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Symposium: Popular Legal Culture

Popular Legal Culture: An Introduction

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The Storrs Lectures at Yale have produced sharply differing views of law. In 1974, Grant Gilmore said "[t]he function of law . . . is to provide a mechanism for the settlement of disputes in the light of broadly conceived principles on whose soundness, it must be assumed, there is a general consensus among us."[1] Seven years later Clifford Geertz, the anthropologist, objected to Gilmore's concept of law.[2] Law, Geertz argued, "is not a bounded set of norms, rules, principles, values, or whatever from which jural responses to distilled events can be drawn, but part of a distinctive manner of imagining the real."[3] Geertz pointed to legal sensibil-

† Malcolm Pitman Sharp Professor, University of Wisconsin-Madison. Dr. Jacqueline Macaulay took time from her law practice to comment on this paper. She attributes the popularity of *L.A. Law* among lawyers to its portrayal of their fantasies of competence and power.

1. G. GILMORE, THE AGES OF AMERICAN LAW 109 (1977).
2. C. GEERTZ, *Local Knowledge: Fact and Law in Comparative Perspective*, in LOCAL KNOWLEDGE: FURTHER ESSAYS ON INTERPRETIVE ANTHROPOLOGY 167, 216-17 (1983). For an analysis of Geertz's writings and how they fit into anthropological theory, see Ortner, *Theory in Anthropology Since the Sixties*, 26 COMP. STUDY SOC'Y & HIST. 126 (1984).
3. C. GEERTZ, *supra* note 2, at 173.

The articles in this symposium argue that popular legal culture may be influenced by messages transmitted both by legal officials and mass media. We can order the essays according to their discussions of sources of popular legal culture; these sources range from personal experience to fiction. We might expect, although little evidence is offered here, that some sources are more influential than others.

Most of us get some ideas about law from direct personal experience. We pay taxes, and we encounter tax forms, instructions, procedures and the other trappings of bureaucracy. We have driver's licenses, and we were introduced to another bureaucracy when we first applied for one and when we renewed our applications. Many of us have received traffic tickets, and the experience introduced us to the role of law-breaker.[15] Some have bought or sold real estate, made a will, sought a divorce or gone to a small claims court. Experience is a great teacher, but we must ask what these experiences teach.

Barbara Yngvesson looks at what legal professionals see as the not-really-legal demands citizens make to courts. She points to an important part of popular legal culture and tells us that people

> come to the court with a range of problems, from the quarrels of parents and children, lovers, neighbors, or other intimates, to conflict with employers, local companies, landlords and others. For these people, their understanding of "legal rights" involves the right "to control who is on one's property and what happens on one's property . . . [and] rights not to be insulted, harassed, or hit by neighbors or family members without sufficient reason."[16]

Local courts respond by treating these demands as garbage cases. Clerks and Small Claims Court Commissioners steer parties away from the courtroom, and into coercive mediation, or towards dropping the suit. We can guess that those who sought vindication of rights were not pleased by these encounters.[17]

15. *Cf.* Cox & White, *Traffic Citations and Student Attitudes Toward the Police: An Examination of Selected Interaction Dynamics*, 16 J. POLICE SCI. & ADMIN. 105 (1988). Cox and White found that among university students tested, "receiving a traffic citation is associated with negative evaluations of police conduct, specifically, perceptions that the police sometimes behaved in abusive, even brutal, ways and that these perceptions likely lower the level of citizen trust and security in the police." *Id.* at 108.

16. Yngvesson, *Inventing Law in Local Settings: Rethinking Popular Legal Culture*, 98 YALE L.J. 1689, 1700 (1989) (quoting Merry, *Concepts of Law and Justice Among Working Class Americans: Ideology as Culture*, 9 LEGAL STUD. F. 59, 67 (1985)).

17. *Compare* Alschuler, *Mediation With a Mugger: The Shortage of Adjudicative Services and the Need for A Two-Tier Trial System in Civil Cases*, 99 HARV. L. REV. 1808 (1986) (arguing that Americans are coerced to abandon their rights and settle disputes when they should be able to vindicate such rights in court) *with* Gibelman & Demone, *The Social Worker as Mediator In the Legal System*, 70 SOC. CASEWORK: J. CONTEMP. SOC. WORK 28 (1989) (arguing that mediation is positive-shared problem solving as contrasted with adversarial procedures which impose resolutions on winners and losers).

Peggy Davis' analysis of microaggressions against blacks reminds us that part of popular legal culture is formed by actual encounters with the legal system.[18] Most of us have been ignored, treated rudely or had our contributions devalued by those in authority. Taken individually, these unpleasant encounters are but annoyances—what Davis calls microaggressions. However, when they happen regularly, and seemingly on the basis of one's race, class or gender, people learn that they should not expect to be treated fairly. When lawyers, jurors, judges, and others act condescendingly to blacks, and do so regularly, cynical awareness replaces legitimacy. One observer called this the Saturn's Rings Phenomenon.[19] Saturn's rings are made of tiny particles of dust, particles that would cause little damage if we encountered only a few. But passage through rings of uncountable particles of dust is a bruising, painful and scarring experience for both a spaceship and a person.

Austin Sarat and William Felstiner take us to another setting where popular legal culture is formed.[20] Lawyers educate their clients about the functioning legal system, and Sarat and Felstiner suggest that divorce clients, at least, do not like what they learn. Capricious judges, rather than rights and rules, control. Even when a client wins a judgment or a court order, it may not be effective. Ex-spouses fail to pay child support, and ex-spouses deny the non-custodial parent his or her right to see the children. Little can be done about it.

Adjudication is characterized by costs and delay. As is so often true, the American legal system promises justice and delivers a deal. Some get good deals, but it is hard to buy off people who see themselves as entitled to vindicate their rights. Client conferences become occasions for doses of legal realism, or cynicism, debunking the myth that law is a search for justice. As the number of divorced people increases, we can expect dissatisfaction to have a major influence on popular legal culture.

Arguably, in providing their clients with this taste of legal reality, lawyers demystify the legal system. This, however, does not empower most divorce clients.[21] Clients may be given choices, but none of them offer what clients want. Indeed, the reality of the divorce system makes an aware client more dependent on his or her lawyer's skill at navigating past the reefs of discretion, bias and caprice, and at negotiating with an

18. Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989).

19. Rowe, *The Saturn's Rings Phenomenon: Micro-inequities and Unequal Opportunity in the American Economy*, in P. BOURNE & V. PARNESS, PROCEEDINGS OF NSF CONFERENCE ON WOMEN'S LEADERSHIP AND AUTHORITY (1977); *see also* Rowe, *The Case of the Valuable Vendors*, HARV. BUS. REV., Sept.-Oct. 1978, at 40.

20. Sarat & Felstiner, *Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office*, 98 YALE L.J. 1663 (1989).

21. *But cf.* D. ROSENTHAL, LAW AND CLIENT: WHO'S IN CHARGE? (1974). Rosenthal classified personal injury clients as active or passive. He found that active clients who played a role in the resolution of their case got better recoveries from their legal claims, and they better protected their emotional interests as well.

unreasonable lawyer on the other side. At least in the area of divorce, it may not be enough to change clients' expectations and ideas about the legal system if we want to empower them. Perhaps nothing less than major structural change would empower them. Perhaps the changes would have to come from far beyond the legal system.

We do not learn everything by direct personal experience. Legal officials and intellectuals who rationalize society tell stories which show that the legal process is necessary, acceptable or just. Some might accept those stories. Carol Greenhouse writes about a theory that appellate courts and their interpreters offer to justify adjudication.[22] This theory challenges American common sense about time. The law has been, is, and always will be there. Judges serve this timeless law, not interests or power. Supreme Court decisions are unrelated to such events as the elections of Richard Nixon and Ronald Reagan or to Jimmy Carter's lack of an opportunity to appoint anyone. Judicial succession tests this story. "All aspects—biographical and political—of *becoming* a Justice are symbolically suppressed. Those aspects are precisely the ones that would (though they cannot) resolve the indeterminacies linking the times of the individual, the law and the nation in relation to the power of the presidency and the Congress."[23] For example, the Senate hearings on President Reagan's nomination of Robert Bork to the Supreme Court became a morality play attempting to hide a power struggle. Bork's opponents pictured him as a man who would rely on his own eccentric views of what law ought to be rather than act as an instrument of modern American tradition. Bork attempted to paint himself as a mainstream neutral who would bring little to the Court other than his outstanding intellectual and technical skills. We might use Greenhouse's approach to analyze the messages sent out by the White House, the Senate Democrats, and Judge Bork himself.[24]

Courts also use judicial opinions to send messages attempting to legitimate their actions. Professors, newspaper columnists, politicians and lawyers may translate the messages and offer their interpretations to the interested public. Peggy Davis suggests that at least some blacks have learned that the present Supreme Court of the United States is insensitive to, if not biased against, their interests. They do not see the present majority applying timeless law. Rather, justices appointed by right-wing presidents seem to be carrying out a racist mandate that elected and reelected those presidents. If the assumptions underlying legal opinions are foreign to members of a particular audience, these people will see the authors as

22. Greenhouse, *supra* note 7.

23. *Id.* at 1649.

24. Karl Llewellyn offered a somewhat different story than the one analyzed by Greenhouse to legitimate bounded judicial discretion within which a judge's "situation-sense" might operate. *See* K. LLEWELLYN, THE COMMON LAW TRADITION—DECIDING APPEALS 121-57 (1960).

fools or knaves. Legal rhetoric legitimates the legal system only for those who accept the case made by such rhetoric as honest and plausible.

Davis discusses the Supreme Court's opinion in the *McCleskey* case.[25] There the Court rejected the empirical work of Baldus, Pulaski and Woodworth[26] concerning bias in Georgia's use of the death penalty.[27] Baldus and his associates found what many blacks thought was obvious, but Justice Powell imposed a very high burden of proof to avoid accepting what many blacks just knew was so.

For another example of Davis' point, consider Professor Charles Lawrence's discussion of *City of Memphis v. Greene*:[28]

> The city of Memphis, acting at the behest of white property owners, erected a barrier which closed the main thoroughfare between an all-white enclave and a predominantly black area of the city. Justice Stevens, writing for the majority, examined the evidence developed at trial and concluded that the decision was motivated by an interest in protecting the safety and tranquility of a residential neighborhood. *One reads Justice Stevens's words with incredulity: Could he really believe what he says? Did this man grow up in the same United States of American that I did?* There is hardly a black in the country who would not agree with Justice Marshall that the city's action was "nothing more than 'one more of the many humiliations which society has historically visited' on Negro citizens."[29]

Both Davis and Lawrence remind us that the stories courts tell in imagining the real work only some of the time with some people. Indeed, it is possible that Professors Davis's and Lawrence's angry reactions to the Supreme Court's opinions are magnified by the Court's claim of timeless judicial neutrality.

Most Americans, however, learn about their legal system even more indirectly. They have little personal experience with law and lawyers. Few people ever read the text of appellate opinions or statutes. Few of us ride in a squad car, play any role in litigation or participate in administrative decisionmaking. Newspapers and television news, however, take us

25. McCleskey v. Kemp, 481 U.S. 279 (1987).

26. *See* Baldus, Pulaski & Woodworth, *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience*, 74 J. CRIM. L. & CRIMINOLOGY 661 (1983); Baldus, Pulaski & Woodworth, *Arbitrariness and Discrimination in the Administration of the Death Penalty: A Challenge to State Supreme Courts*, 15 STETSON L. REV. 133 (1986); Baldus, Pulaski & Woodworth, *Monitoring and Evaluating Contemporary Death Sentencing Systems: Lessons From Georgia*, 18 U.C. DAVIS L. REV. 1375 (1985); Baldus, Pulaski, Woodworth & Kyle, *Identifying Comparatively Excessive Sentences of Death: A Quantitative Approach*, 33 STAN. L. REV. 1 (1980).

27. The Law and Society Association gave the Baldus project its Harry Kalven Prize for excellence after the Supreme Court's opinion, and the negative comment on the Court's opinion was quite intentional. LSA's citation said, "history will look back on this work as extremely significant on the issues of the death penalty even if the present Supreme Court cannot appreciate its utility."

28. 451 U.S. 100 (1981).

29. Lawrence, *"Justice" or "Just Us": Racism and the Role of Ideology* (Book Review), 35 STAN. L. REV. 831, 849 n.70 (1983) (emphasis added) (citations omitted).

to some parts of the legal system in operation. Nevertheless, news is not social science, and journalists do not offer a representative sample of the work of the legal system. Sometimes they even misreport what happens.

Moreover, most Americans read mystery novels or watch films or television that deal with dramatic aspects of the legal system. Schattenberg[30] suggests that police and private-detective television programs send information about moral boundaries as public hangings once did. One common message is that the appropriate punishment for being a bad guy is to have police officers administer capital punishment without a trial in a shoot-out. However, Lawrence Friedman cautions that we cannot tell what people make of books, film and television programs just by reading and watching them ourselves.[31] He sees a complex interrelationship between popular culture, the functioning legal system, and the ideas that books, films and television shows attempt to sell. Armchair self-analysis of our own reaction is not enough. People will deconstruct *Miami Vice* or *Hill Street Blues* for themselves in light of the way they imagine the real.

Friedman and Stephen Gillers look at *L.A. Law*, a television program which is surprisingly popular in the United States and many countries abroad. Charles Rosenberg, legal advisor to *L.A. Law*, responds to Giller's paper.[32] Both Friedman and Gillers agree that the program portrays lawyers and the law unrealistically. However, Friedman argues "[t]he lawyers of *L.A. Law* are caricatures; but caricatures are always caricatures of something, and that something has to be real."[33] Gillers defends the program against several charges of its critics. At its best, he says, the program is a series of moral questions that can be developed dramatically in a legal setting. He asks, "[w]hat difference does it make if McKenzie, Brackman lawyers consistently ignore the rules of evidence or if they make speeches to witnesses when they should be asking questions?"[34] Gillers has more doubt about *L.A. Law*'s handling of ethical questions. Nonetheless, he points to examples where "*L.A. Law* has taken a hard, ambiguous ethical problem and portrayed it in a serious, dramatic way without making it seem self-evident and without pretending to have solved it."[35] Finally, Gillers asks whether *L.A. Law*'s influence is constructive. His answer is mixed. However, he emphasizes that *L.A. Law* provides wonderful if unrealistic role models:

30. Schattenberg, *Social Control Functions of Mass Media Depiction of Crime*, 51 Soc. Inquiry 71, 71-72 (1981). Schattenberg argues that our criminal justice system mass processes violators through plea bargaining which takes place out of public view. Thus, actual law enforcement lacks ceremonial force.

31. Friedman, *Law, Lawyers, and Popular Culture*, 98 Yale L.J. 1579 (1989).

32. Rosenberg, *An* L.A. Law*yer Replies*, 98 Yale L.J. 1625 (1989).

33. Friedman, *supra* note 31, at 1601.

34. Gillers, *Taking* L.A. Law *More Seriously*, 98 Yale L.J. 1607, 1612 (1989).

35. *Id.* at 1614-15.

> With a nearly subversive zeal, the writers and producers have populated the show's legal terrain with a rainbow coalition of characters. Women, blacks, Latinos, Asian-Americans, and individuals of various sexual orientation are shown as lawyers, judges and other persons of achievement.[36]

Others may construe the portrait of the rainbow coalition less favorably than Gillers.[37] Friedman suggests that Americans have a love-hate view of lawyers. Some lawyers champion individuals' claims to justice, and the public applauds if it agrees with these claims. Other lawyers champion unpopular causes or serve their own interests while manipulating the legal system for the undeserving, and the public hisses and boos. Or do some people admire crafty and unscrupulous lawyers who exercise great power? Would it make any difference if J.R. on *Dallas* had been presented as a lawyer?[38] Such questions are far easier to ask than to answer.

Gillers and Friedman can only can offer plausible suggestions about the influence of *L.A. Law*. We simply do not know how Americans interpret the series and why it is so popular. Rosenberg thinks Gillers may overstate the influence of the show. Rosenberg argues that Americans can distinguish fact from fiction: "[I]t is part of our culture to learn from an early age what is story and what is not. If you doubt this, ask any five year old if there are really thousand foot beanstalks and giants."[39] Perhaps Rosenberg is right, but *L.A. Law* sends few signals that it is fantasy; it looks very real. *L.A. Law*'s messages are complex.

Judge Richard Posner continues his new-found role as literary critic and confronts Tom Wolfe's best-selling novel, *The Bonfire of the Vanities*.[40] He finds that the book adds little to our knowledge about how lay people view the law. He says that Wolfe follows better books in arguing:

> [the public] expect[s] technicalities to matter . . . [t]hey are not surprised when miscarriages of justice occur . . . [t]hey expect legal proceedings to be interminable and excruciatingly expensive; and . . . they are unillusioned about the moral and intellectual qualities of judges, lawyers, jurors, and other participants in the machinery of

36. *Id.* at 1620 n.47. However, *L.A. Law* also teaches hierarchy when it portrays legal secretaries, court clerks and others. Some dislike the lessons offered. *See, e.g.*, Smith, *T.V.: Clerical Workers Put Down*, 17 New Directions for Women, Nov.-Dec. 1988, No. 6 at 1, cols. 1-4, at 4, cols. 3-4.

37. *Cf.* Mayne, *L.A. Law and Prime-Time Feminism*, X Discourse, Spring-Summer 1988, at 30 (*L.A. Law* scripts often argue that assumptions behind feminist thought burden women in specific situations).

38. *See* Hirschman, *The Ideology of Consumption: A Structural-Syntactical Analysis of "Dallas" and "Dynasty"*, 15 J. Consumer Res. 344 (1988).

39. Rosenberg, *supra* note 32, at 1627.

40. Posner, *The Depiction of Law in* The Bonfire of the Vanities, 98 Yale L.J. 1653 (1989).

legal justice, and about the corrosion of that machinery by political and personal ambitions and fears.[41]

Judge Posner questions whether Americans really view "their legal system in quite so bleak a light."[42] Again, we might remember Friedman's comment about *L.A. Law*. He saw it as a caricature, but continued "caricatures are always caricatures of something, and that something has to be real."[43] The judge is right when he insists that whether Wolfe reflects popular legal culture is unclear.[44] But the American audience can recognize these themes, and this suggests that there might be some there there to investigate.

This symposium raises many important questions concerning popular legal culture, a topic far too broad to exhaust in seven articles. For example, we might ask what people learn in school about law, rules, lawyers and the legal system. Here we must look at both the open and the hidden curriculum. School textbooks offer a very simple and formal view of law when they mention it at all. However, school children learn to cope with or evade authority, decide whether and when to cheat, and pick up practical views about the interplay of rights and power as they interact with administrators, teachers, coaches, and other students. We might expect that attitudes developed from encountering the micro- and the macro-aggressions of the powerful at school would be sharpened by the contrast between experience and the fantasies found in schoolbooks and in class. We might guess that those who learn to cheat on multiple-choice examinations in school are more likely than others to violate traffic laws and evade taxes later in life. This guess might be entirely wrong, but the question is worth considering.

Americans also learn from sports about breaking rules or honoring them in form but not in substance. Part of the lesson is taught in school and part by sports programs on television. Professional baseball, for example, honors tricking and intimidating umpires. A cynic might speculate that American intercollegiate athletics shows that many universities act as if they honored only the amoral principle: "Don't get caught!"[45] Gambling on professional sports is illegal in almost all states. Nonetheless, newspapers regularly publish the current odds, and CBS Television long offered Jimmy The Greek, a former gambler giving us the inside dope

41. *Id.* at 1659.

42. *Id.* at 1659-60.

43. Friedman, *supra* note 31, at 1601.

44. Posner, *supra* note 40, at 1660.

45. An Associated Press poll shows that more than 55 percent of Americans suspect universities and athletic booster clubs of frequently making under-the-table payments to players. Half the respondents thought that professors commonly gave student athletes higher grades than they deserve so they could continue to compete. Thirty-two percent doubted that this occurs, and 18 percent were unsure. Wis. State Journal, April 3, 1989, at 2D, cols. 1-2.

about professional football. This, too, may be an important part of popular legal culture.

Then we might look at what political campaigns teach about law. Again our cynic might conclude that recent campaigns taught citizens that due process and civil liberties are slogans for those who champion the interests of criminals and that the death penalty is the solution to most of our civic dilemmas. Furthermore, campaigns for judicial office have become increasingly political. We can wonder how far the successful campaign against Chief Justice Rose Bird in California undercut the legitimation myth analyzed by Greenhouse.

Most of the articles in this symposium identify a source of information about legal matters and then consider the explicit and implicit messages being sent out at that place. However, all teachers who have read final examinations know that not every thing sent out is received exactly as intended. Listeners and readers must make sense out of what they perceive, and their experience colors their perceptions and interpretations. Yngvesson argues that, on one hand, legal professionals are empowered by their capacity to reveal rights and define wrongs, to construct a meaning of everyday events and thus to influence cultural understandings of fairness, of justice, and of morality.[46] On the other hand, she tells us, law is invented, negotiated or made in local settings.

Both propositions are undoubtedly true to some unknown extent. We can draw an analogy to classic jazz.[47] Composers such as Gershwin, Porter, and Berlin wrote songs which jazz musicians reinvented in many ways. Moreover, George and Ira Gershwin composed *Porgy and Bess*, an

46. Yngvesson discusses ideas of scholars such as Bourdieu. *See* Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS L.J. 805 (1987) (R. Terdiman trans.). Bourdieu asserts that "[l]aw is the quintessential form of the symbolic power of naming that creates the things named, and creates social groups in particular. It confers upon the reality which arises from its classificatory operations the maximum permanence that any social entity has the power to confer upon another, the permanence which we attribute to objects." *Id.* at 838. However, he continues, "[s]ymbolic acts of naming achieve their power of creative utterance to the extent, and only to the extent, that they propose principles of vision and division objectively adapted to the preexisting divisions of which they are products." *Id.* at 839. Naming works "only to the extent that the law is socially recognized and meets with agreement, even if only tacit and partial, because it corresponds, at least apparently, to real needs and interests." *Id.* at 840.

I think it is clear that we must take Bourdieu as saying that legal professionals have the power to *attempt* to construct the meaning of everyday events and influence cultural understandings of justice. However, not all their attempts succeed. If we were to read Bourdieu without noticing the important qualifications to his argument, he would seem to say that once the Supreme Court decided that states must desegregate schools, stop school prayers and allow abortions, then everyone accepted these decisions as statements of what was morally proper. While the Court's decisions put all these matters on the public agenda, Bourdieu does not say that "law creates the social world [simply] by naming it." Yngvesson, *supra* note 16, at 5.

47. Compare Karl Llewellyn's statement: "[w]ho in the literature or in the classroom has followed up the implications of Jerome Frank's insight that a court 'reads' a statute as a performing violinist 'reads' his music or an actor 'reads' his part?" K. LLEWELLYN, *The Study of Law as a Liberal Art*, in JURISPRUDENCE: REALISM IN THEORY AND PRACTICE 375, 390 (1962). I think jazz is a better metaphor. Violinists and actors tend to stay closer to the score and the script than jazz musicians to a songwriter's composition. In my view, Americans freely improvise on the law.

legal policies that defend the haves.[54] Nor does the story necessarily suggest that legal culture is good. A lynch mob can be viewed as an expression of a legal culture, and Nazi Germany had a legal culture too.

Legal culture also includes what people see as necessary, acceptable or just, and this may be the basis for their support of the legal system. These ideas may affect how specific legal rules or the operating legal system affect society. Too often we write as if we think citizens are puppets attached to strings held by legislators and judges. However, we have far too few police, IRS auditors, customs inspectors and other administrative personnel to watch everyone always. We think of ourselves as a law-abiding nation, and we say we are not a "Banana Republic."[55] Yet we know that most Americans drive faster than the speed limit, many cut corners when they fill out their income tax returns, some bribe legal officials for favorable treatment, and others buy or sell illegal drugs. At best, we are selectively law abiding; we do not "really" cheat, we just cut a few corners. We have only begun to ask what working rules Americans follow, how we rationalize other-than-strict compliance, and how far we will go when there is a good chance that we will not be caught. Popular legal culture should supply some of the answers.[56] And those questions are at least as worthy of attention as the mailbox or consideration rules so celebrated in contracts courses required in all law schools.

Finally, the study of popular legal culture has another major virtue—it promises to be fun. I think what lay people think lawyers do day to day is at least as interesting as legal rules. We may choose to put aside our latest issue of the *Harvard Law Review*, or even, for that matter, *the Yale Law Journal*, and watch an episode of *L.A. Law*. As I have said before, "[p]erhaps, best of all, I no longer need feel guilty as I watch the Badgers, Bucks, Brewers, and Packers struggle with so little success. It's not wasting time. It's research."[57]

54. *See* Kennedy, *Antonio Gramsci and the Legal System*, 6 A.L.S.A. FORUM 32 (1982).

55. Many Central Americans might find our claim to be particularly offensive when we use this phrase. North Americans forget that insofar as there is truth in the image connoted by the term "Banana Republic," North Americans are largely responsible for creating that truth. Most of us would do well to remember Neruda's *The United Fruit Company*. P. NERUDA, FIVE DECADES: A SELECTION (POEMS: 1925–1970) 78 (B. Belitt ed. 1974).

56. But compare Harris's view: "Rules facilitate, motivate, and organize our behavior; they do not govern or cause it. The causes of behavior are to be found in the material conditions of social life. The conclusion to be drawn from the abundance of 'unless' and 'except' clauses is not that people behave in order to conform to rules, but they select or create rules appropriate for their behavior." M. HARRIS, CULTURAL MATERIALISM: THE STRUGGLE FOR A SCIENCE OF CULTURE 275 (1980).

57. Macaulay, *Images of Law in Everyday Life: The Lessons of School, Entertainment, and Spectator Sports*, 21 LAW & SOC'Y REV. 185, 214 (1987).