, 2005, p. 136). To reinforce that the moral lawyer and justice was always right, the Codes mandated obligatory punishment and castigation for any immoral lawyer portrayals (Asimow, 2000). For example, in the famous 1941 noir film The Maltese Falcon, officials from the PCA dictated that, "[Sam] Spade's speech about the district attorney should be rewritten to get away from characterizing most district attorneys as men who will do anything to further their careers.” In Double Indemnity (1944), the PCA refused the original script because, “at the end of the story, the crime is confessed ... to the auditors of the insurance company, who proceed thereupon to withhold this information from the proper legal authorities and successfully effect a gross miscarriage of justice by arranging for the escape of the two murderers." (Mezey, 2005, p. 138) Consequently, movie producers were forced to produce wholesome prosecutors, especially if they wished to appeal to popular sentiment and portray the evil lawyer that filled the novels and theaters of that time. However, even these stringent rules could not suppress all negative legal portrayals. Many films were shown throughout the country that depicted sinister legal characters and dark plots. These films came mostly from the film noir movement of the 1940s, whose dark thrillers were overlooked the PCA due to their low budgets.

The real Golden Age for law occurred in the late 1950s and early 1960s as a sudden plethora of movies focused on the heroic lawyer stereotype. Two illustrative examples from this era are Anatomy of a Murder (1959) and To Kill a Mockingbird (1962). In the former, the humble James Stewart plays a small-time lawyer Paul Biegler who successfully defends a client charged with murder against the condescending and derisive prosecutor played by
George C. Scott. Biegler’s quest for truth is further endorsed by his lack of monetary interest and his genial personality. *To Kill a Mockingbird* (1962) starred Gregory Peck as Atticus Finch, who defends an underprivileged black defendant wrongly accused of rape against a poor white family in the Deep South. Finch displays impeccable courtroom skills, but ultimately loses the case in the impossible face of entrenched Southern racism. However, the journey through the trial allows him to showcase his desire for justice, extreme morality, and intense compassion. (Asimow, 2000) Along with *12 Angry Men, Witness for the Prosecution*, and *Inherit the Wind*, these films make up the “finest hour” or American courtroom drama. Their represent a “complete integration” of the upstanding lawyer figures into popular culture – “an elaborate image unprecedented… within the existing history of American mass cultural iconography” (Chase, 1986, p. 284). Their influence lies in “the way they all championed the rule of law, glorified lawyers, and portrayed a neutral, objective legal system that reached just results.” (Mezey, 2005, p. 133-34)

The explanation for this transition cannot be attributed to the Production Codes, which were dismantled in the early 1960s with the rebellion of the film industry. The real explanation may be that this blossoming of positivism was a reaction inversely related to the decline McCarthyism. The American people started to realize the extent to which their individual rights had been savagely battered during McCarthy’s Communist witch hunt – it had been a time of blacklists, loyalty oaths, and unjustified jail time. Most disconcerting was that during this time, McCarthy’s supporters acted with an absolute lack of restrictions and society turned a blind eye to its ravaged civil rights. (Chase, 1986; Asimow, 2000) The honorable lawyer was their chance to redeem society from their own shameful failings while righting the sense of fairness and justice that the legal system was based on. This virtuous lawyer was clever, ethical, and devoted to his clients, and promoted American values with a special focus on respect for law. He also lacked any human failings, which inadvertently could make him seem emotionless and a bit square, but this issue was offset with his exceeding decency and intellect. Additionally, the films themselves were brilliant – well written and acted, incorporated with popular sentiment, and visually impressive. After years of poorly made anti-
Communist propaganda, the popularity these films was inevitable. (Mezey, 2005)

However, the 1970s re-introduced the negative lawyer figure into the cinematic repertory in such films as Carnal Knowledge, The Godfather, and The Godfather II. These criminalized lawyers are crude models for what would emerge as the really “bad lawyers” seen in approximately 68% of legal dramas from1980s and 1990s. These lawyers heavily abuse alcohol, like Frank Galvin in The Verdict and Lucien Wilbank in A Time to Kill. They are also promiscuous and make bad decisions in choosing partners. This is especially true if they are female – Laura Fisher in The Verdict and Teddy Barnes in Jagged Edge are both examples of the femme fatale roles that female lawyers are usually restricted to (Walton, 2001). Most of all, they are incompetent in the courtroom, and a look into their wretched and desolate personal lives reveals them to be insensitive, greedy, and egotistical. Examples of these movies include The Verdict, Cape Fear, My Cousin Vinny, The Devil’s Advocate, The Firm, The Rainmaker, Regarding Henry, Philadelphia, Liar Lair, and Justice for All. (Asimow, 2000)

The return to the negative lawyer image can be found in the relationship between society and the legal system during this same time. First, annual salaries of lawyers rose, which fostered the belief that lawyers were overcharging for services. Additionally, an increase of “frivolous litigation” corresponded with a dramatic increase in the amount of active lawyers, leading the public to construct a purely hypothetical correlation between the two. Secondly, the occurrence of highly publicized trials brought controversial law right into the living room of the American public, who subsequently judged what they saw. Cases like OJ Simpson’s trial and Kenneth Starr’s hearings created dissatisfaction within public opinion that only increased with inaccurate media reporting and dubious legal techniques. Thirdly, the increasing rates of bankruptcy, crime and divorce meant that more people were experiencing lawyers and the legal system under unfavorable conditions. This also overlapped an increase in governmental regulation that created public displeasure. Lastly, advertising for legal services increased considerably in the 1980s. These ads included television spots promoting debt evasion and phony injury lawsuits that were regarded as sleazy and immoral by television viewers. (Asimow, 2000)
A good example to illustrate the current dichotomy of law portrayals can be found in *The Verdict* (1982). This movie presents “a hegemonic, common-sense understanding of justice” which “demonstrates both law's inherent weaknesses and its role as the foundation of justice in our society” through the eyes of a typical 1980s negative lawyer figure. (Mezey, 2005, p. 153 - 54) It contains actual direct criticisms of lawyers, power and influential social institutions such as the medical society, the Catholic Church, and the law. Played by Paul Newman, the main character Frank Galvin is a typical bad-lawyer figure – a fallen alcoholic lawyer who neglects a medical malpractice suit until ten days prior to trial. However, this movie is set apart by the rehabilitation of the bad-lawyer figure in the movie: as he prepares for the trial, Galvin finds his faith reawakened to the power of justice and his job. He proceeds to fight the powerful institutions trying to deter truth and justice, which prevail in the end. In this way, *The Verdict* shows the immense power held by lawyers, doctors and, clergy over their helpless dependents, and chronicles how desire for more power can cause them to abuse their status. The film juxtaposes this corruption with the inherent strength found in the jury, which upholds the truth with some guidance from Galvin. Thus, the virtuous-lawyer figure and the integrity of the legal system are upheld even as both are being discredited as corrupt. (Asimow, 2000)

The lawyer’s passage through film has been a difficult one, and the image of law is battered evidence enough. Despite periods of redemption caused by censorship and national crisis, the lawyer has retained a fairly steady negative connotation through the past century. While personal contact with the legal system has increased considerably among the present general population, these meetings have been tainted by the negative circumstances of the situations, shifting the client focus away from the actual procedures to the unhappy emotional context. This communal pessimism has infiltrated popular culture and been expressed in cinema due to the structure of the industry. Implications for this occurrence are varied but require background knowledge of televised legal drama.

**TELEVISION**

Despite the large number of attempted series, television legal dramas have changed very little since their
inception in the 1940s. The earlier generation of shows differs very little from modern-day version as far as plot and basic characters are concerned, showing a lack of diversity that developed in film. These constant factors are best mapped through examination of popular television shows throughout the decades, focusing on overall message and character portrayal.

Television saw its first legal program in 1949. Aired on the Dumont Network during Tuesday primetime, *The Court of Current Issues* featured debates between well-known public figures overseen by a real judge; at the conclusion of each show a twelve person “jury” gave a “verdict.” The next year brought the exploits of Detective Dick Tracy and Captain Videon. Soon television would have a countless law and cop shows, most of which were unpopular dramas doomed to fold after a short time. However, the one common thread found in all of them was the plotline: “just, intelligent, even heroic law enforcement officials quickly solving crime and invariably fostering justice” (Mezey, 2005, p. 115).

However, the defining milestone for significant popular culture attorneys can be found on September 21st, 1957 when the first episode of *Perry Mason* aired on CBS. Focusing on the legal practice of a single upstanding attorney played by Raymond Burr, this show would run for ten seasons and become both the most successful legal drama and one of the most popular shows in television history. Easily one of the most recognizable legal characters in popular culture, Perry Mason is the most archetypal and flawless virtuous-lawyer figure to ever grace television. Kind, intelligent, and moral, Mason would manage to win over even stubborn and uncooperative clients, rising above their trifling nature in his quest for truth. (Kitei, 1999) His cross-examination skills were so perfect that he won every single case with no exception, concluding each episode with a highly marketable dramatic flourish – the witness would break down and confess in front of the whole court, unable to stand up to Mason’s relentless barrage of questions. In this way, Mason showcased his considerable skills and faith in justice while totally encompassing American values. (Mezey, 2005)

Another early television phenomenon was ABC’s 1960 drama *The Fugitive*. This show focused on Dr.
Richard Kimble, played by David Janssen. Kimble was a doctor wrongly accused of killing his wife who escaped before his execution and became a renegade, fleeing the law. Each episode, Kimble seeks the one-armed man who he believes killed his wife while eluding capture by Lt. Phillip Gerard, the officer pursuing him. *The Fugitive* stretched out the suspenseful drama for four seasons, and its finale was watched by 72% of the television audience, making it one of the most watched finales in history. This series has a more subtle message than *Perry Mason*, one that concerns itself more about the legal system itself: if you are innocent, do not fear the law because it will always prevail in the end. Additionally, Kimble’s escape indicates a new concept, that sometimes the legal system cannot do it alone and must be aided by citizens. (Mezey, 2005)

While the next fifteen years hosted many successful cop and P.I. programs, they were also characterized by a total lack of success for many bland legal dramas. It wasn’t until the 1986 arrival of *L.A. Law* that lawyers again took the focus of a highly successful television show. Aired during NBC’s Thursday primetime slot, *L.A. Law* would have one of the broadest and deepest impacts on popular culture than any other legal drama in history. Created by Stephen Bocho of *Hill Street Blues* fame, this program completely broke conventional storylines. It was set in a high profile private firm and reflected the booming economic success of the mid-1980s. Each episode was rife with expensive status symbols – flashy cars, big houses, and pricey clothes – and chronicled how the lawyers were able to afford such luxuries. (Mezey, 2005; Friedman, 1989)

The “heroic” main characters were not venerated for their morals or virtues, but for their wealth, status and beauty. The characters all possess major flaws, a key difference from previous television dramas (Friedman, 1989). They lied and dealt in shady transactions to win cases, made unfortunate choices regarding their sexual activities, and valued money highly. Despite this superficiality, the virtuous-lawyer stereotype can be found embedded in the series because the characters avoided becoming overly sleazy or dangerous by their dedication to the legal system. Part of the appeal came from the attorneys’ ethical actions; it was not that they avoid morally objectionable actions, but that they turned around to “actively and ingeniously confront” the tough case topics (Simon, 2001, p. 430). The
attorneys’ enthusiasm for the litigation material made law exciting and engaging for the first time. Because of this, *L.A. Law* also became the first legal drama to actually focus on genuine legal concerns, even if it did so with a veneer of superficiality.

Dozens of legal dramas have been created since the premiere of *L.A. Law*. Modern day television features less series dramas, but an overwhelming percentage of what does air focuses on the legal system. One of the most popular is the NBC crime drama *Law & Order*, currently in its sixteenth season. *Law & Order* offers up the typical positive view of the legal system but does so in a very unique format. Each episode begins with the same spoken lines:

“In the criminal justice system, the people are represented by two separate yet equally important groups: the police who investigate crime and the district attorneys who prosecute the offenders. These are their stories.” ([www.imdb.com](http://www.imdb.com), 2006)

The plot was dedicated to showing the interactions between police and the legal system, devoting half the time to each side. Like *Perry Mason*, the plotlines vary little and stick to basic crime stories of homicide. Since a trial always occurs in the second portion of the episode, there are no plea bargains or other legal measures that are very customary in the real legal world. In the hearing, the guilty are almost always convicted; transgressions of the system always are accompanied by a justification that assures the audience that the case is specific and rare and not indicative of a system failing. Unlike *Perry Mason*, the main lawyer characters are not stable and confident; they plagued by troubled histories and display major human flaws such as alcoholism and promiscuity. These problems are remedied by their redeeming hard work and dedication to justice. (Mezey, 2005)

David E. Kelly, the creator of *L.A. Law*, launched a new series around the same time called *The Practice*. On the surface, this television program is notable for its deviations from a stereotypical legal plotline. Set in Boston, it focused on criminal defendants and plaintiffs who were suing large companies. This series was darker and more dangerous than previous legal dramas: the clients routinely suffered from terrible injuries, the attorneys were threatened by others in the system, and moral lines were heavily blurred. (Simon, 2001) The attorneys of *The Practice* did not
always win and often their loss was a transgression of justice. Additionally, they successfully represented a client while fully aware of the client’s guilt or dishonesty (Kitei, 1999). Conversely, prosecuting attorneys and presiding judges were shown to be vicious and immoral in their attempts to convict. (Mezey, 2005)

Despite these distinctions, the core of *The Practice* still manages to return the positive message found in all of television’s legal dramas. When faced with an obviously guilty client, the lawyers are always unwilling to take them on and forcefully voiced their displeasures even though they eventually defend them. This would be truly ground-breaking except that each episode includes the lawyer explaining or justifying their action: someone has to step up because the system requires them to function, and that their presence ensures that innocent people are not wrongly convicted. Suddenly these flawed characters are vaulted past simple heroism into a higher realm of honor that borders on martyrdom of the legal profession – they are so serious about the legal system that it is their personal duty to uphold it no matter what, even if they cannot morally self-assert themselves based on their own beliefs. As the series progressed, this martyr effect was amplified when attorneys were attacked by clients. Despite this increased danger potential, the characters still insisted upon doing their job. Overall, *The Practice* failed to break new ground.

It resorted to the obvious distinctions between the ineffective bad guys and the triumphant good guys so that “our discomfort with the existence of the morally ambiguous criminal defense attorney was assuaged by her important role in the criminal justice system, which for all its imperfections, is mostly effective, just, and superior to the imaginable alternatives.” (Mezey, 2005, p. 127)

Between 1949 and 1987, 134 police dramas were created, 17 of which would run between five and nine years. The count of TV courtroom dramas done in 1984 already had reached 27 primetime series, a number that has definitely increased in the past 22 years. Unlike film, the history of legal drama demonstrates the static trends based on prevailing justice and the mythic lawyer standard that originated in the 1950s. The positive reinforcement of a belief in law is the metaphorical cockroach of television – it can be found somewhere in all television legal dramas notwithstanding surface negativities or serious variations on the standard form.
This can be attributed to interactions between the general sentiments of the public and structure of televised programming. The long history and high ratings of legal dramas demonstrate that audiences enjoy legal dramas. These legal dramas traditionally fulfill the desire for faith in justice. Television’s funding requires broad appeal so the necessity for empathetic characters is born out. It is a cycle that has resisted significant alteration and will probably never truly be broken unless a huge upheaval of either part occurs.

**Part II: Implications for Culture**

Popular culture is defined as beliefs and values held by the common people as defined by books, movies, television, music, magazines, and other prevalent media forms. Interconnected to popular culture is legal culture, which is made up of thoughts, positions, and principles that society holds regarding law. The two systems exist concurrently in a cycle: popular culture reflects legal culture while popular legal culture creates popular culture. Given this, the public is definitively affected by the media they view. What must be measured is how firmly these effects cement themselves in people. This section will address some of the vast research done on media and culture in an attempt to better understand the whole picture. (Friedman, 1989)

**Beliefs in Public Opinion**

These trends in television and film have been found to coincide with a rising tide of contempt for the lawyer. A 1997 Harris Poll found that already low opinions of lawyers had further deteriorated at a rate faster than any other profession. By 1977, 36% of people believed that lawyers had impressive prestige as compared to 19% in 1997, and only 7% expressed confidence in law firms, the lowest rating for any institution ever polled. However, an ABA study conducted in 1999 showed that 30% of people were extremely confident in the justice system but only 14% of those people had great confidence in lawyers. Conversely, 42% of the 27% who said that they had little to no confidence in the justice system also expressed no faith in lawyers. This study also revealed that litigation attorneys were regarded much more harshly than “transactional attorneys” who handled such affairs as real estate and
contracts. (Asimow, 2000) Overall, it seems that confidence in the legal system remains steady as opinions about the enforcers themselves have fallen greatly.

**Evaluating The Internal Interactions of Media**

On one hand, television is the most dominant force in culture today. It goes beyond mere entertainment – it is “our marketplace, our political forum, our playground, and our school; it is our theatre, our recreation, our link to reality, and our escape from it.” Television has come to replace newspaper, radio, and literature as the source for information. A recent study by Fox Television estimates that 98.2% of Americans own at least one TV set that is playing for an average of over seven hours a day and 39 hours a week (Dunwoody & Salzmann, 2005; Hans & Dee). A 1990 Nielsen poll showed that the average American watches over thirty hours of TV per week, a number which surely has increased due to the expansion of networks available through digital cable. Psychology studies have revealed that people use TV programs instead of actual human companions (Dunwoody & Salzmann, 2005). The majority of TV legal dramas viewed will reinforce a basic positive view of the justice system, even in the presence of negative aspects such as the demonization of the “bad guy” or an immoral lawyer.

While television is a heavy presence in the daily routine, movies are viewed comparatively less often. How then does the negative imagery pervade common attitude? The answer lies in the very medium itself. The experience of being in a movie theatre provides a much more intense emotional experience due to the sheer immersion in the content. First, studies have shown that material watched on a larger screen produces a more intense reaction in the viewer and a greater sense of realism regarding the material. The viewer is also more likely to feel like a participant in the occurring action due to the greater amount of the visual field filled by a large screen. Secondly, the act of movie-going greatly factors in. While television choices can be arbitrary and chosen out of boredom, the commitment and resolve that goes into a trip to the movies creates a greater sense of focus. The relative infrequency of movie viewing as compared to frequent TV actually makes the film a more unforgettable and definite occasion. There is also the social mentality of a movie theatre due to the presence of an audience. TV is generally viewed in
small groups while a movie theatre is filled with people all bound by one cause, reacting as a set. Thirdly, some reports suggest that negative images are more easily remembered. Since movies carry more negative situations that people are more focused on, it seems natural that these images will become solid memories that are easily recalled. Additionally, viewing material different what is customarily received results in better recall; the average American is used to television content and thus will see great distinctions in movie content. (Asimow, 2000)

Given these three reasons, the relatively small amount of pessimistic images linked to law find a very firm foothold in the American popular culture. This negativity provides a counterbalance for the positive imagery of television that accounts for the diversity of common opinions. Furthermore, the constant play between the two mediums has created a unified image that blankets popular culture – most people do not even realize there is a difference between the two.

**Evaluating The Influence of Television**

The effect of media will be limited to television in this evaluation due to the research available on the topic. Since there is a heavy interaction between the two mediums, effects can be extended to film as well. Contradictions in research on the direct effect of film arise for two reasons: the focus on the immediate reaction and the relative infrequency of occurrence. However, Michael Asimow conducted a 2000 study in which he evaluated movies about the law made in the 1980s and 1990s. The study chose to look at only films that focused heavily on American law set in the 20th century. It was found that approximately two-thirds of films made in these two decades portrayed at least one negative lawyer stereotype and that the majority of these films did not feature a “good” lawyer counterpart. (Asimow, 2000)

The effect of television on the common person, on the other hand, is well documented and widespread. Studies have shown that televisions viewers internalize the beliefs presented by legal dramas, a tendency which will be discussed later on in this paper. Therefore, given its history and important role in culture, television viewing should result in a more positive view of law and society, especially if exposure to film is limited. This holds to some extent:
the image of the virtuous lawyer who fights for his client has created unrealistic expectations for attorneys in clients as well as cemented a belief that “justice will prevail despite the realities of the law” (Dunwoody & Salzmann, 2005, p. 413)

These affirmative results are limited. Interestingly, despite the mainly positive view of the justice system in TV, most studies show that increased exposure results in a more negative view of society and the law. This trend is found most heavily in heavy viewers, people who watch more than 4 hours of television per day. They tended to categorize the world as more cruel and dangerous than light consumers, exhibit higher levels of fear about crime, and give “television answers” to questions presented about law enforcement officers (Dee & Hans, 1991). Other studies have confirmed that heavy viewers were more inclined to provide crime theories that relied on dispositional qualities than situational reasons, which is consistent with the majority of views found on television programs. Additionally, people whose sole source of information was television expressed greater support for the death penalty and use of police force, a less rehabilitative use of prison time, and a greater distrust of justice for victims (as in Greene, 1990).

However, it should also be noted that television programs could also create the reverse effect in overestimating the legal system. One survey found that of people who got their information mainly from television, 46% gave lawyers a favorable rating as opposed to 28% unfavorable. These numbers are much higher than national polls show. A different study elicited ratings about various positive facets of the lawyer persona such a physical attractiveness, composure, power, presence, characters, and sociability. Heavy viewers of TV law dramas such a L.A. Law returned much higher ratings in all areas when compared with the general public and those within the legal field. These viewers also believed that in greater frequencies of young and female lawyers than estimated by the public or actually found in the profession. (Asimow, 2000)

One example of this effect is the hypothesis that the success of L.A. Law can be directly correlation to the dramatic increase in law school applications that occurred during its run (Mezey, 1005). Authors Marvin Kitman and Charles Rosenberg put it perfectly in an article about the show:

“L.A. Law was great. It taught me lawyers had plenty of time for sex at the office. They always had
such interesting cases and only one at a time… [they] never seemed to have to draft briefs, redraft, do research, or burn the midnight oil… it was also the most educational TV experience I've had since *Perry Mason* taught me the guilty person was never on trial but usually sitting in the courtroom. After the first couple of seasons of *L.A. Law*, I would have been willing to become a partner in a law firm, if not for my more important work of watching TV.” (p. 34)

Given this glamorous world, it seems highly probable that many impressionable young people chose to pursue a career in law that almost certainly disappointed them in all respects.

**Cultural Effects: Rationalization and Conjecture**

Despite differing messages in media, it seems like negative images of the law now dominate social opinion. However, I do not believe this is entirely due to media influence. Media has the capability to form comprehensive “stories” for viewers to adopt, but they cannot spontaneously create the kind of negativity currently found in society. One strong explanation for this phenomenon is the basic nature of the law profession. Lawyers are responsible for representing a client at all costs, meaning that they must play whatever role is demanded of them. They use manipulation and persuasion to make their cases. Their ability to fulfill this duty creates an immediate distrust in the public. Creating additional suspicion is their propensity to represent the rich and powerful. This elite group utilizes the assistance of lawyers more frequently than other demographics since their status comes from business, a legally driven arena. Unfortunately, this association garners further resentment by the public. (Asimow, 2000)

The public face of litigation further condemns the profession in the eyes of the public. A lawyer must represent one side to a case with great passion and persistence to ensure that justice is served, meaning that someone must always confidently defend the “guilty” party. The public, who is granted the luxury of ignoring the “innocent until proven guilty” principle in their opinion, often views this as deplorable. Also, lawyers are rarely associated with positive memories. Most people seek out legal advice during difficult times in their life such as divorce, death, and injury. The lasting impression of the law is then innately tied to unhappiness.

I would go beyond this theory and also propose that a second explanation for negative opinions of the law in the structure of drama. While information can be gleaned from them, television and film are first and foremost
entertainment. James Elkins, a professor of a “Film and Law” course, addresses the leisure quality of entertainment. His class focuses on watching films for their educational content: seeking out main story morals, identifying stereotypes, understanding conflicts, and contemplating the hero-lawyer. However, nowhere does Elkins address the procedural errors commonly found in these drama; he only wishes for this law students to uncover the messages of honor attached to lawyers that will help them in their education. He believes that there is not need for realistic portrayals of law in media that primarily caters to entertainment and escapist purposes. Viewers simply seek to break out of the real world and immerse themselves in a new one. (Elkins, 1978) A requirement of entertainment is dramatic structure, which always involves conflict as the driving force behind the story. Therefore the antagonist is a necessary component to all stories. In legal dramas, the criminal can be the focus only so many times before the plot is stale; the only other alternative is another legal figure. Akin to this is the high prevalence of violent crimes shown on in media. A trial about tax evasion or a petty misdemeanor will never be the focus of a legal drama because there is little drama in it. Most cases center on a murder, rape, or high-scale robbery because these are exciting or emotional crimes that can be worked into high-action plots. In reality, these crimes are very rare and account for a very small percentage of crime each year. Despite this reality, the legal dramas watched by the public create a skewed opinion that the world is a more dangerous place than it actually is. (Hans, 1990; Asimow, 2000; Mezey, 2005)

A third rationalization can be found in the use of parody. Television shows such as Ally McBeal and Night Court and movies such as My Cousin Vinny and Legally Blonde combine the legal system with comedy in order to appeal to an audience. However, this union undermines an already touchy subject matter because the characters that the audience identifies with tend to be superficial and inept. For example, Ally McBeal was extremely popular, winning Best Comedy Series in 1997 at both the Emmy and Screen Actors Guild Awards ( HYPERLINK "http://www.imdb.com" www.imdb.com, 2006). While set in a law firm, the show barely concerned itself with law, focusing instead on the ridiculous exploits and neuroses of the characters (Kitei, 1999). Controversy still rages over whether the content of the show was funny or derogatory. One critic contended that, “Ms. McBeal comes across as
a narcissistic nitwit who has little judgment about either her personal or professional life… [and] is surrounded by lawyers whose professional antics and personal behavior are ridiculous” (Asimow, 1999, p. A26) while another claimed it was “laugh-out-loud funny and true to its intentions” (Kitei, 1999, p. 183).

The surface of *Ally McBeal* seems to be light comedy, but I think that a deeper analysis shows that connections can be drawn between the lawyers and the law. The law becomes as seriously flawed and “subject to social prejudice and psychic chaos” as the lawyers themselves. (Mezey, 2005, p. 128) In this view, the law is about the interactions between inner insecurities and outer conflict. When law is not about justice, it is derided as a source of comedy. Furthermore, comedy is often used to address very grave or intimidating issues because the façade it provides makes them easier to face. If media is a mirror for public opinion, then *Ally McBeal* might be displaying society’s own fears about the insecurity and instability of the law, safely expressed through inane humor.

One study found that a stronger feminist attitude resulted in a greater identification with Ally McBeal due to her feminist struggles, even though the same participants strongly disapproved of her outcomes (Cohen, 2002). This could be construed as a loose association between feminism and incompetence since *Ally McBeal* thrived during what one critic termed “Giggle TV” – a trend of shows that portrayed women as innocuous airheads who didn’t take their careers seriously (Wu, 1998). However, I believe that this identification with Ally McBeal is more damaging to the legal system. Understanding her feelings and relating to them entails accepting responsibility for the usually unprofessional and absurd outcome. The law becomes a secondary concern to whether Ally McBeal can score a date, making it personally less important as well. Rare instances of this do not create a problem, but repeated exposure to this type of comedy could definitely form a lasting impression. I think that legal comedies can be dangerous, and am more disturbed when people like David E. Kelly generate them in the place of more serious shows.

Overall, I believe that television and film combine with personal experiences to create negative views of the legal system in popular culture. It is a cyclic sequence: television and film include negative imagery in their stories
due to dramatic structure and preexisting biases against lawyers. These mediums have heavy influences on the perceptions of viewers, which further reinforces the existing biases. The less favorable impressions of law stand out in memories, and while the unconscious reassertion of positive legal images found in media actually strive to offset this natural tendency, they cannot overcome it altogether.

**Implications for the Justice System**

The question now becomes: while socially interesting and reflective of history, does the evolution of the law in media really matter? If media is just a reflection of popular opinion, then legal drama is just a natural byproduct that will simply reinforce existing ideas. Unfortunately, this is not the case.

As stated before, media often disregards proper legal procedure and misrepresents the legal profession. The actual life of a lawyer is nothing like the television portrayals, and violent crimes are far less common than shown on legal dramas (Hans, 1990). These depictions are done for the benefit of dramatic structure and profits in Hollywood. Likewise, much of the incorrect information about the law stems from ignorance on the behalf of writers, who feel no need to stick by facts in the making of fiction. However, because most people are ignorant to extent of this distortion, these discrepancies between actualities and interpretations do have a major effect on the public. They still internalize what they see, however, which can augment already existing issues in the general public such as personal prejudice and prototype biasing, which in turn arise when a person is tapped for jury duty.

**Media’s Influence on a Public of Potential Jurors**

The duty of a juror is to turn over a verdict about a crime after carefully thinking over all of the evidence that has been presented. At the most basic level, they are simply decision-makers in the law to ensure justice. This also makes their decision-making process of high interest to people who study the field of law and psychology. These psychologists have attempted to deconstruct juror decision-making models for the past several decades. The interest in the field derives from the extreme unpredictability of the juries. In recent years a “commonsense justice” approach
has become more prevalent as juries take legal matters into their own hands, resulting in a more subjective view of culpability (Finkel & Groscup, 1997). The complexities of the process cannot be understated; years of research have turned up conflicting results and tangled webs of theories.

The key to understanding juror decision-making rests in narrative structure. A trial is a struggle over “narrative construction and reception – a struggle over what stories may be told at trial, over the way stories must be told and even listened to, over who should be the audience for a story.” The stories referenced here are the attorney’s presentations of evidence for their clients. These stories must correspond with the established legal rules governing storytelling. When construed as such, “the entire law of evidence…is really a law of narrative – a law of narrative transactions.” (Gewirtz in Brooks & Gewirtz, 1996, p. 136). In other words, law is a story told by the lawyers at trial. The stories follow a logical structure and include external factors that link them to moral and ethical judgments (Benneworth et al., 2003). In this way, they convey facts and emotion in a sophisticated web that will correct the average layperson’s understanding of both the law and the specific trial (Brooks & Gewirtz, 1996).

In a story construction model, jurors receive all of the evidence from these stories and then construct a story of their own. Each person has a directory of features that are associated with different possible verdicts. When jurors compare their respective stories to these lists of crucial feature and draw parallels, a verdict is produced. If enough parallels are created, the juror votes to convict, whereas if too many aspects are missing the juror can turn a “not guilty” verdict. (English & Sales, 1997) Story construction is done for three reasons: the structure of a story helps to organize the large quantity of information gotten from the trial; a story can serve as a framework in which facts can be positioned and related to create an clear account; and the story model is the common thread between the law and the juror. This final reason also explains the lawyers’ narrative presentations; they utilize stories in order to connect with the juror and persuade them. (Finkel, 1995)

Pennington and Hastie’s three-part model for jury decision-making is a commonly accepted theory of story construction. In step one, jurors take in the new information offered at the trial and arrange it in such a way that it is understood. In the second step, jurors adjust the new knowledge
according to their own pre-existing comprehension of the physical and social world. In this step, the juror must also
take into account the tenets of the law presented to them in judge’s instructions; these tenets will interact with their
own personal value system pertaining to justice. In the last step, the first two stages are combined to create a story
that will adhere to their definition of a basic narrative structure. (Hackney et al., 2002) The second step of this
model is where the main focus of psychology lies. Story construction involves both subjective and objective aspects,
and in the process of formation, gaps may appear or the facts will not line up. In order to form a clear vision, jurors
must turn to their own knowledge to fill in the spaces.

A second theory centered on prototypes can help explain this process. Every story has two parts, however.
Though the evidence presented in the courtroom is accounted for, the jurors’ own personal lives play a huge part in
the decision-making process. Even though the law believes each of them to be a *tabula rasa*, they unavoidably have
their own prejudices, stereotypes, and criminal prototypes that come from their own experiences and lives (Finkel,
1997). The last two stem from heuristic processing, which involves the use of existing knowledge structures that
have been learned and stored in an individual. Relevant information bits called heuristic cues activate these schemas.
Systematic processing involves more cognitive functioning in which deeper handling of information takes place.
Heuristic processing takes less effort and therefore is assumed dominant over the more strenuous systematic
processing. This is especially true when the processor has a motivation to rely on a framework because it fits their
personal opinion (Chaiken, Chen, & Duckworth, 1999).

The lawyers’ narratives offer up heuristic cues to jurors, and if a cue is deemed to match up to an objective
anchor constructed by a juror’s own perceptions and opinions, one of these frameworks can be utilized. Other
information from the story can be used to call up the juror’s specific prototypes and stereotypes. The stereotypes
deal with generic expectations for crimes, whereas prototypes are frameworks that depict various criminal types.
While often crude, they can be quite powerful in influencing the story perception and construction by the juror. A
juror takes all of these cues into account, balances the opposing sides, and re-orders the final selection of facts into
the definitive story that will ultimately determine the verdict. (Finkel & Gorscup, 1997; Hackney et al., 2002)

The original study by Smith in 1991 showed the existence of common prototypes used by the majority of jurors to categorize crimes and reach verdicts. These were utilized even when presented with definitions of the crimes they were judging (as in Hackney, Rauch, Richmond, Seib, & Wiener, 2002). Later research by Finkel & Groscup (1997), Holst and Pezdek (1992), and Wiener (2002) challenged this simplified view and revealed the existence of more complex prototypes used in jury decision-making (as is Hackney et al., 2002). Despite this expansion of possible prototypes, however, mock jurors were still found to share some common story skeletons, or “brief outlines of the main characters, intentions and relationships between actors” (Hackney et al., 2002, p. 123).

Biases arise from prototypes because they contain pre-existing prejudices. Many of the prototypes are sweeping generalities that share common themes among people but lack complexity or even reality (Kunda & Sinclair, 1999). Common prototype examples found by Farrell & Swigart (1977) included: the adulterer is dishonest and self-doubting; the marijuana smoker is an “insecure escapist, lacking self-control and looking for kicks”; and deviants are more often male minorities of low socio-economic status” (Farrell & Swigart, 1977, p. 17).

Additional research on personal motivation has shown an even greater susceptibility to bias in prototypes and stereotypes. Motivation can be used to “lend coherence to the justification people construct for their desired conclusion” (Kunda & Sinclair, 1999, p. 21). Basically, if stereotypes might support a desired impression of a defendant, then this personal motivation can activate stereotypes even if the proper cues are not present. Conversely, personal motives can inhibit stereotypes from being applied in order to uphold a personal sentiment. These incidences lead to unusual application of stereotypes to surprising individuals. (Kunda & Sinclair, 1999) For instance, Howard (1984) uncovered that prototypes dictate that women are more often assaulted and usually have higher characterological blame than males when compared in similar situations, and males usually provoke their own assaults due to their behaviors.

Within prototypes lie the influences of media. Due to limited contact with actual criminals and crimes, the
majority if the information found in stereotypes and prototypes come from legal dramas. Viewers develop firm images of what criminals, policemen, judges, and attorneys should act like. For example, in media trials are set in majestic old courtrooms resplendent with flags that share a common setup of a central raised judges platform, characters are divided up into their clearly defined categories, and a familiar plot structure of opening-examination-closing-triumphant verdict. This forms a definite image of “the legal system” for people (Dunwoody & Salzmann, 2005). When they are presented with a real trial, there are deviations from the expected, which is jarring in itself. Suddenly the juror is forced to reframe their understanding of the law when cross-examinations do not run swift and sharp, attorneys aren’t dramatic and entertaining, and the details aren’t as clear-cut as expected. Jurors perform this modification while the trial goes on, meaning that they are listening and taking in information as they reorder.

This focal split has implications on the processing of the jurors. Overall, as jurors lose details due to lack of focus, they will rely more and more on prototypes. Evidence to support this can be found in three experiments: Brewer, Dull, & Lui (1981) found that when information that is consistent with the schemata, people are more likely to remember it. Bower, Turner, & Black (1979) have pointed out that when a story is presented with variations, people tend to rely more heavily on media-created stereotypes and prototypes to construct their final story. Anderson (1981) showed that heavy television viewers exhibited great difficulty in reordering new factual information without the biases formed by media (as in Greene, 1990). Thus, those heavy television viewers will actually have the hardest time in a true trial because they have more firmly cemented prototypes and expectations to balance.

Beyond prototype bias, media that covers legal issues and trials can influence the outcome of other legal proceedings. Often media will concern itself with reporting legal news, especially in the case of an upcoming popular trial. Media agents will often provide background to satisfy the public’s curiosity and to create a whole picture. This pretrial publicity is harmful because it reaches potential jurors before the legal system does, creating biases before the trial even gets underway. Pretrial publicity specific to a trial has been found to significantly alter a jury’s judgment of a defendant. Dexter, Otto, & Penrod (1994) found that negative pretrial publicity about a defendant’s character and
prior criminal record created a negative bias towards his guilt that was only partially mitigated by the actual content of the trial. These findings have been supported by countless other studies including Kovera (2002) and Dodge & Greene (1995), and were detailed by Clayton et al (2001).

However, general publicity on legal matters also has a surprising effect on public opinion. In 1984, an Illinois murder trial was scheduled for night sessions that coincided with a NBC made-for-TV movie that depicted a case similar to the one being tried. The judge moved the time of the sessions in order to keep jurors from encountering a potentially negative influence, even if it wasn’t directly related to this specific case. This theory of media influence is supported by a Greene & Loftus (1984) study, which found that subjects’ rates of conviction dropped significantly when a newspaper story about mistaken eyewitness testimony ran halfway through an experiment. After more research, Greene (1990) concluded that if the content of pretrial publicity is remotely similar to a trial, jurors display the same negative effects associated with directly related pretrial publicity. Since jurors judge the guilt of the defendant by conjuring up pertinent examples, the effects are presumably due to an availability factor in the jurors’ minds.

A discussion on connections between media and the law must also include an analysis of the ever-popular Court TV, which premiered in 1991. Court TV is a 24-hour cable channel viewed in 85 million American homes that entirely devoted to producing “a window on the American system of justice through distinctive programming that both informs and entertains” (www.courttv.com, 2006) The channel shows live trial coverage from around the country during the day and features special primetime dramas at night. The televised trials are mostly unedited and run from start to finish in order to allow viewers the whole judicial system experience. Educational subtitles and various experts are also featured to help explain events and generally inform the audience of legal tenets. (Harris, 1993)

Creator Steve Brill hoped to both entertain television viewers while teaching them about the legal system by allowing them to view and evaluate these trials (Paul, 1997). However, a brief look at Court TV reveals some blurred
lines. It focuses solely on trials, whereas the actual legal world usually deals in settlements and mediations. The majority of broadcasted trials tend to be about exciting and appealing topics that compose a small percentage of all litigation, perpetuating the myths about amplified violence in society (Harris, 1993). Finally, experts and proffered information often skew the case by providing information that would be inadmissible in court or oversimplifying the law.

Court TV is also at its most basic level a television network. Trial coverage is interrupted to show advertisements because as any TV network, Court TV relies on advertisers’ monetary backing to stay on-air. The network then relies on high ratings to stay alive. This becomes more evident when the network renames their cases with more marketable tags such as “Murdered Neighbor” and “9/11 Conspirator.” This indicates a “dumbing down” of the law in order to better sell the network. But the real damage in removing the true legal case titles requires knowledge of Court TV’s primetime lineup. Each night from 8 pm to 10 pm, purely fictional shows seamlessly mix in with reality television such as COPS. Former trial lawyer and novelist Lisa Scottoline summarized the problem nicely in the 1999 speech:

“Court TV has bought the rights to broadcast the series Homicide every night… The stories are realistic. The characters are almost human, and ugly so you know they’re real people. The camera bumps around so you know it’s really happening. Sometimes Court TV sandwiches its COPS show between episodes of Homicide, as in Homicide, then COPS, and then another Homicide. The COPS show… is a show about real homicide detectives….The camera bumps around so you know it’s real. By the way, real homicide detectives are much better looking than the actors who play them on television, who are ugly to seem more real. But to my point—if you watch these shows together, you are liable to forget which is the fiction and which the reality. They look identical, talk identical, and both have credits and theme music at the end. How do you know?”

Scottoline goes on to reference a mini-documentary that aired on Court TV that detailed the making of A Civil Action, a movie made from a bestselling book that was based on a real lawsuit. The documentary cut between clips of the movie and real footage from the actual trial so flawlessly that the lines between fact and fiction were completely gone (Scottoline, 1999). Her point is that Court TV’s need for marketing itself destroys any essentially positive qualities and replaces them with the same messages that the public can find in legal dramas.

Despite these flaws, Court TV does a better job teaching the public about the judicial system than film or
television. This is because the trials are real. They are uneventful, tedious, and rarely mirror anything that can be found in a typical legal drama. The information presented by the network to help clarify the law educates the viewers to some extent. One study by Raymond imitated Court TV’s structure by having mock jurors watch an entire televised trial, and found that the experience changed the jurors’ comprehension and opinion about the law. Thee jurors retained more information about legal principles, maintained full confidence in the justice system, and voiced support for broadcasting live trial coverage (Harris, 1993). While these results show some benefit from the realistic trial coverage, one other possible explanation for the results can be found in the audience. Since Court TV is relatively monotonous, it may be that the viewers are people who are already interested and educated about the law. Their passion for the system is what leads them to patronize Court TV, while those people who remain ignorant never tune in.

Overall, media’s impact on culture is significant on many levels and an endless amount of research has been done chronicling its effects. Contact with the content and opinion of media can influence the public, planting seeds of bias that will appear in the trial itself. Due to false images found in media, strong effects appear in prototypes used in juror decision-making. The prototypes formed from such misinformation leads to problematic reasoning for verdicts, which accordingly leads to a possible miscarriage of justice.

**Media’s Influence Inside the Legal System**

While less predictable, media also has a notable influence on the actual people within the legal system. First, the negative perception of their profession lowers the self-esteem and personal satisfactions of lawyers, which in turn lessens the honor and power associated with their work. This devaluation of their job results in inferior work that results in client frustration and displeasure. When the public can no longer trust legal professions, the pre-existing negativity will blossom into an outright mistrust. Second, this mutual mistrust between lawyers and clients results in higher costs for legal services because the documents and intentions of both sides much undergo more rigorous scrutiny. This examination will create considerably more work hours that consecutively generate larger legal fees.
Third, a widespread public suspicion of the legal system destroys the processes that bring about justice. Attorneys and judges will stop fighting in the face of insurmountable adversity while people spurn the system by refusing to serve as jurors or not adhering to legal principles in reaching verdict. (Asimow, 2000)

Legal Effects: Rationalization and Conjecture

I argue that the jury is the important part of the American justice system because it gives the public power to judge guilty those who transgress against society, and thereby face punishment. After bearing witness to all evidence brought forward in a trial, jurors comprehensively evaluate all factors to gauge where truth lies and uphold justice through their verdict (Clark, 2000). Each year over 150,000 juries assemble in courtrooms across the United States, determining fate in their returned verdicts (Devine et al., 2001). While truly tremendous in theory, this system has one major Achilles' heel – the jury is composed of laypersons that usually lack knowledge of proper legal procedure. What these common citizens do possess are private preconceived views and opinions obtained, in large part, from culture, which is often influenced by the media.

Counteracting the actual media is not an option because it is so ubiquitous. Centuries of constant contact with popular culture have created firmly ingrained images of the law that are so difficult to undo. In the modern day, advances in technology have made information accessible all the time and there is no way to thwart this barrage. The focus of the law should shift and look to improve the current methods used to fight bias. Legal precedent and history can show neglected or troubled areas that can be then corrected in collaboration with psychology and sociology.

Currently, the legal system fights these prejudices with voir dire and jury instructions. Voir dire is helpful in weeding out those people with strident prejudices that would impede justice, but both the subjective nature of the examinations and the unconscious and ingrained nature of bias inexorably mean that the jury is predisposed towards certain verdicts. Jury instructions present the laws and legal standards that jurors must abide by, requiring jurors to set aside personal opinion. Unfortunately, myriads of studies have shown inconsistencies in the effectiveness of these instructions. Juror comprehension of these legal instructions ranges from a high of 73% (Buchanan et al.,
to a low of 13% (Steele and Thornburg, 1988), 39% (Charrow & Charrow, 1979), and 41% (Reifman et al, 1992) (as cited in Lieberman & Sales, 1997). These studies have also shown that that jurors are perfectly capable of remembering and understanding the presented information, pinpointing the trouble to the comprehension and application of the relevant legal standards (Ellsworth & Reifman, 2000).

Improving the bias filter of voir dire is nearly impossible because the participants – the potential jurors, attorneys, and judges – change from case to case, eliminating the prospect of standard scripts or regulations. However, jury instructions can be altered to increase juror comprehension of the law, which leads to better application of legal standards. Since these standards dictate rules that attempt to lessen subjectivity, jurors will become more aware of their own opinions. I feel that the most effective methods of improvement are: rewriting jury instructions using psycholinguistic principles as guidelines so that jurors can better grasp the concepts (Lieberman & Sales, 1997; English & Sales, 1997; Wegener, Kerr, Fleming & Petty, 2000); and presenting jury instructions at the beginning of a trial so that jurors may form the necessary schema before hearing the evidence (Ellsworth & Reifman, 2000). In this way, the judicial system can begin to address biases in the individual, including those prototypes that have formed as a result of media.

I also believe that presentation of the case is a greater factor than generally realized. The attorney already has numerous biases to deal with that arise from extra-legal factors, such as the defendant’s physical attractiveness, in-group and out-group status, and judicial bias (Clark, 2000; Nelson, 2004). However, certain safeguards in presentation can be taken to lessen bias. For example, Benneworth, Canter, Grieve, & Nicol (2003) found that following a conventional sequential story structure and avoiding prejudicial indicators of past criminality drastically improved the perceived plausibility of a legal argument. Brewer & Semmler (2002) found that inconsistent eyewitness accounts lessens both credibility of the prosecution’s argument and likelihood of a guilty verdict for the defendant. By following these suggestions to lessen extra-legal factors, the jurors’ focus ought to shift to the evidence and its context – where it belongs.
Conclusion: A Different View

It appears that the justice system is up against overwhelming obstacles as media and society continue to deride it. Maintaining true justice in the face of such complex networks of preconception and attitude becomes an unmanageable task that requires very radical action. Perhaps the most effective solution to eliminating biases formed by the media is to completely raze the current system and construct a new model in which there are no live trials. If trials only serve to turn verdicts on guilt, then more in-depth writings or tapes could be substituted; the information would still be presented and a judgment could still be passed. In fact, the advantages of this option are immense. There would be no problems with extra-legal factors creating partiality because physical cues could be controlled for, jury instructions would be written out in front of jurors for reference, and the presentation styles for arguments could be standardized to curtail possible biasing agents. Maybe juries could be dispensed with altogether and replaced with a committee of designated representatives from the common population that rotates out on a yearly basis.

Additionally, this system would considerably cut down the enormous amounts of time and money that are necessary for the execution of trials. Overall, this seemingly extreme proposal for reform might be the answer for the problems of the American legal system.

The error in this argument is not the conclusions but the premise that trials exist only to produce verdicts. While the end result is very important, the process itself fulfils an even more vital duty that the American justice system needs to survive. The entire process is a tutorial for the public – trials educate and reinforce the tenets of the legal system as they teach fairness and dignity. The live action is where the embodiment and life of law can be found. Without this aspect, it becomes simple words that many people could not connect with. (Friedman, 1989)

If the performance aspect of law is a vital component, suddenly a link is drawn to theatre. In fact, it could even be said that “trials and oral arguments are as necessary to the judicial system as performance is to drama” (Ball, 1975, p. 81). In fact, I have found that this connection between law and drama continues to resurface in a large amount of
cultural literature. To be sure, the law has been utilized for dramatic entertainment from the advent of literature. Sophocles’s *Antigone* deals with her defiance of royal decree and resulting castigation while Euripides’s *The Trojan Women* features the female protagonist Hecuba imploring the conquering Greeks for justice. Over two-thirds of Shakespeare’s works feature trial scenes and deal extensively with the law; author Daniel Kornstein notes that “law is essential to our understanding and interpretation of Shakespeare’s works; great art is often inspired by a passion for justice” (p. xii). Kornstein goes even further by encouraging attorneys to pursue independent studies of Shakespeare in order to “draw new connections, and open new perspectives… on notions of law” (p. xiv).

The argument can be made that law has a more noble aspiration than theatre, which is often done simply for the sake of art. The legal system aims to find truth and uphold justice based on facts. But what is the nature of truth in trial? If truth were so readily discernible, a trial would be unnecessary. Unfortunately, the lines of honesty and certainty become blurred in the law because both sides aim to win the case. Television and film feature legal dramas that are “based on actual events”, which usually means that fictional variations have been added to a real situation. However, this phrase also applies to the actual trial itself as both the prosecution and defense construct stories based on common events. They both construe their accounts as “fact” or “reality” but often the stories do not overlap, indicating that at least one account is false, and perhaps both accounts shade the truth towards their respective sides. In these instances, juries merely make the best decision after weighing the evidence. Perhaps the only true fact is that truth is as subjective and shifty as lying. (Pan, 2005)

This argument helps cut through the superficial surface differences between drama and law. Further closing the gap between the two are practical applications of structural theatre elements. A prominent example that holds considerable merit can be found in the work of Irving Goffman. Goffman reordered social functioning using a theatrical metaphor: an actor carries out agreed-upon scenes with other actors while on appropriate stages. The individual is divided into a performer (the actual person) and a character (the idealized and socially acceptable image cultivated by the actor through costume, speech, and interactions with others). The actors all form a “working
“consensus” in which a situation is commonly defined among them, and then act as a team to perform scenes around these concepts. Thus realistic action and outwardly genuine personal facades identify successful socialization.

(Goffman, 1959; Manning, 1991)

Using this metaphor as a stepping-stone, common styles and structures shared by the law and drama can be identified. To start with, both present audiences with stories that focus on disclosing information that will resolve a central conflict. Abiding by this Aristotelian story structure ensures that any “audience” will be able to understand and follow the plot as well as connect to the characters as they develop. In law, an additional parallel can be drawn: society must function within the boundaries set by laws in order maintain order and justice, just as lawyers stay within the bounds of the expected conventional story structure in order to inform and connect to the jury.

The next point to address is the visual aspect shared by drama and law. Each one requires a performance that entails very particular necessities, specifically a stage and actors. When an audience assembles in the theatre for a show, they anticipate a spectacle that will involve sets, costumes, props, and lights. Likewise, a courtroom is a theatrical space that comes loaded with hefty expectations from the audience. This has been upheld in two notable legal cases. In the 1965 case of *Estes v. Texas*, the Supreme Court acknowledged the importance of expectation attached to the American courtroom. The guilty verdict was overturned by the Court due to excessive publicity prior to and during the trial that was seen as a violation of the 4th Amendment. Moreover, the Supreme Court believed that the rearrangement of the courtroom to accommodate cameras was substantial enough to strip the venue of its legal significance, creating an impediment to justice. In his remarks, Chief Justice Warren emphasized that while the main purpose of the courtroom is to accommodate the participants of the trial, “the setting … is itself an important element in the constitutional conception of a trial, contributing a dignity essential to the ‘integrity’ of the process” (as quoted in Ball, 1975, p. 85). In a second case, *Thompson v. Stiehl*, the guilty verdict for contempt of court was overturned because the room that was defined as a “court” more closely resembled a jail. While it seems to be a small distinction on a minor verdict, it does imply some necessary aesthetic standard for legal conduct. (Ball, 1975)
Beyond setting lie other mutual theatrical elements. Costuming is also important in the courtroom. For example, a judge’s robes are mandatory because they define his status to observers; without them, he appears to hold no distinction in the trial. Equally influential is the attire of the defendant. Lown (1977) reviewed a series of judicial arguments in which the claim was made that defendants wearing prisons uniform during a trial can create a negative connotation that goes against the “innocent until proven guilty” tenet of the law. While ultimately left up to the discrimination of the defense counsel, the debate raises questions about the theatricality of cues in the court.

Similarities between the content of a trial and theatre can also be drawn. It is often said that Shakespeare’s works were written to be performed because their potential does not exist merely in words. While the text will always be the same, the appeal of theatre comes the unpredictability and spontaneity of live performance that gives it an individuality factor. Theatre entails the creation of characters that react to delivered lines, play off the energy of the other characters and the audience, and respond to the action onstage. In other words, the magic is in the life of the plot as seen onstage, where every show will be different because the drama keeps changing every time it is done.

The legal proceedings of the courtroom follow the same concept. Presentation of story is key to an effective case, denoting the attorney as the main actor in the trial. It has been established that attorneys generally adhere to logical story structure, offer the jury a story that is believable, and find ways to connect the case facts to jurors’ perceptions of justice. However, an aspect of theatricality enters here as well. It is the duty of an attorney to assume a demeanor that is the appropriate to case content and argument. Each situation has an appropriate “face”: use warmth to win over a jury, aggression to call attention to certain facts, or compassion to evoke sympathy. Evidence is presented to supplement the pitched story. It is a whole cohesive act. Given these parallels, it can be plainly stated that litigation is theatre. Lawyers are method actors employing the objective work of Stanislavski. Legal props and costumes are used to expand the possible effect.

Given this argument, I propose that the effects of media on the law are not as great as research has reported because most experiments neglect the theatricality of the courtroom. Reading trial facts or watching taped trials
simply does not have the same impact as watching an actual live trial. Also missing is the urgency that comes from being a juror for an authentic trial and feeling the weight of determining another person’s fate. Psychology has neglected these aspects in research, but viewing the law in a more dramatic context can add the necessary weight to these elements. As for the future of studies in this field, psychologists should look to conduct more in-depth experiments that test the presentations of trials and apply these results to past research to account for the oversight.

The law itself has to recognize that media is a driving force in society and needs to accommodated appropriately. Media will continue to evolve, just as it has for the past century, and it will inevitably tie in important cultural elements. The law is a popular topic for television and film because it is actually exciting – legal dramas are easy to make because the material itself gives a interesting plot that the American public find fascinating. However, law must broach that gap that exists between this thrilling fictional law and the reality of law. While not without its flaw, Court TV is a good example of ways that the law both redeems itself and becomes more available to the common person. These aspects are very important in upholding justice because every consumer is also a potential juror.

In closing, while the history of media and law is long and convoluted, I believe that the interactions between law and media are not a problem to be solved but a situation to be altered. These fields share more than a few common features because they are both performance driven areas that require input from their audiences to survive. Only with mutual cooperation and effort can both sides achieve their goals. Media should bow to the wishes of law when obeying is in the best interest of justice, and law should find ways to reach out to the public it has sworn to protect. In doing so, the people of this country will both become more educated and more entertained and defendants nationwide can breathe a sigh of relief that justice will be upheld.

Sources


It should be noted that pretrial publicity that was dissimilar to the case being judges has little to no effect (p. 442). See Canter (2000) on p. 41. Arguments sprung from *Estelle v. Williams*.