

Introduction

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Scholarship on law and television has developed slowly over the past 30 years. It began alongside the study of film and law, but its trajectory and import differ in significant ways. This Introduction provides both an overview of the earlier work on law and television and context to the current collection of essays.

There are several putative beginnings to law and television scholarship, all dating to the 1980s. The early work of both Stewart Macaulay¹ and Lawrence Friedman² featured the role of television in the development of popular legal culture. Their influential essays form the starting point for the study of popular culture in shaping the public's conception of the law. Around the same time, studies of Perry Mason complemented those describing the popularity of the pioneering legal drama *LA Law*.³ Others explored television's role in conceptualising law in the modern era.⁴ Steven Stark's 1987 article, 'Perry Mason meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes', is emblematic and examines the substantial amount of 'law and order' oriented programming on American television in its first 30 years as a mass medium of entertainment.⁵ By 1990, a mere three years later, one finds the majority of scholarship on law in popular culture focused on television. However, by the beginning of the new century the emphasis switched to film, with only modest contributions in the late 1990s to the study of law and justice on the small screen.⁶

¹ Stewart Macaulay, 'Images of Law in Everyday Life: The Lessons of School, Entertainment and Spectator Sports' (1987) 21 *L&SR* 185.

² Lawrence Friedman, 'Law, Lawyers and Popular Culture' (1989) 98 *YLJ* 1579.

³ See Stephen Gillers, 'Taking LA Law More Seriously' (1989) 98 *YLJ* 1607. See also: Robert Rosen, 'Ethical Soap: LA Law and the Privileging of Character' (1989) 43 *UMLR* 1220; Charles Rosenberg, 'An LA Lawyer Replies' (1989) 98 *YLJ* 1625.

⁴ See David Leonard, 'From Perry Mason to Kurt Waldheim: The Pursuit of Justice in Contemporary Film and Television' (1988) 12 *LSF* 377. See also Anita Sokolsky, 'The Case of the Juridical Junkie: Perry Mason and the Dilemma of Confession' (1990) 2 *YJL&H* 189.

⁵ Steven Stark, 'Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes' (1987) 42 *UMLR* 229.

⁶ See Rorie Sherman, 'Small Screen Takes Shine to Lawyers' (1991) 13 *TNLJ* 9. See also: Robert Jarvis and Paul Joseph, *Prime Time Law* (Durham, Carolina Academic Press, 1998); Chris Jackson, 'Film and TV Drama Commentary' (2000) 24 *LSF* 321; Joan Marek, 'The Practice and Ally McBeal: A New Image for Women Lawyers on Television' (1999) 22 *JAC* 77; Joseph, 'Saying Goodbye to Ally McBeal' (2003) 25 *UALR* 459.

In the twenty-first century comparative law and television scholarship grew, with studies of law and justice on television in Canada,⁷ France,⁸ Australia⁹ and the United Kingdom.¹⁰

Television was not always its own object of study in the interdisciplinary field of law and popular culture. Media departments and cultural studies programmes today, however, study television as a unique medium with its own representational systems, production mechanisms and distribution channels. The beginnings of the law and culture field did not treat television differently from film and literature.

I. Overview of Law and Television Studies

The earnest study of law and popular culture began in the mid-1980s with its mixed focus on literature, film and television. Out of the law and literature movement the interdisciplinary field of 'law in culture' studies rose, which soon evolved into a study of law and popular culture, including both film and television. Over the last 20 years, there has been an explosion in the number of books, edited collections and individual essays devoted to law and popular culture. The vast majority of these have centred on film. Since 1996, more than 16 monographs have been written in the field of law and film, and over a dozen edited collections or special journal editions have been published. (See the references at the end of this Introduction.) Conspicuously absent from the larger body of this more recent scholarship, however, is a focus on television.

While scholarship on law and film has flourished, there has been relatively little published on lawyer and legal processes on the small screen. Even in light of the major developments in Spain, where cultural images of law have been examined in extensive detail under the heading 'cine y derecho',¹¹ that work has neglected the broader 'cultura popular y derecho' and television representations do not feature prominently. The same is true for French and German scholarship. This dearth of scholarship devoted to television in the law and popular culture field is ironic. Television reaches the vast majority of the population. It is more democratic in its processes and distribution mechanism than film. It provides news, dramas, documentaries and comedies seven days a week, 24 hours a day. Cinema, the pre-eminent source of mass entertainment since the early 1920s, is on the decline. Visiting the cinema is now a luxury and is reserved for a relatively small population of Western audiences. The rise of television as the dominant source of entertainment and information, in light of the world's growing focus on the rule of law and international relations, demands consideration in the law and culture scholarship. Robust studies of law and television will complement

⁷ See Mary Jane Miller, 'Mirrors in the Robing Room: Reflection of Lawyers and Law in Canadian Television Drama' (1995) 10 *CJL&S* 55.

⁸ See Barbara Villez, *Séries Télé: Visions de la Justice* (Paris, Presses Universitaires de France, 2005).

⁹ See Jason Bainbridge, 'Rafferty's Rules: Australian Legal Dramas and the Representation of Law' (2006) *MIA* 136.

¹⁰ See Peter Robson, 'Lawyers and the Legal System on TV: The British Experience' (2007) 2 *IJLC* 333.

¹¹ See Robson, 'Law, Hollywood and the European Experience' (2009) *LP&S:SF* 117.

law school courses on law and literature, law and film, and law and popular culture more broadly.

Most television scholarship about law focuses on the police and prison system and not on legal processes or lawyering.¹² This is likely because the adjudication phase of law, with its lawyers and courts, does not feature in the vast majority of police or prison television dramas. The separateness of the trial process from detention and imprisonment is a consistent feature of a considerable body of programmes in Britain and the United States. One result of this separateness is that lawyer shows rank as a mere sub-genre in the field of legal television studies and criticism. The present volume seeks to begin filling that gap with several chapters focusing exclusively on the adversarial process and/or the ‘lawyer-as-character’ on television.

There may be legitimate institutional and material reasons for both the dearth of scholarship on legal television programming and for a growing future in the area. As discussed elsewhere in greater detail,¹³ practical problems exist in assembling the material. Given this, scholars have frequently worked on individual shows that were accessible on video.¹⁴ As far as the British and American series are concerned, easy access to material up to the present day has been limited. Only two of the pre-2000 British fiction-based law-oriented shows appeared in video/DVD format until very recently.¹⁵ Unfortunately, tapes of the vast majority of the programmes from 1958 to the present day have been destroyed or are only available at considerable cost. The same appears to be the case in the United States and Canada. At the time of writing, programmes such as *The Defenders*, *LA Law* or *Petrocelli* appear to be unavailable. Although these are not insuperable obstacles,¹⁶ they reinforce the unarticulated hierarchy in cultural products in which television comes after literature and film.¹⁷

Television programming has become more available in the DVD era and more recently shown series are now easier to access. Availability is, however, patchy. Despite these hurdles, there has been a slow and partial recognition of the significance of television in this area.¹⁸ Now, with the expansion of digital channels, the rise in sales of DVD players and ‘home cinema’ devices, there are fruitful possibilities for more widespread viewing and research. Whether or not scholars of the law and legal system

¹² See Nicole Rafter, *Shots in the Mirror* (Oxford, Oxford University Press, 2006).

¹³ Robson, ‘Lawyers and the Legal System on TV’ (n 10); Robson, ‘Developments in Law and Culture: The Case of the TV Lawyers’ (2007) in *Representations of Justice* (Brussels, Lang Publishing, 2007) 75.

¹⁴ Robson, ‘Law and Film Studies: Autonomy and Theory’ in *Law and Popular Culture* (Oxford, Oxford University Press, 2005) 21.

¹⁵ These are *Rumpole* and *Kavanagh QC*. By contrast, four of the many other shows have gone to DVD, eg, *Judge John Deed*, *Outlaws*, *New Street Law* and *Kingdom*. The pioneering series *Law and Order* (1978) (no relation to the American series) is also now available.

¹⁶ Robson, ‘Lawyers and the Legal System on TV’ (n 10).

¹⁷ There is also the question of volume. The sheer quantity of material even in the most modest series is huge, and for some a barrier to research. Typically, even a modest run of a series involves a dozen one-hour episodes. The attraction of looking at a single two-hour film as opposed to at least 12 and possibly 40 hours of television programming may be irresistible. Yet anyone wishing to undertake a serious study of any series is required to undertake a longitudinal study of the series. Many chapters in this volume accomplish this Herculean task.

¹⁸ See Elayne Rapping, *Law and Justice As Seen on TV* (New York, New York University Press, 2003). See also: Villez, *Séries Télé: Visions de la Justice* (n 8); Robson, ‘Lawyers and the Legal System on TV’ (n 10); Robson, ‘Developments in Law and Culture’ (n 13); Michael Asimow, *Lawyers in Your Living Room!: Law on Television* (Washington DC, American Bar Association, 2009).

will turn seriously to television is by no means certain. (Certainly, in media and communication departments, the study of television has been a mainstay since the 1970s.)¹⁹ The most extensive recent publication in the field, for instance, is deliberately non-scholarly and general in its appeal.²⁰ Coverage is also focused primarily on the United States.²¹ In contrast, the present volume spans a consideration of shows aired in North America and Europe, and it aims for a comparative view of law and justice on television.

II. Contrasting Theoretical Approaches to Lawyers in Popular Culture

The scholarly approach in law and film studies varies, and this diversity informs the structure of the current volume. There is the ‘law-in-film’ approach, which is primarily concerned with the ways in which law and legal processes are represented in film.²² The ‘law-in-film’ approach considers film as a jurisprudential text by asking how law should or should not regulate and order our worlds by critiquing the way it does so in film.²³ Whether the filmic legal practice is accurate interests a range of writers from Bergman and Asimow²⁴ to James Elkins.²⁵ Others are concerned with the relationship between the law and its operative social context, tracing the changes in emphasis as regards both the lawyers depicted in the film and the kinds of socio-political framework operating within and beyond the film.²⁶ Hence, the emergence of women as protagonists in courtroom dramas has been of interest to a considerable body of scholars, especially for the light these changes in cultural representations may shed on changing sexual politics in the late twentieth and early twenty-first century.²⁷

There is also a ‘film-as-law’ approach, which asks how films about law constitute a legal culture beyond film. This approach pays special attention to film’s unique qualities as a medium and asks how its peculiar ways of world-making shape our expectations of law and justice in our world at large.²⁸ Writings in the ‘film-as-law’

¹⁹ See (describing the evolution of the field of television studies) Robert Allen and Annette Hill (eds), *The Television Studies Reader* (London, Routledge, 2004) 3–6.

²⁰ Asimow, *The Lawyer in Your Living Room* (n 18).

²¹ *Ibid.*

²² See Anthony Chase, *Movies on Trial: The Legal System on the Silver Screen* (New York, New Press, 2002) (describing films about law as a vehicle to explore popular beliefs about law and politics). See also (for essays discussing film stories about law) John Denvir (ed), *Legal Realism: Film as Legal Texts* (Chicago, University of Illinois Press, 1996).

²³ See (for reading ‘law films’ as feminist critiques of power struggles in law to imagine a more inclusive and compassionate legal order) Orit Kamir, *Framed: Women in Law and Film* (Durham, Duke University Press, 2006).

²⁴ Paul Bergman and Michael Asimow, *Reel Justice: The Courtroom Goes to the Movies* (Kansas, Andrews & McMeel, 1996).

²⁵ James Elkins, ‘Reading/Teaching Lawyer Films’ (2004) 28 *VLR* 813.

²⁶ Steve Greenfield, Guy Osborn and Peter Robson, *Film and the Law* (New York, Cavendish, 2001).

²⁷ Cynthia Lucia, *Framing Female Lawyers: Women on Trial in Film* (Austin, University of Texas Press, 2005).

²⁸ See Jessica Silbey, ‘Patterns of Courtroom Justice’ (2001) 28 *JL&S* 97. See also (showing how the genre of ‘the female lawyer film’ both emboldens and undermines women’s authority in law and society)

vein often explore the rhetorical power of film to affect popular legal consciousness.²⁹ They also tend to look closely at film's capacity to persuade us of a particular view of the world, to convince us that certain people are good or bad or guilty or innocent by positioning the audience as the judge or jury.³⁰ As Ruth Buchanan and Rebecca Johnson, in their 'film-as-law' scholarship, saliently explain:

[V]iewers are actively positioned by film to identify with certain points of view; to see some groups of people as trustworthy, dangerous, disgusting, laughable; to experience some kinds of violence as normal; to see some lives as lightly expendable.³¹

Thus, by this latter approach, film and law are compared as epistemological systems, formidable social practices that, when combined, are exceptionally effective in defining what we think we know, what we believe we should expect, and what we dare hope for in a society that promises ordered liberty.³²

Moving from the big screen to the small screen should be an inevitable step for legal scholars working within either of the above-mentioned approaches. Betting that the sheer ubiquity and influence of television ought to attract those interested in the impact of popular culture on legal (or other socio-political) systems, we embarked on collecting the essays for this volume.

III. Noteworthy Television and Law Books of the Past

Several books about law on the small screen deserve mention before setting out the structure of the present book. *Prime Time Law*³³ was an early examination of television lawyers and legal procedure. A main interest of this collection by Robert Jarvis and Paul Joseph is its spotlight on television lawyers. It consists of 17 essays written by a combination of academic lawyers, historians and specialists in the media. Eleven essays focus on individual shows that span four decades of television: *Perry Mason*, both versions of *The Defender* (both from the 1960s), *Paper Chase* and *Rumpole of the Bailey* (from the 1970s), *Matlock*, *LA Law* and *Hill Street Blues* (from the 1980s), and *NYPD Blue*, *Murder One*, *Picket Fences* and *Law and Order* (from the 1990s).³⁴

Lucia, *Framing Female Lawyers*. See also Rebecca Johnson, 'Leaving Normal: Constructing the Family at the Movies in Law' in Lori Beaman (ed), *New Perspectives on Deviance: The Construction of Deviance in Everyday Life* (Scarborough, Prentice-Hall, 2000) 163.

²⁹ Silbey, 'Patterns of Courtroom Justice' (n 28).

³⁰ Silbey, 'Criminal Performances: Film, Autobiography and Confession' (2007) 37 *NMLR* 189; Silbey, 'Filmmaking in the Precinct House and the Genre of Documentary Film' (2005) 29 *CJL&A* 107; Silbey, 'Judges as Film Critics: New Approaches to Filmic Evidence' (2004) 37 *UMJLR* 493. See also Jennifer Mnookin, 'Reproducing a Trial: Evidence and Its Assessment in Paradise Lost' in Austin Sarat, et al (eds), *Law on the Screen* (Palo Alto, Stanford University Press, 2005).

³¹ See Ruth Buchanan and Rebecca Johnson, 'Strange Encounters: Exploring Law and Film in the Affective Register' (2008) 46 *LP&S* 33.

³² See (for comparison of film and law as knowledge systems) Silbey, 'A History of Representations of Justice: Coincident Preoccupations of Law and Film' in *Representations of Justice* (n 13).

³³ Jarvis and Joseph, *Prime Time Law* (n 6).

³⁴ In *Hill Street Blues*, *NYPD Blue* and *Murder One* lawyers make only limited appearances. These would be more accurately described as 'police shows' rather than 'lawyer shows'.

The subjects of the essays varied from the social themes (love triangles and work life) to the pursuit of justice through lawyering and detective work. The contribution of the individual essays to the field of ‘law and television’ studies was initially limited to considerations of the changes over time in the content of certain programmes or, in some cases, across programmes and genres.

Elayne Rapping’s *Law and Justice: As Seen on TV* is a sustained argument on the representation of legal process on television and its interrelationship with social justice more broadly.³⁵ Therein, she examines the wide-ranging and diverse law-related programmes from the 1940s to the present, touching especially on the advent of televised trials in the United States. She also focuses on *Law and Order* specifically, as well as some of the more notorious trials of the past three decades (including that of OJ Simpson and the Menendez brothers). Rapping argues that the public consumption of law in the forms it has taken on television (mostly crime shows, whether fictional or not) implicates the political growth of the conservative right in the United States. Hers is a trenchant and vigorous critique of the social construction of the legal imagination through popular culture.

Barbara Vilez’s *Television and the Legal System* is principally a survey of television shows in the United States spanning the decades since the 1960s.³⁶ She categorises the decades in terms of their programming content, describing the individual case-focused dramas of the 1960s and 1970s as depicting lawyers who are ‘guardian angels of the law’.³⁷ The shows of the 1980s, such as *LA Law*, focused more on the lawyer’s professional office life and the relationships between lawyers and paralegals.³⁸ What Vilez calls the final ‘third generation of television lawyer[s]’ centres on the personal and professional lives of female lawyers, as originally exemplified by shows such as *Ally McBeal* and *Judging Amy*,³⁹ a short list to which one might now also add *Damages* and perhaps *Fairly Legal*. Vilez’s contribution to the literature is significant, but it does not describe a universal phenomenon and is limited to the United States.⁴⁰

These seminal works aside, recent empirical work on popular attitudes towards law and lawyers based on television and other media suggest that interest in popular culture and law is growing.⁴¹ In this research, however, an emphasis on film remains and television still plays a mere tangential role.⁴² The current volume about law on

³⁵ Rapping, *Law and Justice As Seen on TV* (n 18).

³⁶ First published in French under the name *Séries Télé: Visions de la Justice* (n 8).

³⁷ *Ibid* 37.

³⁸ *Ibid* 48.

³⁹ *Ibid* 54.

⁴⁰ Robson, ‘Lawyers and the Legal System on TV’ (n 10) 340.

⁴¹ See Kimberlianne Podlas, ‘The CSI Effect—Myth and Reality’ (paper delivered at Annual Meeting of the Law and Society Association, Baltimore, July 2006). See also Robson, ‘Lawyers and the Legal System on TV’ (n 10) and ‘Developments in Law and Popular Culture’ (n 13).

⁴² However, there are two exceptions: (1) a transnational study conducted in Argentina, Australia, England, Germany, Scotland and the United States where we looked at the sources of students’ perspectives on various aspects of justice, M Asimov, S Greenfield, J Guillermo, S Machura, G Osborn, P Robson, C Sharp and R Sockloski, ‘Perceptions of lawyers: a transnational study of student views on the image of law and lawyers’ (2005) 12 *International Journal of the Legal Profession* 407, and (2) a similar empirical study inquiring of first year law students as to their knowledge of the cinema of justice, television lawyers and role models in film, television and literature, V Salzmann and P Dunwoody, ‘Do Portrayals of Lawyers Influence How People Think About the Legal Profession’ (2005) 58 *Southern Methodist University Law Review* 411.

the small screen aims to fuel both the interpretative and empirical work on television programming and its various relationships to our national justice systems.

IV. Theoretical Perspectives on Television and Law Studies

In this book we sought to take stock of the diversity of approaches to the study of law and television, and to craft a preliminary taxonomy that enriches analysis in the field. The structure of this volume is not the only way to account for the field of ‘law and television’ studies, but in light of the field’s history and its major contributors thus far, we thought it sensible to build on the founding texts and to derive some broader categories in which to delve more deeply.

Building on some of the earlier empirical and historical work on television production and media reception, Part I of this book investigates the method and context of doing law and television scholarship. All five authors included in Part I approach the question of ‘doing law and television scholarship’ from slightly different angles, but each is uniquely interested in the ‘how’ of television rather than the ‘what’ of its programming. These essays make some of the most unique contributions to the field, and it is for this reason that we have put them at the beginning of the book.

Part II builds on the formidable scholarship of the past that investigates television genres as a mechanism for understanding the programme’s meaning and impact. The first section of Part II contains four essays that bring the field into the twenty-first century, evolving understandings of past law and television genres for a contemporary audience. Taunya Banks’ piece investigates race and gender in cable television shows about law. Hers is an inquiry into the transformation of the primary television format, from network broadcasts to cable-based programming, and the complex and crucial categories of identity (*vis-à-vis* race and gender) as they are there represented in fictional stories about law. Paul Bergman explores what he calls ‘rape-centred’ law and justice television shows to analyse whether the period of law reform directed at prosecuting rape cases more effectively (the 1980s and 1990s) was reflected in or reinforced by the popular media representations of criminal rape cases. Christine Corcos identifies a new American genre of television show about law: psychic detective dramas, whether they be fictional or reality-based. Her chapter explores these shows in detail, offering theories on the reasons behind their popularity and their relationship to the rise in scientific evidence’s role in establishing legal-truth claims, and in offering the added dimension of scientific authentication to the legitimacy of legal verdicts. Tung Yin explores yet another new American law and justice television genre: the terrorism thriller. His chapter focuses generally on the content of these newly popular shows since 11 September 2001, and also more specifically on the characterisation of lawyers within the stories. Yin compares the (mostly negative) characterisation of criminal defence lawyers in these shows with real life examples of lawyers involved in real-time counterterrorism operations as a way to critique and challenge the portrayal of lawyers in this new genre of television programming.

The second section of Part II focuses exclusively on one genre of law and television programming: ‘reality TV’. Although ‘reality TV’ as it relates to law has been around in the United States at least since trials were first televised in the early 1980s, the explosion throughout the world of court television and reality police shows in the late 1990s and the 2000s implies more than a trend, it is an obsession. These chapters exemplify the diversity in ‘reality TV’ programming today. In her chapter, Nancy Marder analyses six ‘courtroom reality’ shows during a week of programming in the Chicago metropolitan area. Marder conducts a qualitative and quantitative content analysis of these shows to draw conclusions about the character and role of television judges as they relate to our understanding of actual judging and courtroom practice. Marilyn Terzik also writes about ‘courtroom TV’, but focuses solely on the wildly popular *Judge Judy* in the United States. Terzik’s approach contrasts with Marder’s in that she investigates the process of ‘message design’ in the television aesthetic, that is, the ‘manipulation and planning of signs and symbols that can be produced for the purpose of modifying the cognitive or affective behavior of viewers’. Indeed this chapter, combined with Marder’s, forms a vibrant and contrasting pair of essays on reality court television.

Freya Kodar uses empirical and historical methods to analyse the reality television show *Til Debt Do Us Part*, which airs primarily in Canada and is about debt management. Kodar’s analysis situates this new reality television show within the context of ‘reality’ law shows as well as game shows, the latter of which clearly have a much longer pedigree than courtroom television shows do. Despite the obvious differences in the content and context of this type of show from the two previous examples, Kodar’s analysis parallels many of the others in the book by exploring, at its conclusion, the role of television (especially ‘reality’ television) in constituting popular notions of responsibility and legal and social fairness, as well as the role of the State in promoting national welfare.

Mark Tunick analyses a new genre of reality television that combines twenty-first century surveillance and communication techniques to target criminal predators. Tunick’s analysis of the four years of *To Catch a Predator* contains in-depth content analysis of the programming, as well as a critical examination of the role of surveillance tactics—including those involving television—in the criminal justice system. This chapter is both an examination of a particularly horrifying feature of our criminal justice landscape, as well as a trenchant analysis of the complicity of television and television viewing in exacerbating the social ills the programme claims to be exposing.

Stefan Machura brings the discussion to Germany, where he analyses the lengthy history of ‘courtroom television’ in that country from the 1960s to the present. Machura is particularly interested in the changing trends of that programming as it relates to the commercial pressure on television broadcast companies to increase their audiences. Indeed, he notes a trend in the programming that is also reflected in the other chapters in this section: the legal conflicts have grown exaggerated over time but the image of the judge as revered legal hero who brings peace and order has not. Ultimately, however, whether or not we can call this patterning ‘reality-reflective’ or ‘reality broadcasting’ is the focal question underlying the analytical framework of all the contributions included in this section.

Part III returns to the roots of law and television scholarship. The essays in this last section focus on individual shows in order to examine contemporary themes of law and justice. The innovation of this last section is threefold. First, these chapters are the most international of the volume, focusing on programmes from Canada (Ummni Khan, Jennifer Schulz), Spain (Anja Louis), and the United States (Annette Houlihan, Sara Ramshaw). Second, these chapters focus on the particularly contemporary manifestations of legal programmes: national identity in a world with increasingly blurry national boundaries, alternative dispute resolution, terrorism and law (Ryan Thomas and Susan Ross, Jennifer Schulz), vigilante justice in societies with decreasing levels of social welfare (Sara Ramshaw), and the relationship between surveillance powers and law enforcement (Angus Nurse). Third, as compared to the other sections of the book, a larger number of the authors in Part III are new to the field of ‘law and popular culture’ studies, some of them engaging in ‘law and television’ scholarship for the first time.

So, in short, to those who have recently joined the conversation, welcome—we are proud to have your work in this volume. To the others who have returned to contribute to scholarship about law and popular culture, we thank you for joining us in this particular volume on law and justice on the small screen.

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