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Article

AS SEEN ON TV: THE NORMATIVE INFLUENCE OF SYNDI-COURT ON CONTEMPORARY LITIGIOUSNESS

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I. INTRODUCTION

A variety of disciplines have investigated the ability of the media, particularly television, to influence public perceptions. Regardless of the theory employed, all posit that television content has a reasonably direct and directional influence on viewer attitudes and propensities to engage in certain behaviors. This article extends this thesis to the impact of television representations of law: If television content generally can impact public attitudes, then it is reasonable to believe that television law specifically can do so. Nevertheless, though television representations of law have become

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2. See Feigenson & Bailis, supra note 1, at 446. Generally, media coverage can influence behaviors that are and are not socially desirable. See id. at 446-47.

ubiquitous,⁴ the extent of their impact, if any, has neither been defined nor measured with precision.⁵

In the last decade, television has given birth to a new source of legal “information”: the syndicated television courtroom or “syndi-court.”⁶ Though the public previously has seen law on the television screen, it has never seen reality law in such a constant, uniform way. Just as other media sources of law signal both social and legal rules about litigation, so too does syndi-court. Syndi-court is thus poised to exert some influence on viewer belief systems regarding the methods and acceptability of disputing.

This article examines syndi-court’s influence on beliefs and potential actions regarding litigation, both in terms of pursuing litigation and pro se representation upon litigation. The analysis presents three interrelated empirical studies. These studies explore the content of syndi-court, any association between its messages and the beliefs of its viewers regarding litigation, litigiousness, and pro se disputing, and the potential for converting these beliefs to litigious behaviors.

After painting a picture of a litigious culture, this paper presents statistical evidence disputing this mythology. Having set up such juxtaposition between belief and reality, the article contemplates explanations for this disconnect, as well as the prevalence of this belief. Next, relying on cultivation theory, the article posits that the media has contributed significantly to the phenomenon of increasing litigiousness. Then, recognizing the potential power of the media, in particular, television imagery, in cultivating messages about the law and legal system, the article identifies our strongest


⁶. See Mark Jurkowitz, Hour of Judgment, BOSTON GLOBE, Dec. 3, 2000, at 9; see also Here Come the Judges, EBONY, May 2002, at 96 (noting popularity of syndicated TV courts). For a discussion of syndicated television courtrooms, see infra notes 147, 150-53 and accompanying text.
television messenger of law, the syndicated television courtroom. The characteristics of syndi-court and its potential for social influence are outlined.

Having established the theoretical construct of syndi-court influence, this hypothesis is tested through three related studies. First, a content analysis of the four most popular syndi-courts is reported. This analysis clarifies the primary messages and prevalence of pro se litigation and litigants on the television screen. Second, a study of 241 prospective jurors ("Juror Study") is recounted. This study focused on degree of syndi-court viewing, attitudes about litigation, and views consistent with predominant syndi-court imagery. Third, this research was refined and replicated in studies of jury-eligible adults who were enrolled in college ("Eligibles Studies"). These studies also collected data regarding attitudes toward litigation and pro se representation as well as factors that might mediate these propensities.

The data from the Juror Study and Eligibles Studies are presented independently and, where possible, via meta-analysis. In sum, the results of the analyses converge to suggest frequent viewing of syndi-court predicts beliefs encouraging litigation, pro se representation, and even future acts of litigiousness.

II. BACKGROUND

A. Our Litigious Culture

It is hardly radical to note America's litigation explosion.7 If the rhetoric is believed, over the last few decades, American society has become a highly litigious one,8 where Americans "believe the


One study found 94% of executives believed litigation had exploded over the last decade. See John Lande, Failing Faith in Litigation? A Survey of Business Lawyers' and Executives' Opinions, 3 HARV. NEGOT. L. REV. 1, 26 (1998).

8. See Mark A. Hoffman, Common Good Fights Against Litigious Culture, BUS. INS., Apr. 29, 2002, at 40 (explaining how "culture of litigiousness" is fundamental problem in society); see also BUSINESS, supra note 7, at 56 (illustrating public opinion surveys and increases in court filings); Walter K. Olson, The Litigation Explo-
right to sue is a birthright."9 "The whole legal culture nowadays sees litigation as a good thing, something to be cheered."10 In fact, viable legal claims no longer seem to be a prerequisite to entering the courtroom and obtaining a verdict.11 Rather, plaintiffs, emboldened by out of control juries12 with Robin Hood attitudes,13 now litigate all manner of trivialities.14 Indeed, businesses, special interest groups, and their political allies complain that many suits


11 See Business, supra note 7, at 13, 178 (telling juries are believed to redistribute wealth); see also Robbennolt, supra note 12, at 105 (reporting critics insist juries fuel litigation crisis).

12 See Vamos, supra note 11, at 66 (noting many businesses fear they will be sued unfairly).
are nothing more than unjustified\textsuperscript{15} lotteries\textsuperscript{16} for plaintiffs looking for deep pockets.\textsuperscript{17}

\textsuperscript{15} See Robbennolt, supra note 12, at 114 (stating litigation is expensive). Such legal myths have become folklore — they have multiple versions, no single authoritative text, are formulaic and anonymous, and "are conveyed in settings detached from any practices of active testing for veracity." Oil Strike, supra note 12, at 723; see also Marc S. 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, 8-12 (1983) [hereinafter Landscape of Disputes] (discussing excessive litigation by Americans).

Businesses must respond even when suits are frivolous, and this response translates to expense. \textit{See} Andrew Wood, \textit{Legal Costs Too High?: Try Alternative Dispute Resolution}, 160 CHEMICAL WK. 33, 34 (Nov. 4, 1998) (remarking PricewaterhouseCoopers estimates legal spending for chemical companies as 0.42% of yearly revenue); \textit{see also} Sauer, supra note 8, at H-6 (relating how one vice president complained, "a company can spend millions defending itself against . . . frivolous suits"); Richard J. Rosenthal, \textit{Mediation as an Affirmative Business Strategy}, HAW. PAC. ARCHITECTURE 13 (Jan. 1995) (discussing how business defendants must contend with "spiralizing legal fees" of litigation), \textit{available at} \url{http://www.mediate.com/articles/rosenthall.cfm} (last visited Oct. 21, 2002)).

If news of suit spreads, regardless of the claim's underlying validity, copycat suits may abound, further increasing "response costs." \textit{See} Brian D. Beglin & David M. Cohen, \textit{Tiptoeing Through Mass Tort Litigation}, 48 RISK MGMT., Apr. 2001, at 65 (describing how, within days, a "trickle of legal complaints" can evolve into flood of complaints); \textit{see also} Oliver, supra note 7, at 97 (recounting suits from bystander defendants); Editorial, \textit{Big Punitive Award Threatens Justice}, \textit{Seattle Post-Intelligencer}, Feb. 13, 1999, at A11 (asserting large damage awards encourage "flood of copycat suits motivated by fantasies of a big payday"). Even suits devoid of merit can cause public image problems for a business. \textit{See} Speelman, supra note 11, at 45 (noting companies cast into role of tort defendants are commonly forced to defend products in media). Regardless of trial outcomes, businesses will often find their reputations damaged. \textit{See} America's Love Affair with Litigation Means New Laws for PR, 56 PR NEWS, June 26, 2000, at 1 (discussing damage to business reputation resulting from frivolous suits); \textit{see also} Business, supra note 7, at 4-5 (discussing how litigation alleging DuPont withheld toxicity test results of Benlate DF harmed DuPont's image).


\textsuperscript{17} See Valerie P. Hans, \textit{The Illusions and Realities of Jurors' Treatment of Corporate Defendants}, 48 DEPAUL L. Rev. 327, 329 (1998) [hereinafter Illusions] (noting negative predisposition of jury toward corporate defendants). Some businesses claim victimization by civil juries who rule against them based on a "deep pockets" rationale rather than the evidence. \textit{Id.}; \textit{see also} Business, supra note 7, at 13 (stating ubiquitous belief that juries base their decisions on "deep pocket" rationale).

Lawyers have also been blamed for the litigation explosion, because more litigation means more business for them. \textit{See} Paul Sweeney, \textit{Keeping Legal Costs Down}, FIN. EXECUTIVE, Dec. 2001, at 47, 48 (describing "litigation machine" created by lawyers to pool resources and increase business litigation and noting litigation "driven by plaintiffs attorneys who seek out claims on behalf of consumers"); \textit{see also} Michael Kirsch, \textit{Lawyers, Heal Thyselfs}, 85 A.B.A. J., May 1999, at 96 (noting lawyers contribute to "litigomania"); Leo, supra, note 7, at 24 (stating trial lawyers promote...
This court-sanctioned redistribution \textsuperscript{18} of wealth \textsuperscript{19} is problematic not only for business defendants, but also for the public.\textsuperscript{20} Certainly, defending a tort case is expensive,\textsuperscript{21} but that expense is amortized beyond the individual disputes.\textsuperscript{22} For instance, litigation also increases the costs of doing business,\textsuperscript{23} of insurance,\textsuperscript{24} and of "litigation lottery"; Olson, supra note 8, 247-70 (accusing lawyers of prompting plaintiffs to sue and churning out "junk litigation").

18. There is a suspicion that, compared to judges, who are likely to be wealthier, jurors enact "redistributive inclinations" and biases in their awards against wealthy defendants. See Robbennolt, supra note 12, at 155-56 (comparing wealth of judges and jurors and noting biases latter may have against certain defendants).

19. See Business, supra note 7, at 13 (reporting notion that jurors redistribute wealth from rich corporations to poor plaintiffs). This belief system has led many to criticize tort litigation. See, e.g., Philip K. Howard, The Collapse of the Common Good: How America's Lawsuit Culture Undermines Our Freedom 23 (2001) ("Courts are not supposed to be commercial establishments where, for the price of a lawyer, anyone can buy a chance at a raffle.").

20. See David Trubek et al., The Costs of Ordinary Litigation, 31 UCLA L. REV. 72, 74 (1983) [hereinafter Trubek] (noting wide belief "that the costs of litigation are rising and that these costs are an important public problem").

21. See Robbennolt, supra note 12, at 114 (stating litigation is expensive). "Anyone can file a suit forcing a corporation to spend millions defending itself, and those costs are passed on to [consumers]." Sauer, supra note 8, at H-1 (quoting Adrienne Kotner of Citizens Against Lawsuit Abuse organization). In particular, defending a business can cost millions of dollars. See id. at H-6.

22. See Michael J. Saks, Do We Really Know Anything About the Behavior of the Tort Litigation System - And Why Not?, 140 U. PENN. L. REV. 1147, 1281-82 (1992) [hereinafter Do We Know] (reporting major expense of litigation is transaction costs).


24. See Koenig & Rustad, supra note 11 (noting some blame damage awards for causing businesses to cancel insurance). The Insurance Information Institute estimates that the legal tab of court costs, attorney's fees, insurance premiums, and payouts amount to $161 billion or 2% of the U.S. Gross Domestic Product. See Sweeney, supra note 17, at 47. Another source estimates litigation costs, including legal fees, jury awards, copying, and organization costs, to be $100 billion to $300 billion. This does not include indirect costs, such as damages to corporate reputation and increased day-to-day business costs. See Michael Netzeley, Alternative Dispute Resolution: A Business (and) Communication Strategy, 64 BUS. COMM. Q. 83 (2001) (discussing advantages of alternative dispute resolution). Businesses can employ a variety of methods to keep liability insurance costs down. For example, Chubb Insurance reduces employment practices liability insurance for companies who participate in its certified training programs. See Sweeney, supra note 17, at 47; see also Sally Roberts, Steps Can Be Taken to Limit Exposure to Punitive Damages, 35 BUS. INS., May 14, 2001, at 50, 52-53 (advising companies to purchase insurance to cover damage awards; "general rule of thumb is $1,000 per $1 million in limits").

Additionally, businesses should be careful not to inflate insurance costs with their "sky-is-falling" rhetoric. Saks asserts that the irrational fear of lawsuits causes increased costs, because insurers insist on excessive reserves and products are not produced. See Do We Know, supra note 22, at 1284-85; see also Timothy R. Brown, Group Puts Price Tag on Legal System, COMMERCIAL APPEAL (TENN.), Apr. 17, 2002, at D1 (noting consumer litigation leads to "increase[d] insurance rates").
consumer products.25 This so-called "tort tax" has been estimated at $300 billion per year.26

The risk of litigation may even deter businesses from developing new products,27 and contribute to the decline of the economy.28 One survey found that 60% of corporate executives insisted that civil litigation hampered the ability of U.S. businesses to compete globally.29

The contemporary litigation explosion was identified in the 1970s,30 and reached the pinnacle of public awareness with the Republican Party's 1994 Contract With America.31 The Contract With America's "Common Sense Legal Reform" component used the explosion to justify a number of tort reforms to limit litigation, its attendant costs, and jury awards.32 The policy's supporters

25. See Brown, supra note 24, at DS1 (stating litigation causes consumers to pay more for products).

26. See Leo, supra note 7, at 24-25; see also Peter W. Huber, LIABILITY: THE LEGAL REVOLUTION AND ITS CONSEQUENCES (1988).

One author claims that "tort taxes" increase the cost of an $80 ladder to $100 and a $15,000 pacemaker to $18,000 as business seeks to account for perceived future litigation costs. See Leo, supra note 7, at 24-25. Saks, however, has suggested that this fear of litigation is unfounded and unreasonably pushes up product prices and insurance costs. See Do We Know, supra note 22, at 1284-85.


28. See Koenic & Rustad, supra note 11 (noting critics blame punitive damage awards for U.S. economic decline).

29. See Vamos, supra note 11, at 66; see also Hoffman, supra note 8, at 40 (stating fear of claims "paralyze" business); Jeffrey Rothfeder, Living with Litigation, 173 CHIEF EXECUTIVE, Dec. 2001, at 20 (noting decisions regarding litigation are among most critical for CEOs).


32. See Posey, supra note 31, at 124-25 (discussing various measures of tort reform). The typical tort reform agenda includes caps on damage awards, creation of new costs and procedural barriers to filing of suits, higher burdens of proof for plaintiffs, enhanced affirmative defenses for defendants, limitations on liability for joint tortfeasors, and elimination of certain legal doctrines. See Robert S. Peck,
preached only tort reform could avert damage to American society and our economy.33

B. A Myth Exposed

Although these beliefs in American litigiousness are deep, they seem more popular mythology than empirically-supported reality.34 Proof of a tort litigation explosion or a cultural litigiousness would require evidence of either an increase in the proportion of people suing or an increase in the number of people suing over issues previously ignored.35 Yet, excluding the unique products liability cases of the 1970s and 1980s,36 statistics support neither.37

Instead, once adjusted for population growth, statistical evidence not only disputes an increase in litigation,38 but also suggests a decline over the last decade. Indeed, a study sponsored by the Georgia Civil Justice Foundation and the Georgia State Bar Association found tort lawsuits had declined from 1994 to 1997,39 Another,


The Supreme Court has also imposed constitutional limits on punitive damage awards. See, e.g., BMW of N. Am. v. Gore, 517 U.S. 559, 585-86 (1996) (holding BMW's conduct not egregious enough to merit punitive damages rising to level of "severe criminal penalty" beyond constitutional limits).

33. See Litigation Explosion, supra note 12, at 4-5 (portraying outcry from business and government on explosion of litigation "mark[ing] America's moral decline.

34. See Sauer, supra note 8, at H-1 (statistics do not support notion of "sue-happy society").

35. See John A. Stookey, Trials and Tribulations: Crises, Litigation, and Legal Change, 24 LAW & SOC'Y REV. 497, 497-98 (1990) (explaining role of litigation in society). Litigation rates measure the frequency of disputes and the willingness and ability of individuals to "convert" those disputes into litigation. See id.

36. See Business, supra note 7, at 9 (recounting high-visibility liability and class actions). Specifically, a majority of the 1980s tort cases involved automobile-related claims. See id. at 57.

37. See id. at 52-58 (recounting debate over existence of litigation explosion). For a discussion of the absence of statistical support, see infra notes 38-49 and accompanying text.

38. See generally KOENIG & RUSTAD, supra note 11 (disputing myths of litigiousness, runaway juries, and need for tort reform); see also Litigation Explosion, supra note 12, 6-7 (illustrating declining per capita rates of filing between 1981 and 1984); Landscape of Disputes, supra note 15, 36-51 (debunking litigation crisis and suggesting caseload increases merely tracked population growth and certain product liability cases, like asbestos litigation); Do We Know, supra note 22, at 1184 (stat ing claims of litigation explosion are overblown); Marc Galanter, Contemporary Legends About the Civil Justice System, 35 TRIAL, Jul. 1999, at 60 [hereinafter Legends] (refuting belief of litigiousness as "jaundiced view"). The rhetoric of large damage awards is similarly "uninformed by empirical research." Robbennolt, supra note 12, at 107.

39. This study concluded the "litigation explosion" was merely "popular and political rhetoric." Bill Rankin, ATLANTA CONST., Feb. 9, 2000, at C3 (reporting
commissioned by the National Center for State Courts, found, in sixteen states, the number of tort suits had declined throughout the 1990s. More recently, when allegations are measured in terms of malpractice suits alone, statistics demonstrate that malpractice suits have actually declined more than 25% since 1994.

Just as claims of present increases in litigation are of a questionable character, so are claims of an emergence of "litigiousness" among Americans. Reputed scholars, such as Michael Saks and Marc Galanter, respectively, have conducted a number of studies investigating this claim from both a psychological and socio-legal perspective. Their studies have found that most people entitled to bring legal claims do not do so. This low ratio of claims to lawsuits demonstrates, if anything, that Americans tend to avoid dis-

University of Georgia study); see also Sauer, supra note 8, at H-1 (noting Judicial Council of California found 50% drop in personal-injury suits over last fifteen years).

40. See William Glaberson, Ideas & Trends: The $2.9 Million Cup of Coffee; When the Verdict Is Just a Fantasy, N.Y. TIMES, June 6, 1999, at 4.1 (reporting National Center for State Courts study).

41. See Koeng & Rustad, supra note 11, at 64 (using statistics of states to dispute claim that medical malpractice suits are increasing); see also Abbot S. Brown, The Med-Mal Suit Explosion That Isn't, N.J. L.AW., Apr. 1, 2002, at 1 (contrasting insurance industry claims against New Jersey statistics of suits).

The media commonly misreport quantitative data, failing to distinguish raw numerical increases from proportional increases. Americans are also guilty of these errors. See Charles R. Berger, Making It Worse than It Is: Quantitative Depiction of Threatening Trends in the News, J. COMM. 655, 656-67, 675 (2001) (observing "Americans are particularly inept at handling quantitative data").

42. See Do We Know, supra note 22, at 1185 (stating victims tend not to complain); see also BUSINESS, supra note 7, at 55-58 (recounting 1991 Rand Study showing vast majority of potential plaintiffs did not resort to legal disputes); Trubek, supra note 20, at 86-87 (noting only about 10% of sampled cases actually end up in court). But see William L.F. Felstiner et al., The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . ., 15 LAW & SOC'Y REV. 631, 636 (1980-81) (stating "small fraction of injurious experiences" mature into disputes); Michael Rustad, In Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data, 78 IOWA L. REV. 1, 2 nn.1-5 (Oct. 1992) (discussing skyrocketing of punitive damages); Ted Rohrlich, We Aren't Seeing You in Court; Americans Aren't Suing Each Other as Often as They Did a Decade Ago, L.A. TIMES, Feb. 1, 2001, at A1 (reporting legal scholars and survey by Rand Corporation's "Institute for Civil Justice" suggest only small percentage of injured Americans litigate).

43. See BUSINESS, supra note 7, at 56 (noting low ratio of potential legal claims to suits); see also Richard Birke & Craig R. Fox, Psychological Principles in Negotiating Civil Settlements, 4 HARV. NEGOT. L. REV. 1, 1 (1999) (stating 5% to 7% of claims filed result in settlement). Less than 5% of all civil suits filed result in a verdict. Id. Of the remainder, almost 90% settle. See Marc S. Galanter & Mia Cahill, "Most Cases Settle": Judicial Promotion and Regulation of Settlements, 46 STAN. L. REV. 1339, 1340 n.2 (1994) (discussing sample of distinct court cases going to trial arbitration, dismissal, or settled).
puting.\textsuperscript{44} Furthermore, even when they do complain in a legal venue, plaintiffs are not rewarded with lottery-sized verdicts.\textsuperscript{45} Instead, it seems that juries are biased against plaintiffs, often blaming them for their fates,\textsuperscript{46} and undercompensating them for catastrophic injuries.\textsuperscript{47}

C. The Media as Storyteller

The drastic disconnect between the perception and reality of litigation rates raises the question of why such deep-seated cultural and political beliefs persist. While some attribute the mythology of the litigious American to sloppy legal scholarship,\textsuperscript{48} and others to business propaganda\textsuperscript{49} intended to influence juries and legal reforms,\textsuperscript{50} another explanation is the media.

In disseminating information, the media does more than merely neutrally inform the public. Instead, by selecting stories

\begin{itemize}
\item \textsuperscript{44} See Do We Know, supra note 22, at 1183 (declaring "remarkable" how few plaintiffs there are in tort system); see also Wood, supra note 15, at 33 (noting most attrition of disputes occurs early).
\item \textsuperscript{45} See Marc Galanter, Pick a Number, Any Number, Am. Law., Apr. 1992, at 82, 84.
\item \textsuperscript{46} See Business, supra note 7, at 216-17 (stating empirical studies do not support myth of jurors as pro-plaintiff); see also Mark Madell, Overcoming Juror Bias: Is There an Answer?, 36 Trial J., July 2000, at 28 (noting jurors judge plaintiffs harshly).
\item \textsuperscript{47} See Rustad, supra note 42, at 62-64 (noting stance juries take when awarding punitive damages if plaintiff played significant role in injury).
\item In fact, the Civil Trial Court Network Project study demonstrated awards against business defendants were lower than those against non-business defendants. See Business, supra note 7, at 217 (stating evidence does not support anti-business bias of jurors). But see Brian J. Ostrom et al., A Step Above Anecdote: A Profile of the Civil Jury in the 1990s, 79 Judicature 233, 236-37 (1996) (stating juries tend to award larger sums when defendant is business); Do We Know, supra note 22, at 1218-23 (noting awards roughly proportional to injury, but significant horizontal inequity remains). See generally Michael J. Saks et al., Reducing Variability in Civil Jury Awards, 21 Law & Hum. Behav. 243, 243 (1997) (noting settlements under compensate plaintiffs for their economic losses).
\item \textsuperscript{48} See David A. Kaplan, The U.S. Litigiousness Myth, Nat'l L.J., Feb. 6, 1984, at 2, 44 (remarking litigiousness myth perpetrated by sloppy legal scholarship).
\item \textsuperscript{49} See Report Disputes View that Jurors Are Lavish With Punitive Damages, S.D. Union-Trib., Aug. 6, 2001, at A-6 (reporting comprehensive study by Eisenberg and Wells of 8,724 trials shows juries not overly prone to award punitive damages).
\item \textsuperscript{50} See Business, supra note 7, at 14, 50 (noting general belief of litigation explosion). Corporations have tried to avoid corporate responsibility by leading a battle for tort reform. See Peck, supra note 32, at 18-19.
\end{itemize}
and determining their prominence and content,\textsuperscript{51} it orients the audience toward a particular perspective on the information reported.\textsuperscript{52} Often, public opinion develops in line with the perceived media slant.\textsuperscript{53}

For instance, a content analysis of 2,696 articles disclosed that community perceptions of fundamentalist Christians tend to track the media coverage and portrayal of fundamentalists in their area.\textsuperscript{54} Positive coverage begets positive attitudes and negative coverage begets negative ones.\textsuperscript{55} Similarly, another study found people exposed to \textit{The New York Times} for five consecutive days adjusted their overall agendas to conform, in part, with those implied by the newspaper.\textsuperscript{56}

Television commentary also influences viewer judgments. A study of ninety-six children showed that their approval of soccer fouls conformed to the opinion of voice-over commentary.\textsuperscript{57} When the commentator disapproved of the player’s aggressiveness, chil-


\textsuperscript{53} \textit{See} Sei-Hill Kim et al., \textit{Think About It This Way: Attribute Agenda-Setting Function of the Press and the Public’s Evaluation of a Local Issue}, 79 J. Mass Comm. Q. 7, 8 (2002); \textit{see also} Lipschultz & Hilt, \textit{supra} note 51, at 240 (noting media plays indirect but significant long-term role in shaping thoughts, actions, and social myths); Sotirovic, \textit{supra} note 51, at 752 (explaining coverage of welfare “reduce[s] reality to a few caricatures”).

\textsuperscript{54} \textit{See} Kerr & Moy, \textit{supra} note 52, at 48, 60-69.

\textsuperscript{55} \textit{See} id.

\textsuperscript{56} \textit{See} Althaus & Tewksbury, \textit{supra} note 51, at 196 (observing findings of study where “two dimensions of media exposure were examined”). Indeed, news is a social construction of reality. \textit{See} Kerr & Moy, \textit{supra} note 52, at 55.

Recently, Serbian president, Slobodan Milosevic, harnessed television to promote his agenda and to spawn ethnic hatred. \textit{See} Daniel Deluce, \textit{Media Wars}, 48 NATO Rev. 16 (2000-01) (describing television as “most powerful tool” to spawn propaganda of ethnic hatred).

\textsuperscript{57} \textit{See} Johannes W. J. Beentjes et al., \textit{How Television Commentary Affects Children’s Judgments on Soccer Fouls}, 29 COMM. RES. 31, 35-36 (2002) (describing method utilized in study). In this study, two groups of children were shown identical soccer games, but one version featured commentary criticizing fouls. \textit{See} id.
Children rejected the foul more strongly than when the commentator approved of the player's actions.\(^{58}\)

It is, thus, reasonable to presume this media effect can even extend to attitudes and beliefs about the law. Philip K. Howard, author of *The Death of Common Sense*, described that interaction:

Americans today seem to abide by a kind of law by journalism, reacting to whatever risks newspapers write about. Several New York private schools instituted peanut-free cafeterias after publicity about horrible reactions that can occur in people born with the peanut allergy. [Yet,] [n]ationally, only a few people every year die from allergic reactions to food of all kinds . . . .\(^{59}\)

Indeed, media reports have been shown to contribute to juror opinions about civil litigation and damage awards.\(^{60}\) Unfortunately, however, the majority of contemporary news reports of jury decision-making inaccurately represent civil litigation. Content analyses of tort litigation stories show that media coverage overrepresents products liability and medical malpractice cases, including the number that go to trial, the number the plaintiff wins, large damage awards,\(^{61}\) and punitive damages.\(^{62}\) This overrepresentation skews public perception of litigation\(^{63}\) and tort awards, leading it to believe such awards are common. For instance, although a 1996 study disclosed damages over $1 million were awarded in barely 8% of all awards,\(^{64}\) 11% of citizens sampled believed multi-million dol-

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58. See id. at 34, 38-41 (describing methodology used in study and subsequent results). Moreover, the commentary may be perceived as punishing or rewarding. See id. at 35-36. This has the effect of "framing" the sporting event. See id. at 33.

59. Howard, *supra* note 19, 11-12 (discussing influence of media reports on American public’s “legal anxiety”).

60. See Robbennolt, *supra* note 12, at 118 (analyzing empirical research on jury decision making process on punitive damages); see also *Business*, *supra* note 7, at 70-71 (maintaining media and advertising influence people’s view of litigation as unrestrained).


62. See Robbennolt, *supra* note 12, at 126 (stating there is misconception in believing punitive damages are customary and substantially large).

63. See id. (stating overrepresentation of cases affects public perception).

64. See Ostrom et al., *supra* note 47, at 235-38 (interpreting data on jury awards in state courts).
lar damage awards were common in 50% of all court cases.\textsuperscript{65} Another study suggested that reports of high damage awards anchor jury damage determinations by defining what is an injury-appropriate sum.\textsuperscript{66}

D. Function of Media Coverage

Accordingly, media coverage of litigation contributes to the persistence of beliefs in a litigation explosion.\textsuperscript{67} At the turn of the century, lawsuits were uncommon.\textsuperscript{68} That trend was paralleled by media coverage that either did not report litigation at all or described it as unusual and inappropriate.\textsuperscript{69} When, during the industrial revolution, the number of severe industrial accidents began to skyrocket,\textsuperscript{70} media coverage of litigation changed. Newspapers began publicizing these accidents, and juxtaposed their portrayals of innocent and horribly injured workers against culpable busi-


\textsuperscript{66} See W. Kip Viscusi, \textit{The Challenge of Punitive Damages Mathematics}, 30 J. LEGAL STUD. 313, 331 (2001) (discussing effect of anchor values on awards). In that study, one group of participants was told of a "similar case" where $50 million in punitive damages were awarded, while a second group was told nothing. Ultimately, the group told of the award awarded higher damages than did the censored group.

Other studies, however, suggest media coverage causes jurors to respond negatively, reducing awards to stem the perceived tide of out-of-control damages. See Valerie P. Hans & William S. Lofquist, \textit{Jurors' Judgments of Business Liability in Tort Cases: Implications for the Litigation Exposition Debate}, 26 LAW & Soc'y Rev. 85, 97 (1992) (noting juries react to stem perceived rise in damages).

\textsuperscript{67} Cf. Mira Sotirovic, \textit{Effects of Media Use on Complexity and Extremity of Attitudes Toward the Death Penalty and Prisoners' Rehabilitation}, 3 MEDIAPSYCHOLOGY 1, 4 (2001) ("What we learn about social issues generally comes to us through some type of media, broadcast or print.").

\textsuperscript{68} See \textit{Illusions}, supra note 17, at 328 (stating there was general disfavor of civil jury). Litigation was inconsistent with the predominant belief systems of Americans who, accustomed to adversity, accepted whatever fate visited upon them, and did not look for another party to whom to shift losses. See LAWRENCE M. FRIEDMAN, A \textit{HISTORY OF AMERICAN LAW} 185-87 (2d ed. 1985) [hereinafter History] (describing two million injuries yearly); \textit{cf. Illusions}, supra note 17, at 331 (maintaining societal desires to stimulate economy led to generous treatment of business corporations), 328 (asserting legal doctrine favored business); Julie Pacquin, \textit{Avengers, Avoiders, and Lumpers: The Incidence of Disputing Style on Litigiousness}, 19 WINDSOR Y.B. Access JUST. 3, 30 (2001) (stating people who hold fatalistic beliefs may lack motivation to sue).

\textsuperscript{69} See \textit{Business}, supra note 7, at 50-54.

\textsuperscript{70} See \textit{id.} at 7 (noting industrial accidents caused about two million injuries and 35,000 deaths per year around beginning of twentieth century); \textit{see also} LAWRENCE M. FRIEDMAN, LAW IN AMERICA 45 (2002) [hereinafter LAW] ("Nothing does a better job of mangling human bodies than machines.").
nesses. Stories even noted protests against unsafe working conditions. Consequently, the frequency, tone, and content of this coverage signaled that litigation was just. This change in media coverage helped support, if not develop, new social attitudes favoring litigation, and soon society began to sue in greater numbers. This account is not meant to suggest that the media is a singular, causal factor inspiring litigation, but to acknowledge the media's influence on people's beliefs and actions regarding litigation.

Hence, while the 1970s may not have marked the beginning of a statistically-supported litigation explosion, it did commence a wave of messages about a litigation explosion. Stories of novel suits put the issue of litigation on the public radar. As public interest piqued, the media continued to look for and report stories about litigation. While the accounts may have whetted an appetite, the increase in the number of stories also suggested to viewers an increase in the amount of litigation, although the suggestion was largely self-replicating. Business then responded with anecdotes of runaway juries, high damage awards, and abusive plaintiffs. Since these anecdotes were consistent with the increase in litigation reports, the media integrated litigation explosion rhetoric into its cov-

71. See Business, supra note 7, at 7 (noting high visibility of industrial injury cases brought about legal change); see also Matthew T. Miklave, Why "Jury" Is a Four Letter Word, 77 WORKFORCE, Mar. 1998, at 57 (claiming publicity generated by media coverage of trials and monetary awards encourages individuals to sue).

72. See Business, supra note 7, at 8 (observing protests were born out of progressive attitudes about collective responsibilities of business).

73. See History, supra note 68, at 545 (indicating newspapers sensationalized high profile trials and accidents in late nineteenth century).


75. See History, supra note 68, at 548-49.

76. See Business, supra note 7, at 70-71 (detailing media reports and business ads complaining of litigation).

77. See id. at 15, 51-70 (describing business-sponsored "litigation horror stories" and anti-litigation advertising campaigns, as well as businesses crafted advertising campaigns "decrying a litigation explosion"); see also Oil Strike, supra note 12, at 731 (noting corporate publicity departments disseminated stories of trivial claims). In fact, as early as 1969, when punitive damage awards were highly unusual, businesses lobbied to scale down or eliminate them. See Rustad, supra note 42, at 10, 17 (claiming punitive damages rare before 1969).
verage. For example, *The National Law Journal* deemed America to be in the midst of "The Hundred Years' (Tort) War," and other media labeled Americans "sue-happy." Media coverage of the "litigation explosion" increased, thereby buttressing claims of the phenomenon by American businesses.

Story selection and content further contributed to the "litigation explosion" mythology: The media overrepresented sensational tort stories, the plaintiffs who brought suit, and high damage awards at the expense of typical suits and verdicts. Moreover, 21% of those reports mentioned punitive damages, though they were awarded in only 4.6% of cases. Even now, the media is twelve times more likely to report verdicts for plaintiffs than for defendants. The media also publicized the tort reform component, "Contract With America." Ultimately, this "[t]ort 'reform' propaganda [helped create] the almost palpable belief we live in a sue'em society, where 'frivolous' lawsuits are commonplace and plaintiff lawyers are no more than hired gunfighters."


80. Do We Know, supra note 22, at 1157 n.25 (cataloguing stories including: "[a]cross the country, people are suing one another with abandon; courts are clogged with litigation; lawyers are burdening the populace with legal bills"); see also Oil Strike, supra note 12, at 731 (recounting stories of "disembodied cartoon-like tales that pivot on a single bizarre factor").


82. See Oil Strike supra note 12, at 746 (reporting study of newspaper coverage from 1985 to 1996).

83. See id. at 746 (citing research in newspaper study).

84. Posey, supra note 31, at 125 (noting media attention of tort reform in this instance); see also Miklave, supra note 71, at 55, 56 (describing litigation explosion).

85. Mandell, supra note 46, at 28 (using this to show jurors sympathize with plaintiffs); see also Marc S. Galanter, Real World Torts: An Antidote to Anecdote, 55 Md. L. Rev. 1093, 1154-55 (1996) (stating unfounded stories about out of control juries and litigation explosion have influenced public opinion); Peck, supra note 32, at 19 ("[T]ort 'reformers' have manufactured myths and anecdotes about supposed cases to further their political agenda by enraged the public about a civil justice
E. The Media as Normative Messenger

The media contributes not only to beliefs about litigation but also to actions to undertake litigation. Many factors influence the prevalence of lawsuits, including changes in the law, the expansion or contraction of remedy, procedural barriers, and business cycles. As suggested, however, another and more constant factor in forecasting social propensities toward "disputing" is the media.

The media exercises its influence by publicizing or implying norms of disputing. Norms are societal expectations of how one is to act. Norms tell us what others deem right or wrong, much like a parent frowning when we put our elbows on the table or smirk-

system supposedly gone awry. The tales they tell have little relationship to the facts . . . ."

To the extent that litigation has decreased, it may be due to publicity about the tort reform movement, rather than any tort reforms. See Illusions, supra note 17, at 330-31.

86. See Miklave, supra note 71, at 56-57 (remarking on past decade, Congress and state legislatures expanded legal protections for employees); see also BUSINESS, supra note 7, at 6-7 (stating in nineteenth and early twentieth centuries, contributory negligence and fellow servant doctrines typically barred plaintiff recovery); Legends, supra note 38, at 60 (noting expansion of remedy plus cultural shift expanding notion of rights).

87. For instance, the Advisory Committee on the Federal Rules of Civil Procedure amended Rule 11, and state courts tightened sanctions. See Chris Guthrie, Framing Frivolous Litigation: A Psychological Theory, 67 U. CHI. L. REV. 163, 164 (2000) (arguing reforms were created to remedy problems associated with frivolous lawsuits). Similarly, the Supreme Court has interpreted law to make summary judgment on behalf of tort defendants more readily available. See Oliver, supra note 7, at 97 (stating until 1970, legal rules discouraged filing suits, but "[t]his has changed"). See, e.g., Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986) (holding summary judgment can be made with or without affidavits by moving party); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (holding only substantive legally relevant facts are analyzed for summary judgment); Matsushita Elec. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (emphasizing issue of fact must be genuine to be adjudicated).

88. Some business models also employ an economic model. Generally, these models posit that potential litigants make decisions regarding suit and settlement to maximize, in dollars (via belief in ultimate verdicts), the value of litigation. See Guthrie, supra note 87, at 170-71 (asserting litigants weigh settlement value with expected trial value, including costs, in determining when to settle).

89. See McAdams, supra note 74, at 350 ("[C]onsiderable effort has gone into defining exactly what constitutes a norm" and "economic[s] literature continues to struggle over the issue[.]"); (citations omitted); see also Cass R. Sunstein, Social Norms and Social Roles, 96 COLUM. L. REV. 903, 914 (1996) (posing norms are understood in many different ways).

ing when we give to charity. Just as children look to adults to understand what is bad and good, so, too, do we look to other members of society to set the boundaries of appropriate and inappropriate behavior. Normative conformity can reflect avoidance of abnormal behaviors or compliance with normal ones. For instance, sometimes we conform out of an internal sense of duty or fear of negative reputational consequences due to deviance — we don’t want our mothers to think badly of us. Other times, we conform out of a desire for social esteem — we want our mothers to think well of us. Regardless of the positive or negative motivation, norms influence our choices and behaviors.

91. See Charon, supra note 90, at 61-62 (noting norms refer to expectations people have of one another). Norms may refer to behavior such as table manners, relinquishing a seat on the bus, recycling, wearing a helmet while biking, or wearing clothing in public. See Marilyn Chase, Besides Saving Lives, Wearing a Helmet When Cycling is Cool, WALL ST. J., Sept. 18, 1995, at B1 (describing change in norms regarding helmets); see also Charon, supra note 90, at 62.

92. See Charon, supra note 90, at 61 (noting people are actors within social structure and learn expectations or role though directions of others in higher status position).

93. See Sunstein, supra note 89, at 914 (noting differences in definition of social norms are not important and relying on conventional understandings). According to Sunstein, norms are “social attitudes of approval and disapproval, specifying what ought to be done and what ought not to be done.” Id.

94. See id. at 915, 916-17 (discussing how public disapproval enforces and defines norms through perceived reputational consequences).

95. The behavior followed must be deemed worthy and the behavior avoided deemed bad. See McAdams, supra note 74, at 358 (asserting esteem-based norms require consensus regarding behaviors). This is referred to as the Esteem Theory of normative origin. See id. at 355-56 (noting Esteem Theory is thesis asserting norms arise because people seek esteem from others); see also Robert Ellickson, Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County, 38 STAN. L. REV. 623, 672-75 (1986) (describing system of informal enforcement of rules in trespass and property-related disputes among cattle ranchers).

96. No singular, universally-accepted theory of how those norms originate exists. See McAdams, supra note 74, at 391, 352 (describing origin of norms as “puzzle”).

97. See Sunstein, supra note 89, at 939 (discussing how social norms, roles, meanings affect choice and extent of its effect depend on five factors).

98. See Charon, supra note 90, at 108 (stating norms are part of culture and influence, shape, or control individual’s actions); see also McAdams, supra note 74, at 339 (observing influence or explanatory nature of norms extends beyond sociologists, to philosophers and economists).

Norms also influence propensities toward illegal behavior. People are “more likely to commit crimes when they perceive such criminal activity is widespread.” Dan M. Kahan, Social Influence, Social Meaning, and Deterrence, 83 VA. L. REV. 349, 350 (1997) (noting individuals do not decide to commit crimes in isolation). Individuals may conclude crime is status-enhancing or that little or no stigma attaches to crime. See id.
Norms also help define the cultural environment of litigation.\(^99\) Norms socialize us into expectations regarding disputes\(^100\) signaling what is an injury,\(^101\) what to do about it,\(^102\) and what society’s reaction to lawsuits and plaintiffs will be.\(^103\) In some circumstances, norms disfavoring litigation explain avoidance of litigation.\(^104\) For instance, even with a viable claim, many people do not seek legal redress.\(^105\) Instead, they shy away from litigation out of fear or embarrassment,\(^106\) considering “litigation [ ] a disagreeable,”\(^107\) if not demeaning, experience.\(^108\) Similarly, a large portion of the public thinks most plaintiffs are motivated not by a legitimate


\(^{100}\) See Charon, supra at note 90, at 167 (noting importance of socialization in following society’s rules of law); see also Amitai Etzioni, *Social Norms: Internalization, Persuasion, and History*, 34 Law & Soc’y Rev. 157, 159 (2000) (“Strong social norms reduce the burden on law enforcement; that laws supported by social norms are likely to be significantly more enforceable; and that laws that are formulated in ways that are congruent with social norms are much more likely to be enacted than laws that offend such norms.”). Recently, legal scholars have rediscovered social norms as a critical factor in law-related behaviors. See id. at 157-58.

\(^{101}\) But see Do We Know, supra note 22, at 1188-89 (suggesting reasons for low rate of claims by injured individuals). Many victims do not realize that they have viable legal claims, and, therefore, do not sue. See id.

\(^{102}\) See Daniels & Martin, supra note 78, at 482-85 (noting attempts by lawyers to adapt to diminishing verdicts in personal injury cases).

\(^{103}\) See Rohrlich, supra note 42, at A1 (noting litigation-oriented decisions made with reference to social norms of suit and plaintiffs). Some experts assert increases and decreases in legal filing reflect cultural changes regarding the perception of suits and plaintiffs. See id.

\(^{104}\) See id. (identifying how norms disfavor litigation). Few wrongs mature into lawsuits, and on the journey from harm to the courthouse, any number of factors can deter an individual from litigation: (1) no realization of a legal claim; (2) insufficient funds to pursue a claim; (3) counsel (or others) labeling the claim unworthy; and/or (4) the stigma associated with suit. See id. For a grievance to mature into a legal dispute, the victim must perceive a wrong as qualifying for redress, seek legal help, and conclude the appropriate action under the circumstances is to sue. See Do We Know, supra note 22, at 1188 (suggesting reasons for low rate of injury claims by victims). Nonetheless, not all aggrieved engage in “naming,” that is, perceive a legally-cognizable injury, transform it into a grievance, and request a remedy. Id.

\(^{105}\) See Rohrlich, supra note 42, at A1 (explaining decline in tort litigation). Even when they do identify cognizable legal claims, people are inclined to give up rather than fight. See id.

\(^{106}\) See Do We Know, supra note 22, at 1189 (telling potential plaintiffs factor in stigma associated with litigation and decline suit).

\(^{107}\) Pacquin, supra note 68, at 17 (classifying attitudes of users and non-users to court systems).

\(^{108}\) See id. (claiming many people think of litigation as “disagreeable experience”).
grievance, but by greed. Psychological research has even shown jurors often blame and denigrate plaintiffs victimized by business wrongdoing. These publicized views communicate a norm disparaging litigation and those who consider it. Thus, as putative plaintiffs attempt to avoid the stigma of litigation and litigants, they are deterred from bringing lawsuits.

By contrast, when society deems litigation as "normal," or at least not abnormal, the stigma of litigious behavior is eliminated along with the threat to one's social esteem. Consequently, individuals will be more inclined to litigate either because there are no negative reputational consequences, that would otherwise deter suit, to avoid, or simply because there exists a norm encouraging litigation. In these ways, norms not only influence litigious behaviors, but also regulate access to the legal system. And it is the media that publicizes these norms.

F. The Primacy of Television

Though all media can exert some degree of normative force, television boasts both a unique character and force as a normative messenger. For norms to emerge and influence attitudes or be-

109. See Daniels & Martin, supra note 78, at 454 (detailing beliefs of people regarding civil litigation).
110. See Illusions, supra note 17, at 334-35 (describing jury's perception to plaintiffs injured by business corporations).
111. See Lande, supra note 7, at 3 (describing public images of litigation). "The public image of litigation as reflected in the mass media is largely a negative one." Id.
113. See Sauer, supra note 8, at H-1 (stating injured people with valid claims avoid court to avoid reputation as "the kind who goes to court").
114. See id. (noting citizens avoid suit to avoid shame associated with suing). Some believe business has portrayed litigation as shameful. See Rohrlich, supra note 42, at A17 ("Corporations have created a stigma for people [who sue].") (quoting Jamie Court, Director of Foundation for Taxpayer and Consumer Rights).
115. See Massaro, supra note 112, at 651 (noting differing views on "shameful failures").
116. Under such circumstances, litigation can be esteem-enhancing. See Kahan, supra note 98, at 350 (exploring roles of social influence and social meaning).
117. See Sunstein, supra note 89, at 907 (noting "[b]ehavior is pervasively a function of norms").
118. See Althaus & Tewksbury, supra note 51, at 181 (asserting television dominant mechanism for disseminating information); see also Edward Sankowski, Film, Crime, and States Legitimacy: Political Education or Mis-Education?, 36 J. AESTHETIC
haviors, first, there must be an apparent consensus about a behavior and, second, that consensus must be publicized. 119 People consider behaviors correct to the degree they see others perform them. Absent such publicity, individuals lack a known standard against which to judge their acts. 120 For instance, a behavior may be popular statistically, but, if the social group is unaware of the numerical consensus, it will not materialize into a normative force influencing behavior. Instead, pursuing or avoiding such behavior will be independent of any normative influence. 121 Television thus wields much of its normative force by publicizing these "social proofs." 122 Television's images show us 123 how things work and what to do. 124 Because virtually every American owns a television set, 125 and most watch with ritualized regularity, 126 a huge audi-

119. See McAdams, supra note 74, at 362-65 (reporting esteem-based norms require publicized consensus).

120. See id. at 400 (recognizing publicity barrier). The publicity condition is difficult to satisfy and is often "[t]he determinative obstacle to societal norm formation." Id.

121. See id. at 362 (explaining ignorance of consensus will not produce norm).

122. See id. 362-64 (discussing importance of consensus). Furthermore, the actor's behavior not only establishes a behavioral consensus, but also incites the reaction of others to the behavior, which reinforces the behavior's acceptability or normalcy. See, e.g., Robert B. Cialdini, Influence: The Psychology of Persuasion (1993). Those reactions "'pro[ve]' that the behavior is appropriate." Id.

123. Moreover, the influence of these images is enhanced by television's auditory and visual stimuli. See Gary R. Edgerton & Michael T. Marsden, The Teacher-Scholar in Film and Television, J. Popular Film & Television 2, 3 (2002) (noting in past century, priorities shifted away from printed word and toward image). Print media describes, but it cannot add moving pictures, speech, tone, lighting, camera angles, music, and interspersion of shots. Television news includes pictures with its narrative, but its narratives are a metered vocal tone, accompanied by stolid sets and largely static images. It is the difference between reading a screenplay and seeing the completed, scored movie.


125. See Todd Picus, Demystifying the Least Understood Branch: Opening the Supreme Court to Broadcast Media, 71 Tex. L. Rev. 1053, 1085 n.172 (1993) (discussing Broadcast Ban on Supreme Court proceedings and how 98% of Americans have at least one television) (citation omitted).

126. See id. Since 1983, the average household has tuned in seven hours per day. See id. at 1085. The average adult watches over four hours of television each day, and his or her children will watch even more. See Edgerton, supra note 123, at 3; see also L.J. Shrum, Effects of Television Portrayals of Crime and Violence on Viewers' Perceptions of Reality: A Psychological Process Perspective, 22 Legal Stud. F. 257, 257 (1998) (reporting more than four hours per day for individuals and seven hours per day for households). Adults over fifty-five years of age watch the most televi-
ence\textsuperscript{127} is privy to the behaviors and opinions of others\textsuperscript{128} — at least as seen on TV.

Researchers have long asserted that television influences perceptions of reality.\textsuperscript{129} Individuals learn from what they see on television,\textsuperscript{130} and, even if they forget the specific elements, retain general impressions that can influence their perceptions of the world.\textsuperscript{131} “In turn, these perceptions of reality, regardless of their accuracy, are consequential for individuals’ judgments and decisions.”\textsuperscript{132} In fact, significant exposure to television can lead to perceptions of reality that differ from those held by non-viewers.\textsuperscript{133} Cultivation theory\textsuperscript{134} investigates this relationship between television exposure\textsuperscript{135} and particular beliefs about the world,\textsuperscript{136} specifically, beliefs consistent with media imagery.\textsuperscript{137} According to

\textsuperscript{127} See Edgerton, supra note 123, at 4 (noting American public watches television with ritualized regularity).

\textsuperscript{128} See Angelique M. Paul, Note, Turning the Camera on Court TV: Does Television Trials Teach Us Anything About the Real Law?, 58 OHIO ST. L.J. 655, 656 (1997) (stating Americans get majority of information from television); see also Brian Lowry, In the King Trial We Wake, News Media Will Be the Message, DAILY VARIETY, Apr. 7, 1993, at 1 (noting size of television viewing audience).

\textsuperscript{129} See Kahan, supra note 98, at 351 (averring people draw inferences from behavior of others).

\textsuperscript{130} See Sotirovic, supra note 51, at 750 (stating television influences viewer’s perception of reality).

\textsuperscript{131} See id. This hearkens to cultivation’s “mainstreaming” process, where viewers learn facts about the world and are socialized by observing them on the television screen. See Cohen & Weimann, supra note 124, at 102 (describing how media content shapes our attitudes).

\textsuperscript{132} Sotirovic, supra note 51.

\textsuperscript{133} See Cohen & Weimann, supra note 124, at 108 (exemplifying how certain television genres are significantly related to certain cultivation measures). George Gerbner, the architect of cultivation theory, contends television does not merely reflect beliefs, but cumulative exposure develops a set of beliefs in viewers. See George Gerbner, Growing Up With Television: The Cultivation Perspective, in MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH 43, 51 (Jennings Bryant & Dolf Zillman eds. 2002).

\textsuperscript{134} See Edgerton & Marsden, supra note 123, at 4 (describing cultivation effect). Although cultivation began as a more limited concept, its emphasis shifted “from individual short-term effects to the long-term cultural-ideological socialization role of repetitive messages found in television programming.” John L. Sherry, Media Saturation and Entertainment-Education, 12 COMM. THEORY 206, 211 (2002).

\textsuperscript{135} See Cohen & Weimann, supra note 124, at 112 (maintaining cultivation accounts for effects of dominant messages on television).

\textsuperscript{136} See SHANAHAN & MORGAN, supra note 1, at 73 (describing impact of mainstreaming as overriding behavior ordinarily stemming from other factors).

cultivation theory, the more an audience sees a behavior on television, the more it believes those behaviors are normal and, therefore, acceptable.\textsuperscript{138} Hence, the more people watch television, the more they will "cultivate" the television image, believing the real world resembles what they see on television. The world as seen on TV, however, may bear little resemblance to reality\textsuperscript{139} and cultivate a distorted view of the world.\textsuperscript{140}

G. Law as Seen on TV

Scholars have begun to recognize a similar interaction between television and perceptions of the law.\textsuperscript{141} Television brings the legal process into our living rooms,\textsuperscript{142} both demystifying and defining it.\textsuperscript{143} Yet, television is not always an accurate window into the court-

\textsuperscript{138} This is a two-step process. First, during the "learning phase," viewers acquire from television portrayals many pieces of incidental information. \textit{Shanahan & Morgan}, supra note 1, at 72-74 (describing process of cultivation theory). Next, during the "construction phase," these separate pieces of information congeal to inform the viewer's beliefs. \textit{Id.}

\textsuperscript{139} \textit{See} Shrum, supra note 126, at 258 ("The rate of portrayal of crime and violence on television programs is roughly ten times greater than its real world incidence.").

\textsuperscript{140} \textit{See} Gerbner, supra note 133, at 51-58.


\textsuperscript{142} \textit{See} Getty, supra note 118, at 126 (proposing television influences how Americans view justice); \textit{see also} Joseph & Mertez, supra note 141, at 206 (announcing that for many, "primary source of knowledge about...the legal system" comes from television); Leah Ward Sears, \textit{Those Low-Brow TV Court Shows}, \textit{Christian Sci. Monitor}, July 10, 2001, at 11 (declaring Americans get lasting impression of courts from television).

In 1999, the American Bar Association commissioned a report to discover how citizens learned about the law. The resulting \textit{Report on Perceptions of the U.S. Justice System} concluded, "the media can and does impact some people's knowledge" about the justice system. \textit{American Bar Association Report on Perceptions of the U.S. Justice System}, 62 \textit{Alb. L. Rev.} 1307, 1315 (1999) (stating all forms of media have greater impact on knowledge base of people with less knowledge than those with more knowledge).


Of course, those television representations may be distorted. \textit{See} Birke & Fox, supra note 43, at 9; Eschholz, supra note 81, at 37-39 (noting television exaggerates incidence of violent crime); \textit{see also} Bruce M. Selya, \textit{The Confidence Games: Public Perceptions of the Judiciary}, 30 \textit{New Eng. L. Rev.} 909, 913-14 (1996) (proposing media's coverage of judicial decisions tends toward sensationalism and "implant[s]
room.\textsuperscript{144} Rather, its lens alters the reality of and shapes perceptions about the law.\textsuperscript{145} Moreover, the impact of television representations is heightened because these representations are the only experiences a majority of Americans have with the legal system.\textsuperscript{146}

In the last decade, a new form of law has burst onto the television screen: the syndicated television courtroom or "syndi-court." Deemed the "hottest trend in daytime television,"\textsuperscript{147} shows like \textit{Judge Judy} and \textit{The People's Court} are the new messengers of law. Though easy to discount as fluff,\textsuperscript{148} the communicative power of this genre\textsuperscript{149} is tremendous.\textsuperscript{150} As demonstrated by its ratings, syndi-court boasts a regular audience of approximately 8,500,000 viewers.\textsuperscript{151} Its closest competitor, \textit{Court TV}, on a good day, manages within the public psyche a potential for undue cynicism and the basis for rejecting judicial authority\textsuperscript{\textquoteright}.


145. \textit{See} Edwin Yoder, \textit{Television in Courtroom Reshapes the Reality It Covers}, St. Louis Post-Dispatch, Sept. 30, 1994, at 15D (explaining how lens of TV "shapes and alters as it mediates").

146. \textit{See} Elliot E. Slotnik, \textit{Television News and the Supreme Court: A Case Study}, 77 JUDICATURE 21, 22 (1993) (articulating television provides majority of public with its only information about law); \textit{see also} Joseph & Mertez, supra note 141, at 206 (discussing how primary knowledge about law comes from pop culture sources, including television, which shapes public's view of law); Selya, supra note 143, at 913 (1996) ("[F]ew individuals have direct experience with the justice system.") (citations omitted).

147. Jurkowitz, supra note 6, at 96 ("Syndicated courtroom shows are increasing in popularity.").

148. \textit{See} Naomi R. Rockler, \textit{It's Just Entertainment}, J. POPULAR FILM & TELEVISION 16, 17 (2002) (explaining media educators regularly encounter criticisms that television is merely entertainment, and, therefore, illegitimate for critical analysis or scholarly study). \textit{But see} Neil Postman, AMUSING OURSELVES TO DEATH 16 (1985) ("The best things on television are its junk.").

149. \textit{See} SHANAFOH & MORGAN, supra note 1, at ix-x. Whereas previous mass communication research considered whether individual messages could produce changes in audience attitudes or behaviors, cultivation looks at the totality of television or a genre. \textit{See id.}


151. In 1997, \textit{Judge Judy} was the number-one ranked syndicated show, even topping Oprah. \textit{See} Marc Gunther, \textit{The Little Judge Who Kicked Oprah's Butt: Daytime Television's Hottest Property}, FORTUNE, May 1999, at 32 (discussing rise of \textit{Judge Judy}
only an anemic 6% of that audience\textsuperscript{152} — and can do so only by replacing its legal coverage with movies and \textit{NYPD Blue} repeats.\textsuperscript{153}

Additionally, syndi-court's "little morality plays"\textsuperscript{154} ensure a memorable experience,\textsuperscript{155} and, therefore an even greater impact. For instance, their "structural features," such as edits, cuts, and music, help increase viewer attention, and, thus, memory.\textsuperscript{156} The camera never lingers on one party, but constantly moves between the

and influx of other reality courtroom shows it has spawned); see also Joe Schlosser, \textit{Another Benchmark for 'Judge Judy,'} \textit{BROADCASTING \& CABLE}, Mar. 29, 1999, at 15 (reporting on Judy Sheindlin's new contract will have her sharing in profits of \textit{Judge Judy}); Gary Levin, Judge Judy Overrules Daytime Chat, \textit{USA TODAY}, Mar. 25, 1999, at 3D.

These shows remain popular. The week of January 21-27, 2002, Judge Judy had 8.4 million viewers and \textit{Judge Joe Brown} had 4.4 million viewers. See Lynette Rice \& Dan Snierson, \textit{On the Air: The Latest News from the TV Beat}, 640-41 ENT. WNL., Feb. 22, 2002, at 133 (listing viewership for thirty most-watched syndicated programs); see also Bill Keveny, Syndicated Goldies Are Oldies: \textit{New Shows Are No Match}, \textit{USA TODAY}, Nov. 26, 2001, at 4D (stating \textit{Judge Judy} garners 7,061,000 viewers and remains among top ten syndicated shows); of Walt Belcher, Judge Judy Continues Her Rule as the Queen of All Court Shows, TAMPA TRIB., Mar. 7, 2002, at 4 (detailing how court show ratings dipped after September 11th while ratings for sitcom reruns increased).

152. Harris, supra note 5, at 803 ("Court TV's regular fare stands out because of its tediousness. It has all the pizzazz of a pair of orthopedic shoes.").

\textit{Court TV} recently garnered its highest ratings ever — 557,000 viewers for the first quarter of 2002. See \textit{Court TV Has Highest Quarterly Rating in Network's History}, BUS. WIRE, Apr. 2, 2002, at 1 [hereinafter \textit{Court TV}]. This ratings increase was driven by the premier of \textit{Forensic Files} and the movie, \textit{Guilt By Association}, as well as growth in the networks distribution. \textit{id.} (announcing \textit{Court TV's} surge in ratings).

153. See \textit{Court TV}, supra note 152, at 1 (stating how \textit{Court TV} has not lived up to promise and has recently increased ratings by airing repeats of \textit{NYPD Blue}, as opposed to airing more or better legal coverage).


155. See Itzhak Yanovitzky, \textit{Effects of News Coverage on Policy Attention and Actions}, 29 COMM. RES. 422, at 424 (2002) (arguing since "media effects are contingent on a person's motivation to attend to the message .... Motivation, in turn, is [partly] a function of .... message attributes").

156. These features elicit an "orienting response" that directs the viewer's attention to particular information presented. See Annie Lang et al., \textit{The Effects of Edits on Arousal, Attention, and Memory for Television Messages: When an Edit is an Edit Can an Edit Be Too Much?} 44 J. \textit{BROADCASTING \& ELECTRONIC MEDIA} 94, 96 (2000) (examining effect of rate of camera changes in same visual scene on viewers' arousal, attention, and memory).

The availability heuristic further enhances the influence of these comparisons. "People infer the prevalence of something from the ease with which an example can be recalled." Shrum, supra note 126, at 262 (explaining use of cognitive heuristics). Of course, the more popular something seems, the easier it is to remember. \textit{See id.} Thus, with syndi-court's Nielsen popularity and imagery, frequent litigation and numerous pro se litigants are easy to recall. Unfortunately, research indicates people are often unaware of the source of their information and unable or unwilling to determine the source of their memories. \textit{See id.} at 264. Therefore, it is unlikely that people will first reflect and then discount information, because it was gleaned from syndi-court.
litigant narratives and the judge’s reaction. Studies have demonstrated increasing the number of edits in a television “message” increases viewers’ attention, as well as their ability to remember the message. Syndi-court also makes use of drama, labeling the disputes, focusing on judge reactions, and adding a musical score. These features also increase the “active participation and involvement of the audience.” By contrast, as one bored television critic said, syndi-court’s closest cousin, Court TV, “stands out because of its tediousness,” and is about as exciting as “a pair of orthopedic shoes.”

Finally, unlike legal reporting or Court TV, syndi-court shows cumulatively share a homogenous format, presenting a unified body of information and reinforcing the images and lessons of each other. Televised trials, by contrast, are generally too infrequent, long, and unique to educate the public. Even when a viewer can devote the time to watch a television trial from start to finish,

157. See Stacy Davis, The Effects of Audience Reaction Shots on Attitudes Towards Controversial Issues, 43 J. Broadcasting & Electronic Media 476, 477 (1999). Reaction shots, such as those common of the syndi-court bench, are among the “most commonly used editing devices used to capture and manipulate” participants’ emotions. Id. (describing broad use of reaction shots in film and television).

Facial expressions, in particular, communicate a number of messages. See id. at 476. Research demonstrates shots of facial expressions can influence viewer perceptions of the speaker’s reaction to or opinions about the topics discussed. See id. at 477.

158. See Lang, supra note 156, at 105 (providing evidence for “limited capacity approach” to television viewing). Furthermore, the presentation of cases is simple and dichotomous and the resolution of disputes swift. See Lisa Scottoline, Law and Popular Culture: Get Off the Screen: Address at the Nova Southeastern University’s Goodwin Alumni Banquet (Mar. 1999), 24 Nova L. Rev. 655, 657 (2000) (commenting on people’s fascination with shows such as Judge Judy and The People’s Court).

159. The six key elements of drama are: action or plot, character, thought or ideas, verbal expression or language, music or song, and spectacle. See Jeffrey Hatcher, The Art and Craft of Playwriting 21 (1996) (highlighting six essential ingredients for writing successful drama).

160. See Podlas, supra note 4, at 18-20 (discussing study showing how jurors interpret judge reactions and use them to guide evidentiary determinations).


162. Harris, supra note 5, at 803 (stating Court TV is only considered boring in light of more modern such as those on MTV channel).

163. Id. (referencing MTV era as responsible for making shows, such as Court TV, seem mundane).

164. See Cripe, supra note 144, at 237 (telling how high-profile cases receive majority of media’s attention).

165. See Lassiter, supra note 5, at 934-35 (claiming television trials could be educational if it was not so easily abused to further politics).
those trials tend to fixate on sensational lures or peculiar elements rather than the legal process.\textsuperscript{166}

III. Empirical Studies of Syndi-Court

The ubiquity of syndi-court coupled with the power of television as normative messenger may contribute to the public's opinions about litigation. It is, therefore, important to understand what signals syndi-court sends, what it tells us about litigation, and what potential influence on attitudes and behaviors it may exact.

A set of triangulated studies contemplated this potential influence. These studies, a content analysis and surveys of prospective juror and juror-eligible adults investigated:

1. What themes syndi-court promotes
2. Whether those themes promote or discourage litigation
3. Whether syndi-court influences or interacts with viewer belief systems pertaining to
   a. Undertaking litigation
   b. Undertaking pro se representation
4. Whether syndi-court influences viewer action with regard to
   a. Undertaking litigation
   b. Undertaking pro se representation

A. Content Analysis of Syndi-Court Messages

1. Protocol

To accurately assess what occurs on syndi-court, one must first employ some sort of scientific protocol. Here, the method chosen was the content analysis, a protocol borrowed from the field of communication theory.\textsuperscript{167} Thus, the content of four syndi-courts was systematically monitored for two two-week periods in September and November of 2002, totaling four weeks or twenty hours. Shows were chosen based on Nielsen ratings,\textsuperscript{168} hence, the four highest

\textsuperscript{166} See id. at 973 (observing trials tend to fixate on sensational lures, not less sexy legal issues).

\textsuperscript{167} Cultivation analysis begins with a message system analysis. This analysis identifies the most recurrent, overarching content. See Gerbner, supra note 133, at 43, 49 (describing technique used to identify recurrent, subtle messages received by viewers).

\textsuperscript{168} Nielsen Media Research estimates that as many as thirty-one million people see at least one TV judge daily. See Jurkowitz, supra note 6 (referring to thirty-one million viewers who tune in to Moral Court, Divorce Court, or Judge Judy).
rated shows were chosen: Judge Judy, Judge Joe Brown, The People's Court, and Judge Mathis. This yielded a total of 333 segments.169

Next, coders individually viewed and coded the content of shows. One group of coders, “Law Coders,” consisted of six individuals practicing law; the other group of coders, “Student Coders,” consisted of eighteen students in a Contemporary Issues course. Each show was coded by one Law Coder and one Student Coder, and catalogued according to:

- plaintiffs per show170
- remedy sought
- type of case

Cataloguing between the Student Coders and Law Coders was then compared. Because the key was to discern the messages the audience would take away from syndi-court, rather than technical legal accuracy, syndi-court episodes that were coded differently (18 episodes or 5%)171 by the Law Coders than by the Student Coders were excluded from the final tally.

2. Results

Table I reports the data for the remaining 315 coded segments.

---

169. The segments consisted of portions of, or distinct cases on, a syndi-court broadcast.

170. This was later calculated to determine the average number of plaintiffs per week.

171. Four episodes from Judge Judy, seven from Judge Joe Brown, five from Judge Mathis, and two from The People's Court were excluded.
### Table I.

<table>
<thead>
<tr>
<th></th>
<th>Judge Judy</th>
<th>Joe Brown</th>
<th>Judge Mathis</th>
<th>People’s Court</th>
<th>Mean(^{172})</th>
<th>Mean(^{173}) Per Week</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PLAINTIFFS</strong></td>
<td>73</td>
<td>76</td>
<td>79</td>
<td>87</td>
<td>78.75</td>
<td>19.7(^{174})</td>
</tr>
<tr>
<td><strong>TYPE OF CASE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contract</td>
<td>13</td>
<td>15</td>
<td>20</td>
<td>37</td>
<td>21.25</td>
<td>5</td>
</tr>
<tr>
<td>Personal injury</td>
<td>20</td>
<td>19</td>
<td>17</td>
<td>18</td>
<td>18.5</td>
<td>4.6</td>
</tr>
<tr>
<td>Property damage</td>
<td>18</td>
<td>22</td>
<td>26</td>
<td>26</td>
<td>23</td>
<td>5.75</td>
</tr>
<tr>
<td>Family</td>
<td>22</td>
<td>20</td>
<td>16</td>
<td>6</td>
<td>16</td>
<td>4</td>
</tr>
<tr>
<td><strong>REMEDY SOUGHT(^{175})</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt; $100</td>
<td>2</td>
<td>15</td>
<td>8</td>
<td>11</td>
<td>9</td>
<td>2.25</td>
</tr>
<tr>
<td>$100-499</td>
<td>45</td>
<td>35</td>
<td>42</td>
<td>48</td>
<td>42.5</td>
<td>10.6</td>
</tr>
<tr>
<td>$500-1,500</td>
<td>19</td>
<td>14</td>
<td>18</td>
<td>19</td>
<td>17.5</td>
<td>4.4</td>
</tr>
<tr>
<td>&gt; $1,500</td>
<td>7</td>
<td>12</td>
<td>11</td>
<td>9</td>
<td>9.75</td>
<td>2.4</td>
</tr>
<tr>
<td>Return of property(^{176})</td>
<td>6</td>
<td>8</td>
<td>3</td>
<td>9</td>
<td>6.5</td>
<td>1.6</td>
</tr>
<tr>
<td>Apology(^{177})</td>
<td>7</td>
<td>12</td>
<td>21</td>
<td>22</td>
<td>15.5</td>
<td>3.9</td>
</tr>
</tbody>
</table>

3. **Discussion**

a. **The Behaviors That Syndi-Court Publicizes**

The content analysis shows syndi-court is not reserved for weighty remedies or high dollar amounts, but for relatively low dollar amounts. As shown in Table I, the modal dollar remedy sought is in the $100 to $499 range. Very few litigants appearing on the episodes sought more than $1,500.

b. **Viewer Translation of Content**

The above portrays the raw content of syndi-court, but it is also critical to determine how the viewing public translates this content. This constant parade of litigants, of pro se plaintiffs, and of commonly trivial causes of action may signal that both litigation and pro se representation are common, viable, and normal. Furthermore,

\(^{172}\) This number reflects the mean of the analyzed episodes. The mean for the full sample of syndi-court plaintiffs equals 85.25 (calculating number of plaintiffs per week after filtering in coding process equals 78.75, with raw number of plaintiffs per year equaling 1,092).

\(^{173}\) The per week mean of the total sample equals 21. Thus, a viewer of one show would see approximately 1,092 plaintiffs per year.

\(^{174}\) This number would amount to approximately 1,024 plaintiffs per year.

\(^{175}\) This section looks at only damages sought, not damages awarded.

\(^{176}\) The plaintiff sought the return of property in addition to monetary damages or as an alternative to monetary damages.

\(^{177}\) During the presentation of her case, the plaintiff requested an apology or explained their motivation for suit was to obtain an apology.
as viewers compare their own legal problems to the more trivial ones on television, they might conclude, if those grievances warrant litigation, so do their own. Finally, syndi-court's "little-guy" litigants championing their own causes may also encourage other litigants, who would otherwise employ counsel, to go it alone, and enhance an already-existing tendency toward pro se representation in others.

Accordingly, having established an empirically-supported content base, the next phase of study investigated connections between syndi-court viewing, beliefs about, and potential litigious actions. To ascertain any connections, two studies were undertaken. The first and most significant in terms of population size and representativeness, sampled prospective jurors. The second study sampled jury-eligible, college-enrolled adults.

B. Juror Study178

1. Protocol

The study consisted of distributing a three-page instrument to 241 prospective jurors from Manhattan, the District of Columbia, and Hackensack, New Jersey awaiting jury service. Prior to entering the courthouse (and, in some instances, during breaks), individuals were approached, identified as appearing for jury duty, and asked to complete a questionnaire.179 No individual that was believed to be a juror was excluded.

The questionnaire asked respondents to answer a number of forced-choice questions including syndi-court viewing habits, likelihood of considering pro se litigation, likelihood of considering litigation, and opinions regarding judicial behavior. In exchange for their participation, jurors received candy bars and the pens used to complete the questionnaires. Individuals or questionnaires demonstrating obvious English language barriers and those that were substantially incomplete were discarded. Of the 241 surveys collected,180 225 (93.3%) were analyzed.

178. See Podlas, supra note 4, at 12-15 (depicting juror viewing data and impact of syndi-court representations on juror opinions about judge behavior). For a discussion of the Juror Study, see infra notes 178-84 and accompanying text.

179. A similar survey method was used in Harry Kalven and Hans Zeisel's pioneering study. See HARRY KALVEN, JR. & HANS ZEISEL, THE AMERICAN JURY 33-44 (1971). Kalven and Zeisel, however, questioned judges, not jurors. See id. at 129-30.

180. 58% of the respondents (n= 130) were women and 42% (n= 95) were men. See Podlas, supra note 4, at 9-10.
2. **Results**

   a. **Viewing**

      To isolate any connection between syndi-court viewing and certain factors contemplated by the questionnaire, respondents were first identified as either frequent viewers ("FV") or non-viewers ("NV").\(^{181}\) FV watched syndi-court between "two to three times" or "more than five times per week" (and checked the corresponding category in the descriptive Likert scale). NV did not watch syndi-court or did so once per week (and checked the appropriate response on the corresponding descriptive scale).\(^{182}\) Of the 225 juror responses analyzed, 149 (66.2%) were FV and 76 (33.78%) were NV.

   b. **Litigious Attitudes, Pro Se Representation**

      Table II contains the means and standard deviations for the litigiousness and pro se responses for each category of viewer, i.e., FV and NV. There was a statistically significant difference (P < .05) between FV and NV scores on both considering/bringing a claim (litigiousness) and considering/appearing pro se. In each instance, a higher proportion of FV expressed positive responses than did NV.

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181. *See* Podlas, *supra* note 4, at 11 (explaining designations as frequent or non-frequent viewers to discern if viewership was associated with certain factors in questionnaire). Quantifying exposure to the medium is a precursor to ascertaining any effect of media. *See* Yanovitzky, *supra* note 155, at 424 (describing results of study on patterns of media use by members of Congress).

182. This designation mimics Gerbner's "heavy" and "light" viewer labels. *See* Gerbner, *supra* note 133, at 49-50 (describing labels used when referring to amount of time viewers spend watching television on "average day").
TABLE II.

<table>
<thead>
<tr>
<th>Sample</th>
<th>Would consider bringing claim</th>
<th>Would bring a claim</th>
<th>Would consider pro se 183</th>
<th>Would appear pro se 184</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean Std. Dev.</td>
<td>Mean Std. Dev.</td>
<td>Mean Std. Dev.</td>
<td>Mean Std. Dev.</td>
</tr>
<tr>
<td>FV=149</td>
<td>.86 .35</td>
<td>.75 .44</td>
<td>.55 .50</td>
<td>.59 .49</td>
</tr>
<tr>
<td>NV=79</td>
<td>.76 .43</td>
<td>.50 .50</td>
<td>.16 .37</td>
<td>.18 .39</td>
</tr>
<tr>
<td>T value</td>
<td>1.77* 3.65**</td>
<td>6.65***</td>
<td>6.76***</td>
<td></td>
</tr>
</tbody>
</table>

c. Opinions Regarding Judicial Behavior

The Juror Study also considered whether FV held beliefs consistent with syndi-court imagery, specifically, regarding particular judicial behaviors. The data in Table III again indicates statistically significant differences between viewer groups (P < .0005). Mimicking the pattern of data of litigiousness and pro se leanings, FV tended to express beliefs about judges mirroring those seen on the television screen, regardless of whether these beliefs were consistent with reality. Some NV also shared some of these views, but at a much lower level.

TABLE III. VIEWS CONSISTENT WITH SYNDI-COURT IMAGERY

<table>
<thead>
<tr>
<th></th>
<th>Judges should have opinion regarding verdict</th>
<th>Judges should ask questions during trial</th>
<th>Judges should “be aggressive with litigants or express displeasure with their testimony”</th>
</tr>
</thead>
<tbody>
<tr>
<td>FV</td>
<td>75%***</td>
<td>82.5%***</td>
<td>63.76%***</td>
</tr>
<tr>
<td>NV</td>
<td>48.6%</td>
<td>38.16%</td>
<td>26.32%</td>
</tr>
</tbody>
</table>

183. The question read:
I
___ would consider representing myself in court without the aid of an attorney
___ would NOT consider representing myself in court without the aid of an attorney

184. If I was unable to afford an attorney, I
___ would appear in court without the aid of an attorney
___ would NOT appear in court without the aid of an attorney
C. Eligibles Studies

1. Eligibles #1

a. Protocol

A subsequent study investigated whether the attitudes and propensities toward pro se representation were mediated by degree of risk/jeopardy. The study’s first phase consisted of distributing a one-page instrument to 88 jury-eligible adults who had either completed or were presently enrolled in an introductory-level business course. Questions pertained to syndi-court viewing habits and propensity toward self-representation in various civil and criminal contexts.

Of the 88 questionnaires completed, 2 (2.27%) were discarded as internally inconsistent. The 86 remaining respondents were again divided into two groups: FV or NV (as defined by the Juror Study). Because of the more inclusive question pertaining to watching “law” television shows, 22 respondents who watched only legal dramas were excluded from the analysis (25%). Of the remaining 64 questionnaires analyzed, 45 (70.3%) were FV and 19 (29.69%) were NV.

Next, responses to individually-descriptive questions were translated into “high risk” and “low risk” categories. These contexts were then translated into “high risk” and “low risk” categories. Risk/jeopardy was defined in Table IV below:

<table>
<thead>
<tr>
<th>Table IV. Categories of Risk/Jeopardy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil</td>
</tr>
<tr>
<td>Low: $0-$1,500</td>
</tr>
<tr>
<td>High: &gt;$1,500</td>
</tr>
<tr>
<td>Criminal</td>
</tr>
<tr>
<td>Low: Fines up to $1,500</td>
</tr>
<tr>
<td>Probation</td>
</tr>
<tr>
<td>Up to 3 days in jail</td>
</tr>
<tr>
<td>Fines above $1,500</td>
</tr>
<tr>
<td>Weeks, months in jail</td>
</tr>
<tr>
<td>≥1 yr. imprisonment</td>
</tr>
</tbody>
</table>

185. For a discussion of Eligibles #1, see infra notes 185-92 and accompanying text and tables. For a discussion of Eligibles #2, see infra notes 193-94 and accompanying text and tables.

186. The Eligibles Studies were conducted in two phases.

187. As the initial Eligibles Study was previously conceived of as independent of the Juror Study, the questions differ somewhat. Additionally, the initial Eligibles #1 Survey Instrument collected information regarding viewing of legal dramas.

188. It is unknown how many students were approached but declined participation in the survey.
b. Results

Analysis of the Eligibles data yielded statistically significant findings in expressed propensity toward pro se representation, once risk/jeopardy was contemplated. The means and standard deviations are shown in Table V below.

### Table V. Expressed Propensity for Self-Representation (Eligibles #1)

<table>
<thead>
<tr>
<th>Level of Risk/Jeopardy</th>
<th>FV (n=45)</th>
<th>NV (n=19)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>Mean</td>
</tr>
<tr>
<td></td>
<td>Std. Dev.</td>
<td>Std. Dev.</td>
</tr>
<tr>
<td>Civil low</td>
<td>.62</td>
<td>.26</td>
</tr>
<tr>
<td></td>
<td>.49</td>
<td>.452³⁸⁹</td>
</tr>
<tr>
<td>Criminal low</td>
<td>.64</td>
<td>.32</td>
</tr>
<tr>
<td></td>
<td>.484</td>
<td>.478³⁹⁰</td>
</tr>
<tr>
<td>Civil high</td>
<td>.20</td>
<td>.105</td>
</tr>
<tr>
<td></td>
<td>.405</td>
<td>.315³⁹¹</td>
</tr>
<tr>
<td>Criminal high</td>
<td>.022</td>
<td>.05</td>
</tr>
<tr>
<td></td>
<td>.149</td>
<td>.229³⁹²</td>
</tr>
</tbody>
</table>

2. Eligibles #2: Extension Study

a. Protocol

In light of the statistically significant results but small sample size, the Eligibles protocol was refined and extended for two additional semesters. During this second phase, a new instrument was constructed that included all queries from the Juror questionnaire as well as the relevant queries on the initial Student questionnaire, i.e., questions pertaining to pro se representation. Over two semesters, this refined instrument was distributed to a total of 148 jury-eligible adults on the first or second day of class in the same introductory-level course. Of the 148 surveys collected, 6 surveys were discarded as substantially incomplete or internally inconsistent. The remaining 142 (96%) were analyzed.

Again, respondents were divided into FV or NV (as defined by the Juror Study). Ninety-one (64%) were FV; 41 (36%) were NV.

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189. The t value equals 2.625.
190. The t value equals 5.13.
191. The t value equals 1.11.
192. The t value equals .642.
193. As noted above, approximately 25% of responses were excluded.
194. The adults were either second-semester freshmen or sophomores ranging in age from 18 to 21 years.
b. Results

The results were consistent with those obtained in the Juror Study and Eligibles #1. As shown in Table VI, Eligibles #2 expressed a propensity toward pro se, but only at lower levels of risk/jeopardy.

TABLE VI. EXPRESSED PROPENSITY FOR SELF-REPRESENTATION (Eligibles #2)

<table>
<thead>
<tr>
<th>Level of Risk/Jeopardy</th>
<th>FV (n=91)</th>
<th>NV (n=51)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>Std. Dev.</td>
</tr>
<tr>
<td>Civil low</td>
<td>.63</td>
<td>.49</td>
</tr>
<tr>
<td>Criminal low</td>
<td>.58</td>
<td>.50</td>
</tr>
<tr>
<td>Civil high</td>
<td>.07</td>
<td>.25</td>
</tr>
<tr>
<td>Criminal high</td>
<td>.04</td>
<td>.75</td>
</tr>
</tbody>
</table>

A meta-analysis of the analyzed responses of the Eligibles Studies on these measures yielded similar results (Table VII). The meta-analysis included 206 respondents of which 136 (66%) were FV and 70 (34%) were NV. Results of pro se propensity as mediated by risk/jeopardy are displayed in Table VII below.

TABLE VII. META-ANALYSIS (Eligibles/Eligibles) OF PROPENSITY FOR SELF-REPRESENTATION ACCORDING TO RISK/JEOPARDY

These results are also plotted in Table VIII. This chart highlights the similarity of response in high risk/jeopardy situations and the disparity in response in low risk/jeopardy situations as mea-
sured by frequent viewing. Importantly, Table VIII does not quantify intervening degrees of risk.

**Table VIII. Pro Se [Student Meta-analysis]**

![Graph showing risk/jeopardy]

The findings of the second study phase of Eligibles #2 also conformed to the findings from the Juror Study. Tables IX and X show FV distinguished themselves from NV on questions (or measures) pertaining to propensity toward litigiousness and likelihood of appearing pro se. (For ease of comparison, these results are shown along with those of Jurors). Similarly, a meta-analysis of the complete (analyzed) responses of the Eligibles #2 Study and the Juror Study was conducted on the questions. This yielded a total of 367 filtered responses of which 240 (65%) were FV and 127 (35%) were NV. These results are shown below.

Although there appeared a striking similarity in response based on viewing, one difference was the proportion of each group that considered the option of pro se representation. A larger proportion of both FV and NV Eligibles than Jurors considered this. Yet, on the litigiousness scale, an equal proportion of both FV noted they would consider litigation, there was a much sharper drop in Juror NV than Eligibles NV in pursuing (as opposed to merely considering) a claim. This is shown in Tables XI and XII.

Similarly, meta-analysis was conducted combining the responses of the Juror Sample with those of Eligibles #2 on questions pertaining to likelihood of litigation and likelihood of representing themselves pro se. That analysis disclosed the following:
TABLE IX. PRO SE JURORS

TABLE X. PRO SE ELIGIBLES

TABLE XI. LITIGIOUSNESS OF JURORS

TABLE XII. LITIGIOUSNESS OF ELIGIBLES

TABLE XIII. JURORS + ELIGIBLES
IV. DISCUSSION

A. Syendi-Court's Influence on Litigiousness

If a case can be made that syendi-court encourages litigation and pro se representation, the results herein supply a preponderance of evidence supporting that proposition. Cumulatively, the studies suggest the profile of attitudes expressed by FV conforms with the dominant imagery of syendi-court, to wit: one celebrating pro se plaintiffs and litigation over all manner of perceived wrongs and for all manner of imagined remedies. Hence, syendi-court is a force of cultivation.

Although a surprisingly large proportion of both FV and NV state that they would consider litigation, FV are more likely to do so.195 Furthermore, as shown in Table XII, it appears that considering a claim and bringing a claim are options much closer on a continuum of actually litigating than they are for NV. For FV, contemplating litigation seems to be a step on the way to not-too-distant action. Perhaps this implies a normative force at work, where FV have become so comfortable with the pro-litigation norm broadcast by syendi-court that, when contemplating behavior, they are prone to act in accord with that previously-defined norm.

FV also express a propensity toward pro se representation rejected by their non-viewing counterparts. As clarified by the Eligibles Studies, this propensity appears mediated by the degree of risk/jeopardy that the individual faces. Thus, the pro se propensity of FV is evidenced in only the “low” risk/jeopardy categories — the situations most resembling those seen on TV — but is absent when the stakes are high risk, i.e., the situations most distinct from those of syendi-court.196

Finally, FV entertain very different opinions about appropriate judge behaviors than do NV. Whereas FV believe that judges should ask witnesses questions and act aggressively with litigants,

195. Although both the Juror and Eligibles samples disclosed a significant number of frequent viewers, the Juror sample included a higher proportion of frequent viewers. This might be explained either by age (younger individuals watch less television or less day-time television) or college enrollment (college-aged students are in classes during much of the syendi-court show time, thus, they watch less syendi-court). Both are consistent with previous findings that college students are “appointment viewers,” and watch less television than the average American. See Suzanne Pingree et al., If College Students Are Appointment Television Viewers . . ., 45 J. BROADCASTING & ELECTRONIC MEDIA 446, 457-59 (2001).

196. This might also reflect frequent viewers’ propensity to litigate or consider litigating relatively minor disputes. Indeed, the Juror Study suggests FV are more disposed toward litigation than are NV or, at least, more prone to claiming they consider it an option.
NV do not. It appears just as FV look to the model of syndi-court regarding litigation, so too do they follow its representations regarding judge behavior. These viewers tend to believe real judges will, and should, act like their syndi-court counterparts.197

B. Promoting Litigiousness

The significance of these findings lies in the values syndi-court promotes, accurate or not, intended or not, about litigation: a cultural acceptance of lawsuits, the perceived commonality of pro se representation, and reinvisioning of the courtroom as a forum for all manner of disputes and remedies.

Disputes are not scientific equations, but social constructs,198 and syndi-court contributes to those constructions.199 In making litigious assessments, we look to what others have done under similar circumstances, how they have been treated, and what they have won or lost (be it in terms of money, time, or social esteem). Syndi-court provides that very public point of comparison.201 Unfortunately, the selective presentation of syndi-court incidents distorts the reality and popularity of litigation.

If an individual were to watch just one syndi-court regularly, that individual would see almost 1,200 plaintiffs per year. Presenting scores of people litigating implies disputing is common behavior, engaged in by ordinary people.202 Litigation is neither reserved for the rich, nor practiced by the deviant. Rather, litigation is nor-

197. These differences are the most pronounced among those investigated. This is not surprising, as the judge behavior, and therefore the message or model presented to the viewing public, is the most concrete of those studied. Viewers see “x” behavior from TV judges and generalize that “x” is how judges behave. There are no intervening inferences to make or conclusions to draw as there are in understanding statistically popular behavior as a norm guiding behavior.

198. See Felstiner et al., supra note 42, at 631 (maintaining disputes are social constructs).

199. See Asimow, supra note 4, at 550-51 (claiming pop culture can lead public opinion and reinforce pre-existing attitudes). Often, “[t]he determinative obstacle to societal norm formation” is sufficient publicity of the action or belief. Id. at 400-01. This is not a problem for syndi-court, which broadcasts to a substantial audience several hours a day.


201. Vivid presentations of so-called reality “may impose themselves in the mind of the audience and begin to serve as a point of reference. Once activated, this information and these images guide further processing and recall and may produce systematic distortions in perceptions.” Sotirovic, supra note 51, at 752.

202. See Shrum, supra note 126, at 259 (“Content analyses of . . . reality-based police programs indicate that, just as with all programming, systematic biases are apparent.”).
mal. This reduces any stigma associated with the behavior of suing — that may deter litigation — and even replacing it with a societal endorsement.

The types of disputes showcased on syndi-court also lower the bar to legal claims. Indeed, the content analysis showed a majority of disputes sought truly minor sums. No dispute is too minor and no sum too small to warrant suit. One plaintiff even sued for $11. This substantially lowers the bar to "legal claims" and opens the doors to the courtroom much wider for all manner of trifling problems.203

Many plaintiffs, however, were not seeking compensation for legal wrongs, but for apologies or recognitions of wrongdoing. Several even noted the unimportance of monetary redress. Though these emotions are understandable, the noted "remedies" sought are not within the purview of a court. Perhaps early in the process, before counsel is involved, or papers are filed, or when one is at St. Peter's Gate, an apology is valuable legal currency, but in the crucible of the courtroom, it is not legally cognizable. Nonetheless, syndi-court communicates litigation to address trivial or moral issues is acceptable. Therefore, when comparing their problems to those on syndi-court, viewers who otherwise may not have considered their dispute worth pursuing might now conclude it deserves judicial redress.

Furthermore, syndi-court's exclusively pro se rally endorses the model of pro se representation. Showcasing litigants operating without the aid of counsel204 portrays pro se representation as both a reasonable alternative to representation by paid counsel and an undertaking that anyone can handle.205 In general, this perception

203. "Small claims is never about the money; it's about the principle." Judge Marilyn Milian, The People's Court (television broadcast, Oct. 16, 2002).

204. In the United States, all individuals possess a constitutional right to forego counsel and represent themselves pro se. See Faretta v. California, 422 U.S. 806, 807 (1975) (describing waiver of counsel in criminal trial). This is grounded in the Sixth Amendment. See id. at 818; see also U.S. CONST. amend. VI.

205. The consumer movement may also contribute to the popularity of self-representation, emboldening those who believe a reasonably intelligent person should be able to handle their own legal problems. See L. Karl Branting, An Advisory System for Pro Se Protection Order Applicants, 14 INT'L REV. L., COMPS., & TECH. 357, 358 (2000) (noting various factors adding to increase in pro se litigants). "The relatively high education level of pro se litigants — the most common level of education for pro se litigants is 1-3 years of college — attests to choice, rather than necessity, as the motivation for many pro se litigants." Id.

Unrepresented litigants can obtain information through a variety of sources, such as books, kits, and Internet resources. There is even court-sponsored software such as POA ("Protection Order Advisor"), for pro se litigants seeking orders of protection. See id. at 362-68 (describing such as developed for use in Idaho).
evinces some degree of favor toward litigation. Additionally, promotion of pro se as a viable option also diminishes a number of societal gatekeepers to the courthouse, to wit: the cost of counsel and a bad legal claim.

Although there is little data supporting an increase in litigation, overall there is evidence of an increase in pro se representation.206 In fact, since the proliferation of syndi-court, those employed by the justice system have insisted “unrepresented litigants are flooding the courts”207 and pro se filings have increased.208 Though the exact number of pro se litigants is unknown,209 their

206. See, e.g., Rosenberg, supra note 7, at 478-79 (noting quantitative data demonstrating increase in litigation); see also Branting, supra note 205, at 357 (telling of increasing numbers of litigants representing themselves in court); Chris Mahoney, Verdict: Litigants without Attorneys Are on the Rise, 20 B. BUS. J., Sept. 1, 2000, at 13 (noting number of pro se litigants increasing); Kathleen M. Sampson, Meeting the Pro Se Challenge: An Update, 84 JUDICATURE 926, 326-28 (2001) (portraying how self-representation continues to grow).

Court administrators and judges have insisted the number of pro se litigants has increased sharply. See Russell Engler, And Justice for All — Including the Underrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks, 67 ford. L. Rev. 1987, 1987 (1999) (describing flood of pro se litigants into “poor people’s courts”).

207. Engler, supra note 206, at 1987 (“This phenomenon is hardly surprising given widespread reports that over eighty percent of the legal needs of the poor and working poor currently are unmet in the United States.”); see also Branting, supra note 205, at 357 (telling of increasing numbers of litigants representing themselves in court).

208. See Alan Feuer, More Litigants Are Taking a Do-It-Yourself Track, N.Y. TIMES, Jan. 22, 2001, at B1 (describing increase of pro se litigants in New York City). “[T]he numbers of people representing themselves in court have been increasing in the city, the state, and the country at a significant rate.” Id. (quoting statement made by New York State Deputy Chief Administrative Judge, Juanita Bing Newton); see also John Gibeaut, Turning Pro Se, 85 A.B.A. J. 28, 28 (Jan. 1999) (stating Goldschmidt study “one of two” “charting an increase in the number of people showing up in court without lawyers”); Mahoney, supra note 208, at 13 (discussing how court officials insist they see increase in pro se cases); Daisy Whitney, Well-Documented “People” Company Helps Do-It-Yourselfers with Legal Tasks, DENVER POST, Aug. 3, 1999, at C-01 (quoting statement made by Sherry Patten, spokesperson for Colorado Judicial Department, that pro se litigation been on rise over past five years).


A repeatedly cited ABA study in the Phoenix area found that at least one party acted pro se in 24% of the 1980 divorce cases. By 1990, that proportion had increased to 88%. See Jeff Donn, More Americans Turn To Sue-It-Yourself Law, CHARLESTON GAZETTE & DAILY MAIL, Mar. 7, 1994, at A1, A11 (noting “American Bar Association does not keep records” of individuals who “act on their own legal behalf”); see also Jona Goldschmidt, The Pro Se Litigant’s Struggle for Access to Justice: Meeting the Challenge of Bench and Bar Resistance, 40 Fam. Ct. Rev. 36, 37-38 (2002) (characterizing judges attempt to address increasing number of pro se litigants).
numbers are believed to be significant. Courtwatchers, too, attribute the increase in pro se litigation, in part, to the abundance of court programs on television. Furthermore, an assistant court executive in California related that one pro se litigant explained he and his wife obtained all of their information about the courts from watching Judge Judy. A circuit court judge in Illinois also associated the rise in self-representation to cameras in the courtroom: because people can now see what occurs inside the courtroom, they may believe they are capable of litigating on their own behalf.

Insofar as pro se obviates the necessity of counsel, its popularity could increase litigation rates. Some have asserted the increase in


210. See Terry Carter, Self-Help Speeds Up, 87 A.B.A.J. 34, 34 (July 2001) ("The bulk of [pro se] representation tends to be in family matters . . . ."); see also Should Filing Fees Be Increased to Solve the Pro Se Representation Problem?, 29 BCD News and Comment, Dec. 3, 1996 (indicating despite lack of certain data, number of pro se litigants believed to be significant).

There have been dramatic increases in the number of pro se litigants in domestic relations disputes. See Branting, supra note 205, at 358; see also Carter, supra note 210, at 34 (noting increase in landlord-tenant small claims and other cases); Peter J. Ausili, Outside Counsel: Federal Court Statistics for Fiscal Year 1997, N.Y. L.J. Apr. 28, 1998, at 1 (noting federal criminal appeals reports show filings have increased slightly each year since 1993). With regard to the latter, though overall filings in the federal courts of appeals (excluding the Federal Circuit) rose only 1% from 1996 to 1997, of those 52,319 total cases, 42% that were pro se have been documented. See id. (discussing pro se increase in federal courts); see also Presiding Justice of the Appellate Division, Second Department, Guy Mangano, New Fifth Department Crucial, N.Y. L.J. [Supplement], Jan. 26, 2000, at S1 (describing need for new appellate department due to increasing case load).

The Boston Bar Association similarly found that, in 75% of divorce cases, at least one spouse is unrepresented by counsel. See Mahoney, supra note 206, at 13 (stating reports by “the trial court and the Boston Bar Association found that at least one spouse in two-thirds of divorce cases is unrepresented”).

211. See Feuer, supra note 208, at B1 (explaining court television shows are learning instruments for pro se litigants). Pro se litigants also attribute any increase to the cost of legal representation and the popularity of the do-it-yourself movement. See id.


Another pro se plaintiff considered his watching the Simpson trial a sufficient legal education. See Feuer, supra note 208, at B1 (relating experience of Victor Montalvo, who is using knowledge gained from television shows to sue Home Depot).

213. See Higgins Williams, supra note 212, at 816 (attributing rise of pro se litigants to lessons learned from cameras in courtrooms). “On television, it looks simple enough: You go to court. You make your case . . . [a]fter a few moments—and a commercial break—the judge renders a decision.” Dante Chinni, More Americans Want to Be Their Own Perry Mason, CHRISTIAN SCI. MONITOR, Aug. 20, 2001, at 1 (describing simplicity of arguing cases on self-representation television shows).
pro se litigation responds to the lack of affordable legal services for the poor and middle class. Pro se representation eliminates this expense, thereby clearing a path into the courtroom. In fact, according to a New York State Bar Association survey, “[t]he costs of legal services, or least their perceived cost, is encouraging a trend toward pro se litigation among middle-income New Yorkers . . .”. As pro se litigation can transform individuals who would otherwise be economically-barred from suit into litigants, it contributes to litigiousness.

Similarly, pro se representation also eliminates the hurdle of a bad legal claim to litigation. Even those who wish to litigate cannot

214. See Engler, supra note 206, at 1987 (suggesting up to 80% of legal needs of indigent are unmet); see also Janet Reno, Address Delivered at the Celebration of the Seventy-Fifth Anniversary of Women at Fordham Law School, 63 FORD. L. REV. 5, 8 (1994) (reporting 80% of poor and “working poor” have no access to legal services); Branting, supra note 205, at 358 (detailing shortfall in legal services for poor).

215. See Trubek, supra note 20, at 74 (rising litigation costs are barrier for some potential litigants); see also Rosenberg, supra note 7, at 481 (asserting lawyers’ fees and related charges have “priced out a large number of Americans from the civil justice system”). But see Eric A. Feldman, Blood Justice, 54 Law & Soc’y Rev. 651, 657 (2000) (claiming access to U.S. courts is inexpensive); Pacquin, supra note 68, at 30 (stating in empirical study of litigious personalities, few respondents mentioned cost as barrier to litigation or reason underlying decision to sue or not to sue).

216. Pro se litigation also impacts the justice system. Court officials claim pro se litigants’ lack of familiarity with the courts bogs down docket, and procreates frivolous suits. Even where their suits are meritorious, pro se litigants do not understand legal procedures. See Kimberlee K. Kovach, The Lawyer as Teacher: The Role of Education in Lawyering, 4 CLINICAL L. REV. 359, 370 (1998) (indicating public not familiar with many legal terms). In addition, few people know about filing deadlines or the documents necessary to initiate legal proceedings. See Branting, supra note 205, at 358 (stating problems to judicial systems posed by increasing pro se trend).

217. Gary Spencer, Middle-Income Consumers Seen Handling Legal Matters Pro Se, N.Y. L.J., May 29, 1996, at 1 (stating study commissioned by New York State Bar Association indicates increasing likelihood of middle income people to self represent). That study defined “middle income” as $25,000 to $95,000. See id.

218. This paper does not suggest the Constitutional right to pro se representation be restricted. Instead, it cautions that it may be undertaken by individuals under the mistaken impression that it is easy or that it might increase avenues for litigation.

In fact, the Supreme Court has noted the “nearly universal Conviction . . . that forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so.” Faretta v. California, 422 U.S. 806, 817, 819 (1975) (holding States can’t require citizen to use lawyer); see also United States v. Dougherty, 473 F.2d 1113, 1128 (D.C. Cir. 1972) (noting right to self-representation designed to “safeguard dignity and autonomy” of the defendant, not to achieve “best result in the litigation from a lawyer’s point of view”).
do so unless a lawyer agrees to take their case.\textsuperscript{219} Generally, a lawyer will decline to do so where a viable claim is absent and/or the likelihood of success or significant monetary recovery is low.\textsuperscript{220} Therefore, just as the expense of counsel may prevent people from suing, so may an attorney's refusal or expert opinion that the case is meritless. If a person acts without counsel, she circumvents such refusal, and, in spite of a meritless claim, can initiate litigation. Un fortunately, eschewing counsel in favor of self-representation might also cause one to lose a very winnable claim.

C. Study Limitations

Despite the studies' strong relational conclusions, they cannot substitute for causation. Because one cannot isolate the influence of television as a variable,\textsuperscript{221} social science can never prove cultivation of attitudes favoring litigation.\textsuperscript{222} Consequently, it cannot be determined with certainty whether and how the messages of syndi-court might interact with the individuals that view them or simply reflect some other trait shared by FV.\textsuperscript{223}

For instance, views regarding litigation or pro se representation may merely catalog individual predispositions toward litigiousness. Additionally, the type of person who opts for self-representation or pursues litigation might also be the type of person who likes to watch syndi-court. Thus, viewers already prone to litigiousness selectively expose themselves to syndi-court content. Similarly, these individuals may be more inclined than the average person to attempt pro se representation, sue, and favor the model

\textsuperscript{219} See Hans, supra note 17, at 10-11 (observing how civil jury signals potential litigants and lawyers, informing their decisions to pursue claims, accept cases, or agree to settlements).

\textsuperscript{220} See Do We Know, supra note 22, at 1190-92 (describing low probability of attorney agreeing to represent client if he foresees small economic benefit or little chance of success); see also Daniels & Martin, supra note 78, at 484 (explaining how court costs and weak cases lead 57% of lawyers to represent smaller percentage of clients than five years ago). "As a result, the client with a small, but legitimate claim may not be able to find a competent attorney, or have his or her claim successfully settled." Id. at 485.

\textsuperscript{221} "From the cultivation point of view, the television system cannot be isolated and separated in terms of a traditional independent variable or stimulus[.]" Patrick Rössler & Hans-Bernd Brosius, Do Talk Shows Cultivate Adolescents' Views of the World? A Prolonged-Exposure Experiment, 51 J. Comm. 143, 147 (2001) (indicating difficulty of performing experiments to test cultivation) (citation omitted).

\textsuperscript{222} See id. (noting cultivation studies do not permit causal interpretation of data).

\textsuperscript{223} Particularly in our media-saturated culture, it is not possible to restrict the analysis to one of a micro-level learning process.
of judges as expressed on television. These individuals may be more interested in trials than the average person or be contentious by nature. Therefore, these individuals seek out entertainment that satisfies these appetites.

Accepting the saturation of media, including syndi-court, in our culture, it is difficult to imagine how this problem could be cured through an alternative study design. In a culture that watches somewhere between 230-375 hours of television yearly, it would be impossible to isolate even individual predispositions from their genesis in media imagery.

Furthermore, education level and legal expertise provide an alternate explanation for the results. For instance, previous research has found education level is a strong predictor of opinions regarding crime policy. Generally, more educated people are likely to have and employ more complex ways of thinking. In relation to this, the level of legal understanding could mediate any propensity to litigate. People who better understand the law and legal system might better assess the strength of a potential claim as well as weigh the costs and benefits of litigation.

Nonetheless, though one would expect those with a better legal understanding to make better decisions regarding litigation, which decision-making process may not translate to fewer suits, but, rather, a redistribution of types of cases and wins. Presumably, more knowledgeable individuals would litigate stronger claims (that less educated individuals may not recognize) and would not litigate weaker claims that the less educated might pursue. Hence, knowledge would be independent of litigious tendencies. In fact, one study has shown past experience with the justice system has no con-

224. This motivational aspect has also been analyzed in traditional cultivation theory. See Margaret Reith, Viewing of Crime Drama and Authoritarian Aggression: An Investigation of the Relationship Between Crime Viewing, Fear, and Aggression, 43 J. Broadcasting & Electronic Media 211, 211 (1999) (discussing competing theories for why people watch crime dramas). For instance, Gerbner asserted people watched crime dramas by "accident." See id. Zillman suggested people who feared crime sought these out purposely (and, thus, this explained the positive correlation between viewing and fear of crime). See id.

225. For a discussion of television viewing hours, see supra notes 125-26 and accompanying text.

226. Data regarding education level was not collected in the Juror Study. Although it was known in the Eligibles Studies, the potential influence of this variable was not analyzed. See infra note 230 and accompanying text.

227. Sotirovic, supra note 51 ("Education widens the scope of one's acquaintanceship with different ideas and facts and increases the capacity to perceive implications of certain events.").

228. See id.
nection to attitudes favoring syndi-court-styled judicial behaviors or of heavy syndi-court viewing. Consequently, there is no reason to believe overall education level would exact an independent effect here.

Although education level was not a variable in either study, respondents in the Eligibles Studies all had completed at least one semester of college education. Therefore, when contemplating education as a potential explanatory factor, respondents in the Eligibles Studies may be used as a point of comparison. At least with regard to viewership and propensity toward pro se representation, FV and NV Eligibles Studies respondents expressed views in line with those of FV and NV Juror Study respondents. Thus, at least according to this measure, the effect of college education on attitude is not immediately apparent. Furthermore, what little empirical evidence exists, does not support the notion that syndi-court viewers are any different from television viewers generally. Indeed, the millions of syndi-court viewers represent a wide variety of demographic ranges.

Finally, an overwhelming majority of viewers reported they would consider litigation, and half said they would pursue it. This relatively large consensus raises questions about the genesis of the pro-litigation attitudes and behaviors. In fact, proportion of

229. See Podlas, supra note 4, at 14, 22 (discussing study showing no effect on frequent syndi-court viewers by judicial system experience).

230. In fact, there is evidence individuals who have completed some college constitute the largest proportion of pro se litigants. This college background may explain the difference in the proportions of Eligibles versus Jurors who expressed a propensity toward pro se litigation. The results reported herein showed a larger proportion of Eligibles – who all had at least one year of college education – than Jurors expressing a preference for pro se litigation.

231. Additionally, research has shown college students are somewhat different from the general public with regard to their television viewing (much academic debate of late regarding students as viewers). See Pingree, supra note 195, at 450 (noting differences in Nielson data). Indeed, Pingree’s study of 731 college students found they tended to be selective viewers with their available time. See id. at 455. They are “appointment viewers,” who choose to watch particular shows, by appointment. See id. at 455-56, 458. Additionally, or as a result, college students tend to be lighter viewers than the general public. See id. at 457 (confirming earlier studies). “Despite generally easy access to television, students clearly do not simply spend their free time casually viewing television.” Id. at 459. This departs from Nielsen data available for the aged 18 to 34 cohort. See Pingree, supra note 195, at 459 (discussing television viewing habits of college students).

232. One additional characteristic deserves note: the differences between the sample groups. The student sample group(s), i.e., those who favor disputing, is both younger than the juror sample group, and grew up in a time of syndi-court prominence.

233. For a discussion of viewers reports, see supra note 195 and accompanying text and Tables X-XII.
Eligibles was even larger. This may suggest some factor other than syndi-court viewing accounts for such litigious attitudes. Although this suggestion might undercut the explanatory value of syndi-court, it might underscore the operation of normative development via television.

It must be remembered, because NV do not watch syndi-court, they would not be expected to express attitudes in line with what FV see daily on syndi-court. One example is the rather active and aggressive behavior of judges. NV simply would not see these particular behaviors, so would not think them common or acceptable. Indeed, the statistical evidence supports this conclusion. Table III shows FV and NV exhibited their most pronounced differences on opinions regarding expected judicial behaviors: FV expected real judges to behave like those they had seen constantly on syndi-court, whereas NV, who had never been exposed to such behaviors, tended to expect behaviors more consistent with reality.

General attitudes toward litigiousness, however, are not wholly confined within the purview of syndi-court broadcasts; they are evidenced in places other than syndi-court, and, therefore, would be known to, or integrated by, NV. As previously noted, the last decade has marked a great deal of publicity about the litigation explosion. The residual effect of this publicity (or its truth) might explain the high proportion of NV contemplating litigation. Moreover, even if NV do not watch syndi-court, they are undoubtedly aware of the proliferation of these quasi-courtrooms. The popularity of syndi-court might positively shape dispositions toward considering litigation. Nevertheless, despite NV's degree of preference for considering or pursuing litigation, it was significantly different, i.e., lower, than that of FV, thus supporting some impact of syndi-court.

V. Conclusion

As Neil Postman said, "No medium is excessively dangerous if its users understand what its dangers are." Consequently, as syndi-court's de facto role as a legal messenger increases, legal practitioners and theoreticians are obliged to discern its influence on litigation and the public's propensity to litigate.

For some, syndi-court is lively "infotainment"; for others, it is the bastard of the legal system; for all, it is a normative messenger telling us what society deems "right" and "wrong" about litigation.

234. Postman, supra note 148.
It appears, however, syndi-court tells the public litigation and disputing are so common as to be devoid of stigma, pro se representation is an easy and viable option for those who cannot afford or find an attorney to take their case, and virtually anything deserves to be litigated. Not only does syndi-court cultivate attitudes, and possibly behaviors, favoring litigation, it also promotes unrealistic beliefs about the ease and popularity of litigation.\textsuperscript{235}

Certainly, amassing evidence that syndi-court has indeed influenced society's construction of disputes or propensity toward litigation will take time. Changes in symbolic environments such as these are like changes in the natural environment: they do not happen all at once, but are gradual and additive at first, then suddenly reach critical mass.\textsuperscript{236} Yet, at worst,\textsuperscript{237} these studies quantify and qualify opinions held by FV of syndi-court; at best, they describe the attitudes and behaviors that syndi-court cultivates. The former cautions that a large portion of the public already possesses a sensitivity toward the pro-litigation messages of syndi-court; the latter alerts us that the public is learning from syndi-court and is on the cusp of translating those beliefs to litigious behavior,\textsuperscript{238} as seen on TV.

\textsuperscript{235} "Whatever the visual mass media touch bear the mark of reality/fiction confusion." \textsc{Richard K. Sherwin}, \textit{When Law Goes Pop, \textsc{The Vanishing Line Between Law and Pop Culture}} 8 (2000); \textit{see also} Scottoline, \textit{supra} note 158, at 656 (stating "right now in the popular culture, there is an almost complete merger of fiction and reality when it comes to the law").

\textsuperscript{236} \textit{See Postman, supra} note 148, at 27.

\textsuperscript{237} The noted methodological hurdles notwithstanding.

\textsuperscript{238} Cognitions are intermediary steps between the content on television and ultimate behaviors. \textit{See Shrum, supra} note 126, at 260 (explaining television portrayals influence beliefs of viewers in series of cognitions). This is consistent with the belief real-world television effects may not manifest themselves as direct links between viewing and behavior, but work in a slower, subtler fashion. \textit{See id.}