

ARTICLE

THE VIEW FROM THE COUCH

*Blake Gilson**

“BOMBSHELL TONIGHT” blasts from my fifty-five inch television, and I see a two-foot image of a blonde female in dark clothing.¹ The lady is none other than television personality, legal commentator, and former prosecutor Nancy Grace. I sit back and prepare to become enmeshed in the latest events of today’s trial.

Legal media coverage is not new, but it now comes with a seemingly unprecedented focus on entertainment. The first half of 2013 was packed full of drama, sex, and murder. The Jodi Arias and George Zimmerman trials are prime examples.² The media covered those events through a lens of entertainment, hoping to create a foundation of understanding for non-legal professionals. Like all news events, legal happenings are packaged and sold to media audiences in which hype is paramount, finer legal points are minimized, and events are universalized.³

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1. Television star Nancy Grace often uses this phrase. For an example, see Spencer Kupper, *Bombshell Tonight*, YOUTUBE (May 7, 2012), http://www.youtube.com/watch?v=7PFTivp_Hh8.

2. The Arias and Zimmerman trials are certainly not the only examples of criminal trials that garnered attention. See, e.g., Stephen Loiaconi, *Nancy Grace: Casey’s Deposition ‘Unbelievable’*, HLNTV (Apr. 4, 2012), <http://www.hlntv.com/article/2012/01/12/nancy-grace-caseys-deposition-unbelievable> (discussing an “unbelievable” development in the Casey Anthony case); *What You Need to Know About the MacNeil Trial*, HLNTV (Oct. 7, 2013), <http://www.hlntv.com/video/2013/10/06/martin-macneill-murder-trial-back-ground>.

3. See LANCE BENNETT, NEWS: THE POLITICS OF ILLUSION 15 (1996) (discussing the multitude of factors that drive media hype).

American audiences like drama, and my fiancée and I are no different. We will pay to access it, we will watch commercial after commercial to get it, and we want every detail. Television producers know this and have found legal troubles to be a ripe source of stories that a television audience will spend countless hours obsessing over. Nothing demonstrates this better than the criminal prosecution of Jodi Arias.⁴ The salacious facts of the case involved lust, jealousy, lies, a brutal murder, and a young attractive female with a made-for-TV personality.⁵ A jury ultimately convicted her of first-degree murder of her ex-boyfriend Travis Alexander.⁶

The Jodi Arias trial lured my fiancée and me in with the same torrid narrative that hooked much of the American public. A beautiful young woman accused of a horrible crime,⁷ with undertones of religious and sexual manipulation, unsurprisingly (though somewhat unexpectedly) piqued our interest. Once hooked, we could not help but stay up with the latest live blogging and cable news coverage. The constant stream of blog posts kept us hooked to the action during the day and our eyes glued to the cable news coverage into the evening and night.

Television amplified the drama by obsessively focusing on every intimate detail of the defendant's and victim's lives and the graphic gruesomeness of the murder. The lineup of CNN's legal talking heads was impressive: Jane Velez-Mitchell,⁸ Nancy Grace,⁹ Dr. Drew On Call,¹⁰ and HLN After Dark.¹¹ Almost every night, they each provided a wealth of commentary and slightly different perspective on the day's events. Accompanying them

4. In fact, the media coverage became so intense that Ms. Arias asked the judge to completely exclude the media from her sentencing, sparking a debate about whether the case had become a public controversy. *Jodi Arias' Attorneys Seek to Bar Live Coverage of Trial*, CBS NEWS (Oct. 4, 2013), http://www.cbsnews.com/8301-201_162-57606180/jodi-arias-attorneys-seek-to-bar-live-coverage-of-trial/.

5. Though a full transcript of the argument is difficult to find online, quoted portions of the closing argument are available online. Nancy Grace, *Prosecutor's Closing Argument in Jodi Arias Murder Trial*, CNN (May 2, 2013, 8:00 PM), <http://transcripts.cnn.com/TRANSCRIPTS/1305/02/ng.01.html> (quoting Transcript of Prosecutor's Closing Argument in Jodi Arias Murder Trial, State v. Arias, CR2008-031021-001 (Ariz. D. Ct. 2013)).

6. TheCount.com, *Jury Verdict Jodi Arias Murder Trial (Live in Courtroom)*, YOUTUBE (May 8, 2013), <http://www.youtube.com/watch?v=EtoA4m3O57s>.

7. See Grace, *supra* note 5.

8. *Jane Velez-Michelle*, HLN TV, <http://www.hlnv.com/shows/jane-velez-mitchell> (last visited Jan. 28, 2014).

9. *Nancy Grace*, HLN TV, <http://www.hlnv.com/shows/nancy-grace> (last visited Jan. 28, 2014).

10. *Dr. Drew On Call*, HLN TV, <http://www.hlnv.com/shows/dr-drew> (last visited Jan. 28, 2014).

11. *HLN After Dark*, HLN TV, <http://www.hlnv.com/shows/after-dark> (last visited Jan. 29, 2013).

was a small army of guests that ranged from legal professionals to body language experts¹² to jury interviews¹³ to people who personally knew those involved in the case.¹⁴

HLN After Dark even physically constructed a replica of the bathroom where the murder took place so that it could act out the murder in utterly exquisite detail.¹⁵ Each time, they told the story from the different perspectives of the defendant and victim. And what seemed like every night, HLN After Dark brought in members of the public to discuss and cast decisions or “verdicts” on key questions of the case.¹⁶ Gathering twelve seemingly ordinary people into “mock juries”¹⁷ encouraged the audience to play along, to think like jurors by evaluating the evidence and arguments as active participants rather than passive spectators. My fiancée and I irresistibly fell into this delusion, talking constantly about our decision on each of the “verdicts” as though we too sat on the jury. We knew the coverage was sensationalistic, playing up each aspect by dissecting each plot point with each night’s coverage, but we could not help ourselves from engaging in the roleplaying egged on by the shows.

The courtroom drama itself was also addictive. The sparring between lawyers was pure entertainment. It was difficult not to feel a rush of excitement each time prosecutor Juan Martinez took the podium to cross examine a defense witness.¹⁸ The legal jargon was initially a barrier to understanding nearly every courtroom scene, but the commentators provided explanations of key points. As the trial went on, we found ourselves easily

12. *Body Language Expert: Did You Catch Arias Doing This?*, HLNTV (Feb. 11, 2013, 11:36 PM), <http://www.hlntv.com/video/2013/02/11/body-language-expert-did-you-catch-arias-doing>.

13. *Two Arias Jurors to Break Their Silence to Dr. Drew*, HLNTV (May 27, 2013, 11:39 AM), <http://www.hlntv.com/article/2013/05/26/two-arias-jurors-speak-dr-drew-tuesday>.

14. *Nancy Grace Smacks Down Jodi Arias Friend*, HLNTV (May 23, 2013, 9:34 AM), <http://www.hlntv.com/video/2013/05/23/nancy-grace-arias-verdict-hung-donavan-bering>.

15. Alexandra Thomas, *Prosecution v. Defense: Two Sides of the Crime Scene*, HLNTV (Mar. 20, 2013, 2:58 PM), <http://www.hlntv.com/video/2013/03/19/after-dark-re-enactment-killing-scene>; see Alexandra Thomas, *HLN After Dark Reenacts Arias Killing*, HLNTV (May 29, 2013, 2:38 PM), <http://www.hlntv.com/slideshow/2013/03/18/jodi-arias-trial-evidence-murder-scene> (photo gallery).

16. Brian Stelter, *Coverage of Murder Trial Bolsters Ratings at HLN*, N.Y. TIMES, Mar. 18, 2013, at B5, *available at* http://mediadecoder.blogs.nytimes.com/2013/03/17/hlntv-jodi-arias-coverage-helps-bolster-ratings/?_r=1.

17. *Id.*

18. See Ray Stern, *Jodi Arias Trial: Prosecutor Juan Martinez’s “Meltdown” with Murder Suspect*, PHOENIX NEW TIMES (Feb. 26, 2013, 6:30 PM), http://blogs.phoenixnewtimes.com/valleyfever/2013/02/jodi_arias_trial_prosecutor_ju.php (“Arias . . . said in her third day of being cross-examined that [Juan] Martinez was making her ‘brain scrambled.’ Even viewers who’d prefer to see her hang could sympathize.”).

picking up complicated lawyerly words. Voir dire, side bar, and surrebuttal are new words added into my vernacular that I will not soon forget.

What shocked me was how accessible the legal knowledge became. I have no legal training, no legal education, and no legal exposure of any kind outside of one random conversation about playing a witness in a mock trial. While I might not have fully understood the complexity within each situation, the legal commentators narrated so well that they at least tricked me into believing that I understood every legal issue at stake. Indeed, during the commentary, the TV shows regularly provided the perspective of both layperson and legal analyst. The legal analyst regularly pointed out how the simplistic analysis from the layman failed to account for the legal minutia that made one side's argument viable or totally nonsensical. This back and forth dialogue facilitated the perception that I was rapidly learning the law.

But, I knew even while listening to these conversations that I was missing some of the finer points of the law. I sensed a deeper decision involving more complicated legal questions lurking somewhere beneath the gloss of media buildup. I got the feeling that a much larger legal discussion lay just around each turn, and it was a discussion that I was not going to hear. Even so, the freshness of perspectives, topics, and new angles kept us coming back for more. Even when coverage became repetitive, I still could not bring myself to change the channel, instead letting the TV fall into the background with only enough attention given to keep an ear out for new facts, updates, or commentary.

The whole experience replicated the sensationalism found in many other aspects of the twenty-four hour news cycle, where news stories are rehashed again and again for a willing audience hungry to consume each new fact.¹⁹ Legal drama, inside and outside the courtroom, has become entertainment for a public intent on learning everything they can. It sure was for me.

19. See, e.g., Lucy P. Marcus, *Newton, Conn.: Why I Turned Off Social Media and 24-Hour News*, HUFFINGTON POST (Dec. 18, 2012, 1:24 PM), http://www.huffingtonpost.com/lucy-p-marcus/newtown-connecticut-why-i_b_2323029.html ("I was drawn to . . . the 24-hour news channels, hungry for information."); see also BILL KOVACH & TOM ROSENSTIEL, *WARP SPEED: AMERICA IN THE AGE OF MIXED MEDIA 2* (1999) (arguing that audiences hunger for stories full of "sensationalism, entertainment, and opinion"). One viewer found the material in twenty-four hour media to be so sensationalist that the viewer created a video montage using media coverage from major networks, such as CNN. Bannedsquirrel9, *Sensationalism Montage*, YOUTUBE (Dec. 6, 2011), <http://www.youtube.com/watch?v=cXc5fn6b9RI>. For a comprehensive listing of sensationalist stories that have garnered a great deal of public attention, see Andrew K. Dart, *News Media Sensationalism and Dishonesty*, AKDART.COM, <http://www.akdart.com/med21.html> (last visited Jan. 28, 2014).

Nonetheless, my obsession with legal drama, while perpetuated by TV's legal talking heads, stemmed more from my desire to be entertained than an interest in the legal aspect of the events themselves. Legal "water-cooler talk" has a market because the public has always been interested in stories with intense drama, and such stories have been told in an oral tradition since the beginning of history. After all, legal dramas with scandalous subject matter draw more attention than dozens of other stories.²⁰ Oedipus Rex, I am sure, would have made excellent televised legal drama.

Rather than objecting to this obsession as commoditizing legal suffering, we should accept the entertainment aspect of legal drama as an inevitability. Not everyone agrees. When responding to a question about cameras in the nation's highest court, Justice Scalia said in an interview with CNBC's Maria Bartiromo that he felt "there's something sick about making entertainment about real people's legal problems."²¹ However, while making the facts of a story into a form that can be consumed by an audience in an entertaining way may be sickening, such rubbernecking is unavoidable. The public wants to know the details of the scandal and wants to be shocked by its findings.

Yet the inevitability of using legal drama as entertainment is nothing to mourn about. Packaging the legal matters into television entertainment brings a nonlegal audience into the legal system. The hype attracts the public to the story and engages them in a way that the raw legal facts of a case often will not.²² While there is a possibility of confusion and misunderstanding because the finer details of procedure may be lost, many media legal analysts recognize the relative ignorance of their audience and make an effort to explain the complex statutes, processes, and jury instructions at issue. This process spreads legal understanding and provides an opportunity for

20. See, e.g., A. Drakontaidis, *Why Is the News Media Obsessed with the Jodi Arias Trial?*, REAL TALK (May 1, 2013), <http://realtalkrealdebate.wordpress.com/2013/05/01/why-is-the-news-media-obsessed-with-the-jodi-arias-trial/> (summarizing some of the tragic stories that the Jodi Arias coverage overshadowed); see also Merrill Knox, *After Strong Jodi Arias Ratings, HLN Looks Ahead to George Zimmerman Trial*, TVNEWSER (May 22, 2013, 1:48 PM), http://www.mediabistro.com/tvnewser/after-strong-jodi-arias-ratings-hln-looks-ahead-to-george-zimmerman-trial_b180390 (comparing the ratings CNN received during times the Jodi Arias trial to times when typical stories aired and recognizing the massive swell in ratings associated with the Jodi Arias trial).

21. *Justice Scalia Says 'Not a Chance' to Cameras*, TODAY (Oct. 11, 2005), <http://www.today.com/id/9649724/ns/today/t/justice-scalia-says-not-chance-cameras/#.UIQud1CkqRR>.

22. See, e.g., Drakontaidis, *supra* note 20 (describing other cases that the public ignored because they lacked media hype).

education that would otherwise be unavailable. While it may not ensure proper legal education, just as a good teacher may not ensure a good pupil learns everything, the space for engagement creates the foundation for deeper understanding of the law.

In the process of consuming the entertainment of the Jodi Arias trial, I learned many things about the legal profession, its jargon, and courtroom power positioning. I feel very strongly that the story itself, involving a horrible crime and a twisted relationship, is something I will never forget. Nonetheless, I cannot help but be grateful that I became exposed to a body of knowledge that I would otherwise have ignored.²³

Of course, the Jodi Arias trial was not the only high profile case of 2013. Television's coverage of the George Zimmerman trial illustrates another unique aspect of media legal coverage. The media helped provide a larger social discussion centered on the facts of the case. The events of the trial became universalized as part of a national social conversation that would be near impossible without national coverage.²⁴

In *Florida v. Zimmerman*, Trayvon Martin, a 17-year-old African-American high school student, was shot by George Zimmerman, a 28-year-old mixed-race Hispanic.²⁵ The case raised questions of self-defense, racial profiling, gun rights, and race relations. While many people believe that the case was not about race, it is difficult to dispute that it took place against the backdrop of ever-evolving racial relations in America.

What attracted me to the Zimmerman trial was the questions it posed regarding self-defense. Initially, the legal novelty of stand your ground laws and the physical engagement question of the trial sparked a deep sense of curiosity. Yet I soon realized the deeper social questions at stake. While the self-defense issues lured me into the trial, the intense arguments regarding racism in America kept me hooked.²⁶

23. Luckily or unluckily for the American public, Lifetime captured the story in a made-for-TV movie called "Jodi Arias: Dirty Little Secret." JODI ARIAS: DIRTY LITTLE SECRET (Lifetime 2013).

24. Karen Grigsby Bates, *National Reaction to the Zimmerman Verdict: What Next?*, NAT'L PUB. RADIO (July 14, 2013), <http://www.npr.org/blogs/codeswitch/2013/07/14/202131045/National-Reaction-To-The-Zimmerman-Verdict-What-Next>.

25. For a copy of the official charges, see Issue Capias, *State v. Zimmerman*, SA NO: 1712F04573 (Fl. D. Ct. 2013), available at <http://i2.cdn.turner.com/cnn/2012/images/04/11/zimmerman.charges.pdf>.

26. See, e.g., Danielle Cadet, *Mark O'Mara: If George Zimmerman Were Black 'He Never Would've Been Charged with a Crime'*, HUFFINGTON POST (July 14, 2013), http://www.huffingtonpost.com/2013/07/14/mark-omara-george-zimmerman-black_n_3593337.html (noting that the Zimmerman trial sparked racial debates and quoting Zimmerman's attorney's statement that "[Mr. Zimmerman] never would've been charged with a crime" if Zimmerman was black); Lauren Rankin, *George Zimmerman Trial: Just Further Proof of Our Racist Justice System*, POLICYMIC (June 11, 2013),

One guest who appeared repeatedly on the legal show “Dr. Drew On Call” was Shahrazad Ali, an outspoken social commentator and author of *Are You Still a Slave?* and *The Blackwoman’s Guide to Understanding the Blackman*.²⁷ Her views on race relations involved a polarizing view of white versus black and, while extremely controversial, helped place the events of the Zimmerman trial into a larger social context. The exchanges between Ms. Ali and the other commentators brought out the much larger social impact of the trial, even though the discussion seemed unproductive at times.

These broader issues, which became much more important than just the legal facts in the case, thrust into the public limelight the fact that race relations in America are far from perfect; many feel the situation has become dire, and more work must be done. The public attention to the case culminated in a response from President Obama on the progress and needed attention to the issue of race in America.²⁸

At a more personal level, watching (or more accurately, obsessing over) the media coverage gave me an edge at the company water cooler. I became the expert on the law amongst my co-workers. Conversations about the trial were inevitable, and immersing myself into the sheer volume of commentary had given me a breath of legal understanding my coworkers simply lacked. I recall one specific conversation in which a colleague of mine said that Mr. Zimmerman stepping out of his vehicle and approaching Trayvon Martin involved aggression and thus legal responsibility for the confrontation and violence that followed. I was able to respond by discussing the nuances of Florida law that seriously complicated imposing legal responsibility, whatever the moral merits of my co-worker’s point.

Even though my legal understanding increased over the two trials, the law as a profession did not become more attractive to me. I had witnessed the mystique and mystery around the legal

<http://www.policymic.com/articles/47559/george-zimmerman-trial-just-further-proof-of-our-racist-justice-system> (arguing that Zimmerman’s case reveals structural inequalities in the American justice system); W.W., *Getting Away with It*, ECONOMIST (July 15, 2013), <http://www.economist.com/blogs/democracyinamerica/2013/07/trayvon-martin-and-george-zimmerman> (“[O]n the whole, our criminal-justice system seems so frightfully racist . . .”).

27. E.g., *Miss Ali Makes ‘Behavior Bureau’ Debut*, HLNTV (July 11, 2013, 11:25 P.M.), <http://www.hlntv.com/video/2013/07/11/miss-ali-makes-behavior-bureau-debut?clusterId=1347#videoplayer>; see also *Books*, OFFICIAL SITE OF SISTER SHAHRAZAD ALI, http://sistersshahrazadali.com/home/?page_id=30 (last visited Jan. 28, 2014).

28. Madeleine Morgenstern, *Obama Interrupts Press Conference to Comment on Zimmerman Verdict: ‘Trayvon Martin Could’ve Been Me 35 Years Ago’ (Full Video)*, THE BLAZE (July 19, 2013), <http://www.theblaze.com/stories/2013/07/19/obama-trayvon-martin-couldve-been-me-35-years-ago/>.

profession defog, and watching and following the commentary made me think I could, with study and focus, become a legal professional. But I do not want to. The legal commentary and trial demonstrated the conflict driven core of the legal system.²⁹ My current profession (information technology) focuses on constructive development, and conflict is a rarely used tool to bring agreement, consensus, and solutions. It is not the zero-sum winners-win and losers-lose environment I witnessed play out over the course of the two trials. Frankly, I find the consensus building involved in information technology far more satisfying.

Even so, I continue to believe that media coverage of criminal trials serves a vital function in our society, even if it is often sensationalized. Media coverage, specifically television, will continue to bring more people into legal discussions by repackaging of legal events into entertainment. This repackaging is inevitable and helps universalize the issues raised in complex legal battles into discussions over larger social issues. But, it also has a side effect of creating a new group in society, the couch-potato-legal-analyst. And I am proud to call myself one.

29. I recognize that some areas of the law are less conflict-driven than others. Nonetheless, whether a lawyer's adversary is the State in a criminal trial or an attorney arguing for inclusion of a certain clause in a contract, conflict seems to drive much of the legal profession.