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Epilogue to Prime Time Law: Fictional TV Lawyers and Their Impact on America — From Perry Mason and L.A. Law to Law & Order and Ally McBeal

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Prime Time Law

*Fictional Television as
Legal Narrative*

Edited by
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and
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CAROLINA ACADEMIC PRESS
Durham, North Carolina

Epilogue

RONALD D. ROTUNDA

Even without televised commercials, it is hard to watch much television without seeing lawyers in action. Sometimes the lawyers are bad, sometimes they are heroic, but they are nearly as pervasive as television itself. Other than shows about police dramas or medical doctors, no other profession is featured nearly as often in the storyline—not the clergy, nor the military, nor other professions.

Empirical evidence demonstrates that the primary way that most people learn about lawyers is through watching television. Yet when people turn to television, they do not rely on the news, C-SPAN, or lawyers's commercials for their view of lawyers. Instead, they turn to *fictionalized* portrayals of lawyers like the ones discussed in this book.¹

When people are asked to name the lawyer that they most admire, they frequently cite Ben Matlock. Many people apparently think that Matlock is a real person. And because Matlock fights for justice, many of the people who watch "Matlock" think more highly of lawyers. Yet despite having Ben Matlock among their numbers, lawyers will never win popularity contests. Even television does not have that much power.

It is hardly surprising that lawyers would like to be more well-liked. So too would car mechanics, tax collectors, undertakers, and politicians. There is one important difference, however, between lawyers and other professionals. We will never be widely loved as long as we are really doing our jobs. Our quest for universal popularity is therefore as futile as the quest for the holy grail.

Surveys illustrate the dilemma that lawyers face. When people are asked what they dislike most about lawyers, they routinely answer that lawyers are "too interested in money" (31%), file "too many unnecessary lawsuits" (27%), and "manipulate the legal system without regard for right or wrong" (26%).² By the same token, people praise lawyers for "putting clients" first (46%) and protecting people's rights (25%).³

People dislike lawyers because we are guns for hire who manipulate the legal system, but they like us because we fight for our clients, protect their rights, and cut through bureaucratic red tape. When we fight zealously for our clients, file lawsuits, and cut through red tape we are doing

good, but when we fight zealously for our clients, file lawsuits, and manipulate the legal system, we are doing bad. We receive accolades and denunciations for doing the same thing.

Individuals want a Rambo-type litigator on their side but want the opponent's lawyer to be Mr. Milquetoast, understanding and supportive of their (the adversary's) position. The general public wants lawyers to be less aggressive, to compromise more, but they also know that if Rosa Parks is suing because she objects to a law forcing blacks to sit at the back of the bus, the last thing she needs is a lawyer who will compromise and find her a seat in the middle of the bus.

As one astute commentator of the legal profession has noted, lawyers are "simultaneously praised and blamed for the very same actions."⁴ The popular culture dislikes lawyers because we "manipulate the legal system in the interests" of our clients, but the popular culture also likes us because our "first priority" is our clients, whom we represent with zeal.

We expect lawyers to fulfill both desires, and so they are a constant irritating reminder that we are neither a peaceable kingdom of harmony and order, nor a land of undiluted individual autonomy, but somewhere disorientingly in between. Lawyers, in the very exercise of their profession, are the necessary bearers of that bleak winter's tale, and we hate them for it.⁵

If, as this volume of essays has shown, television is ambivalent in its treatment of lawyers, it is because society is ambivalent in its treatment of lawyers. The little black box of television to some extent molds, but to a much greater extent reflects, the equivocalness that the popular culture has for lawyers.

We should not be surprised that medical doctors rate more highly in public opinion polls than lawyers do, because doctors simply represent the patient. There is no doctor fighting zealously for the disease. Not so for lawyers. Our legal system gives everyone their day in court, and some of these litigants are viewed less favorably than ugly diseases. Lawyers are the messengers who are blamed for the bad message.⁶

Litigation is what economists call a "zero-sum" game. In order for one side to win, the other must lose. When lawyers represent clients in non-litigative matters, clients are much more positive about their experiences with lawyers.⁷ In litigation, however, at least one side (often called the loser) will be unhappy. Even if the other party (often called the winner) believes that he or she has been ultimately vindicated, it is not unusual for that party to complain that justice did not come easily but had to be fought for. When winners and losers are disgruntled, their lawyers are like magnets for their complaints. People want to see their lawyers about as much as the dinosaurs wanted to see giant meteors hit the earth.

It is true that one of Shakespeare's characters, Dick the Butcher, says that we must "kill all the lawyers,"⁸ but Dick was an unsavory character, and in context he meant that the only way for his revolution to succeed was to kill those who represented the law. Luke's Gospel does refer to lawyers in a disparaging way, but the corresponding sections of the Gospel of Matthew only complains about the scribes and Pharisees.⁹ Lawyers are not necessarily Pharisees.

Carl Sandburg wrote years ago:

The knack of a mason outlasts a moon.
The hands of a plasterer hold a room together,
That land of a farmer wishes him back again.
Singers of songs and dreamers of plays
Build a house no wind blows over.
The lawyers—tell me why a hearse horse snickers
hauling a lawyer's bones.¹⁰

But why should we pay attention to what horses think?

Several years ago, Harry Blackmun told me that if he had his life to live over again, he would like to be a medical doctor. I related this conversation to a friend of mine and said that I found Blackmun's remarks surprising. At the time, after all, he was a justice of the United States Supreme Court. One would think that he was at the pinnacle of his career. Why would anyone want to trade that to become a doctor? My friend remarked, "People often want to be doctors so that they can help people." I replied, but that is what lawyers do. We mend no bones. We build no bridges. We design no buildings. We paint no pictures except, perhaps, for our own amusement. There is little that we do that the human eye can see or the human hand can feel. But, if we are doing our jobs properly, we take up other people's burdens and relieve their stress. We make possible living a peaceful life in a peaceful state.¹¹