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

by

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In recent years, it has become common to lament America's ever-deepening descent into a sea of litigiousness. Although the statistical validity of these claims is questionable, "litigation anxiety" has a real impact on the strategic and operational decisions of business as well as tort legislation.

Indeed, a wide variety of factors influence an individual's decision to pursue a legal remedy for some perceived damage or injury.[1] The most constant, if not only universal, factor in forecasting this propensity toward "disputing" is the influence of cultural norms. Norms are societal expectations of how one is to act. As they relate to litigation, they tell us whether and under what circumstances society deems litigation is appropriate. More specifically, they tell us whether putative plaintiffs will be lauded or stigmatized by society.

Societies communicate their norms in a myriad of ways. Twentieth century America saw mass media become a primary conduit for such messages; and television is now the dominant mode among these. Generally, audiences come to perceive behaviors portrayed frequently on television as normal or appropriate (or as imbued with the values consistent with their portrayals) and to perceive others (typically, those portrayed less frequently or negatively) as shameful or "wrong."

In the last decade, television has given birth to a new source of legal "information": the syndicated television courtroom, or syndi-court. Just as other media sources of law signal both social and legal rules about litigation, so too does syndi-court. Due to its ubiquity and unique digestibility, syndi-court exerts a previously-unknown normative force on the public's perception of litigation, its processes, and players. Thus, it is important to ascertain what influence syndi-court might exact, what norms it promotes, and whether there exists evidence that these messages may, ultimately, materialize into litigious behaviors.

Consequently, this paper investigates and quantifies syndi-court's function as messenger of social norms regarding litigation. It begins with a brief discussion of litigation's impact on business and the popular perception of the "litigation explosion." It then explains the influence of social norms on this perception and their expression though the media, primarily, television. Next, it turns to the phenomenon of syndi-court, suggesting that its constant parade of litigants, acting without counsel, and litigating often trivial matters may signal a societal endorsement of litigation.

These suppositions of litigiousness are tested through 2 related empirical studies – one of prospective jurors and one of college students – measuring viewer and non-viewer attitudes about litigation, pro se representation, and the tendency to support syndi-court representations of judicial behavior.

The results support the thesis that syndi-court's portrayals of litigation cultivate viewer attitudes, generally, and attitudes favoring litigation and pro se litigation, specifically. Ultimately, this paper concludes that such norms promote a propensity toward suit (and pro se suit) where it otherwise would not exist, indeed, that it promotes litigiousness. This cultivates plaintiffs, people who are increasingly prone to sue their neighbor, small businesses and service providers, and even larger corporate entities. In the end, more people considering suit means greater expense for business.

## Costs of Litigiousness

Businesses fear litigation perhaps now more than ever.[2] This fear is fueled by a perception that American society has become increasingly litigious[3] and American juries increasingly pro-plaintiff.[4] Accordingly, businesses fear they will be sued unfairly[5] and lose.[6] Litigation anxiety influences a number of business-[7] and litigation-related decisions, including how claims are handled and whether, when, and with whom to settle.[8] In fact, in one study, 80% of corporate executives stated that the fear of suit impacted business decision-making more now than 10 years ago,[9] and 60% of those surveyed insisted that civil litigation hampered the ability of US businesses to compete globally.[10]

Although the expense of litigation to business is commonly calculated in terms of monetary judgments after trial, the mere act of a plaintiff filing suit amounts to an expense for business.[11] "Anyone can file a suit forcing a corporation to spend millions defending itself, and those costs are passed on to you and me. . . ."[12] Even when suits are frivolous, business must respond.[13] They might introduce additional training for customer service staff, generate form letters of refusal, apology, and recall, add legal staff, or increase the work for retained or corporate counsel. The involvement of counsel also translates to expense:[14] counsel will be forced to communicate with plaintiffs (and plaintiff's counsel), draft letters, file motions, take depositions, and engage in other pre-trial strategies.[15]

If news of suit spreads, regardless of the claim's underlying validity, copycat suits may abound,[16] further increasing "response costs." Further, any suit, including those devoid of merit, will likely cause public image problems for business. Responsive PR campaigns to contain that damage[17] will add to the legal tab.

Of course, if a plaintiff's legal claims are strong, even greater expense is forecast. A plaintiff may recover a monetary judgment including attorney's fees[18] and punitive damages.[19] Yet, even if the parties avoid trial, it will generally be through settlement,[20] again, requiring a payout by business.[21] Thus, if such payouts are frequent or insured, the company's insurance premiums will increase.[22]

Perceptions of American Litigiousness

The allegation of a growing propensity toward litigation notwithstanding, there has been great debate regarding its accuracy. Since the 1970s through the 1990's tort reform movement,[23] politicians and the press asserted a litigation explosion.[24] Indeed, in 1994, the Republican Party proclaimed that "[a]lmost everyone agrees America has become a litigious society. . . ,"[25] and declared war against tort litigation with its Contract With America.[26] Nonetheless, many dispute this claim of litigiousness in American society as ranging from sloppy legal scholarship[27] to all out propaganda.[28] These scholars have found a low ratio of claims to lawsuits, showing that most Americans entitled to bring legal claims do not do so.[29]

Unfortunately, statistics analyzing civil filings, numbers of plaintiffs, and tort awards from the 1980's[30] through mid-1990s do not dispose of one conclusion in favor of the other. Rather, depending on the data, they can support both that litigation increased[31] and remained the constant or decreased.[32]

Norms of Litigious Behaviors

Historically, Americans have expressed both stronger and weaker proclivities toward suit.[33] Sometimes, the prevalence or rarity of suit can be explained by changes in the law. For instance, tort liabilities[34] and remedies[35] can expand or contract and procedural barriers[36] can be erected or decimated. Other times, the popularity of suit is influenced by business cycles.[37] Yet, as important as these factors may be in calculating suit, they neither operate in every instance nor alone. Arguably, the only constant in the equation of citizens pursuing or avoiding suit is the influence of social norms.

*Norms*

Although there are many definitions,[38] generally, social norms are societal expectations of how one is to act. They tell us what others deem right or wrong,[39] thereby permitting us to conform to these guidelines.[40] Norms may refer to table manners, relinquishing a seat on the bus, recycling, wearing a helmet while biking,[41] or clothing in public.[42]

Social norms play a part in determining choices[43] and behaviors.[44] Although individuals may comply with norms out of an internal sense of duty, fear of opprobrium, or perceived negative reputational consequences,[45] often, they obey out of a desire for social esteem.[46] People act like they believe others do to invite approval or to avoid disapproval.[47] Indeed, norms are commonly described as informal mechanisms of social control.[48]

Two critical aspects of normative force and formation[49] are consensus and publicity. Simply, norms require an apparent consensus view within the population and that that consensus be publicized to the relevant population.[50] Absent publicity, individuals will not have a known standard against which to judge or model their behavior:[51] A particular behavior may be popular or vilified statistically, but, if the members of the social group are unaware of this numerical consensus, it will not materialize into a normative force *influencing* behavior.[52] Rather, the following or eschewing of such behavior exists independent of any normative influence.[53]

*Social Norms and Litigation*

Just as norms influence a myriad of other attitudes and behaviors, they also influence attitudes and behaviors regarding litigation.[54] In the US, a cultural environment surrounds litigation that signals what is an injury, what to do about it,[55] and what society's reaction to suit and those who sue will or should be.[56]

Before a person initiates the process of litigation, she must identify what she believes to be a legal claim. Many injury victims do not realize that they have viable legal claims, and, therefore, do not sue.[57] Once a claim is identified, the aggrieved must decide whether to pursue it and to what extent. She might complain to a company's customer service department, draft a letter, turn to the local Better Business Bureau for intervention, consult an attorney, or file a claim in Small Claims or State Civil Court. These litigation-oriented decisions are made with reference to social norms of suit and plaintiffs.[58]

For example, many people believe that litigation is demeaning or bad.[59] Relatedly, a significant portion of the public believes that plaintiffs bring unjustified lawsuits, and, therefore, derogates plaintiffs as "blameworthy"[60] or greedy.[61] When pursuing litigation is seen as shameful,[62] legitimately aggrieved people will lump it[63] to avoid this stigma.[64] Simply, they do not want to be seen as the type of person who goes to court.[65] Conversely, when society's messages deem litigation as "normal" or worthy of respect, citizens will be more prone to litigate. (Either the stigma[66] or shame[67] of suit is eliminated, thus no risk of lowering social esteem, or the popularity and normalcy associated with suit provides a mechanism to heighten esteem).

Thus, social norms are a gatekeeper of sorts, regulating access to the legal system: They dissuade people from litigation, when the collective consciousness deems lawsuits wrong, and inviting in potential litigants, when it deems litigation acceptable.

The Normative Influence of the Media

One source that both shapes and transmits norms is the media.[68] "What we learn about social issues generally comes to us through some type of media, broadcast or print."[69] Individuals draw inferences from the behavior of others,[70] and media is a mechanism that tells them, accurately or not, what that behavior is.

For example, in the 19th century, Americans were accustomed to living with adversity. They accepted whatever fate visited upon them, and did not look for another party to whom to shift losses. This belief system discouraged suit.[71] Later, the growing industrial economy favored businesses in the developing tort system.[72]

Eventually, the number of severe industrial accidents[73] skyrocketed, and were publicized by the media. Newspapers stories portrayed business as culpable, evil, and exploitative of the common person. They spoke of worthy victims, increasingly frequent protests by average workers of against unsafe working conditions,[74] and devastating injuries.[75] The tone and content of these stories indicated that litigation – particularly against big business – and plaintiffs were more palatable, even positive. This helped usher in new societal attitudes.[76] Soon, society, that had previously frowned upon litigation, began to express attitudes and behaviors compliant with this view.[77] Indeed, people began to sue in greater numbers.[78]

By the 1970's,[79] suit reached critical mass. Businesses, special interest groups, and political allies began reciting the woes of the legal system, recounting legal mythologies of unjustified suit and out of control juries.[80] They said that only through reform could the damage to American society (and its economy) be averted.[81] By the early 1990s, the media had picked up on this rhetoric.[82] The National Law Journal announced "The Hundred Years' (Tort) War,"[83] and other media outlets proclaimed that Americans were "sue-happy."[84] Media coverage of litigation buttressed this "conclusion." During this time, news publications and broadcasts overrepresented sensational tort stories (distorting the realities of litigation);[85] it spoke of punitive damages in 21% of those reports, although punitive damages are awarded in only 4.6% of cases.[86] Even now, the media is 12 times more likely to report verdicts for plaintiffs[87] than for defendants.

With this shift in coverage, again, came another shift in public attitudes.[88] This time, however, the public expressed disfavor of lawsuits and those who used them. Indeed, Marc Galanter has found that many of the media culture stories about out of control jurors and the litigation explosion have influenced public opinions but are incorrect.[89] In short, historically, lawsuits have been uncommon when societal attitudes disfavored them and more common when society and the media's coverage did.

As Seen on TV

Although the media includes newspapers, film, and radio, presently, its primary mode of normative transmission is television.[90] The public receives much of its information from what it sees on TV[91] and integrates this information into its knowledge structures.[92] "People view a behavior as correct in a situation to the degree that they see others performing it. The reactions of others thus serves as 'proof' that the behavior is appropriate"[93] and television displays the "social proof" necessary to develop social norms.

As explained by cultivation theory, television's images tell us how things work and what to do.[94] Hence, they socialize viewers.[95] These reconstructed realities[96] then become schemata[97] that viewers use to support their attitudes and behaviors.[98] Indeed, significant exposure to the reconstructed realities of television can produce perceptions of reality that are different from those held by people who do not watch television.[99] Specifically, audiences come to perceive behaviors portrayed frequently in the media as normal and, therefore, more acceptable.[100] Hence, watching a significant amount of television will lead viewers to hold beliefs consistent with those regularly depicted in that medium.[101] Cultivation theory investigates the relationship between exposure to television and certain beliefs about the world,[102] specifically, beliefs consistent with the media imagery.[103]

The educational force of television also extends to the law.[104] Television transmits an enormous amount of information about law to the viewing public.[105] Indeed, it has become not only our most common window[106] into the courtroom,[107] but also our most powerful institutionalized messenger of law.[108] Its model of law nurtures assumptions about both the procedures and commonness of "litigation." It socializes individuals regarding the way in which one should behave when wronged, and signals what behaviors are frowned upon. Television thus creates knowledge and reality."[109] The impact is further heightened, since most Americans do not have a great deal of personal experience to displace the information "as seen on TV."[110]

*Syndi-Court*

In the last decade, a new media source of litigation has metastasized into the public consciousness: the syndicated television courtroom. Deemed the "hottest trend in daytime television,"[111] the proliferation of syndicated television courtrooms like Judge Judy and The People's Court mark the beginning of a new legal information era.[112]

Syndi-court's characteristics make its potential for public influence unique among televised sources of law.[113] Unlike periodic reporting of noteworthy trial and appellate decisions[114] by network news outlets or Court TV, syndi-court has a regular, substantial audience.[115] Whereas ratings confirm rabid, daily interest in syndi-courts, Court TV must struggles to

garner 500,000 viewers[116] – and can do so only by replacing its reality legal coverage with movies and "NYPD Blue" repeats. While Court TV has been described as "stand[ing] out because of its tediousness,"[117] syndi-court is produced to be interesting and quick, averaging 2 cases per 22 minute show. Its content is also accessible: simple, dichotomous conflicts and parties, and speedy resolutions.[118] According to one critic, people "like these little morality plays."[119]

Syndi-court offers a consistency unlike any other form of media-produced law. These courtrooms are broadcast daily instead of sporadically, and cumulatively reflect a homogenous format. Thus, the images and lessons promote a unified body of information. Moreover, syndi-court is easy to find on the dial – any weekday, anyone with a television set[120] can tune in to one or many such courtrooms. A cable subscription or satellite dish is not a pre-requisite. By contrast, televised trials, such as those on Court TV or of high-profile cases,[121] are generally too infrequent and unique to educate the public.[122] They may temporarily excite interest, tend to fixate viewers on sensational political lures rather than the less sexy legal issues.[123]

The ubiquity and digestibility of syndi-court and its messages heighten its potential for cultivating social norms.[124] Just as, in the past, media messages shaped and transmitted public attitudes about litigation, syndi-court may transmit norms[125] about the social acceptability of litigation and any stigmas associated with being a plaintiff.[126] They may communicate an apparent behavioral consensus, thus ushering in a new norm, or publicize an emerging norm for others to follow.[127]

*What Is The Message?*

Media messages of past decades have swung from the culpability of business to the impropriety of suit. In this context, it is also important to consider what specific messages syndi-court may send to the viewing public.

Presently, there are a dozen syndi-courts airing daily and many markets broadcast 3-4 hours of syndi-court daily. At an average of 2+ cases per ½ hour show, regular viewers see 120-150 litigants per week and more than 3,200 plaintiffs per year.[128] This constant parade of litigants, of pro se plaintiffs, and of commonly trivial causes of action may signal that both litigation and pro se[129] representation are common, viable, and accepted. This parade would either eliminate any stigma associated with litigation, affirmatively encourage suit, or both. Consequently, people who have previously eschewed litigation or airing their grievances in public out of shame, embarrassment, or fear of social disapproval, would be more inclined to sue. Similarly, as viewers compare their own legal problems to the menial nature of many of the disputes broadcast on TV, they might conclude that, if grievances broadcast on television deserve litigation, so do their own. Finally, "little-guy" litigants championing their own causes may also encourage some litigants who would otherwise employ counsel to go it alone, and enhance an already-existing tendency toward pro se representation in others. All contribute to litigiousness.

As reasonable conclusions, these effects of syndi-court on litigious attitudes are interesting cocktail party far, yet, there is some evidence that syndi-court is already promoting these effects on the justice system, particularly with regard to pro se litigation. Since the blossoming of the syndi-court genre, those employed by the justice system have insisted that "unrepresented litigants are flooding the courts"[130] and that the number of pro se filings have increased.[131] Though the exact number of pro se litigants is unknown,[132] their numbers are believed to be significant.[133] Courtwatchers, too, attribute the increase in pro se litigation, in part, to the abundance of court programs on television.[134] Furthermore, an assistant court executive in California related that one pro se litigant explained that he and his wife obtained all of their information about the courts from watching Judge Judy.[135] A Circuit Court Judge in Illinois also attributed the rise in self-representation to cameras in the courtroom: because people now see what occurs inside the courtroom, they believe that they are capable of litigating on their own behalf.[136]

## Empirical Investigation: The Normative Impact of Syndi-Court

Relying on the above literature as support, 2 studies were undertaken to ascertain the normative influence of syndi-court in promoting litigiousness. As such normative influence (or cultivation effect) begins with identifying any relationship between frequent viewing of syndi-court and holding beliefs consistent with the primary images of that forum, 2 hypotheses were posited:

(1) Generally, syndi-court exacts a cultivation effect, as demonstrated by frequent viewers entertaining beliefs consistent with syndi-court imagery; and

(2) Specifically, among those beliefs, frequent viewers will express attitudes consistent with the norms put forth by syndi-court, i.e., those favoring: (a) pro se litigation, (b) litigation, and (c) judicial behaviors as exemplified by syndi-court judges.

### The Juror Study[137]

241 prospective jurors from Manhattan, the District of Columbia, and Hackensack, New Jersey were sampled. 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. (No individual believed to be a juror was excluded). Questions relevant here measured syndi-court viewing habits, expressed propensity toward pro se litigation, expressed propensity toward litigation, and

opinions regarding judicial behavior. In exchange for their participation, jurors received candy bars and the elite pens used to complete the questionnaires and candy bars. Individuals or questionnaires demonstrating obvious English language barriers and those that were substantially incomplete were discarded. Of the 241 surveys collected,[138] 225 (93.3%) were analyzed.

Findings: Pro Se Representation

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].[139] Of the 225 juror responses analyzed, 149 (66.2%) were FV and 76 (33.78%) NV.

As summarized in Table I below, statistically significant differences emerged between the frequent viewer and non-viewer responses to the following questions ($P< .05$):

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

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

**Table I**

| Sample | would consider appearing pro se | | would appear pro se | |
|---|---|---|---|---|
| | x[140] | SD | x | SD |
| FV =149 | .55 | .499 | .59 | .4917 |
| NV =76 | .16 | .367 | .184 | .39 |
| t value | 6.647* | | 6.763* | |

* designates statistically-significant results

Findings: Attitudes Toward Litigiousness

As summarized in Table II below, statistically significant differences ($P< .05$)[141] also emerged between FV and NV responses to of the following questions pertaining to potential for entertaining litigation:

I
___ would consider bringing a claim in court
___ would NOT consider bringing a claim in court

I
___ would bring a claim in court
___ would NOT bring a claim in court

**Table II**

| Sample | would consider bringing claim | | would bring a claim | |
|---|---|---|---|---|
| | X | SD | x | SD |
| FV | .86 | .349 | .745 | .437 |
| NV | .76 | .43 | .5 | .5 |
| t value | 1.767* | | 3.65* | |

* designates statistically-significant results

Findings: Attitudes Regarding Judicial Behaviors

In addition to litigiousness and expressed propensity toward pro se representation, the Juror Study also considered whether frequent viewers held beliefs consistent with the imagery of syndi-court.

As displayed in Table III, data indicated that a significant portion of frequent viewers expressed beliefs about judges mirroring those seen on the television screen, regardless of whether these beliefs were consistent with reality. Frequent viewers held beliefs consistent with syndi-court's representation of judges to a statistically significant degree (P<.0005) than their non-viewing counterparts.

**Table III: Views Consistent With Syndi -Court Imagery**

| | Judges should have opinion regarding verdict | judge should ask questions during trial | should "be aggressive with litigants or express displeasure with their testimony" |
|---|---|---|---|
| FV | 75% | 82.5% | 63.76% |
| NV | 48.6% | 38.16% | 26.32% |

Follow-Up Regarding Pro Se Litigation: The Student Study

The second study investigated attitudes and propensities toward pro se litigation amo ng 88 college students at a private college. Over a 2-day span, 39 students in an introductory-level business class and 68 students in the students cafeteria completed a 1-page survey. Respondents answered questions (among others) measuring syndi-court viewing habits, law viewing habits,[142] and propensity toward self-representation in various civil and criminal contexts.[143] These were then translated into "high risk" and "low risk" categories[144] to obtain data on whether any propensity toward self-representation existed regardless of level of legal jeopardy.

Findings: Pro Se Litigation (II)

Again, respondents were identified and divided as frequent viewers and non-viewers, as defined in the Juror Study. Additionally, because of the more inclusive question pertaining to watching "law" television shows, respondents who watched only law dramas (and, thus, were neither "frequent viewers" or "non-viewers" as defined in Study I) were excluded from analysis herein (n=22). Of the remaining 64 questionnaires analyzed, 45 (70.3%) were FV and 19 (29.69%) NV.

As summarized in Table IV below, statistically significant differences again emerged between the frequent and non-frequent viewers (P<.05). This time, however, those differences were apparent only at the low risk/ jeopardy levels. No difference was found when respondents contemplated high risk/ jeopardy situations. Rather, it appeared that, where respondents were faced with high levels of risk/ jeopardy, they rejected the potential of pro se representation, notwithstanding viewing profiles.

**Table IV: Expressed Propensity For Self-Representation**

| Level of Risk/ Jeopardy | FV (n=45) | | NV (n=19) | | |
|---|---|---|---|---|---|
| | X | SD | x | SD | t value |
| civil low | .62 | .49 | .26 | .452 | 2.625* |
| criminal low | .64 | .484 | .32 | .478 | 5.13* |
| civil high | .20 | .405 | .105 | .315 | 1.11 |
| criminal high | .022 | .149 | .05 | .229 | .642 |

* designates statistically-significant results

Table V summarizes some of the proportions regarding the views of frequent viewers and non-viewers.

**Table V: Comparison Between FV and NV**

| Syndi -court characteristic | Proportion FV | Proportion NV |
|---|---|---|
| Judges should speak, ask questions | 83.5% | 38% |
| Judges should be aggressive | 64% | 26% |
| Would appear pro se (low risk) | 62% | 26% |
| Would bring claim | 74.5% | 50% |

| Would consider claim | 86% | 76% |
|---|---|---|

Results

The cumulative results confirm what Neilsen ratings tell us: that a significant percentage of the population watches syndi-court, frequently. Although the proportion of frequent viewers was slightly higher in the Student Study than in the main, Juror Study, they were still within the same range.

More importantly, the results support that frequent viewers of syndi-court hold a number of views regarding litigation that not only differ from those held by non-viewers, but also conform to the predominant imagery of the syndi-court genre. For the most part, this supports the hypotheses proposed, i.e., normative cultivation and expression of attitudes consistent with syndi-court imagery.

First, both the Juror Study and the Student Study demonstrate that frequent viewers express a propensity toward pro se representation (Tables I and IV). Non-viewers, by contrast, do not. As clarified by the follow-up Student Study, this difference is evident only in the "low" risk/ jeopardy categories,[145] the situations most resembling those of syndi-court: Notably, frequent viewers do not express this propensity, and no difference is apparent in high risk/ jeopardy situations – situations unlike any represented on syndi-court.

Second, the Juror Study suggests that frequent viewers appear more disposed toward considering litigation than do non-viewers (Table II). Although statistical differences on this measure are not as pronounced as those on other measures (pro se, judicial characteristics), they are, nonetheless, significant. Interestingly, where these responses of frequent viewers and non-viewers are closest proportionally, it does not appear that both groups begin to move toward a center, but that non-viewers begin to look more like those of frequent viewers. Furthermore, like findings regarding pro se propensities, the attitude expressed by frequent viewers complies with that promoted daily on syndi-court.

Finally, frequent viewers entertain very different views about appropriate judge behaviors than do non-viewers. These differences are the most pronounced among those investigated. As displayed in Tables III and V, frequent viewers believe that judges should ask questions during trial and act aggressively with litigants. It appears that frequent viewers believe that real judges will and should act like their syndi-court counterparts. Although these opinions about judicial behavior do not speak to the normative development of litigious attitudes (the focus of this paper), they, nevertheless, support the normative influences of television.

Discussion: Developing Norms of Litigiousness

The significance of these results extends beyond their description of frequent viewers or support for normative cultivation. They also suggest the specific norms that syndi-court publicizes, accurate or not, about litigation: acceptance of suit, commonality of pro se representation, and the courtroom as a forum for all manner of disputes. These forecast a brewing storm of litigiousness.

By presenting one hundred people weekly litigating claims, syndi-court apparently communicates to the public that litigation is a behavior engaged in by many regular folk. It is neither reserved for the rich, nor practiced by only deviant "troublemakers." This portrayal of litigation as shockingly common, reduces any stigma associated with the behavior of suit, perhaps, even replacing it with a societal endorsement. Either disempowers the social gatekeepers to suit of loss of esteem and public scrutiny. Therefore, as fewer people are no longer deterred from litigious behavior, such behavior is likely to increase; as more people are encouraged to accept this behavior, such behavior is likely to increase.

Additionally, showcasing litigants operating without the aid of a lawyer furthers impressions favoring not only litigation but also pro se litigation. That respondents in the Student Study affirmatively stated that they would pursue pro se litigation in certain instances, necessarily evinces some degree of favor toward pursuing litigation, generally. Moreover, focusing on average people directing their own cases (often to victory), shows that pro se representation is both a reasonable alternative to representation by paid counsel and something that virtually anyone can handle. This option endorses a way around one economic gatekeeper to suit, i.e., the expense of counsel, that sometimes prevents individuals from pursuing litigation.

Indeed, some have asserted that the increase in pro se litigation is due to the lack of affordable legal services for the poor and middle class.[146] Aggrieved individuals, thus, forgo assertion of their legal rights, because they cannot afford an attorney.[147] Yet, pro se representation eliminates this expense, thereby clearing a path into the courtroom.[148] 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. . . ."[149] As this transforms individuals who would otherwise be economically-bared from suit into potential litigants, it contributes to litigiousness.[150]

Similarly, the promotion of pro se litigation eliminates another potential gatekeeper to suit: a bad legal claim. Even those who wish to litigate perceived legal claims can not do so unless a lawyer agrees to take their case. 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.[151] Therefore, much as the expense of counsel may prevent people from suing, so may an attorney refusal (or her expert opinion

that the case is meritless). Yet, where a person acts without counsel, she circumvents such refusal, and, in spite of a non-existent claim, can initiate litigation.[152] As this also removes a gatekeeper to litigation, it, too, may contribute to litigiousness.

Finally, the types of disputes showcased on syndi-court might also enhance tendencies toward litigation. On syndi-court, no dispute is too minor and no sum too small to warrant suit. This communicates that litigation to address trivial or moral issue is acceptable. Thus, when comparing syndi-court disputes to their own, viewers who may not otherwise have considered their dispute worth pursuing through litigation might conclude that theirs also deserves judicial redress. This substantially lowers the bar to "legal claims" and opens the doors to the courtroom much wider for all manner of trifling problems.

Ultimately, these norms favoring litigation may be actualized as litigious behavior. More citizens will be prone to consider litigation, or pro se litigation, as a socially acceptable options. This cultivates plaintiffs, people who are increasingly prone to sue their neighbor, small businesses, and even larger corporate entities. In the end, more plaintiffs and more people even considering the preliminary steps toward suit, means greater expense for business.[153]

<u>Study Limitations</u>

Social science research generally and cultivation and normative investigations specifically suffer from the inability to distinguish causation from correlation. Therefore, it cannot be ascertained whether television, or syndi-court, does, indeed, cultivate these attitudes toward litigation, and, therefore, promote norms favoring litigiousness, or whether these attitudes exist independent of syndi-court viewing. Such views toward litigation or pro se litigation might merely catalog individual predispositions toward the litigiousness "plaguing" society.

Additionally, the type of person who would opt for self-representation or pursue litigation might also be the type of person who expresses a greater interest in syndi-court. Therefore, frequent viewers may already be more inclined than the average person to go pro se, to sue, and favor the model of judges as expressed on television. They may also be more interested in trials than the average person or be contentious by nature. Thus, these individuals seek out on syndi-courts when turning on the television. The little empirical evidence that exists, however, does not support the notion that syndi-court viewers are any different from television viewers generally.[154] Indeed, there are quite a few viewers of syndi-court and they represent a wide variety of demographic ranges. (The empirical strength and validity of this research, however, is unclear). Also, and unfortunately, neither study reported herein obtained data on respondents's television viewing as a whole. Thus, it cannot be determined whether frequent viewers are also frequent *television* viewers and/ or whether non-viewers are also non-viewers of television.

Furthermore, two variables that were not considered,[155] but may provide an alternate explanation for data are education level and level of legal expertise. In a previous study of media effects, it was found that education level was a strong predictor of opinions regarding crime policy. "Education widens the scope of one's acquaintance with different ideas and facts and increases the capacity to perceive implications of certain events."[156] Simply, more educated people are likely to have and employ more complex ways pf thinking.[157] Relatedly, the level of legal understanding could mediate any propensity to sue. People who better understand the law and legal system might better assess the strength of a potential claim as well as the costs and benefits of litigation. Nonetheless, though one would expect those with a better legal understanding to make better decisions regarding litigation, that decision-making process may not translate to more or fewer suits, but rather a redistribution of wins and losses. Presumably, more knowledgeable individuals would litigate stronger claims (that less educated individuals may not recognize) and decline litigating weaker claims (which less educated individuals would litigate). Hence, knowledge would seem independent of litigious tendencies. In fact, although not directly on point, it has been found that past experience with the justice system neither accounted for attitudes favoring syndi-court-styled judicial behaviors nor mediated any possible effect of heavy syndi-court viewing.[158] Consequently, there is no reason to believe that overall education level would exact a similar effect here.

The results of the Student Study (II), however, offer some indication of the potential impact of education on litigious attitudes. Although education level was not a variable in either study, respondents in the Student Study all had completed at least 1 semester of college education. Therefore, when contemplating education as a potential explanatory factor, respondents in the Student Study may be used as some degree of comparison. At least with regard to viewership and propensity toward pro se representation, frequent and non-viewer student respondents expressed views in line those of frequent and non-viewer juror respondents. Thus, at least on this measure, the effect of education on attitude is not immediately apparent.

Finally, it is interesting to note Table V's summary regarding non-viewer attitudes toward litigation. 76% claimed that they would consider litigation, and half stated that they would pursue litigation. This relatively large consensus raises questions about the genesis of the pro-litigation attitudes and behaviors. It may suggest that some factor other than syndi-court accounts for such litigious attitudes.

While, at first blush, this finding might undercut the notion that syndi-court (as a normative messenger) contributes to litigiousness, it can also be interpreted as consistent with the theory of normative development via television. Because they do not watch syndi-court, non-viewers would not be expected to express attitudes in line with what frequent viewers see daily on syndi-court: the rather active and aggressive behavior of judges, for instance. Simply, non-viewers would not see these particular behaviors, so would not think them common or acceptable. Indeed, this is supported by the statistical evidence. Table IV shows that frequent viewers and non-viewers exhibited their most pronounced differences on opinions regarding

expected judicial behaviors: frequent viewers expected real judges to behave like those they had seen constantly on syndi-court, whereas non-viewers, 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 to the purview of syndi-court broadcasts; they are evidenced in places other than syndi-court, and, therefore, would be known to non-viewers. As previously noted, the last decade has marketed the explosion of publicity about the litigation explosion. The residual effect of this publicity (or its truth) might explain high proportion of non-viewers contemplating litigation. Moreover, even if non-viewers do not watch syndi-court, they are undoubtedly aware of the proliferation of these quasi-courtrooms. This popularity might positively shape dispositions toward considering litigation. Nevertheless, despite non-viewer's degree of preference for considering or pursuing litigation, it was significantly different – lower than – that of frequent viewers, thus supporting some impact of syndi-court.

## Conclusion

For some, syndi-court is lively infotainment; for others, it is the bastard of the legal system. For all, however, it is a normative messenger telling us what society deems "right" and "wrong" about litigation. In that regard, syndi-court merely represents the latest permutation in a long line of media evolution to influence attitudes regarding litigation and plaintiffs. The content of syndi-court's message, however, breaks from the media messages of recent decades which disparaged and discouraged litigation. Instead, syndi-court promotes litigiousness by telling viewers that litigation is common, and pro se representation easy. It tells us that litigants are not deviant, and that suits over trivial matters are appropriate. To the extent that societal litigiousness can be forecast, the study results reported here suggest that we need go no further than the behaviors and attitudes endorsing litigation, "as seen on TV."

## Footnotes

[1] Richard Birke & Craig R. Fox, *Psychological Principles in Negotiating Civil Settlements*, 4 HARV. NEGOTIATION L. REV. 1 (Spring 1999).

Less than 5% of all civil suits filed result in a verdict. *Id.* Of the remainder, almost 90% will settle. Marc S. Galanter, *Most Cases Settle: Judicial Promotion and Regulation of Settlements*, 46 STAN. L. REV. 1339, 1340 , n.2 (1994).

[2] The survival of a small business can easily be threatened by a lawsuit. Carlos Conde, *Lawsuit Mania*, 11 HISPANIC 34 (Dec. 1998).

[3] Mark A. Hoffman, *Common Good Fights Against Litigious Culture*, BUS. INSURANCE, April 29, 2002, at 40 (referring to "culture of litigiousness" as fundamental problem in American society); Spencer Abraham [Senator], *Litigation's Stranglehold On Charities*, 85 POLICY REVIEW 57 (Sep/ Oct 1997) (noting current "litigation explosion"); John Leo, *The World's Most Litigious Nation*, 118 U.S. NEWS & WORLD REPORT , May 22, 1995, at 24 (noting litigation explosion); WALTER K. OLSON, THE LITIGATION EXPLOSION: WHAT HAPPENED WHEN AMERICA UNLEASHED THE LAWSUIT (1992) (increase of litigation since mid 1940's and expanding to present day); S.L. Oliver, *Let The Loser Pay*, 147 FORBES 96 (March 18, 1991) (litigation explosion).

One study found that 94% of executives believed that litigation had exploded over the last decade. John Lande, *Failing Faith in Litigation? A Survey of Business Lawyers' And Executives' Opinions,* 3 HARV. NEGOTIATION L. REV. 1, 26, 51 (Spring 1998).

[4] VALERIE P. HANS, BUSINESS ON TRIAL 9 (2000) [BUSINESS] (some analysts assert a change in legal culture, while others claim Americans have become increasingly litigious).

[5] Mark N. Vamos (Ed.), *The Verdict From The Corner Office* (Business Week/ Harris Executive Poll), BUSINESS WEEK, April 3, 1992, at 66.

[6] Business leaders have asserted that they are victimized by civil juries who rule against them due to their perceived deep pockets rather than based on the evidence. Valerie P. Hans, *The Illusions And Realities of Jurors' Treatment of Corporate Defendants*, 48 DEPAUL L. REV. 327, 329 (Winter 1998) [Illusions]. Others claim that jurors are simply anti-business. *Id.* at 328-29. Notwithstanding, there is evidence that civil juries are actually pre-disposed toward business defendants. *Id.* at 331.

[7] Many business executives believe that the potential of litigation inhibits them from engaging in the entrepreneurial activities that would benefit their businesses. Lande, *supra* note 3, at 18.

[8] Indeed, "[m]ost businesses will do anything to avoid being sued." Oliver, *supra* note 3; *see also* ROBERT L. KIDDER, CONNECTING LAW AND SOCIETY, 47-48 (1983) (describing strategies and decision-making in identifying with whom to settle and when to pay more for claims than the law requires).

[9] Hofmann, *supra* note 3, at 40 (fear of claims "paralyze[s]" business); Jeffery Rothfeder, *Living With Litigation*, 173 CHIEF EXECUTIVE 20 (Dec. 2001) (decisions regarding litigation are among the most critical for CEOs).

[10] Vamos, *supra* note 3; *cf.* 43 NATIONAL REVIEW [no author], Sept. 9, 1991, at 14 (curtailing litigation explosion would strengthen international competitiveness of US business and save economy as much as $300 billion in litigation costs).

[11] The Insurance Information Institute estimates that the legal tab of court costs, attorney's fees, insurance premiums, and payouts amounts to $161 billion or 2% of the US GDP. Paul Sweeney, *Keeping Legal Costs Down*, 17 FINANCIAL EXECUTIVE 47 (Dec. 2001).

Another source estimates litigation costs – including legal fees, jury awards, copying, and organization costs –at $100 - $300 billion. This does not include indirect costs, such as damages to corporate reputation and increased day-to-day business costs. Michael Netzley, *Alternative Dispute Resolution: A Business (And) Communication Strategy*, 64 BUS. COMMUNICATION QUARTERLY 83 (Dec. 2001); NATIONAL REVIEW, *supra* note 10, at 14 (tort litigation amounts to as much as $300 billion); 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 (1998) (major expense of litigation is its transaction costs).

This "sky-is-falling" perception may, itself, increase costs. Saks asserts that the irrational fear of lawsuits causes increased costs, because insurers insist on excessive reserves and products are not produced. *Id.* at 1184-85; *see also* Timothy R. Brown (AP), *Group Puts Price Tag on Legal System*, THE COMMERCIAL APPEAL (TENN.), April 17, 2002, at DS1 (consumer litigation leads to "increase[d] insurance rates").

[12] Mark Sauer, *Taming Trouble Torts: Some Wonder Whether Reports Of Litigation Explosion Were Overblown* [PERSONAL FINANCE], THE SAN DIEGO UNION-TRIBUNE, April 21, 2002, at H-1 (quoting Adrienne Kotner of Citizens Against Lawsuit Abuse).

Tort reform groups claim that consumer litigation also causes consumers to pay more for products. Brown, *supra* note 11, at DS1. Another author claims that "tort taxes," i.e., the costs passed on to consumers to cover litigation costs, increase the cost of an $80 ladder to $100 and a $15,000 pacemaker to $18,000. Leo, *supra* note 3, at 24-25.

[13] The Vice President of the Cubic Corporation lamented, "a company can spend millions defending itself against [] frivolous suits." Sauer, *supra* note 12, at H-6.

[14] Andrew Wood, *Legal Costs Too High?,* 160 CHEMICAL WEEK 33, 34 (Nov. 4, 1998) (PricewaterhouseCoopers estimates legal spending for chemical companies as 0.42% of yearly revenue); Richard J. Rosenthal, *Mediation As An Affirmative Business Strategy*, HAWAII PACIFIC ARCHITECTURE (Jan. 1995), also available at http://www.mediate.com/articles/rosenthall.cfm (visited 5/9/02) (business defendants must contend with "spiraling legal fees" in litigation).

[15] The costs of litigation, along with those of product recalls or product development, are then "taken into the firm." Sandra L. Christensen & Brian Grinder, *Justice and Financial Market Allocation of the Social Costs of Business*, 29 J. BUS. ETHICS 105 (Jan. 2001).

[16] Brian D. Beglin & David M. Cohen, *Tiptoeing Through Mass Tort Litigation*, 48 RISK MANAGEMENT 63 (Apr. 2001) (describing how, within days, a "trickle of legal complaints" can evolve into a flood of complaints); Oliver, *supra* note 3, at 97 (recounting suits by bystander defendants); *Big Punitive Award Threatens Justice*, SEATTLE POST – INTELLIGENCER [editorials], February 13, 1999, at A11 (large damage awards open courts to "a flood of copycat suits motivated by fantasies of a big payday").

[17] Companies who are cast into the role of tort defendants are commonly forced to defend their products in the media, Joseph F. Speelman, 69 DEFENSE COUNSEL JOURNAL 35, 44 (Jan. 2002), and often, regardless of trial outcomes, will find their reputations damaged, [no author], *America's Love Affair With Litigation Means New Laws For PR*, 56 PR NEWS, June 26, 2000, at 1.

[18] Some have accused lawyers seeking paychecks of creating the litigation explosion. *See e.g.,* Sweeney, *supra* note 11, at 48 (describing "litigation machine" created by lawyers to pool resources and increase business litigation) *and* ("litigation process is basically driven by plaintiff's attorneys who seek out claims on behalf of consumers," quoting Randall M. Walters); Michael Kirsch, *Lawyers, Heal Thyselves*, 85 ABA JOURNAL 96 (May 1999) (lawyers contribute to "litogomania"); Leo, *supra*, note 3, at 24 (trial lawyers promote "litigation lottery"); OLSON, *supra* note 3 (accusing lawyers of prompting plaintiffs to sue and churning out "junk litigation").

[19] Sally Roberts, *Steps Can Be Taken To Limit Exposure To Punitive Damages*, 35 BUS. INSURANCE 50 (May 14, 2001) ("Punitive damage exposure is the greatest exposure for corporate America").

[20] By one estimate, 90% of lawsuits are settled out of court. Wood, *supra* note 16, at 33.

[21] Birke & Fox, *supra* note 1, at 67 (discussing methods by which lawyers considering settlement calculate the monetary value of the case); Speelman, *supra* note 15, at 35 (asserting that tort suits "extort major corporations and small businesses into massive settlements without ever resolving the validity of the claims on the merits").

"As a rule, it's cheaper for companies to make confidential settlements than to defend themselves." Sarah D. Scalet, *See You In Court*, 15 CIO 62, 64 (Nov. 1, 2001).

[22] Roberts, *supra* note 19, at 52-53 (advising companies to purchase insurance to cover damage awards; "general rule of thumb is $1,000 per $1 million in limits"); *cf.* David M. Katz, *Treasury and Risk Management: Employment Bias: Should You Settle, Or Risk A Jury Trial?* CFO.com (May 24, 2001), at http://www.cfo.com/article/1,5309,3351//A/155/8,00.html (visited 5/9/02).

There are, of course, mechanisms businesses can use to keep their liability insurance costs down. For example, Chubb Insurance reduces employment practices liability insurance for companies who participate in its certified training programs. Sweeney, *supra* note 11, at 47.

[23] *See generally* W. Lee Pittman & Bert S. Netles, *Symposium On Tort Reform: What Is the Role or Function Of Punitive Damages?* 24 CUMB. L. REV. 453 (1993/94); Michael Rustad & Thomas Koenig, *The Historical Continuity of Punitive Damages Awards: Reforming The Tort Reformers*, 42 AM. U.L. REV. 1269 (Summer 1993).

[24] HANS [BUSINESS], *supra* note 4, at 56 (referring to public opinion surveys and noting increases in court filings); Chief Justice of the Supreme Court of the United States, *An Introduction: 2020 Year-End Report on the Judiciary by the Chief Justice of the United States,* 24 PEPP. L. REV. 859, 863 (April 1997) (forecasting increase in litigation); Maurice Rosenberg, *Let's Everybody Litigate?* 50 TEX. L. REV. 1349 (1971).

[25] Sauer, *supra* note 12, at H-6.

[26] Republican candidates for the 104th Congress crafted their "Common Sense Legal Reform" as a component of the "Contract With America." Lisa L. Posey, *The Impact Of Fee-Shifting Tort Reform on Out-of-Court Settlements*, 23 J. INSURANCE ISSUES 124, 125 (2000). This laundry list of reforms was not unique. Rather, very similar reforms were considered in 1994 as well as in the early 1990s. *Id.*

[27] The litigiousness of American society may be a myth perpetrated by sloppy legal scholarship. David A. Kaplan, *The U.S. Litigiousness Myth*, [On and Off The Record], NAT'L L. J., February 6, 1984, at 2.

[28] THOMAS KOENIG & MICHAEL RUSTAD, IN DEFENSE OF TORT LAW (2001) (disputing myths of litigiousness, runaway juries, and need for tort reform); Marc S. Galanter, *The Day After The Litigation Explosion*, 46 MARYLAND L. REV. 3 (1986) [Litigation Explosion]; 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 (1983) [Landscape of Disputes] (debunking litigation crisis and suggesting that caseload increases merely tracked population growth and certain product liability cases, such as asbestos litigation); Marc S. Galanter, *Contemporary Legends About The Civil Justice System*, 35 TRIAL 60 (Jul 1999) [Legends] (refuting litigiousness as "jaundiced view"); Saks, *supra* note 11, 1147-1292 (claims of litigation explosion are overblown); *see also Report Disputes View That Jurors Are Lavish With Punitive Damages,* THE SAN DIEGO UNION-TRIBUNE Aug, 6, 2001, at A-6 (comprehensive study of 8,724 trials shows that juries are not overly prone to punitive damages, reporting Eisenberg & Wells study); 5 CIVIL JUSTICE DIGEST (THE ROSCOE POUND FOUNDATION) 1 (1998); Sauer, *supra* note 12, at H-1 (statistics do not support notion of "suehappy society").

Scholars at the April 1998 Robert A. Clifford Symposium on Tort Law and Public Policy (hosted by DePaul Law School) disputed the notion that jurors hold an anti-business bias. CIVIL JUSTICE DIGEST, *supra* note 28, also available at http://www.roscoepound.org/new/digest/spr98.htm (visited 5/8/02). Furthermore, Hans has suggested that claims of a litigation explosion have been promulgated by potential business defendants seeking to influence public consciousness. HANS [BUSINESS], *supra* note 4, at 50.

[29] HANS [BUSINESS], *supra* note 4, at 56, 58; Michael Rustad, *In Defense Of Punitive Damages In Products Liability: Testing Tort Anecdotes With Empirical Data*, 78 IOWA L. REV. 1, 2 and notes 1-5 therein (October 1992); Saks, *supra* note 11, at 1183 (it is "remarkable" how few plaintiffs there are in the ort system) *and* at 1185 (victims tend not to complain); *see also* Ted Rohrlich, Column One; *We Aren't Seeing You In Court; Americans Aren't Suing Each Other As Often As They Did A Decade Ago. California, In Particular, Has Seen A Steep Decline In High-Stakes Personal Injury Suits*, THE LOS ANGELES TIMES [HOME EDITION] Feb. 1, 2001, A1 (legal scholars and survey by Rand Corporation's "Institute for Civil Justice" suggest that only small percentage of injured Americans litigate claims).

[30] The majority of tort cases in the 1980s involved automobile tort claims. HANS, *supra* note 4, at 57.

[31] *See e.g.,* Rosenberg, *supra* note 24; *cf.* Court administrators and judges have insisted that the number of pro se litigants has increased sharply. Russell Engler, *And Justice For All – Including The Underrepresented Poor: Revisiting The Roles Of The Judges, Mediators, And Clerks*, 67 FORD. L. REV. 1987 (April 1999); *see also* L. Karl Branting, *An Advisory System For Pro Se Protection Order Applicants*, 14 INT'L REV. OF L., COMPUTERS, & TECHNOLOGY 357 (Nov. 2000) (increasing numbers of litigants represent themselves in court); Chris Mahoney, *Verdict: Litigants Without Attorneys Are On The Rise*, 20 THE BOSTON BUS. J., Sep. 01, 2000, at 13.

[32] Sauer, *supra* note 11, at H-1 (Judicial Council of California found 50% drop in personal-injury suits over last 15 years); Abbot S. Brown, *The Med-Mal Suit Explosion That Isn't*, N.J. LAWYER, April 1, 2002, at 1 (though the malpractice insurance industry claims a litigation explosion, the number of malpractice suits in New Jersey has declined more than 25% since 1994); Koenig & Rustad, *supra* note 23 (using statistics to dispute claim that medical malpractice suits are increasing).

One study sponsored by the Georgia Civil Justice Foundation and the Georgia State Bar Association found that, when adjusted for population growth, tort lawsuits had declined from 1994-97. It thus concluded that the "litigation explosion" was merely "popular and political rhetoric." Bill Rankin, THE ATLANTA CONSTITUTION, Feb. 9, 2000, at C3. Another study commissioned by the National Center for State Courts found that in 16 states, the number of tort suits had declined. William Glaberson, *When The Verdict Is Just Fantasy,* THE NEW YORK TIMES, June 6, 1999.

[33] HANS [BUSINES], *supra* note 4, at 5-8.

[34] Matthew T. Miklave, *Why "Jury" Is A Four Letter Word*, 77 WORKFORCE 56, 56-57 (March 1998) (in past decade, Congress and state legislatures expanded legal protections for employees); HANS [BUSINESS], *supra* note 4, at 6-7 (in 19th-early 20th centuries, contributory negligence and fellow servant doctrines were almost insurmountable bars to plaintiff recovery).

[35] Marc S. Galanter, [Legends], *supra* note 28, at 60 (enlargement of remedy accompanied by cultural shift in expanded notion of rights).

[36] For instance, the Advisory Committee on the Federal Rules of Civil Procedure amended Rule 11, state courts tightened sanctions, Chris Guthrie, *Framing Frivolous Litigation: A Psychological Theory*, 67 U. CHI. L. REV. 163, 164 (Winter 2000), and the Supreme Court interpreted law to make summary judgment on behalf of tort defendants more readily available, *see e.g*., Celotex Corporation v. Catrett, 477 U.S. 317, 323-24 (1986); Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 247-48 (1986); Matsushita Electric Company v. Zenith Radio Corporation, 475 U.S. 574, 586 (1986).

[37] One prominent view of litigious behavior is based on 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 36, at 170-71 (and footnotes therein).

Additionally, it is possible that there have been ebbs and flows of suit, and that the tort reform movement, through either its legal reforms or publicity, has led to decreased suits. S*ee generally*, Hans [Illusions], *supra* note 6, at 330-31

[38] Richard H. McAdams, *The Origin, Development, and Regulation of Nor*ms, 96 MICH. L. REV. 338, 351 (1997) ("considerable effort has gone into defining exactly what constitutes a norm" and "[t]he economics literature continues to struggle over the issue") (internal citations omitted); Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903, 914 (1996) (social norms understood in many different ways).

[39] JOEL CHARON, THE MEANINGS OF SOCIOLOGY 61-62, 107 (4th ed., 1993) (norms signal society's rules or expectations).

To illustrate, the litigious actions of Americans in response to torts have been contrasted with the very opposite reactions of Japanese. KIDDER, *supra* note 8, at 46.

[40] According to Sunstein, norms are "social attitudes of approval and disapproval, specifying what ought to be done and what ought not to be done." Sunstein, *supra* note 38, at 914.

[41] Marilyn Chase, *Besides Saving Lives, Wearing Helmet When Cycling is Cool*, WALL ST. J., Sept. 18, 1995, at B1 (change in social norms regarding wearing helmets).

[42] CHARON, *supra* note 39, at 62.

[43] Sunstein, *supra* note 38, at 939.

[44] CHARON, *supra* note 39, at 108; McAdams, *supra* note 38, at 339.

The influence or explanatory nature of norms is not confined to sociologists, but extends to philosophers, and economists. *See id.* and sources cited therein, n.2 (noting interest of philosophers, political scientist, and economists in norms); Sunstein, *supra* note 38, at 907 (behavior is "pervasively a function of norms").

Indeed, the latter, as exemplified by Ellickson, have focused on norms not only to explain, but also to predict behavior. ROBERT ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991) [ORDER].

Norms also influence propensities toward illegal behavior. People are more likely to commit crimes when they perceive such criminal activity is widespread. They may either conclude that crime is status-enhancing or that little or no stigma attaches to crime. Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 350 (1997). Of course, norms also influence behavior by deterring actions of potential tortfeasors. *See* Daniel W. Shuman, *The Psychology of Deterrence in Tort Law*, 42 KAN. L. REV. 115, 115-20, 165-67 (Fall 1993) (discussinf linkage between social psychology and behavior).

[45] Public disapproval enforces and define norms. Sunstein, *supra* note 38, at 915. "Indeed, obedience of law is built in large part on the perceived reputational consequences of law violation." *Id.* at 916-17.

[46] The behavior followed must be thought of as worthy; the behavior avoided must be thought of as bad. McAdams, *supra* note 38, at 358 (pre-condition of esteem-based norms is consensus regarding behaviors).

[47] This is refereed to as the Esteem Theory of normative origin. *Id.* at 355-56.

[48] *Id.* at 340, 345; Robert Ellickson, *Of Coase And Cattle: Dispute Resolution Among Neighbors in Shasta County*, 38 STAN. L. REV. 623 [Coase and Cattle] (describing system of informal enforcement of rules in trespass and property-related disputes among Californian cattle ranchers).

[49] McAdams, *supra* note 38, at 391. A singular, universally-accepted theory of how those norms originate, however, has yet to emerge. *Id.* Indeed, much literature discusses how law might change norms, but ignores theories of their origination. *Id.* at 352 (origination of norms a "puzzle").

One proposed model of normative development is "The Esteem Model." *Id*. at 391-92.

[50] *Id.* at 360 (esteem-based norms require publicized consensus).

[51] *Id.* at 400.

This publicity condition is difficult to satisfy and is "[t]he determinative obstacle to societal norm formation." *Id.* at 400-01.

[52] These preconditions take on added significance when one follows a norm out of a desire for social esteem or to avoid approbation.

[53] McAdams, *supra* note 38, at 362 (ignorance of consensus view cannot produce norm).

[54] Social values underlie social behavior. Tom R. Tyler & John M. Darley, *Is Justice Just Us?,* 28 HOFSTRA L. REV. 707, 719 (Sp 2000).

[55] Stephen Daniels & Joanne Martin, *The Impact That It Has Had Between People's Ears: Tort Reform, Mass Culture, And Plaintiffs' Lawyers*, 50 DEPAUL L. REV. 543 (Winter 2000).

[56] Some experts assert that changes in increases and decreases in legal filing are due to cultural changes regarding the perception of suits and plaintiffs. Ted Rohrlich, *[Column One] We Aren't Seeing You In Court; Americans Aren't Suing Each Other As Often As They Did A Decade Ago. California, In Particular, Has Seen A Steep Decline In High-Stakes Personal Injury Suits,* THE LOS ANGELES TIMES [HOME EDITION], February 1, 2001, at A1.

[57] Saks, *supra* note 11, at 1188-89.

Of course, one may appropriately identify a valid legal claim, may think that they have a cause of action, but be incorrect, or identify a colorable, but very weak claim, but overestimate its value.

[58] Rohrlich, *supra* note 29, at A1.

[59] "The public image of litigation as reflected in the mass media is largely a negative one." Lande, *supra* note 3, at 3. Indeed, "[m]any people think of litigation as a disagreeable experience." Julie Pacquin, *Avengers, Avoiders, and Lumpers: The Incidence of Disputing Style On Litigiousness*, 19 WINDSOR Y.B. ACCESS JUST. 3, 17 (2001).

[60] Hans [Illusions], *supra* note 6, at 334-35 (psychological research has shown several instances in which people blame and derogate victims).

[61] Daniels & Martin, *supra* note 55, at 454.

[62] Shame also influences norm formation. Toni M. Massaro, *The Meanings of Shame: Implications for Legal Reform*, 3 PSYCH. PUB. POL. & L 645, 649-50, 655-56 (1997) ("[s]hame . . . doubtless influences the creation and enforcement of social norms").

Nonetheless, Massaro questions the wisdom of social architects who favor using shame to create or enforce norms. *Id.* at 646-50 (attempts to manipulate behavior through shame is complicated, costly, and often counterproductive); *see also id.* at 655-56 (shaming penalties can be ineffective).

[63] People are inclined to give up rather than fight. Rohrlich, *supra* note 29, at A1.

[64] *Id.* (citizens avoid suit to avoid shame associated with suing); Saks, *supra* note 11, at 1189 (potential plaintiffs factor in a stigma associated with litigation/ suit, and, therefore, decline suit); KIDDER, *supra* note 8, at 4.

Some believe that business has promoted litigation as shameful. *Americans Aren't Suing Each Other As Often As They Did A Decade Ago. California, In Particular, Has Seen A Steep Decline In High-Stakes Personal Injury Suits*, THE LOS ANGELES TIMES [HOME EDITION] A1, (Feb. 1, 2001) ("[c]orporations have created a stigma for people [who sue]," quoting Jamie Court, Director of "Foundation for Taxpayer and Consumer Rights").

[65] Sauer, *supra* note 12, at H-1 (injured people with valid claims avoid court so that they are not perceived as "the kind who goes to court").

[66] Massaro, *supra* note 62, at 651.

[67] Nonetheless, some believe that Americans have lost their sense of shame that little embarrasses them. *Id.*

[68] Carol P. Getty, *Corrections – Media Wise?* 63 CORRECTIONS TODAY 126, 127-28 (Dec. 2001) ("The media can influence attitudes that are weakly held or can reinforce existing ideas").

[69] Mira Sotirovic, *Effects Of Media Use On Complexity And Extremity Of Attitudes Toward The Death Penalty And Prisoners' Rehabilitation*, 3 MEDIAPSYCHOLOGY 1, 4 (2001); Edward Sankowski, *Film, Crime, and States Legitimacy: Political Education or Mis-Education?,* 36 J. OF AESTHETIC EDU. 1 (Spring 2002) (film and related media are important sources of visually centered narratives in contemporary culture).

[70] Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 351 (1997).

[71] LAWRENCE M. FREIDMAN, A HISTORY OF AMERICAN LAW 185-87 (2d., 1985) (2 million injuries yearly); Pacquin, *supra* note 59, at 30 (even presently, people who hold fatalistic beliefs may lack motivation to sue).

[72] Hans [Illusions], *supra* note 6, at 331 (societal desires to stimulate economy led to generous treatment of business corporations); HANS [BUSINESS], *supra* note 4, at 7 (legal doctrine favored business).

[73] FREIDMAN, *supra* note 71, at 468-70.

[74] HANS [BUSINESS], *supra* note 4, at 8.

[75] *Id.* at 9; *see also* Miklave, *supra* note 34, at 57 (the publicity generated by media coverage of trials and monetary awards encourages individuals to sue).

[76] Most of that coverage focused on citizens suing business. McAdams, *supra* note 38, at 391-92; HANS [BUSINESS], *supra* note 4, at 7-8; *see also* Arthur F. McEvoy, *The Triangle Shirtwaist Factory Fire Of 1911: Social Change, Industrial*

*Accidents, And The Evolution Of Common Sense Causality*, 20 L. & SOCIAL INQUIRY 621, 637-38 (1995) (describing how the publicity related to the fire influenced public opinion regarding business responsibility for accidents).

[77] FREIDMAN, *supra* note 71, at 545 (newspapers sensationalized high profile trials and accidents in late 19th century).

[78] *Id.* at 548-49 (cultural values began to change/ follow suit).

[79] "Until around 1970, our legal system had lots of rules that discouraged people from filing suits. . . This has changed. The whole legal culture nowadays sees litigation as a good thing, something to be cheered." Oliver, *supra* note 3, at 97.

[80] In 1994, the Republican Party declared war against tort litigation in its Contract With America, which stated "Almost everyone aggress America has become a litigious society. . . ." Sauer, *supra* note 12, at H-6.

[81] Galanter [Litigation Explosion], *supra* note 28, 60-61; *see generally* Marc Galanter, *An Oil Strike in Hell: Contemporary Legends About the Civil Justice System*, 40 ARIZ. L. REV. 717 (1998) [Oil Strike].

These legal legends have become folkloric – they have multiple versions, no single authoritative text, are formulaic, are anonymous, and "are conveyed in settings detached from any practices of active testing for veracity." Galanter [Landscape of Disputes], *supra* note 28, at 8-12.

[82] Daniels & Martin, *supra* note 55, at 467 (among them, the 1988 Aetna campaign on TV and radio and the 1986 $6.5 million campaign of Insurance Information Institute); HANS [BUSINESS], *supra* note 4, at 11, 50.

[83] Andrew Blum, *The Hundred Years' Tort War,* NAT'L L. J., Oct. 15, 1990, at 1.

[84] Saks, *supra* note 11, at 1157 (quoting media stories such as "Across the country, people are suing one another with abandon; courts are clogged with litigation; lawyers are burdening the populace with legal bills. . . ." [internal citations omitted]).

Galanter asserts that "litigation explosion" stories were churned out by publicity machines and public relations officers of corporations. Galanter [Oil Strike], *supra* note 80, at 731.

[85] Lande, *supra* note 3, at 6-7.

Tort litigation is not alone in being misrepresented by the media. Television and news papers also overrepresent incidents of violence. Sarah Eschholz, *The Media And Fear Of Crime: A Survey Of The Research*, 9 U. FLA. J.L. & PUB. POL'Y 37, 37-38 (1997). This exaggeration is shared by viewers and readers who also tend to overestimate the amount of violence in society. *Id.* at 39-51 (describing literature review of 25 studies on television viewing and anxiety about crime).

[86] Galanter, *supra* note, at (reporting study of newspaper coverage from 1985-96).

[87] *Id.*

[88] Indeed, the media paid a great deal of attention to the "Contract With America" tort reform component. Posey, *supra* note 26, at 125; Miklave, *supra* note 34, at 56 (litigation explosion).

[89] Marc S. Galanter, *Real World Torts: An Antidote to Anecdote*, 55 MD. L. REV. 1093, 1154 (1996).

[90] Television was first introduced to the United States at the 1939 World's Fair. Anderson.

[91] Americans get the majority of their information from television. Angelique M. Paul, *Note: Turning The Camera On Court TV: Does Televising Trials Teach Us Anything About The Real Law*? 58 OHIO CT. L.J. 655, 656 (1997); Brian Lowry, *In The King Trial We Wake, News Media Will Be The Message*, DAILY VARIETY, April 7 1993, at 1 ( Roper study finds that "69% of Americans. . . view television as their primary source of news an information).

[92] Michael Asimov, *Law and Popular Culture: Bad Lawyers in the Movies*, 24 NOVA L. REV. 533, 550 (Winter 2000) (pop culture can lead public opinion and reinforce pre-existing attitudes).

[93] ROBERT B. CIALDINI, INFLUENCE: THE PSYCHOLOGY OF PERSUASION (1993).

[94] JAMES SHANAHAN & MICHAEL MORGAN, TELEVISION AND ITS VIEWERS, CULTIVATION THEORY AND RESEARCH (1999), ix-x (Gerbner introduction).

[95] Jonathan Cohen & Gabriel Weimann, *Cultivation Revisited: Some Genres Have Some Effects On Some Viewers*, 13 COMMUNICATION REPORTS 99 (Summer 2000).

[96] Gerbner has remarked that "[w]e live in terms of the stories we tell – stories about what things exist, stories about how things work, and stories about what to do . . . ." STANLEY BARRAN, MASS COMMUNICATION 312 (2000) (quoting George Gerbner).

[97] A schema is "a category in the mind which contains information about a particular subject." Albert J. Moore, *Trial By Schema: Cognitive Filters In The Courtroom*, 37 U.C.L.A. L. REV. 273, 279 (1989).

[98] David Ray Papke and Kathleen H. McManus, *Narrative Jurisprudence: Narrative And The Appellate Opinion,* 23 LEG. STUD. FORUM 449, 452 (1999).

Media representations place isolated events on a general map so that the public can make sense out of what they see or read. These individual events are linked to create themes that are then absorbed by viewers. Eschholz, *supra* note 85, at 39.

This is consistent with cultivation's process of "mainstreaming," wherein viewers learn facts about the world and are socialized by observing them on the TV screen. Cohen & Weimann, *supra* note 95, at 102.

[99] Cohen & Weimann, *supra* note 95, at 108.

The architect of cultivation theory, George Gerbner, contends that television does not simply create or reflect images or beliefs, but that cumulative exposure to television develops a set of beliefs in viewers. George Gerbner, *Growing Up With*

*Television: The Cultivation Perspective*, in MEDIA EFFECTS: ADVANCES *in* THEORY AND RESEARCH 17, 23-25 (Jennings Bryant & Dolf Zillman ed., 1994).

[100] This is a two-step process. First, in the "learning phase," viewers acquire many different pieces of incidental information from television portrayals. Next, in the "construction phase," these separate pieces of information come together to inform the viewer's beliefs about the world. SHANAHAN & MORGAN, *supra* note 94, at 72-74.

[101] *Id.* As originally envisioned by Gerbner, cultivation considered all television images as a whole constructed by a power elite. *Id*. at i, 72.

[102] *Id.* at 72.

[103] Thomas C. O'Guinn & C.J. Shrun, *The Role Of Television In The Construction Of Consumer Reality*, 23 J. CONSUMER RES. 278, 280 (1996).

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 of a genre is presenting a coherent system of messages. *See generally,* SHANAHAN & MORGAN, *supra* note 94.

[104] Lawrence M. Freidman, *Lexitainment: Legal Process As Theatre*, 50 DEPAUL L. REV. 539 (Winter 2000) (legal entertainment can be didactic).

The courtroom first encountered the electronic media 60 years ago in State v. Hauptman, the first "trial of the century." Christo Lassiter, *TV or Not TV — That Is The Question*, 86 J. CRIM. L. & CRIMINOLOGY 928, 936 (1996).

[105] Getty, *supra* note at 126 (Dec. 2001) (television, and to lesser extent, newspapers and movies, influence how Americans view justice); Leah Ward Sears, *Those Low-Brow TV Court Shows*, CHRISTIAN SCIENCE MONITOR 11 (Jul 10, 2001) (Americans get lasting impression of the courts from television); Gayle Mertez, *Law and Pop Culture: Teaching and Learning About Law Using Images From Popular Culture,* 64 SOCIAL EDUCATION 206 (May/ June 2000) (for many, "primary source of knowledge about . . . the legal system" comes through television and movies); Kelly L. Cripe, *Comment: Empowering the Audience: Television's Role in the Diminishing Respect for the American Judicial System*, 6 U.C.L.A ENT. L. REV. 235, 245-46 (Spring, 1999) (televising criminal trials provides audience with great deal of information).

In 1999, the American Bar Association commissioned a report to discover how citizens learned about the law. The resulting *Report on Perceptions of the US Justice System* concluded "that the media can and does impact some people's knowledge" about the justice system and the law it administers. As reprinted in, Symposium: *American Bar Association Report on Perceptions of the US Justice System*, 62 ALB. L. REV. 1307, 1315 (1999), reprinted report, "Perceptions of the US Justice System," sponsored by the American Bar Association.

[106] Some do not perceive television as a window into the courtroom, but as a lens "that shapes and alters as it mediates, sometimes a little, sometimes a lot." Edwin Yoder, *Television in Courtroom Reshapes the Reality It Covers*, ST. LOUIS POST – DISPATCH, Sep. 30, 1994, at 13D.

[107] *See e.g.,* Kimberlianne Podlas, *Please Adjust Your Signal: How Television's Syndi-Courtrooms Bias Our Juror Citizenry,* 39 AMERICAN BUS. L. J. 1 (Fall 2001); Austin Sarat, *Exploring The Hidden Domains of Civil Justice: "Naming, Blaming, and Claiming" In Popular Culture*, 50 DEPAUL L. REV. 425, 450 (Winter, 2000) (law lives in the media images that saturate our culture); David A. Harris, *The Appearance of Justice: Court TV, Conventional Television, And Public Understanding Of The Criminal Justice System*, 35 ARIZ. L. REV. 785, 786, 798 (1993).

[108] Recently, the study of law and pop culture has obtained cachet. Scholars have begun to recognize that the material is pervasive in our culture and that pop culture is "constantly sending messages about how the world 'is' . . . and may help shape the public's view of law. . . ." Mertez, *supra* note 105, at 206.

[109] Asimov, *supra* note 92, at 552; David Raye Papke, *Essay*: *Conventional Wisdom: The Courtroom Trial in American Popular Culture* (Third Annual Robert F. Boden Lecture), 82 MARQ. REV. 471, 489 (Spring 1999) (television's courtroom "reinforces, shapes, and directs" the public's view of courts).

Of course, those television representations may be distorted. Birke & Fox, *supra* note 1, at 9; Eschholz, *supra* note 85, at 37-39 (noting that television exaggerates the incidence of violent crime); Hon. Bruce M. Selya, *The Confidence Games: Public Perceptions of the Judiciary*, 30 NEW ENG. L. REV. 909, 913-14 (1996) (media's coverage of judicial decisions tends toward sensationalism . . . and "implant within the public psyche a potential for undue cynicism and the basis for rejecting judicial authority").

[110] Elliot E. Slotnik, *Television News And The Supreme Court: A Case Study*, 77 JUDICATURE 21, 22 (1993) (television provides majority of public with its only information about law); *see also* Selya, *supra* note 109, at 913 ("few individuals have direct experience with the justice system"); Paul R. Joseph & Gayle Mertez, *Law and Pop Culture: Teaching and Learning About Law Using Images From Popular Culture*, 64 SOCIAL EDU. 206 (May/ June 200) (primary knowledge about law comes from pop culture sources, including television; it sends messages about how the world and law "is," thus shaping public's view of law).

[111] Mark Jurkowitz, *Hour of Judgment*, BOSTON GLOBE, December 3, 2000, at 9; EBONY, [Judicial] *Here Come The Judges* 96 (May 2002) ("[s]yndicated courtroom shows are increasing in popularity").

[112] Although Judge Wapner's "The People's Court" aired from 1981-1993, Douglas Kalajian, *Evidence Is In: TV Judges Are A Hot Trend*, AUSTIN AMERICAN STATESMAN, December 12, 1999, at 17, and CBS aired "The Verdict Is Yours" in 1957,

Jurkowitz, *supra* note 111, and "Divorce Court" in 1957, David Zurawik, *Bench Marks; Americans Are Going To Court Voluntarily Every Day With TV's Judge Judy And Her Peers, Making These Shows Tops In Their Daytime Slots. The Defendants May Be Pathetic But The Brand Of Justice Is Refreshingly Simple,* April 14, 1999, at 1E, these shows stood without peer.

[113] Although some in the legal system discount the effect of these shows on public opinion, others insist that these shows can alter viewers's perception of the courts. *See* Mike Saewitz, *Many Judge US Justice System By The TV Courtroom Shows*, VIRGINIAN – PILOT, Oct. 3, 2001, at E1. Even one highly-respected state court Chief Judge concurred that "sitting in front of a television, watching Judge Judy," "play[s] a huge role in public perceptions of the justice system." Hon. Judith S. Kaye, Symposium, *Rethinking Traditional Approaches*, 62 ALBANY L. REV. 1491, 1493 (1999).

[114] Cripe, *supra* note 105, at 237 (high-profile cases receive lion's share of media attention).

[115] In 1997, "Judge Judy" was the number-one ranked syndicated show, even topping Oprah. Marc Gunther, *The Little Judge Who Kicked Oprah's Butt; Daytime Television's Hottest* Property, FORTUNE, May 1999, at 32; USA TODAY, March 25, 1999, at D; Joe Schlosser, *Another Benchmark for 'Judge Judy,'* BROADCASTING & CABLE, Mar. 29, 1999, at 15.

These shows continue to enjoy significant popularity. The week of January 21-27, 2002, Judge Judy had 8.4 million viewers, and Judge Joe Brown, 4.4. 640/641 ENTERTAINMENT WEEKLY, Feb. 22, 2002, at 133; *see also* Bill Keveny, *Syndicated Goldies Are Oldies: New Shows Are No Match*, USA TODAY, Nov. 26, 2001, at 4D ("Judge Judy" garners 7,061,000 viewers and remains among the top 10 syndicated shows); *cf.* Walt Belcher, *Judge Judy Continues Her Rule As The queen of All Court Shows* [Walt Belcher Television], TAMPA TRIBUNE, March 7, 2002, at 4 (court show ratings dipped after September 11th, as those of sitcom reruns increased).

[116] "Court TV's regular fare stands out because of its tediousness. It has all the pizzazz of a pair of orthopedic shoes." Harris at 803.

Court TV recently garnered its highest ratings ever – 557,000 viewers for the first quarter of 2002. This ratings increase, however, is not driven by reality law/ trial coverage, but the new series "Forensic Files" and movie "Guilt By Association." Ed., *Court TV Has Highest Quarterly Rating in Network's History*, BUSINESS WIRE, April 2, 2002, at 1.

[117] Harris, *supra* note 116, at 803.

[118] Lisa Scottoline, *Law and Popular Culture*: *Get Off The Screen* (speech at Nova Southwestern University's Goodwin Alumni Banquet, March 2000), 24 NOVA LAW REV. 655, 657 (2000).

[119] J. Max Robins, TV GUIDE (FEBRUARY 2001).

[120] 98% of Americans have at least 1 television. Todd Picus, *Demystifying the Least Understood Branch: Opening the Supreme Court to Broadcast Media*, 71 TEX. L. REV. 1053, 1085 n.172 (citation omitted)

[121] Cripe, *supra* note 105, at 237 (high-profile cases receive lion's share of media attention).

[122] Christo Lassiter, *TV or Not TV — That Is The Question*, 86 J. CRIM. L. & CRIMINOLOGY 928, 934-35 (1996).

[123] *Id.* at 973.

[124] SHANAHAN & MORGAN, *supra* note 94, at 2-3, 5.

Considering the influence and messages of syndi-court independent of those of television or even court shows generally is quite valid. Gunter has suggested that the cultivation effect is not medium-general, but program-specific. Gunter, *The Question of Media Violence, supra* note 99, at 163. People do not see one homogenous view on television, but watch specific programs or genres. Cohen & Weimann, *supra* note 95, at 101-02. Because of genre conventions, the images of the world broadcast on televisions are not uniform. *Id.* 102, 108 (concluding cultivation process varies across genres).

[125] Hence, independent or different from any effect of television as a whole, syndi-courts might exact their own socialization effect. *See generally*, Cohen and Weimann, *supra* note 95, at 99 (specific programs would be most influential in impacting perceptions pertaining to their subject matter, i.e., crime-related shows would impact perceptions about crime).

[126] Additionally, the viewing public may come away from TV with the impression that it, now, or as a result, understands the legal system better/ enhanced understanding. Cripe, *supra* note 105, at 268.

[127] *Cf.* Joseph & Meretz, *supra* note 110, at 206-07 (pop culture representations of law send messages about law); Friedman, *supra* note 104, at 540 (publicized law imparts morals to viewers).

[128] Nielsen Media Research estimates that Judge Judy averages 8 million viewers a day, and as many as 31 million people daily see at least 1 TV judge. Jurkowitz, *supra* note 111.

[129] Literally, "for himself," in Latin.

[130] Engler, *supra* note 31; Branting, *supra* note 31, at 357 (increasing numbers of litigants represent themselves in court).

[131] Alan Feuer, *More Litigants Are Taking a Do-It-Yourself Tack*, THE NEW YORK TIMES [LATE ED., EAST COAST], B.1 (Jan. 22, 2001) ("the numbers of people representing themselves in court have been increasing in the city, the state, and the country at a significant rate," quoting New York State Deputy Chief Administrative Judge, Juanita Bing Newton); Mahoney, *supra* note 31, at 13 (court officials insist they see an increase in pro se cases); Daisy Whitney, *Well-Documented "People" Company Helps Do-It-Yourselfers With Legal Tasks*, DENVER POST, August 3, 1999, at G01 (quoting Sherry Patten, spokesperson for Colorado Judicial Department, that pro se litigation has been on the rise over the past 5 years); John Gibeaut,

*Turning Pro Se*, 85 ABA JOURNAL 28 (Jan. 1999) (Goldschmidt study "one of two" "charting an increase in the number of people showing up in court without lawyers").

[132] Raul V. Esquivel, III, *The Ability Of The Indigent To Access The Legal Process In Family Law Matters*, 1 LOY. J. PUB. INT. L. 79, 90 (Spring 2000); Mahoney, *supra* note 31 (overall figures of pro se litigants are hard to come by).

A repeatedly cited ABA study in the Phoenix area found that at least 1 party acted pro se in 24% of the 1980 divorce cases. By 1990, that proportion had increased to 88%. Jeff Donn, *More Americans Turn to Sue-It-Yourself Law*, CHARLESTON GAZETTE & DAILY MAIL, March 7, 1994 (not naming study); *see generally* JONA GOLDSCHMIDT, MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES AND COURT MANAGERS (1998)

[133] Terry Carter, *Self-Help Speeds Up,* 87 ABA J. 34 (July 2001) ("Growing pro se representation problem in bankruptcy courts"); *Should Filing Fees Be Increased To Solve The Pro Se Representation Problem?* 29 BCD News and Comment, December 3, 1996 (despite lack of certainty of data, numbers of pro se litigants are believed to be significant).

In some instances, increases in pro se representation have been documented. For example, there has been a dramatic increase in the number of pro se litigants in domestic relations disputes, Branting, *supra* note 31, bankruptcy cases, Carter, *supra*, and federal criminal appeals, Peter J. Ausili, *Outside Counsel: Federal Court Statistics For Fiscal Year 1997*, N.Y. L.J. April 28, 1998, at 1 (reporting that 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% were pro se. *Id.* Court managers also report that, in "poor person's courts," it is more common for civil litigants to appear pro se than with legal counsel. GOLDSCHMIDT, *supra* note 132, at 49 (1998); Presiding Justice of the Appellate Division, Second Department, Guy Mangano, *New Fifth Department Crucial*, N.Y. L.J. SUPPLEMENT, Jan. 26, 2000, at S1 This is supported by survey sponsored by the Boston Bar Association finding that, in 75% of divorce cases, at least 1 spouse is unrepresented by counsel, Mahoney, *supra* note 31, as well as by anecdotal evidence of one Suffolk County Probate Judge who recounted that one day's 21 case docket included only 2 cases that involved lawyers, *id.*

[134] Feuer, *supra* note 131, at B.1. Pro se litigants also attribute any increase to the cost of legal representation and the popularity of the do-it-yourself movement. *Id.*

[135] Marie Higgins Williams, *Comment: The Pro Se Criminal Defendant, Standby Counsel, And The Judge: A Proposal For Better-Defined Roles,* 71 U. COLO. L. REV. 789, 816 (2000) ("Some watch too much 'Judge Judy' and think it is easy to represent themselves").

Another pro se plaintiff considered his watching the Simpson trial a sufficient legal education. Feuer, *supra* note 131, at B.1

[136] Higgins Williams, *supra* note 135, at 816.

"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 SCIENCE MONITOR August 20, 2001.

[137] Other data from this study, and an explanation of how syndi-court representations affect juror opinions about judge behavior, appear in *Please Adjust Your Signal. . .*, 37 AM. Bus. L. J. 1 (Fall 2001), *supra* note 107.

[138] 58% of respondents (n= 130) were women; 42% (n= 95) were men.

[139] A "frequent viewer" watched syndi-court between two to three times and more than five times per week (and checked the corresponding response on the descriptive scale of viewing). Non-viewers did not watch syndi-courts or did so, at most, once per week (and checked the appropriate response on the corresponding descriptive scale).

This denomination is also consistent with Gerbner's division of society into "heavy viewers" and non-viewers.

[140] "x" signifies x bar.

[141] While statistically significant, these differences were not quite as pronounced.

[142] Questions also contemplated law dramas ("The Practice," "Law & Order," "Ally McBeal," etc.), but those are not considered here.

[143] Study II was originally contemplated to be independent of and sequential to Study I. Consequently, the questions posed and information sought differed to some degree.

[144] Risk/ Jeopardy was assessed as follows:

| | |
|---|---|
| Civil, low: | $0-$1,500 |
| high: | above $1,500 |
| Criminal, low: | fines up to $1,500 |
| | Probation |
| | Up to 3 days in jail |
| high: | fines above $1,500 |
| | weeks, months in jail |
| | 1 yr. or more imprisonment |

[145] Although frequent viewers opt for self-representation at a level beyond that of non-viewers, the type of case or degree of risk involved might temper this desire. The pro se response appears where jeopardy (either punitive or economic) to the pro se litigant is low but dissipates when jeopardy increases.

[146] Engler, *supra* note 31; 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) (at least 80% of poor and "working poor" have no access to legal services); Branting, *supra* note 31, at 358 (noting shortfall in legal services for the poor).

[147] *But see* Pacquin, *supra* note 59, at 30 (in empirical study of litigious personalities, few respondents mentioned cost as barrier to litigation or reason underlying decision to sue or not to sue).

[148] In addition to its potential to increase citizen litigation including litigation against business, pro se litigation also impacts the justice system. Officials say that because unrepresented litigants are not adequately familiar with the workings of the courts, their cases often face delays and bog down dockets. Employees of the court system complain that pro se litigants impede the efficient delivery of justice. Pro se litigants are more likely than plaintiffs with counsel to file suits that are frivolous. Even where their suits are meritorious, pro se litigants do not understand legal procedures, Kimberlee K. Kovach, *The Lawyer As Teacher: The Role of Education in Lawyering,* 4 CLINICAL L. REV. 359, 370 (1998) (public is not familiar with many legal terms), and know little about filing deadlines or the documents necessary to initiate proceedings, Branting, *supra* note 31, at 358.

[149] Gary Spencer, *Middle-Income Consumers Seen Handling Legal Matters Pro Se,* N.Y. L.J. May 29, 1996, at 1. "Middle income" was defined as $25,000 - $95,000.

[150] This paper considers only whether syndi-court may heighten potential for suit, thus, increasing litigation risk to business. It attempts to avoid any value judgment as to whether there exist benefits to syndi-courts.

[151] Saks, *supra* note 11, at 1190-92; Daniels & Martin, *supra* note 55, at 484 (in light of court costs and strength of cases, 57% of average lawyers are signing up a smaller percentage of clients than 5 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.

[152] Although this is not equivalent to recovering a large cash settlememnt, as explained above, it will create an expense.

[153] This paper considers only whether syndi-court may heighten potential for suit, thus, increasing litigation risk to business. It does not make a value judgment as to whether there exist benefits to syndi-court and/ or opening up the justice system. For instance, syndi-court might increase access to justice by removing perceived barriers to (valid) suits. Still others may not realize that their legal claims possess merit or believe that asserting oneself through litigation is morally wrong.

[154] Freidman, *supra* note 19, at 555.

[155] Data regarding education level was not collected in the Juror Study (I). Although it was collected in the Student Study (II), the potential influence of this variable was not analyzed.

[156] Sotirovic at 9.

[157] *Id.*

[158] *See* Podlas, *supra* note 107, at 14, 22.