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THE TALES TELEVISION TELLS: UNDERSTANDING THE NOMOS THROUGH TELEVISION

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I. INTRODUCTION

To better understand the operation of law in society, legal scholars have shifted their focus to law as understood by and disseminated to real people.[1] In so reconceptualizing the world of law, scholars have looked to the stories of law residing in the cultural world of law, the nomos.[2]

This Article argues that to understand the nomos we must study law and litigation as represented in pop culture, specifically, on television. We must acknowledge the power of legal pop culture, and then read, translate, and discern the meanings of its stories. Moreover, because the various pop cultural representations of law exert neither the same function nor force, we must also consider pop legal culture with an eye toward understanding the impact of these lexi-cultural texts.

After synopsizing Cover's theory of nomos, this Article defines narrative and its critical role in understanding and institutionalizing law. Recognizing law's rich narrative regime, this Article locates within contemporary culture the dominant legal narratives. It argues that law's primary narratives appear in pop culture, commonly on television's syndicated daytime courtrooms. Indeed, the narrative structure of syndi-court as enhanced by its television production elements make it a powerful narrative force.

Relying on cultivation theory adapted for genre-specific effects, this Article reports a group of studies investigating syndi-court's narrative function, that is, its ability to impart factual legal knowledge (legal rules) and normative legal knowledge as expressed as values and heuristics guiding legally-implicated behavior. The results suggest that while syndi-court does not teach specific legal rules, it does impart normative knowledge, such as when and how to litigate, along with the cultural and moral appropriateness of doing so. This Article concludes by extrapolating these results to build a theory explaining the particular ways in which syndi-court contributes to the nomos.

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1. Anna-Maria Marshall & Scott Barclay, *In Their Own Words: How Ordinary People Construct the Legal World*, 2003 American Bar Foundation, 28 LAW & SOC. INQUIRY 617 (2003).

2. Among the scholars who have written about the nomos are: Richard K. Sherwin, *Nomos and Cinema*, 48 U.C.L.A. L. REV. 1519, 1539 (2001) [hereinafter *Nomos and Cinema*]; Samuel J. Levine, Halacha *and* Aggada: *Translating Robert Cover's* Nomos and Narrative, 1998 UTAH L. REV. 465, 469 (1998); Bernard J. Hibbits, *Making Sense of Metaphors: Visuality, Aurality, and the Reconfiguration of American Legal Discourse*, 16 CARDOZO L. REV. 229, 335–36 (1994); and its architect, The Supreme Court, 1982 Term—*Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983) [hereinafter *Nomos and Narrative*].

II. THE NOMOS IN CONTEMPORARY LEGAL CULTURE

Robert Cover was among the first scholars to contemplate law as a story or narrative.[3] In doing so, he introduced the concept of nomos.[4] The nomos is our normative universe of law[5] as well as the world in which we live.[6] The term is derived from the classical Greek word for law, which, in turn, comes from the verb "nemein," to recite or read aloud.[7] According to Cover, all law, formal and informal, exists within the nomos.[8]

Importantly, Cover recognized that law is more than just formal institutions and rules, but includes what people believe law is and the stories they tell about it.[9] Accordingly, the nomos also includes society's narratives of law,[10] that is, the stories that legitimatize and make sense of law.[11] Indeed, Cover asserted that "[n]o set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning."[12] Thus, the nomos, and thereby law, can be understood only in the context of the narratives that encircle, substantiate, and give it meaning.[13]

A. *Narrative*

Contemporary legal scholarship equates legal "storytelling" with "narrative."[14] A "narrative" is both a story that is told and the pro-

3. Hibbits, *supra* note 2, at 339.

4. *Nomos and Narrative*, *supra* note 2, at 4. Cover's thesis thus coincided with and influenced the emergence of "legal storytelling." Levine, *supra* note 2, at 465–66.

5. *Nomos and Narrative*, *supra* note 2, at 4 ("world of right and wrong, of lawful and unlawful").

6. *Id.* at 4–5.

7. Hibbits, *supra* note 2, at 247. The derivation rests on Greek law's connection to oral poetry. *Id.* at 247–48.

8. *Nomos and Narrative*, *supra* note 2, at 4. Although "formal institutions of the law, and the conventions of a social order are, indeed, important to that world," Cover emphasized they were only a "small part of the normative universe." *Id.* at 15.

9. *Nomos and Cinema*, *supra* note 2, at 1539. This underscores that law, as a social institution, includes the totality of perceptions that people have about it. *Nomos and Narrative*, *supra* note 2, at 4; *see* Robert M. Cover, *The Folktales of Justice: Tales of Jurisdiction*, 14 CAP. U. L. REV. 179, 181–182 (1985) [hereinafter *Folktales*] (arguing that the law is more than a set of rules governing particular transactions).

10. As Greek law matured, it increasingly privileged visual expressions. Hibbits, *supra* note 2, at 250. This continued through the Middle Ages which explained legal rules with pictures, allegorical tables, and tales, and into the late medieval period which described legal texts as "mirrors" of the law. *Id.* at 251–52. Much later, Oliver Wendell Homes, Jr., would approach law as a matter of "looking." Oliver J. Wendell Holmes, Jr., *The Path of Law*, 45 B.U. L. REV. 26 (1965).

11. *Nomos and Narrative*, *supra* note 2, at 4; *Folktales*, *supra* note 9, at 181–182.

12. *Nomos and Narrative*, *supra* note 2, at 4 (explaining that our stories provide the "essential context" for the legal rules).

13. *Id.* at 4–5, 11–12 (centrality of narratives). That narratives can legitimate a legal order, a return to the originating acts recounted in these narratives is, nonetheless, possible. *Id.* at 23–24.

14. Levine, *supra* note 2, at 469.

cess of telling it.[15] Typically, it follows a linear chain of events[16] with a beginning, middle, and end.[17]

As important as the story, however, is the way that we make sense of it and imbue it with moral values.[18] Hence, narrative is also a way of taking experience and reconfiguring it into an intellectually and emotionally accessible form.[19] For instance, on the surface, a narrative might configure ordinary life into plot, but upon closer inspection, it may actually be a metaphor for human existence.[20]

To analyze narrative, we conceptualize the story as a "text" made up of images and signs.[21] We then "read" that text by systematically interpreting these components and their structure.[22] Moreover, notwithstanding the *intended* communicative function of a given story, we must consider how it is understood. Audiences can interpret the same text in different ways.[23] Therefore, narrative analysis not only requires determining how a narrative is constructed and what it says, but also how it is received[24] and its meaning understood.[25]

15. JONATHAN BIGNELL, AN INTRODUCTION TO TELEVISION STUDIES 67 (2004); *see also* DAVID A. BLACK, LAW IN FILM 14 (1999); RICHARD A. POSNER, LAW & LITERATURE 348 (rev. & enlarged ed. 1998); Peter Brooks, *The Law as Narrative and Rhetoric*, *in* LAW'S STORIES 14, 16 (Peter Brooks & Paul Gewirtz eds., 1996).

16. BLACK, *supra* note 15, at 14; Michael J. Porter et al., *Re(de)fining Narrative Events: Examining Television Narrative Structure*, 30 J. POPULAR FILM & TELEVISION 23, 24 (2002).

17. POSNER, *supra* note 15, at 346.

18. *See generally* Brooks, *supra* note 15, at 19 (explaining or reflecting the way we organize the world and make sense of meanings that unfold over time).

19. Steven L. Winter, *The Cognitive Dimension of the* AGON *Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225, 2228 (1989).

20. Kathryn Smoot Egan, *The Ethics of Entertainment Television: Applying Paul Ricoeur's Spiral of Mimesis*, 31 J. POPULAR FILM & TELEVISION 158, 158–60 (2004).

21. *See* BIGNELL, *supra* note 15, at 67; BLACK, *supra* note 15, at 100; Brooks, *supra* note 15, at 17; *see also* DENNIS MCQUAIL, MASS COMMUNICATION THEORY 240 (3d ed. 1994) (describing narrative reports of experience).

22. *See* BIGNELL, *supra* note 15, at 86. Indeed, we have an innate psychological disposition toward narrative organization. JEROME BRUNER, ACTS OF MEANING 80 (1990).

23. Alice Hall, *Reading Realism: Audiences' Evaluations of the Reality of Media Texts*, 53 J. COMM. 624, 625 (2003); *see* MICHAEL ASIMOW & SHANNON MADER, LAW AND POPULAR CULTURE 11 (2004) (visual meanings are polysemic); MCQUAIL, *supra* note 21, at 103–04 (integrating Fishe's polysemy of pop culture). Indeed, even Cover noted that any single narrative can have different meanings and divergent social bases for its use. *Nomos and Narrative*, *supra* note 2, at 19 (examining how multiplicity of meanings and divergent social bases for use).

24. Paul Gewirtz, *Victims and Voyeurs: Two Narrative Problems at the Criminal Trial*, *in* LAW'S STORIES, *supra* note 15, at 135, 144.

25. *See* ASIMOW & MADER, *supra* note 23, at 9, 11–12 (process of meaning production critical to narrative theory).

B. *Law and Narrative*

Not only has law long been a prolific narrative regime,[26] but also it is a ready-made narrative.[27] Legal discourse involves storytelling,[28] and its courtroom, the crucible in which it is argued and decided, is a theater of narrative construction.[29] Litigation and its discourse also rest on conflict between opposing forces,[30] a characteristic of effective storytelling.[31] For example, like a fable, litigation involves adversaries, that is, a defendant and plaintiff,[32] and follows a protagonist versus antagonist structure. Furthermore, witness exposition often resembles drama,[33] as each litigant narrates his or her account of the event intending to resolve the problem set in motion at the start.[34]

Stories in law perform a variety of communicative functions. Most concretely, they define and explain legal rules.[35] By presenting concrete, comprehensible examples,[36] stories bridge the law proper with the law in reality making it meaningful.[37] For example, a story of a sexual encounter may conclude with the denomination of a rape, or, because there was sexual touching but no vaginal penetration, an assault. The story may also tell us of a particular criminal punishment imposed, thereby clarifying the seriousness of the crime.

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26. BLACK, *supra* note 15, at 1; Gewirtz, *supra* note 24, at 136 ("narrative and storytelling pervade the law").

27. *Nomos and Cinema*, *supra* note 2, at 1563–64.

28. Hibbits, *supra* note 2, at 232.

29. BLACK, *supra* note 15, at 2; POSNER, *supra* note 15, at 22. Moreover, scholars have noted the similarities between the stage and the courtroom. *See* Richard A. Clifford, *The Impact of Popular Culture on the Perception of Lawyers,* LITIG., Fall 2001, at 1; Abe Fortas, *Thurman Arnold and the Theatre of the Law*, 79 YALE L.J. 988 (1970).

30. ASIMOW & MADER, *supra* note 23, at 26; *see also* BLACK, *supra* note 15, at 2; Avi J. Stachenfeld & Christopher M. Nicholson, *Blurred Boundaries: An Analysis of the Close Relationship Between Popular Culture and the Practice of Law*, 30 U.S.F. L. REV. 903, 904 (1996) (referring to litigation as the "theatre of battle").

31. JAMES MONACO, HOW TO READ A FILM: MOVIES, MEDIA, MULTIMEDIA 6 (3d ed. 2000) (noting that some degree of conflict is necessary for a good story).

32. *Id.* at 6; *see, e.g.*, Suzanne Shale, *The Conflicts of Law and the Character of Men: Writing* Reversal of Fortune *and* Judgment at Nuremberg, 30 U.S.F.L. REV. 991, 991–92 (1996); *see* Gewirtz, *supra* note 24, at 136 (stating that the law of evidence and procedure is rife with narrative and describing a criminal trial as a narrative); *id.* at 136–37 ("the trial's search for truth always proceeds by way of competing attempts to shape and present narratives"); TIMOTHY O. LENZ, CHANGING IMAGES OF LAW IN FILM AND TELEVISION CRIME STORIES 18 (2003) (describing criminal law as narrative).

33. Shale, *supra* note 32, at 991–92 (explaining that witness narrative highlights cause, effect, belief, and resolution).

34. *Nomos and Cinema*, *supra* note 2, at 1563–64; *see* POSNER, *supra* note 15, at 22.

35. *Folktales*, *supra* note 9, at 184.

36. Winter, *supra* note 19, at 2276.

37. *Id.* at 2228 (explaining that the role of narrative is to link experience to social mores).

Stories also justify or condemn legal rules or doctrines.[38] For example, if the above rape example includes as its main characters a young college couple in love, where the 18-year old boyfriend is imprisoned for two years for making love with his 17-year-362-day-old-fiancée, it undermines the force of the rape law. Furthermore, narratives establish the underlying normative firmament of law and supply a simplified set of norms.[39] Without declaring that a particular action is "bad" or "immoral," the story, like a fable, makes society's norm apparent. Ultimately, aside from any story's primary function, the cumulative effect of the underlying narratives can impact beliefs[40] and structure our reality.[41]

Although sometimes a story explains law, other times it constrains our understanding of law. We often draw on stories to make sense of events in our daily lives. In doing so, we superimpose narrative structure on them,[42] using narrative as a conceptual map.[43] Yet, narrative choice can become persuasive.[44] For instance, placing an account within a culturally known storyline prompts one to consider the issues common to and consistent with that storyline. A narrative that follows the traditional course of discrimination leads one to consider the issues attendant to and draw conclusions regarding discrimination.[45] In this way, narrative plays a role in the social construction of meaning.[46] Because one can only reference the stories of which they are already aware, the narrative process is constrained by one's pre-existing understandings.[47]

C. *Locating Contemporary Legal Narratives*

As Sherwin recognized, living in the nomos requires that we understand how the average person constructs and conceives the law.[48] I propose that to understand the nomos, we must read law's narratives

38. *Nomos and Narrative*, *supra* note 2, at 46.

39. *Id.* at 10 (explaining that narratives are models and simplified sets of norms that serve as artificially simplified models).

40. Hibbits, *supra* note 2, at 335–36 (exploring law's normative issues through narrative); *see* JAMES SHANAHAN & MICHAEL MORGAN, TELEVISION AND ITS VIEWERS: CULTIVATION THEORY AND RESEARCH 195–97 (1999).

41. SHANAHAN & MORGAN, *supra* note 40, at 193.

42. Winter, *supra* note 19, at 2230 (claiming that the process of human coherence-seeking rituals superimposes narrative structure on life events).

43. Lawrence Joseph, *The Subject and Object of Law*, 67 BROOK. L. REV. 1023, 1030–31 (2002) (noting failure of American law to recognize that law rests on conceptual mapping of what is morally just).

44. Winter, *supra* note 19, at 2272.

45. Of course, whether this is persuasive depends on the experience and disposition of the listener. *Id.* at 2274 (arguing that persuasion is dependent on predispositions and commitments of the audience).

46. *Id.* at 2228 (arguing that narrative plays role, though not a primary one, in the social construction of meaning).

47. *Id.* at 2271.

48. *Nomos and Cinema*, *supra* note 2, at 1524.

in the library of pop legal culture.[49] More than any other system, pop culture contains the stories that shape the average person's legal consciousness and define contemporary legal culture;[50] or the lexi-cultural texts that comprise the nomos. Consequently, this Article proposes an analysis of discourse formation in which pop cultural stories of law on TV are a mediator between formal law (law on the books and in appellate decisions) and law as understood by the average person.

III. NARRATIVE IN POPULAR CULTURE

Popular culture pervades modern society.[51] It is something to which we are all exposed and by which we are all influenced.[52] Although debates about the definition of pop culture could fill volumes,[53] this Article defines pop culture in conventional terms. Pop culture refers to any product—such as television shows, movies, and popular music—that is commercially made for the consumption of ordinary people.[54] Often, pop culture is distinguished from high culture, the weightier or aesthetically profound works of the intellectual elite.[55] Thus, whereas art is created for the sake of art, pop culture is produced for the sake of entertainment.

Pop culture is also a cultural universe. This universe subsumes the products of pop culture and reflects the norms and values embodied by those products of ordinary people.[56] Importantly, pop culture is both a reflective entity and an active force. Whereas pop culture and

49. Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579, 1580 (1989) (explaining that legal culture and pop culture are fundamentally important in constructing social theories of law).

50. According to media dependency theory, the media will have the greatest influence on a person's conception of reality where a person has little experience. *See* S. J. Ball-Rokeach & M. L. DeFleur, *A Dependency Model of Mass-Media Effects*, 3 COMM. RES. 3, 5–9 (1976).

51. ASIMOW & MADER, *supra* note 23, at 5; *see* SHANAHAN & MORGAN, *supra* note 40, at 196.

52. Richard K. Sherwin, *Picturing Justice: Images of Law and Lawyers in the Visual Media*, 30 U.S.F.L. REV. 891, 897 (1996) [hereinafter *Picturing Justice*].

53. *See generally* ASIMOW & MADER, *supra* note 23, at 3–45; JOHN STOREY, CULTURAL THEORY AND POPULAR CULTURE 1–2, 6 (3d ed. 2001); MCQUAIL, *supra* note 21, at 1–6 (describing theories relating to mass media). The purpose of this article is not to tease out a definition of pop culture or to enter that debate. For an exposition of the myriad definitions of pop culture and their semantic impact, see STOREY, *supra*, at 1–10. For a discussion of the main theoretical positions regarding the meaning of pop culture, *see id.* at 5–14.

54. STOREY, *supra* note 53, at 6–9; ASIMOW & MADER, *supra* note 23, at 4; BIGNELL, *supra* note 15, at 16; *see also* MCQUAIL, *supra* note 21, at 39–41 (discussing mass culture); David M. Spitz, *Heroes or Villains? Moral Struggles Vs. Ethical Dilemmas: An Examination of Dramatic Portrayals of Lawyers and the Legal Profession in Popular Culture*, 24 NOVA L. REV. 725, 729–30 (2000) (intended for public as whole).

55. STOREY, *supra* note 53, at 6–9, 39–41; ASIMOW & MADER, *supra* note 23, at 4; Spitz, *supra* note 54, at 729 ("high culture" is culture of intelligentsia); *see* BIGNELL, *supra* note 15, at 16, 19.

56. Friedman, *supra* note 49, at 1579–80 (defining pop culture as norms and values held by ordinary people as opposed to high or mandarin culture).

its constituent products reflect what its producers think that people do and believe, those products or stories also constitute the very material from which we construct our realities, thus impacting what people do and believe.[57]

A. *Pop Legal Culture*

A subset or type of pop culture is popular legal culture.[58] Pop legal culture refers to the pop cultural images of law and common opinions of all things legal.[59] It encompasses the commercially produced stories and depictions of law in films and television programs[60] as well as lay understandings of[61] and attitudes about law, courts, and justice.[62] Consequently, the relevance of pop legal culture on our understanding of law is significant.[63]

Because most people do not read scholarly or statutory legal resources,[64] they obtain their "knowledge" of the law from secondary resources.[65] Empirical evidence shows that knowledge usually comes from the media and pop culture.[66] Indeed, because individuals have little personal experience on which to draw, these pop cultural representations obtain even greater authority.[67] In fact, some legal scholars believe that the line between law and pop culture has vanished.[68]

B. *Television: The Bard of Pop Legal Culture*

Television is our principal source of pop legal culture.[69] Although few individuals have ever entered a courtroom, millions have seen one on TV.[70] Long before one becomes a litigant or is empanelled as a

57. ASIMOW & MADER, *supra* note 23, at 6–7.

58. *Id.* at 25.

59. Spitz, *supra* note 54, at 730 (explaining that legal culture entails a society's ideas, attitudes, values, and opinions about law).

60. *See* Spitz, *supra* note 54, at 727–28.

61. Friedman, *supra* note 49, at 1580.

62. LENZ, *supra* note 32, at 4. Popular legal culture can then be contrasted with traditional or high legal culture, where individuals learn about the law from appellate opinions and law journal articles.

63. *See* RICHARD K. SHERWIN, WHEN LAW GOES POP 18 (2000) [hereinafter POP]; Kimberlianne Podlas, *As Seen on TV: The Normative Influence of Syndi-Court on Contemporary Litigiousness*, 11 VILL. SPORTS & ENT. L.J. 1, 1–2 (2004).

64. Scholarly or statutory legal resources includes appellate opinions and law journal articles.

65. Spitz, *supra* note 54, at 731 (indicating that the public's information, or misinformation, comes second-hand).

66. *Id.* at 727.

67. *See* John L. Sherry, *Media Saturation and Entertainment-Education*, 12 COMM. THEORY 206, 212 (2002).

68. POP, *supra* note 63, at 8–11.

69. *Nomos and Cinema*, *supra* note 2, at 1519–20; POP, *supra* note 63, at 18 (explaining media is the primary if not exclusive source of stories about law); *see* Kimberlianne Podlas, *Please Adjust Your Signal: How Television's Syndicated Courtrooms Bias Our Juror Citizenry*, 39 AM. BUS. L.J. 1, 2 (2001) [hereinafter *Please Adjust*].

70. *Picturing Justice*, *supra* note 52, at 896.

juror, *Perry Mason* has shown her that the true culprit always confesses at trial, *C.S.I.* has proven that science will ascertain the identity of the killer, and *Law & Order* has demonstrated that prosecutors never act with less than certainty of guilt.

Television is also one of our most potent storytellers. We live in a media-saturated culture where 98% of Americans have at least one television set and tune in with ritualized regularity.[71] In fact, the average person watches more than 25 hours of television per week.[72] Consequently, television is not merely an industry; it is a cultural institution,[73] a voice that mediates the wider culture for the community.[74] As these broadcast legal narratives and their accompanying moral lessons coalesce and take root in our psyches, they contribute to our perceptions of law and justice.[75]

IV. STUDYING THE NOMOS THROUGH THE LENS OF POP LEGAL CULTURE

Today, the dominant narrative of law on television is syndi-court.[76] Syndicated television courtrooms like *Judge Judy*[77] and *The People's Court* reach more Americans than do any other type of legal information.[78] Besides boasting a substantial audience, syndi-court constitutes a genre.[79] It is not a single show, appearing once or twice a week, but an entire volume of stories broadcast 4–6 hours per day,

71. Sherry, *supra* note 67, at 207.

72. L.J. Shrum et al., *The Effects of Television Consumption on Social Perceptions: The Use of Priming Procedures To Investigate Psychological Processes*, 24 J. CONSUMER RES. 447, 447 (1998) (showing the average person watched more than four hours of television per day in 1995); *see also* TODD GITLIN, MEDIA UNLIMITED 15–16 (2003).

73. MCQUAIL, *supra* note 21, at 154–55; Yan Bing Zhang & Jake Harwood, *Television Viewing and Perceptions of Traditional Chinese Values Among Chinese College Students*, 46 J. BROADCASTING & ELECTRONIC MEDIA 245, 245 (2002) ("Television is not simply an entertainment medium; it has the ability to communicate the norms, rules, and values of society."); *see generally* TELEVISION STUDIES 4 (Toby Miller ed., 2001) (explaining the cultural role of television).

74. JILL MARSHALL & ANGELA WERNDLY, THE LANGUAGE OF TELEVISION 9 (2002). The storyteller role is located within an oral, rather than written, tradition. *Id.*

75. *Picturing Justice*, *supra* note 52, at 898–99. Sherwin has explained that law "is in people's heads in the form of scripted expectations, popular story forms, and recurrent images." *Nomos and Cinema*, *supra* note 2, at 1539. Even the American Bar Association's 1999 study concluded "that the media can and does impact some people's knowledge" about law. *American Bar Association Report on Perceptions of the U.S. Justice System*, 62 ALB. L. REV. 1307, 1315 (1999).

76. *Please Adjust*, *supra* note 69, at 1.

77. Judge Judy took to the air in 1996, and, in 2003, she "reupped" with Paramount for another 4 years (at $25 million per year). Paige Albiniak, *Judy Has Bench Strength*, 133 BROADCASTING & CABLE, Feb. 17, 2003, at 15.

78. *Ratings May 24–30*, 134 BROADCASTING & CABLE 19, (June 14, 2004). Judge Judy had 7.2 million viewers. *Id.*; *see also* Paige Albiniak, *Changes Boost Court Shows*, 133 BROADCASTING & CABLE 33, 33 (2003).

79. *Please Adjust*, *supra* note 69, at 6–7.

five days per week.[80] Simply, a viewer can spend 5–20 hours per week watching syndi-court, and even a non-regular viewer can stumble upon it if they turn on their TV. Nor is syndi-court a scripted drama. Rather, it is a cataloguing of "real cases" with "real people." This congruence with reality enhances its authority, heightening its potential for influence.[81] Finally, as addressed below, syndi-court's narrative and theatrical staging enhance their communicative ability.

V. ANALYZING LEGAL POP CULTURE ON TELEVISION

Analyzing pop culture requires contemplating it as a narrative and looking at its text.[82] Television, and thus syndi-court, is no different: it functions as pop cultural or lexi-cultural text that can be analyzed and interpreted.[83] Thus, like studying literature or drama,[84] we study television or its text by looking at its structure, character, and themes. These constituent pictures are signs.[85] Moreover, like written texts, television programs are narrative and sequential, but like oral folktales, are also dramatic, social, and dialectical.[86]

Yet, television is a visual medium. Therefore, when it tells a story, it has a variety of tools at its disposal to enhance the narrative experience. Just as linguistic signifiers, that is, written and spoken words, impart meaning, so do visual images.[87] On television, these visual and non-linguistic signifiers are the "text."[88] Thus, in addition to dialogue patterns, television uses several aesthetic devices. These include editing techniques, lighting, and visual components such as camera shots and camera angles.[89]

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80. MONACO, *supra* note 31, at 23.

81. Kimberlianne Podlas, *The Monster in the Television: The Media's Contribution to the Consumer Litigation Boogeyman*, 34 GOLDEN GATE U. L. REV. 239, 260–62 (2004) [hereinafter *Monster*].

82. *See* BIGNELL, *supra* note 15, at 86. Narrative analysis studies the way in which we construct, deconstruct, and make sense of these narratives and apply them. It developed in the 1980's in several disciplinary fields. *See generally* Jennifer K. Wood, *Justice as Therapy: The Victim Rights Clarification Act*, 51 COMM. Q. 296 (2003) (discussing how narrative analysis is used to study how stories are used as therapy in response to tragedy); SHANAHAN & MORGAN, *supra* note 40 (discussing the narrative processes for analyzing television's stories).

83. *See* BIGNELL, *supra* note 15, at 15.

84. *See id.*

85. *See generally* SHANAHAN & MORGAN, *supra* note 40 (discussing how individuals use television's stories to form judgments about social reality).

86. BIGNELL, *supra* note 15, at 16. Some assert that the oral features of television represent popular culture's rising to the surface, i.e., the culture of the masses being expressed in this venue. *Id.*

87. MARSHALL & WERNDLY, *supra* note 74, at 36 (explaining how images and nonlinguistic sounds function similar to language).

88. *Id.* ("[L]anguage in television is usually meant to be understood in conjunction with images.").

89. *See* ASIMOW & MADER, *supra* note 23, at 13; TELEVISION STUDIES, *supra* note 73, at 31–33; MONACO, *supra* note 31, at 7 (explaining that lighting and camera angles

Visual and aural cues enhance the effectiveness of a story[90] and can elaborate on its message.[91] For example, editing and camera angles convey tone and can impact what viewers recall.[92] Lighting or music may imply foreboding; editing to show facial expressions and gestures of individuals on screen can allow us to see disbelief, anger, or lack of remorse.[93]

Because each of these cues how the audience interprets the events broadcasted,[94] they make the way in which a television program is shot meaningful.[95] Accordingly, textual analysis of television programs requires considering both the aesthetic and production components of broadcasting.

A. *Mise-en-scene of Syndi-Court*

In studying syndi-court, its text, its narratives, and its ultimate meaning, we apply the above principles of narrative analysis. Moreover, the visual, realist codes of the television medium are evident in the mise-en-scene.[96] Borrowed from the field of film studies, mise-en-scene means "to put on stage."[97] It refers to everything that is visible on-screen or shown on camera.[98] Although the syndi-courts vary somewhat in their look, they share a mise-en-scene containing many conventions that impact the narrative.

A fundamental feature of any mise-en-scene is the set.[99] All syndi-courts use very similar sets that resemble our vision of a courtroom.[100] There are flags near or behind the judges, bailiffs standing to the left

convey mood and meaning); MARSHALL & WERNDLY, *supra* note 74, at 36–37 (explaining that signification relies on shots and camera imagery).

90. *Picturing Justice*, *supra* note 52, at 892.

91. Robin L. Nabi & Alexandra Hendriks, *The Persuasive Effect of Host and Audience Reaction Shots in Television Talk Shows*, 53 J. COMM. 527, 528 (2003).

92. *See, e.g.*, Annie Lang et al., *The Effects of Edits on Arousal, Attention, and Memory for Television Messages*, 44 J. BROADCASTING & ELECTRONIC MEDIA 94, 105 (2000). In fact, studies have demonstrated that increasing the number of edits in a television "message" increases viewers's attention as well as their ability to remember the message. *Id.*

93. *See generally* John Stone, *Evil in the Cinema of Oliver Stone: Platoon and Wall Street as Modern Morality Plays*, 28 J. POPULAR FILM & TELEVISION 80 (2000).

94. Stacy Davis, *The Effects of Audience Reaction Shots on Attitudes Towards Controversial Issues*, 43 J. BROADCASTING & ELECTRONIC MEDIA 476, 477 (1999). Unlike theatre, the ability to move the camera allows control over the viewer's perspective. *Cf.* MONACO, *supra* note 31, at 198.

95. MONACO, *supra* note 31, at 7.

96. MARSHALL & WERNDLY, *supra* note 74, at 84.

97. TIMOTHY CORRIGAN & PATRICIA WHITE, THE FILM EXPERIENCE 521 (2004).

98. MARSHALL & WERNDLY, *supra* note 74, at 84 (explaining that mise-en-scene is everything that the camera reveals).

99. CORRIGAN & WHITE, *supra* note 97, at 44–45 (indicating that sets are the most fundamental feature).

100. The author, an attorney, has seldom litigated in such an attractive space.

of the judge,[101] benches, lecterns, and pillars. The judges are costumed in robes and wield gavels; the bailiffs don court officer attire.[102] In terms of blocking,[103] litigants must stand with a neutral space between them and the judge. Should a litigant move from her appointed mark, the bailiff would approach. Most syndi-courts also begin with montages of the respective judges in robes and a depiction of a courthouse or government building.

Syndi-court's camera shots are also narratively suggestive. Often, judges are shot at a low angle, upwardly tilted.[104] Not only is this flattering to the judge's appearance,[105] but it also raises the judge, both literally and figuratively, above the litigants. This angle replicates and certifies the judge's authority.[106] By contrast, litigants are generally shot in medium close-ups,[107] sometimes bordering on a portrait shot, and at a slightly high or normal eye-level angle.[108]

Syndi-courts also highlight non-verbal behavior and are edited to make it more meaningful. When non-verbal behaviors such as gestures or facial expressions are communicated through television, editing can enhance or impute to them meaning.[109] Indeed, developing suggests that the non-verbal reactions of others can shape viewers'

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101. Interestingly, the bailiff-judge duo on each of these shows is a testament to gender and ethnic diversity. The pairs are always "differents," i.e., white judge with African-American bailiff, female judge with male bailiff, male judge with female bailiff, African-American judge with white bailiff.

102. Costumes are narrative markers that help define the character. CORRIGAN & WHITE, *supra* note 97, at 57–58; RICHARD BARSAM, LOOKING AT MOVIES 153 (2005) (asserting that this enhances character and helps to tell the story). They also add to the realism of the story. CORRIGAN & WHITE, *supra* note 97, at 57.

103. Blocking refers to the arrangement and movement of actors within the mise-en-scene in order to highlight relationships among them. CORRIGAN & WHITE, *supra* note 97, at 56.

104. According to Corrigan and White, the high-angle-shot often demonstrates that the subject views the world from a position higher than that of other characters. *See id.* at 88. For a technical description and depiction of this and other basic camera positions, *see* WILLIAM H. PHILLIPS, FILM: AN INTRODUCTION 91–94 (3d ed. 2005).

105. In fact, Judges Judy, Millian (The People's Court), and Hatchett are all beautiful women.

106. *See* Gary A. Copeland, *Face-ism and Primetime Television*, 33 J. BROADCASTING & ELECTRONIC MEDIA 209, 210 (1989) (explaining that the way people are framed impacts credibility); *cf.* ASIMOW & MADER, *supra* note 23, at 14 (showing that films typically introduce the judge in an upwardly-tilted shot to certify authority of court).

107. A "medium shot" is where we see the person from the waist up. It is a neutral middle ground between the meaningful close-up and long-shot. CORRIGAN & WHITE, *supra* note 97, at 86–87. It is the most commonly used shot in film. BARSAM, *supra* note 102, at 199.

108. The shooting angle of the camera in relation to the subject is a framing element that may express a point of view and add to the storytelling. BARSAM, *supra* note 102, at 207. An eye-level shot is made from the eye-level of the observer and implies neutrality toward that being photographed. *Id.*

109. *See* Davis, *supra* note 94, at 476.

perceptions of the speaker or topic.[110] Editing connects the reaction to the thing to be reacted against.

One of the most commonly used devices to capture and manipulate non-verbal cues on television is the reaction shot,[111] a brief shot showing an individual's reaction to an event.[112] Syndi-courts frequently use this device. Although we seldom see a reaction from a litigant, we regularly see a reaction shot of the judge.[113] Litigant narratives are constantly interspersed with the judge's expressions, gestures, and stance. These cue us regarding how to assess the litigants and their stories.[114] For instance, following the defendant's testimony with a shot of the judge scowling or with furrowed brow shows us that the judge does not trust the defendant or disbelieves his story.

Third, syndi-courts devote a camera[115] to capture the courtroom audience and its reactions, both verbal and visual. In fact, although the courtroom audience should be irrelevant to the outcome of the cases, it is included in the master shot, the shot of the scene's entire action.[116] Periodically, we see a master-shot camera truck left or right to include more of the audience, and hence, its reaction. Sometimes, we hear the audience's laughter or applause. For example, on *Judge Judy*, this is done with normal eye-level angles, and the focus is limited so that the audience members can be seen but are slightly out of focus to diminish individual recognizability. On other syndi-courts, the camera engages in the same eye-level shot, but uses deep-focus photography to keep the audience in focus. Deep-focus is somewhat unexpected; scenes are shot in shallow-focus, designating either the foreground or background as relevant.[117] Yet, the deep-focus photography of the audience helps viewers to better see these reactions. This technique in syndi-courts suggests that the audience reaction is clearly part of the story being told.[118]

Finally, syndi-court is bathed in realism. A golden rule of storytelling is that to be effective, a story must be perceived to be authen-

110. Nabi & Hendriks, *supra* note 91, at 527, 529 (discussing observable audience reactions).

111. Davis, *supra* note 94, at 477.

112. LYNNE S. GROSS ET AL., VIDEO PRODUCTION: DISCIPLINES AND TECHNIQUES 95 (9th ed. 2005).

113. For a description of the way that viewers may learn from the actions of syndi-court judges and apply this to their interactions with real judges, see *Please Adjust*, *supra* note 69, at 18–20 (using empirical analysis to demonstrate that jurors interpret judge reactions and use them to guide evidentiary determinations).

114. *Cf.* ASIMOW & MADER, *supra* note 23, at 20 (showing how witness close-ups may be utilized to affect the audience).

115. An analysis of the shots used in *Judge Judy, The People's Court, Judge Joe Brown, and Texas Justice* suggest that up to four studio cameras are used to shoot these shows.

116. *See* CORRIGAN & WHITE, *supra* note 97, at 112–13.

117. *See id.* at 89.

118. MONACO, *supra* note 31, at 198. Deep-focus photography is also thought to add to realism. *Id.*

tic.[119] A narrative must convey a sense of reality[120] so that we have a real emotional response to it and can either better apply it to our own lives or test it against our own experiences.[121] As noted, syndi-court is real. Several syndi-courts, through voice over, explicitly state that these are "real people, real cases,"[122] and "real" judges. Moreover, whereas judges are brilliantly outfitted with distinctive collars or accessories, litigants are anything but. Generally, litigants speak like, look like, and dress like anyone you would see in a mall. They are just regular people who seem to have been lifted from their lives and dropped into the television crucible.[123]

VI. CULTIVATION THEORY

These production-oriented visual and aesthetic characteristics combined with syndi-court's pop cultural prominence makes syndi-court a potentially powerful story-teller. Indeed, the potential effect of television programs has concerned social scientists and public policy officials for decades.[124] Several theories of media influence posit that television exposure can impact viewer attitudes and even behaviors.[125] The most popular theory addressing the relationship between television content and viewer beliefs about social reality is cultivation theory.[126]

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119. *See* Egan, *supra* note 20, at 158–159.

120. *Picturing Justice*, *supra* note 52, at 892; ASIMOW & MADER, *supra* note 23, at 12–13 (audiences look for a sense of reality).

121. *See* ASIMOW & MADER, *supra* note 23, at 12–13.

122. *See generally* Alice Hall, *Reading Realism: Audiences' Evaluations of the Reality of Media Texts*, 53 J. COMM., 624, 625 (2003) (explaining that representations that are believed by the viewer to portray a real-world event are realistic). For a discussion of the types of realism judgment, i.e., absolute realism and relative realism, see *id.* at 626.

123. In order for an audience to make sense of what they see on television, an audience must identify with the program or characters. BIGNELL, *supra* note 15, at 97. Characterizing the litigants as regular people permits such audience identification.

124. Shrum et al., *supra* note 72, at 447.

125. Deborah Fisher et al., *Sex on American Television: An Analyses Across Program Genres and Network Type*, 48 J. BROADCASTING & ELECTRONIC MEDIA 529, 530 (2004).

126. Jonathan Cohen & Gabriel Weimann, *Cultivation Revisited: Some Genres Have Some Effects On Some Viewers*, 13 COMM. REPS. 99 (2000); *see* GEORGE GERBNER ET AL., *Growing Up With Television: The Cultivation Perspective*, in MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH 17, 23–25 (Jennings Bryant & Dolf Zillman eds., 1994). Other popular theories include Alburt Bandura's social learning or cognitive theory, ALBERT BANDURA, SOCIAL LEARNING THEORY 11–13 (1977); Fisher et al., *supra* note 125, at 530; Neal R. Feigenson and Daniel S. Bailis, *Air Bag Safety: Media Coverage, Popular Conceptions, and Public Policy*, 7 PSYCHOL. PUB. POL'Y & L. 444, 446 (2001); priming, Stacy L. Smith et al., *Brandishing Guns in American Media: Two Studies Examining How Often and in What Context Firearms Appear on Television and in Popular Video Games*, 48 J. BROADCASTING & ELECTRONIC MEDIA 584, 585 (2004); and mental processing models such as heuristic processing model of cultivation effects, Hyung-Jin Woo & Joseph R. Dominick, *Acculturation, Cultivation, and Daytime TV Talk Shows*, 80 JOURNALISM & MASS COMM. Q. 109–10 (2003).

According to cultivation theory,[127] the overall pattern of television programming to which viewers are exposed cultivates common perceptions of reality.[128] In other words, people who watch a great deal of television will perceive the real-world to mirror what they see on the TV screen.[129] Importantly, this is not an allegation of short-term effect, where watching a particular show directly causes a certain effect, but of the cumulative, long-term impact of the predominant images of the medium.[130]

Cultivation is not an incremental influence, wherein a 10-hour-per-week-viewer, 20-hour-per-week-viewer, and 40-hour-per-week-viewer possess incrementally more or less convergent views with those on television. Rather, it is an effect of significant viewing. Consequently, cultivation divides the world into "heavy viewers" and "light viewers."[131] This is akin to contrasting groups injected with a lethal dose of a drug, say alcohol or cyanide, with a group of individuals who range from slight exposure (perhaps, one drink per month) to moderate exposure (one drink per night): Everyone is exposed to the same chemical, but the exposure becomes relevant only once a certain threshold is reached.

Cultivation research began by investigating perceptions of real-world incidents of crime and victimization.[132] The classic cultivation studies focused on violence and crime on television and viewers' beliefs about violence and crime in society. Numerous content analyses of network television demonstrated that the number of violent acts and crimes on TV greatly exceed that in the real world.[133] Consistent with this, heavy television viewers appear to adopt this viewpoint, both overestimating the incidence of serious crime in society, and be-

(examining the potential effects of daytime TV talk shows on international college students).

127. George Gerbner is credited with not only devising cultivation theory, but also amassing the most extensive research about it. *See* ANTHONY R. PRATKANIS & ELLIOT ARONSON, AGE OF PROPAGANDA: THE EVERYDAY USE AND ABUSE OF PERSUASION 80 (rev. ed. 2001).

128. *See* Woo & Dominick, *supra* note 126, at 110 (explaining that viewers gradually adopt beliefs that match the stereotyped and selective view of reality portrayed on television); MELVIN L. DEFLEUR & SANDRA J. BALL-ROKEACH, THEORIES OF MASS COMMUNICATION 262–64, 316–17 (5th ed. 1989); Patrick Rossler & Hans-Bernard Brosius, *Do Talk Shows Cultivate Adolescents' Views of the World? A Prolonged-Exposure Experiment*, 51 J. COMM. 143, 146 (2001) (stating that cultivation presumes heavy viewers of TV derive their perception of reality from TV representations).

129. Thomas C. O'Guinn & C.J. Shrun, *The Role of Television in the Construction of Consumer Reality*, 23 J. CONSUMER RES. 278, 280 (1996) (reporting the association between television viewing and beliefs consistent with those images).

130. GERBNER ET AL., *supra* note 126, at 24 (explaining that cumulative exposure to television develops a set of beliefs in viewers).

131. PRATKANIS & ARONSON, *supra* note 127, at 81–82 (describing Gerbner's division of television viewers).

132. *See id.* at 82–83.

133. Chris Segrin & Robin L. Nabi, *Does Television Viewing Cultivate Unrealistic Expectations About Marriage?*, 52 J. COMM. 247, 249 (2002).

ing more likely to believe that the world is a mean place where people cannot be trusted.[134]

Yet, several researchers have noted that the present television environment is quite different than the one that inspired cultivation theory. When Gerbner and his team began collecting data to support his theory, there existed three network stations and one or two local stations. Therefore, a heavy viewer of television watched an identifiable, finite universe of options. There were no heavy viewers of reality TV or situation comedies, but only heavy viewers of TV generally. This led Gerbner to argue that the themes and conventions of storytelling cut across all programming.[135]

In the years since cultivation theory was first proposed, television offerings have increased manifold. Today, however, the world of television is different than it was at cultivation theory's outset. A heavy viewer can watch an infinite array of options: 40 hours of news per week, 40 hours of crime/legal investigation shows per week, or 40 hours of cartoons per week. Consequently, many researchers assert that using raw totality of viewing as a measure is no longer accurate. Instead, they suggest that cultivation theory be modified to[136] acknowledge genre-specific effects.[137] This is particularly apt to the study of syndi-court and its contribution to the nomos.

VII. THE EMPIRICAL STUDIES: THE STORIES SYNDI-COURT TELLS

Although legal scholars have been slow to acknowledge pop-cultural depictions as worthy of academic attention,[138] the study of law's interpenetration of popular culture is beginning to obtain cachet.[139] Unfortunately, we still understand little about how viewers use spe-

134. This is known as the "mean world" syndrome. Of course, assertions of cause based on cultivation theory may confound variables or highlight the role of the viewer in constructing/reflecting/his own reality/seeking out programming that reflects his existing reality.

135. Segrin & Nabi, *supra* note 133, at 259 (outlining debate regarding universal and genre-specific cultivation effects).

136. For a history of cultivation theory and its maturation, see generally Sherry, *supra* note 67.

137. *See* Fisher, *supra* note 125, at 549; Jonathan Cohen & Gabriel Weimann, *Cultivation Revisited: Some Genres Have Some Effects on Some Viewers*, 13 COMM. REP. 99, 101–02, 107–08 (2000).

138. Richard K. Sherwin, Foreword, *Law/Media/Culture, Legal Meaning in the Age of Images: Foreword*, 43 N.Y.L. SCH. L. REV. 653, 655 (2001) [hereinafter *Legal Meaning*] ("The interpenetration of law, culture, and mass media has not been adequately studied."); *cf.* Gewirtz, *supra* note 24, at 136–37 (noting that recent legal research has neglected to study how law's narratives are constructed and influence audiences).

139. Norman Rosenberg, *Looking for Law in All the Old Traces: The Movies of Classical Hollywood, the Law, and the Case(s) of Film Noir*, 48 UCLA L. REV. 1443, 1444 (2001); Steve Greenfield, *Hero or Villain? Cinematic Lawyers and the Delivery of Justice*, 28 J. L. & SOC'Y 25 (2001).

cific story types to make sense of the world,[140] or what effect media representations of law have on the public's perceptions of the legal system.[141] Consequently, the following group of studies investigates viewing habits of syndi-court and knowledge of particular legal rules, attitudes, and propensities regarding law and legal process.

The two interlocking studies reported below investigated whether viewers of syndi-court learned about the law. The first study investigated[142] syndi-court viewing and legal attitudes (Study I). It spanned 46 months,[143] two coasts, and two primary sample groups. The second study investigated syndi-court viewing and content knowledge of specific legal rules, and drew on later participants (Study II). Each study is addressed below.

VIII. STUDY I: SYNDI-COURT AND LEGAL ATTITUDES

A. *Participants*

While awaiting entrance into the courthouse and during lunch breaks, 241 prospective jurors from Manhattan, the District of Columbia, and Hackensack, New Jersey completed a survey instrument [the base survey] regarding syndi-court viewing and perceptions of judges and the justice system.[144] In exchange for their participation, they received the elite pens they used and candy bars.

Next, over 31 months,[145] 326 jury-eligible adults enrolled in their first or second year of college completed an enhanced survey. One hundred forty-nine students were drawn from an introductory business law course (in a northeastern college) and 187 were drawn from an introduction to law course (in a west coast college). Students completed surveys within their first two weeks of regular session classes, and, in exchange for their participation, received extra credit or an extra cut.[146] Once incomplete or internally inconsistent surveys were discarded (n=5), the remaining 321 (=97%) were analyzed.

Finally, after ANOVA between the prospective juror and jury-eligible groups disclosed no statistically significant differences, results of the total 546 completed responses were analyzed via meta-analysis.

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140. *See* SHANAHAN & MORGAN, *supra* note 40, at 194.

141. Spitz, *supra* note 54, at 730–31 (explaining that pop legal culture contains a small but growing body of literature).

142. This was also the first begun and completed, sequentially.

143. It began in June of 2000, in courthouses in the New York City area.

144. Individuals were approached, identified as appearing for jury duty, and asked to complete a questionnaire. No individual believed to be a juror was excluded.

145. After analysis on the Prospective Juror Sample was completed in September 2001, the jury-eligibles Study commenced. Data was collected each successive academic semester from Fall 2001 through Spring 2004, totaling 31 months of collected data.

146. Due to the grading method of some classes, the extra-credit option could not be accurately calculated. Thus, these students received an extra absence from class.

B. *Instruments*

Two survey instruments were used: a base survey and enhanced version of that survey (the basic survey plus one additional page of queries). Hence, all respondents completed the base survey instrument.

1. The Base Instrument

The base instrument measured, *inter alia*: syndi-court viewing habits, expectations of judicial behavior, whether the respondent would consider bringing a legal claim, the likelihood of doing so, whether the subject would consider pro se representation, and the likelihood of partaking in pro se representation.

2. The Base Revised Instrument ($base^R$)

After administering the base instrument to the prospective juror sample—sequentially the first group surveyed—the base instrument was refined to clarify whether the potential risk/jeopardy that a litigant faced impacted one's propensity toward self-representation. In order to maintain the empirical protocol and quantification of both data sets, this refinement was accomplished by merely attaching an additional page of questions to the base survey instrument. This page investigated the propensity toward self-representation in various civil and criminal contexts. The ($base^R$) revised instrument[147] was then administered to the second group, the jury-eligible adults.

C. *Results: Study I*

Once incomplete surveys and those demonstrating obvious English language barriers were discarded, a total of 225 responses from the prospective juror group and 321 from the jury-eligible group, or a total of 546 responses, were analyzed. The data pertaining to litigiousness and pro se representation were analyzed both independently and via meta-analysis.

1. Television Exposure Measures

To isolate any connection between syndi-court viewing and certain factors contemplated by the questionnaire, respondents were identified as either frequent viewers (FV) or non-frequent viewers (NV), consistent with the Gerbner typology.[148] Syndi-court viewing was measured via two axes of self-reported data. First, respondents were asked to quantify how many hours per week/month they watched syndi-court. Second, respondents were asked to describe their view-

147. The phraseology of these questions was confirmed by first administering a draft survey to 81 students and conducting a post-mortem structured interview with a focus group of 28 of those students.

148. This classification is consistent with cultivation theory's division of society into heavy viewers and non-heavy viewers.

ing habits using a Likert-type scale. Of the 546 respondents, 349 were frequent viewers and 196 were not. Of the 225 prospective juror responses analyzed, 149 (66.2%) were FV and 76 (33.78%) were NV. Of the 321 jury-eligible responses analyzed, 200 (62%) were FV, and 121 (38%) were NV.[149]

2. Expected/Appropriate Judicial Demeanor

As summarized below, a comparison of means disclosed several statistically significant differences, $p < .05$, between FV and NV responses to questions measuring perception of judicial demeanor.[150] As reported in the table below, though a surprising number of respondents in either group envisioned an "active" bench, FV in contrast to NV expressed this belief at the .0005 level of significance. Indeed, frequent viewing was associated with a belief that judges should have an opinion regarding the verdict and make it "clear or obvious."

3. Litigation and Pro Se Representation

Differences were also seen in attitudes toward claiming and pro se representation. Within the jury-eligible sample, statistically significant differences, $p < .05$, emerged between FV and NV responses to questions measuring the potential for litigating and the potential for doing so pro se. Differences in responses regarding the potential of pro se representation were seen only in low risk situations (where FV were significantly more likely to engage in pro se representation than NV). No difference was found in high-risk situations. Rather, it appeared that where respondents were faced with high levels of risk, they rejected the potential of pro se representation, notwithstanding viewing profile.

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149. Here, a "frequent viewer" (FV) watched syndi-court between two to three times and more than five times per week (and checked the corresponding response on the descriptive scale of viewing); a "non-frequent viewer" (NV) watched syndi-court no more than once per week (and checked the appropriate response on the corresponding Likert-style scale).

150. Among the "yes/no" queries posed were:

- Should a judge have an opinion about the outcome/verdict in the case?
- Should a judge make her/his opinion about a case clear or obvious to the jury?
- Will you look for clues or try to figure out what the judge's opinion about the case is?
- Should a judge frequently ask questions?
- Should a judge be aggressive with the litigants OR express her/his displeasure with their testimony or behavior?

D. *Descriptive Statistics (Study I)*

	FREQUENT VIEWERS (n=349)		NON-FREQUENT VIEWERS (n=196)	
	Prospective Jurors	**Jury Eligible Adults**	**Prospective Jurors**	**Jury Eligible Adults**
Judge should make opinion clear or obvious to jury	77%	80%	25%	29%
Judge should frequently ask questions	77%	76%	32%	30%
Judge should be aggressive with litigants; express displeasure with testimony	83%	80%	38%	36%
Would consider bringing claim	64%	71%	26%	28%
Would bring claim	86%	82%	76%	77%
Would consider pro se representation	75%	78%	50%	58%
Would represent self pro se	59%	54%	18%	24%
Would represent self [HIGH RISK][151]	55%	53%	16%	19%
Would represent self [LOW RISK][152]	—	5%	—	3%
	—	56%	—	13%

Finally, meta-analysis of the Prospective Juror and Jury-eligible data (total responses=546; FV=349 [64%]; NV=197 [36%]) yielded the following:

Proportions

	FV	NV
Learned about law and legal system	.79	.21
Would consider bringing claim	.84	.59
Would bring claim	.77	.42
Would consider pro se representation	.56	.22
Would represent self pro se	.54	.18

IX. STUDY II: CONTENT KNOWLEDGE OF LEGAL RULES

A. *Participants*

During the final year of data collection, in addition to completing the enhanced syndi-court survey, 96 of the jury-eligible participants were also asked to complete a "Law Test." As these 96 participants had completed and turned in their base^{R}, the researcher asked each student if she or he "could help out by taking a very short law test,

151. This is the mean of the high-risk-civil and high-risk-criminal responses.
152. This is the mean of the low-risk-civil and low-risk-criminal cases.

while [they] were waiting." The test was prominently displayed on the table, so as to show its brevity and simplicity. Ninety participants completed the "Law Test," and attached their completed test to their syndi-court questionnaire.[153] After incomplete surveys were discarded, the remaining 88 were analyzed.

B. *Instrument*

The "Law Test" measured knowledge of concrete legal rules. Choice of topics began by looking back to a previous content analysis of syndi-court's legal content. Ultimately, topics chosen met two criteria: first, they were prominent on syndi-court[154] and, second, they were commonly subject to misperceptions, that is, average people tend to believe something legal or illegal when, in fact, it is the opposite.

After piloting the phraseology and validity of queries with two groups of graduate students enrolled in a Research Methods course, a short forced-choice, True/False test was designed which measured knowledge of certain legal rules. The test included the following six questions:

1. A parent is not usually legally responsible for acts of his/her minor child
2. An oral contract (not in writing) is enforceable
3. If someone falls on your property, you are legally responsible for their medical bills
4. If you win a lawsuit, you can usually recover money for your time spent in court
5. If the dry cleaner ruins your coat, which you purchased 1 year ago for $500, you are entitled to $500
6. You can usually recover punitive damages in a contract action

C. *Results: Study II*

Questions 1 and 2 were coded TRUE; questions 3–6 were coded FALSE. Each of the 88 tests were then "graded." Results were analyzed according to FV/NV profile.

Of the 88 responses analyzed, 65% (n=57) were FV and 35% (n=31) were NV. Although the NV scored slightly higher on the Law Test (NV mean score=2.39; SD=1.52) than did the FV (FV mean score=2.28; SD=1.67), a z-test disclosed that there was no statistically

153. This permitted analysis according to viewer profile and consideration of the interplay among viewing, normative impact and attitudes, and legal content knowledge.

154. Prominence was measured by 10% saturation (occurrence over the month) on any given syndi-court or 12% saturation over the totality of syndi-courts. Some of the questions and, hence, legal rules, overlapped. Thus, the responsibility of a parent for a minor might occur in a case about medical bills, where the plaintiff also sought to recover damages for time spent in court.

significant difference, $p < .05$, between the total scores of the two groups. On individual questions there were two instances where the viewing groups differed. On Question 6 the FV scored significantly higher; on Question 3 the NV scored higher.

D. *Descriptive Statistics (Study II)*

CORRECT RESPONSES (PROPORTIONS) ON LAW TEST

QUESTION #	**TOTAL CORRECT RESPONSE**	**FV CORRECT RESPONSE** (proportion)	**NV CORRECT RESPONSE** (proportion)
1	0.35	0.33	0.39
2	0.43	0.44	0.41
3	0.36	0.33	0.45
4	0.41	0.40	0.42
5	0.35	0.33	0.39
6	0.39	0.47	0.35

X. DISCUSSION

Overall, the data supports a cultivation effect of syndi-court, although no direct, specific learning effect. Specifically, it appears that syndi-court narratives work on a normative or attitudinal level whereby the narrative cultivates attitudes consistent with syndi-court's depicted values, such as advocating the use of the legal system for minor wrongs or for moral redress.[155] In this way, they contribute to lay understandings of law and thus, the nomos.

The data, however, did not show that the particular legal rules expressed by the judge and verdict impacted viewers' content knowledge about the law. Rather, viewers and non-viewers scored similarly (poorly) on the Law Test, demonstrating no significant difference between these viewing groups. Had syndi-court contributed to content learning, we would expect the frequent viewers to perform better on the Law Test. This was not borne out by the statistical analysis. Moreover, although there was one question where each viewing group scored significantly higher, neither question, on its face, could be linked to a unique viewing experience. In fact, if anything, the frequent viewers demonstrated a better knowledge of the limitations of damages, and, thus, better understood when not to sue.

This distinction between results on the attitudinal variables and those on the content-based variables does not undercut an explanation of a cultivation effect, but is consistent with it. Cultivation con-

155. LENZ, *supra* note 32, at 12 (describing both theories that pop culture law mirrors and molds attitudes); *see generally* PRIME TIME LAW (Robert M. Jarvis & Paul R. Joseph, eds., 1998) (explaining how law on TV reflects public's vision of law). 52

siders a cumulative attitudinal impact reflecting a synthesis of the messages carried by television imagery. It does not claim to teach specific, discrete pieces of information. Instead, cultivation asserts that heavy viewers would display attitudes consistent with television's diet of programming. Indeed, though the analysis herein cannot permit definitive directional and causative proof, the results point to such an attitudinal similarity.

Inasmuch as syndi-court's narratives both dramatize law and morality and imply whether or not litigious action is appropriate,[156] they contribute to the nomos. Several of syndi-court's moral, lexi-cultural, and schematic contributions to the nomos are outlined below.

A. *The Moral of the Story*

The narrative of syndi-court is less a depiction of actual legal rules (such as the right of a tenant to withhold rent or the tort liability of minors), than a collection of fables portraying society's moral codes.[157] Indeed, syndi-court disputes tend to focus as much, if not more, on the unjust or irresponsible person as on the legal rules or unjust application of them.[158] Syndi-court regularly equates legal guilt with moral guilt; the bad act *is* the bad person and vice versa.[159] Watching syndi-court may teach us to pay back our debts, follow through on our contracts, control our temper, and restrain our pets, but its moral thrust is to teach us the analogous lessons that welching/stealing/cheating/hitting/biting is bad and that those who engage in such behaviors are morally wrong.[160] Yet, not only do we learn the law's moral values, but also we experience the law. We use syndi-

156. *Monster*, *supra* note 81, at 259–60; *Cf.* Stephen Daniels & Joanne Martin, "*The Impact That It Has Had Is Between People's Ears:" Tort Reform, Mass Culture, And Plaintiffs' Lawyers*, 50 DEPAUL L. REV. 453 (2000) (explaining that the cultual environment of litigation defines injury, whom to blame, and response); *see generally* Amitai Etzioni, *Social Norms: Internalization, Persuasion, and History*, 34 LAW & SOC'Y REV. 157, 161–62 (2000) (discussing how norms constitute legal environment); Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903, 914 (1996) (discussing the relevance of social norms in the context of the law); Gunter Bierbrauer, *Toward an Understanding of Legal Culture: Variations in Individualism and Collectivism Between Kurds, Lebanese, and Germans*, 28 LAW & SOC'Y REV. 243, 244 (1994) (arguing that cultural differences affect individuals' attitudes about the legal system and how it is to be used in dispute resolution).

157. The typical trial focuses on one or both. *See* Clifford, *supra* note 29, at 69–70.

158. According to one author, "[t]hese shows, in reality, have little to do with real justice and even less to do with real cases." Michael M. Epstein, *Judging Judy, Mablean and Mills: How Courtroom Programs Use Law to Parade Private Lives to Mass Audiences*, 8 UCLA ENT. L. REV. 129, 137 (2001).

159. Although syndi-courts include some accidents involving judgments that are rendered against morally-pure litigants, judges often clarify that the litigants are not bad, though their action or inaction results in liability.

160. Pop culture law (contemporary mass media's representation of law) alters the way that people perceive and make judgments about truth and blameworthiness. *Legal Meaning*, *supra* note 138, at 654.

court to understand and enforce moral values and then feel good when we see those values enforced by the judge.[161]

Moreover, the experience of watching individuals win and lose in the television crucible can be cathartic not only for the prevailing litigant, but for the viewer. As viewers to this legal play,[162] we see what occurs, but we also join the judge in passing judgment. When the story reaches its end, we feel reassured that justice—at least for the common person—does exist. It is alive and well and proliferates.

Syndi-court exudes a lexi-cultural aspect akin to the moral function of law. Ultimately, the moral of syndi-court's story may be cathartic, not only for the television litigants, but also for the audience.[163] In fact, Shale has described law as a "spectacle through which we understand essential aspects of humanity and society."[164] Syndi-court accomplishes this in a reflexive, post-modernist way. Like the stories of real trials, the stories of syndi-court make us witnesses to law in action as well as to the moral standards of our law and our culture.[165] Therefore, syndi-courts are, perhaps, best understood as morality plays that offer a singular narrative pitting good against evil, moral against immoral, and legal against illegal. Thus, the legal issue before the syndi-court is merely the conduit through which the morality play is told.

B. *Normative Impact*

Cover saw the nomos encompassing our normative universe of law. Through its stories, syndi-court appears to play a role in establishing or reinforcing that normative universe. As a prominent legal storyteller, syndi-court is a powerful agent of legal socialization.[166] Its

161. In some ways this parallels the media's tort tales that almost always identify plaintiffs as morally blameworthy. WILLIAM HALTOM & MICHAEL MCCANN, DISTORTING THE LAW, POLITICS, MEDIA, AND THE LITIGATION CRISIS 61–64 (2004).

162. Or, they may be conceived as patrons to this legal proscenium.

163. Chief Justice Burger spoke of the community's need for catharsis in the service of the law's legitimacy.

164. Shale, *supra* note 32, at 991.

165. *See* Paul Gewirtz, *Narrative and Rhetoric in the Law*, *in* LAW'S STORIES, *supra* note 15, at 2–3.

166. MCQUAIL, *supra* note 21, at 360 (discussing the media's role in socialization); *see, e.g.*, *Please Adjust*, *supra* note 69, at 7–8, 15; RICHARD E. PETTY ET AL., *Mass Media Attitude Change: Implications of the Elaboration Likelihood Model of Persuasion*, *in* MEDIA EFFECTS: ADVANCES IN THEORY & RESEARCH, 155, 158 (JENNINGS BRYANT & DOLF ZILLMAN eds. 2d ed., 2002) [hereinafter *Attitude Change*]. Socialization is the process by which society's beliefs, attitudes, and behaviors are learned. *Id.* A variety of social scientists employ this concept to explain the way in which various aspects of culture begin as external to individuals then become internal. *Id.* For example, sociologists employ the idea to refer to how we come to participate in group life, psychologists use it to label our learning of the appropriate behaviors necessary to our co-existence in a social group, and anthropologists use "enculturation" to describe the process by which people acquire and internalize aspects of our respective societies. *Id.*

fables can reconstruct legal culture[167] or provide a normative rubric guiding legally-implicated action. Either may alter the normative firmament of litigious action.[168]

Before one files a suit, she must identify a harm and reconstruct it as the type qualifying for legal redress. The key to understanding whether an individual will formally dispute[169] a litigious moment is discerning that individual's social construction of litigious reality—to this person, what is a legal wrong, what is law for, and how or when is the law appropriate to use? This legal culture then guides individuals in a conflict situation by signaling how to behave when wronged[170] and what society's reaction to or perceptions about disputes and disputants will be.[171] This structures opinions and expectations toward disputing, including one's willingness to dispute or turn to legal institutions for the management of private conflicts.[172]

For example, before one files suit, she must identify what she believes to be a litigable claim. This does not mean that the individual knows the legal rules or that, if she does, she will follow them, but that she perceives that this type of thing is a legal wrong qualifying for redress.[173] In making this judgment, the individual may reference urban myths[174] and the ways she has seen others act under similar circumstances. She compares her own situation to those of others, considering what they have done and how society has responded, negatively or positively, to those choices.

Once that litigious moment is identified, the aggrieved party must decide whether to pursue it and to what remedy.[175] Again, this assess-

167. *See* Bierbrauer, *supra* note 156, at 243 (describing legal culture).

168. These set the stage for how a potential disputant constructs a litigious moment. *See generally* William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1980–81) (describing disputes as social constructs).

169. Daniels & Martin, *supra* note 156, at 453 (explaining that the environment of civil litigation includes what is an injury, whom to blame, and how to respond to others).

170. *See* Etzioni, *supra* note 156, at 161–62; *see also* JOEL CHARON, THE MEANING OF SOCIOLOGY 61–62, 107 (4th ed., 1993) (explaining how norms signal society's rules or expectations); *Id.* at 167 (noting importance of socialization in following society's rules of law).

171. *See* Daniels & Martin, *supra* note 156, at 453–454; Sunstein, *supra* note 156, at 914 (stating that norms define what actions are to be taken).

172. Media have long played a role in society's acculturation toward litigation. For an account of that history, see LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 185–87 (2d., 1985).

173. *Cf.* Julie MacFarlane, *Why Do People Settle?*, 46 MCGILL L.J. 663, 678–79 (2001) (discussing how perception of harm and expectation of remedies affect litigants' behavior in a suit).

174. For an account of popular legal legends, see Marc Galanter, *The Conniving Claimant: Changing Images of Misuse of Legal Remedies,* 50 DEPAUL L. REV. 647, 664 (2000) ("Most Americans think there is too much claiming.").

175. MacFarlane, *supra* note 173, at 665 (noting the transformation of the grievance upon voicing it and requesting remedy).

ment is made with reference to norms, comparing her own situation with those of others, considering what they have done and how society has responded, negatively or positively, to those choices.[176] Moreover, where the public image of litigation is negative,[177] the apparent norm disfavors litigation; where it is positive, the apparent norm favors litigation. Often, one compares her problems to those of others. Syndi-court contributes to this normative mosaic.

1. Altering the Normative Firmament

Syndi-court's narrative publicizes a normative standard against which these litigious decisions are made. By celebrating frequent suits by regular people, often over small sums, syndi-court implies that low-end litigation is common or least not abnormal. This implies a norm in favor of litigation. Indeed, the data showing that FV of syndi-court had a significantly higher proclivity to litigate is consistent with such a normative presumption. Moreover, on syndi-court it seems that every problem is worthy of a courtroom airing, if not ultimately legal redress. This may signal that such litigation is normal and even encourages it.

Although "no program of cultivation research to date has carefully examined whether attitudes resulting from long-term exposure to television messages translate into behavioral intentions or behaviors,"[178] the best predictor of volitional behavior is behavioral intention. Behavioral intentions are in turn "based on two types of cognitive antecedents: (a) attitudes toward performing a particular behavior and (b) the subjective norm surrounding that behavior."[179] Consequently, while the studies herein were unable to measure whether frequent viewers actually litigated as much or more than pro se litigants, they *did* measure frequent viewers's expressed intention to do so. The Juror and Eligibles Studies demonstrate that frequent viewers express a propensity toward pro se representation, whereas non-viewers do not. As clarified by the Eligibles Study, this difference is evident only in the "low risk/jeopardy" categories, the situations most resembling those of syndi-court. Notably, no difference is apparent in "high risk/jeopardy" situations. This suggests that syndi-court is a normative messenger of litigation.

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176. *Monster*, *supra* note 81, at 250–253.

177. American culture often marks litigation or litigants as negative. Julie Paquin, *Avengers, Avoiders, and Lumpers: The Incidence of Disputing Style on Litigiousness*, 19 WINDSOR Y.B. ACCESS TO JUST. 3, 17 (2001) ("Most of them still thought of litigation").

178. Robin Nabi & John L. Sullivan, *Does Television Viewing Relate to Engagement in Protective Action Against Crime?: A Cultivation Analysis From a Theory of Reasoned Action Perspective*, 28 COMM. RES. 802, 805 (2001).

179. *Id.* at 807.

2. Reducing Gatekeepers

The transformative potential on legal culture could also reduce gatekeepers to formal legal action. Contemporary society generally stigmatizes litigation as well as those who pursue it.[180] Where a putative plaintiff has a claim, but fears the social rebuke associated with litigation, she may avoid suit in order to avoid that stigma.[181] Hence, stigma is a gatekeeper that keeps people out of the legal system. Portraying litigation and pro se representation as common if not banal, however, reduces the stigma associated with litigation. Consequently, people who would have previously avoided litigation out of embarrassment would no longer be deterred. The gate is then lowered, and more people will likely enter the legal system.

C. *Schematic Impact*

In addition to their normative communicative function, syndi-court's stories may evolve into schema or heuristics. Much of what we know comes from the stories told in our culture, and television is one of the institutions that tells us those stories.[182] Syndi-court's collection of stories, while not teaching discreet legal rules, become heuristics, mental rules of thumb that people use when making decisions.[183] Syndi-court-inspired schema then impact the way we expect the legal process to progress, believe trial evidence will unfold,[184] make judgments about truth and blameworthiness,[185] and value self-representa-

180. Paquin, *supra* note 177, at 17 (explaining that people think of litigation as a disagreeable experience); *see* Daniels & Martin, *supra* note 156, at 462 (explaining that a significant portion of the public believes plaintiffs bring unjustified lawsuits); Galanter, *supra* note 174, at 664 (explaining that litigants are portrayed as exploitative).

181. *See* VALERIE P. HANS, BUSINESS ON TRIAL 70 (2000); Michael J. Saks, *Do We Really Know Anything About The Behavior Of The Tort Litigation System – And Why Not?*, 140 U. PA. L. REV. 1147, 1189 (1992) (stating that potential plaintiffs avoid suit because of the stigma associated with litigation).

182. Moreover, as television transforms story-telling into a centralized system, TV also becomes the primary common source of cultural information. Cohen & Weimann, *supra* note 137, at 101–02, 107–08. Its images tell us how things work and what to do. *See* George Gerbner, *What Do We Know?, Foreword* to SHANAHAN & MORGAN, *supra* note 40 at ix–xiii.

183. Russell B. Korobkin & Thomas S. Ulen, *Law And Behavioral Science: Removing The Rationality Assumption From Law And Economics*, 88 CAL. L. REV. 1051, 1055, 1085 (2000); NEAL FEIGENSON, LEGAL BLAME: HOW JURORS THINK AND TALK ABOUT ACCIDENTS 11 (2000); *see* Russel Korobkin, *Bounded Rationality, Standard Form Contracts, and Unconscionability*, 70 U. CHI. L. REV. 1203, 1223 (2003); *see generally* J. RICHARD EISER, SOCIAL JUDGMENT 103–04 (1990) (referencing contribution of Tversky and Kahneman).

184. *See* Kimberlianne Podlas, *The Effects of Syndicated Television Courtrooms on Jurors*, 25 AM. J. TRIAL ADVOC. 557, 558, 573 (2002) [hereinafter Jurors]; *Legal Meaning*, *supra* note 138, at 654.

185. *Legal Meaning*, *supra* note 138, at 654.

tion. Simply, syndi-court becomes the pop culture edition of *Emmanuel's.*[186]

This can be helpful where syndi-court resembles reality. Where it does not, however, the schematic impact may leave the audience with mistaken impressions about the legal process and potentially reduce respect for or understanding of the justice system.[187]

D. *Misperceptions About Legal Process*

On syndi-court, justice is seldom controversial and always swift. Moreover, the court makes its opinion known, pushes the dispute forward, and often scolds litigants. This sets up the audience to expect similar alacrity and efficiency in a real trial or to hold this as the ideal of functioning justice.

Unfortunately, the syndi-court representation of judge and justice departs from reality. Consequently, when audience members become litigants or jurors, they may be disillusioned when a real legal dispute takes more than twelve minutes and a commercial break. They may become angry when the judge is not aggressive with litigants, does not investigate, or make morality the centerpiece of a dispute.[188] This may cause them to criticize the system or the judges.[189] In fact, data from the empirical study herein showed that a statistically significant portion of frequent viewers expected the real bench to follow the script of the syndi-court bench.

E. *Encouragement of Pro Se Litigation*

The prevalence of pro se representation on syndi-court may provide a schema promoting this legal stratagem. Generally, a putative litigant has two options with regard to representation: obtain counsel or proceed pro se. Syndi-court's showing of hoards of "regular" people litigating without the aid of paid counsel implies that it is reasonable to appear pro se and that anyone can do so. Although we have long seen lawyers on TV, we now see thousands of pro se litigants per year. Seeing that the hoards of average people inhabiting syndi-court—individuals to whom viewers can relate—can represent themselves without counsel, makes it reasonable to presume that anyone can. One pro se litigant confessed to an assistant court executive that he obtained all of his legal information from watching Judge Judy.[190]

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186. *Emmanuel Law Outlines* is the seminal legal topic outline and synopsis favored by law students.

187. Jurors, *supra* note 184, at 558.

188. *Id.* at 572–75.

189. *Id.* at 575.

190. Terry Carter, *Self-Help Speeds Up*, 87 A.B.A. J., July 2001, at 34, 34. *See* Dante Chinni, *More Americans Want To Be Their Own Perry Mason*, CHRISTIAN SCI. MONITOR, August 20, 2001, at 1 ("On television, it looks simple enough: You go to cour

Some posit that syndi-courts contribute to the growing trend of pro se litigation.[191] Indeed, the study data showed that situations most resembling those of syndi-court prompted a higher pro se propensity than did scenarios unlike those broadcast on syndi-court, such as criminal trials.[192] This was true regardless of syndi-court viewing patterns.

Of course, while pro se can be dangerous for the unwary litigant, it may properly open the courthouse for wronged, but economically-deterred, individuals. Indeed, some scholars assert that day-time talk shows, by bringing average and less powerful groups to the public fore, have indirectly advanced them and their causes.[193] Others may be unable to obtain counsel because counsel assesses the claim to be weak[194] or the likely recovery to be low.[195] Syndi-court's advertisement of the popularity and normality of pro se representation, however, promotes pro se as a viable alternative. Viewers may conclude "everybody's doing it—why not me?" By eliminating counsel, pro se eliminates the expense of counsel as well as the relevance of attorney refusal. A plaintiff, no longer needing a bankroll or legal expert to gain admission to the justice system, can simply represent herself.

You make your case . . . [a]fter a few moments—and a commercial break—the judge renders a decision.").

191. Carter, *supra* note 190, at 34. *See generally* JONA GOLDSCHMIDT ET AL., MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES AND COURT MANAGERS 10 (1998) (stating that the cost of litigation, distrust of lawyers, and growth of do-it-yourself law businesses are possible reasons for the growth of pro se litigation); John Gibeaut, *Turning Pro Se*, 85 A.B.A. J., Jan. 1999, at 28 (referencing Goldschmidt study).

192. This could be due to the exclusive existence of the low-risk pro se exemplar. Alternatively, it might be that when risk is too high, it precludes any potential for pro se, or when risk is low, pro se tendencies go unchecked.

193. *See* EVA ILLOUZ, OPRAH WINFREY AND THE GLAMOUR OF MISERY 210 (2003); *see also* Russell Engler, *And Justice For All—Including the Underrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 1987 (1999); Janet Reno, Address Delivered at the Celebration of the Seventy-Fifth Anniversary of Women at Fordham Law School (May 19, 1994), *in* 63 FORDHAM L. REV. 5, 8 (1994) (stating that the poor and "working poor" have no access to legal services).

194. A lawyer will often refuse representation where a claim is specious and/or the likelihood of success is low. Herbert M. Kritzer, *Contingency Fee Lawyers As Gatekeepers in the Civil Justice System*, 81 JUDICATURE 22, 22–23 (1997) (explaining how attorneys tell litigants to stop and how attorneys reject cases that do not satisfy risk/return criteria); Daniels & Martin, *supra* note 156, at 484 (stating that in light of strength of cases, 57% of lawyers specializing in less complex tort cases are retaining fewer clients than 5 years ago). Consequently, individuals with small, yet legitimate claims may be unable to obtain a competent attorney. *Id.* at 485.

195. Kritzer, *supra* note 194, at 23 (attorneys reject cases that do not satisfy risk/return criteria); Saks, *supra* note 181, at 1190–92; Daniels & Martin, *supra* note 156, at 484 (court costs dissuade average lawyers from signing up as many clients as they did previously).

XI. EMPIRICAL CONCERNS

It must be remembered that media consumption is an active process, where viewers' existing attitudes and beliefs play some roll in how TV imagery is interpreted, integrated, and remembered.[196]

This study, like any, is subject to the limitations inherent in the experimental design. Typically, social science investigations and cultivation investigations in particular cannot distinguish causation from correlation. Some third variable might explain the connection between hours logged watching syndi-court and particular attitudes. It would be interesting in a later study to look at other pop cultural representations of law on television, such as *CSI: Crime Scene Investigation* or *Law & Order*. Do these dramatic, prime-time offerings also function the same way as syndi-court? Do they teach legal rules whereas syndi-court does not? Do they socialize audiences? Do they have a different story to tell?

Additionally, in order to obtain the data collected, other data, such as income and socio-economic status, was sacrificed. Therefore, the study cannot account for the demographics of respondents. Previous studies, however, showed that income and education tend to correlate with viewing behavior. Hence, where demographics correlate to difference, that difference is evident in amount of viewing. Yet, no evidence indicates that syndi-court viewers differ from television viewers generally. Cultivation researchers note that most people who watch more of any particular type of program, such as syndi-court, "watch more types of programs" overall.[197] Hence, frequent viewers of syndi-court are likely frequent viewers of television as a whole.[198] Additionally, though the most powerful predictor of television viewing overall is education,[199] all of the respondents in the juror eligible study—the group that ranked highest in syndi-court viewing—had completed at least one year of college. Moreover, because the prospective jurors were drawn from jurisdictions that have largely eliminated absolute exemptions from jury service, each of those samples presumably reflected a representative cross-section of their respective communities. These were not the stereotypic people sitting at home during the day watching TV. Nonetheless, a significant percentage of this population watched syndi-court.

Furthermore, the analyses are premised on a genre-specific effect. As explained above, traditional cultivation analysis assumes that tele-

196. Mary Beth Oliver et al., *The Face of Crime: Viewers' Memory of Race-Related Facial Features of Individuals Pictured in the News*, J. COMM. 88, 89 (2004).

197. *See* GERBNER ET AL., *supra* note 126, at 19.

198. Moreover, though cultivation scholars debate genre effects, several researchers agree that a particular type of program can exert a heightened or focused effect on viewers. *See* GEORGE COMSTOCK & ERICA SCHARRER, TELEVISION: WHAT'S ON, WHO'S WATCHING, AND WHAT IT MEANS 93 (1999).

199. *Id.* at 94.

vision transmits a uniform message across a genre,[200] thus the assertion of genre-specific effect is inapt. Yet, as the availability of television channels has increased twenty-fold since the time of classical cultivation theory, empirical evidence shows that the study of genre is an appropriate,[201] and possibly more accurate, measure of audiences.[202] Hence, the number of syndi-courts broadcast and their hours on screen still permit study and can still measure long-term exposure to a medium, endorsing their genre-specific measure.[203]

XII. CONCLUSION

To know law, and thereby the nomos, is to understand its dominant narratives. In our post-literate culture, many of these stories are seated within pop culture. Indeed, legal pop culture can influence respect for, knowledge of, and propensity to turn to the law for the resolution of disputes.[204]

Syndi-court is one of legal pop culture's most prominent storytellers. It may be designed to entertain, but its narrative content and visual aesthetic also conveys messages. These messages are then integrated into our understandings of and emotions about law, helping to define our legal consciousness. In this way, syndi-court helps to construct the nomos. Ultimately, audiences live out these stories and re-enact their scripts and lessons; they reference them when experiencing what they perceive to be legal wrongs, apply them schemati-

200. Rossler & Brosius, *supra* note 128, at 146.

201. Indeed, Potter and Chang propose a genre-specific measure of viewing rather than total viewing time. W. James Potter & Ik Chin Chang, *Television Exposure Measures and the Cultivation Hypothesis*, 34 J. BROADCASTING & ELECTRONIC MEDIA 313 (1990); W. James Potter, *Cultivation Theory and Research: A Conceptual Critique*, 19 HUMAN COMMUNICATION RESEARCH 564 (1993).

202. Rossler & Brosius, *supra* note 128, at 146 (relying on Potter & Chang, *supra* note 202, at 575).

203. *See* Rossler & Brosius, *supra* note 128, at 145 (noting adequacy of design in genre-specific studies).

204. *See* ASIMOW & MADER, *supra* note 23, at xxii. Indeed, such pop culturally-induced understandings of law can ultimately drive legal policy issues such as tort reform and jury reform. For instance, any American who has picked up a newspaper in the last decade has heard that punitive damages and litigation against business has run amok. THOMAS F. BURKE, LAWYERS, LAWSUITS, AND LEGAL RIGHTS 2 (2002) (collecting stories of juries run amok); CASS R. SUNSTEIN ET AL., PUNITIVE DAMAGES: HOW JURIES DECIDE 6 (2002) (stating that most Americans have heard something from the media about punitive damages in recent years). Empirical evidence has repeatedly demonstrated that these claims lack basis. *See generally* HANS, *supra* note 181, at 56; THOMAS KOENIG & MICHAEL RUSTAD, IN DEFENSE OF TORT LAW 3–5, 6 (2001); Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 UCLA L. REV. 4, 15 (1983). They, nonetheless, drive jury and tort reform. *See* HANS, *supra* note 181, at 15 (explaining that some business concerns undertook advertising campaigns decrying a litigation explosion); Theodore Eisenberg et al., *Juries, Judges, and Punitive Damages: An Empirical Study*, 87 CORNELL L. REV. 743, 744 (2002) (punitive damages reform).

cally to assess guilt or the efficiency of courts, and vicariously experience them as a legal and moral catharsis. Thus, television, and its syndi-court, is our window not only into the law but also into the nomos.