Creating Law Franchises on Television

David E. Kelley*

As the multi-award winning writer/producer behind some of the most successful legal television shows in America, the author offers his perspective on creating law franchises on television. Although many things have changed regarding legal television shows over the twenty-five years of his career, the author maintains that legal franchises will continue to thrive because they evolve like the law itself. He contends that legal shows are intellectually challenging and emotionally appealing even if they are not always realistic.

I think the first rule is kind of knowing your audience. How many here are lawyers? All right, let me start out with an apology. Actually, I like to fish. I was at a lodge not too long ago and we were having dinner around a table with a bunch of people – none of us knew each other and everyone was exchanging pleasantries on what we did for a living. I mentioned that I wrote law shows. And a gentleman from Texas, kind of dismissed me, said, “forgive me but I’ve never seen them.” He said, “I am a lawyer and the last thing I want to do is to go home and at the end of day turn on my television and watch a show about the law.” The conversation continued, someone mentioned Boston Legal, and the same Texas gentleman said: “Wait. Wait. Boston Legal? I love that show.

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After receiving his law degree from the Boston University School of Law, Kelley was an attorney practicing law in Boston before venturing into the world of entertainment. Honored with four George Foster Peabody Awards, a Television Showmanship Award from the Publicists Guild of America, the David Susskind Lifetime Achievement Award from the Producers Guild and the TV Guide Awards’ inaugural Brandon Tartikoff Award, Kelley was also the subject of a tribute by the Museum of Television and Radio and was named a Broadcasting and Cable Hall of Fame Honoree. He is the recipient of the Monte Carlo Television Festival’s first Showman of the Year Award, the Casting Society of America’s Lifetime Achievement Award, and has been honored by the Legal Aid Foundation of Los Angeles. In addition, he has received the prestigious Humanitas Prize for two consecutive years for “The Practice,” and was presented with both The Paddy Chayefsky Lifetime Achievement Award and The Paul Selvin Award from the Writers Guild of America. To date, Kelley is the only Producer to ever win the Emmy Award for Outstanding Comedy and Outstanding Drama, “Ally McBeal” and “The Practice” respectively, in the same year (1999).
That has nothing to do with the actual practice of law.” And so it is.

Twenty-five years ago when I began on L.A. Law, Chuck Rosenberg was our legal consultant. Marshall Goldberg, you were there, part of the writing staff. We actually prided ourselves on being as accurate as we could. Chuck would give meticulous notes to each script. If a lawyer attempted to assume facts not in evidence we would be sure to have the other lawyer object. If the police ran amok of the exclusionary rule, the judge would weigh in on that as well. Now a quarter of a century later on Harry’s Law—not so much. There’s a reason for that. Things have changed in the 25 years.

But before I get to the differences, I would like to just touch on one thing that hasn’t changed. The reason I started writing about law shows, the reason I first went to law school, is because of my fascination with this legal system. This imperfect beast that we have that seeks to legislate the moral and ethical conduct of its citizenry. And the law really doesn’t just tell us what we can and cannot do. It often suggests at least, how we should feel and think sometimes, and it’s not with a coat of blacks and whites. As we know, when cases get interpreted it’s often with shades of gray.

One of the perks of this job, in addition to getting invited to events like this, is you get other sort of interesting invitations and I got one about 10 or 11 years ago from Sandra Day O’Conner who invited me to dinner at her home in Washington. I went on to find out that she has a dinner every year and she and a friend of hers and an assistant sit down to create this dinner. They put together different people from different walks—put them at a dinner table and just see what happens. I went to this dinner and was at a big table, and there was a Pulitzer Prize winning journalist, I think the top neuroscientist, Chief Justice Rehnquist, was to my left, a pretty good caldron of extraordinary people. So I felt daunted just to be at the table. I’d made my mind up right at the beginning, okay, I’m not going to talk, I’m just going to listen.

I look across the table and I see this woman and I recognize her. Her name is Judge Rya Zobel from the Federal District Court of Massachusetts, where I started practicing as a young law associate. Judge Zobel was legendary. She was a brilliant judge, very active, a fierce questioner, an acute listener, nobody wanted to stand up and appear before her, least of all a young, first-year associate. I got that privilege as a first-year associate. I walked in there and true to form, she grilled me about this point, and that argument. I do remember surviving it, but barely, walking out fairly terrorized. Now cut to 20 years later, I’m sitting at this table with all these daunting people but I’m most afraid of Cruella De Vil over there across the table. The dinner starts, we’re talking again, I made my mind up not to speak and I was sort of looking down cutting my piece of meat and all I hear—soft voice, but it was a woman’s voice.” You should be ashamed of yourself.” I didn’t look up I thought, “oh the table got quiet.” All I knew is someone at the table needed to be ashamed. I looked up—it was me—and it was her. And she started in, “the things you do to give the legal profession a black eye. I turned on the television the other night, and you
had two lawyers, romantically involved with each other, arguing against each other in the same case. That is ridiculous. I would never allow that to happen in any one of my courtrooms.

I swallow, I’m trying to think of something intelligent to respond with, and all of a sudden I hear “Why not?” I turn to my left. It’s my new best friend, the Chief Justice of the Supreme Court. He says to her “Why not?” She says “Well because it is a conflict” he says, “Yes but if they disclose the conflict, why not? I mean, I might exclude them but it’s not an absolute.” Silence. I got through it.

The dinner continued and about 10 minutes later, she started in again. She said “I saw one not too long ago where you had an old man dying of Alzheimer’s and he came into court with his son who was dying of heart failure and he asked for a court order to give his heart to his son, so a hospital could do the transplant.” She said “that’s preposterous”. Beat, beat, beat. “Why?” Chief Justice Rehnquist, coming to my defense again. He said, “Look, we allow for directed donations—organ donations, a physician assisted suicide is debated and legalized in some states, why would you necessarily rule out that?” It then gave rise to a loud debate of this issue and that issue. Again, I tried to stay out of it. There’s that adage that when the elephants are fighting, the monkeys stay in the trees and that’s where I was happy to be. But it reminded me of why I went to law school, why I started writing about law shows, and that is, law is this imperfect beast that I spoke of. It’s our best mechanism of society trying to navigate rights and wrongs and it’s not a perfect world. It’s not a world of black and whites. It’s a world of grays. Law is constantly evolving. And that’s why I think law shows still can stay fresh to this day because they do evolve.

Now much has changed. Let’s talk about what’s changed. First is the obvious—the production values. The technological advances of television have grown so dramatically in the last 25 years that shows about talking heads just have trouble competing. With the proliferation of shows like Lost and 24 and high octane shows very well produced, it becomes difficult to get the same dopamine rush from your viewer with a closing argument. We learn to adjust. Now our Q and As – instead of the witness just telling what happened, we will cut to flashbacks. We try to be more filmic where we can. But it’s a challenge to compete with these shows that have high end production values. Consider, for example, Star Trek versus Battlestar Galactica and see how far television has grown. The challenges for a show that is primarily about dialogue remain large.

Second of all—the presentation. When we were doing L.A. Law, we had 48 minutes to tell a story in four acts. Now we’re down to 41 minutes in six acts. That means between every six and seven minutes we now have to break for a commercial. And it’s a loud commercial. If you watch TV, you know that the networks boost up the volume, the decibel level of their commercials, because that’s what they truly want you to hear. So every six minutes you’re being pounded with a Dodge Ram commercial or the like and it puts a burden
on the producers and the story tellers to be just as loud, to be just as noisy, to be just as bombastic. Now what do we do? Again, maybe we go for action instead of dialogue, maybe we decide to hire loud, noisy, bombastic actors to interpret your worlds. But the challenges are there.

Then there’s also the DNA of the viewer. Our DNA is just different. I watch television with my daughter, she’s got her computer out, she’s got her smart phone, she’s doing her homework, she’s looking to multitask, that’s the way people are. We’re bouncing around. Again the arousal levels of the average viewer are not what they were 25 years ago. You simply don’t get the same attention span. So we have to adjust.

Will the law franchise ever become extinct? I think not because the architecture of the law show still remains very, very sound. You’ve got good guys versus bad guys, you’ve got conflict at the center of each episode. Often it’s good versus evil, your protagonist is able to champion the cause of the underdog. And the truth is, people like law shows. As much as we always hear people love to hate lawyers, they also love to love them. Their worlds are very exciting or can be. They walk into these forums and make these big arguments that affect society.

Now— in truth, is the practice of law nearly as interesting as we portray it? No. Probably the biggest disservice that we do is we send the message that justice is swift. Of course, it’s anything but. Litigation is the last resort in the world of law. On television it’s the first place we go. Settlements make for bad television, so there’s a crime or a breach in act one and you’re in trial in act two. We just go from zero to sixty because we have to. Again, to compete with our shorter acts, to compete with the higher octane competition. As a result, I think people sometimes think they can go to a lawyer and get justice as fast as they can go to a doctor and get a prescription for a sore throat and be better in a few days. It doesn’t work that way.

But I do think the law franchise will always be viable. I think that the ability to intellectually challenge audiences on your best episodes, maybe emotionally move them, is a real luxury and opportunity for the storyteller. The law franchise presents that opportunity on a weekly basis. Obviously, shows need to be fresh week in and week out. With law shows you get to cycle in new crises through different clients just like the police shows do it with victims and the doctor shows do it with patients, the lawyer shows will have new clients. I think it’s here to stay.

There’s more pressure on us to do it better. We have still many good law shows. I think The Good Wife is remarkably well done. I don’t think that the franchise is facing extinction but it has changed. It has evolved in 25 years. We do face challenges that were not there. I think that’s my best overview of the television franchise.

Larry Kramer: By the way, wasn’t Rya Zobel a character on one of the shows, I thought it was The Practice?

David Kelley: I try to get even with a lot of people. I make them
characters on the show. I’m careful not to make anything that could possibly be interpreted as the truth because I made that mistake quite frankly early in my career. I just had made the name of a plaintiff a friend of mine, and lo and behold, it was close to a case that was actually happening, so I learned my lesson. If I’m going to use names, I’d better be careful to be so far away from the truth that it couldn’t possibly be misinterpreted, but I wouldn’t be surprised if I used Zobel. I still consider her a judicial terrorist. She was a brilliant judge, she still is a brilliant judge, but for a first-year associate—not a fun experience.