

TV and DDL Guide

Monday, December 19, 2011

This is the time of the year when critics and pundits come out with their top (and, sometimes, bottom) ten lists. Bexis will soon recite his most and least favorite court decisions of the year, with his usual withering wit and disproportionate enthusiasm. Some writers have already entered the fray on the mass culture front. Our favorite television critic, [Alan Sepinwall](#), made a pretty good case for the best ten television shows of the year. We found ourselves nodding at almost all of Sepinwall's selections. We also found ourselves thinking of some of the DDL cases we ran across this year. What does that mean? Clearly, we don't get out enough.

Here are our tv favorites of 2011, along with our sometimes-logical-sometimes-puerile associations with legal rulings we encountered over the past twelve months.

Game of Thrones – HBO gave us a Tolkien-esque fantasy where dynamic leaders formed shifting alliances to topple one another. The character with whom the audience most identified was beheaded near the end of the season, throwing us (at least those of us who hadn't read George R.R. Martin's books) for a loop. Peter Dinklage rightly got some Emmy love as a supporting actor. We can't wait for the next season to begin. There is already a teaser trailer online [here](#). Season One contained plenty of strategy, sex (including yucky incest), and lots of blood. Naturally, when we think of battles in high places, we think of the Supreme Court's opinion in *Mensing*, and how it squared with, or was inconsistent with, *Levine*. We'd like to think that the presumption against preemption, at least in implied preemption cases, is now as dead as King Robert Baratheon, Khal Drogo, and (sob) Ned Stark.

Boss- Kelsey Grammer played the same character, Frasier Crane, for many years across two sitcoms, **Cheers** and **Frasier**. In fact, he tied James Arness (**Gunsmoke**) for longevity. Grammer has also supplied the voice to our favorite **Simpsons** villain, Sideshow Bob (12 times and counting). Now Grammer goes dramatic, inhabiting the role of Mayor of Chicago, lording over the City of Big Shoulders like a mighty Colossus. Actually, make that a crazy Colossus, because Hizzonor is starting to lose his faculties. The Mayor has been diagnosed with [Lewy body dementia](#). No doubt some enterprising Chicago plaintiff lawyer will take the case and allege that off-label use of some blockbuster drug caused this malady. **Boss** gives us another reason to tune to the Starz channel, besides seeing **ConAir** for the fortieth time.

Grammer's character is crazy, brilliant, colorful, and brutal. For some reason, we began thinking of our favorite Chicago judge, who most definitely is not crazy, but certainly is brilliant, colorful, and, yes, sometimes brutal when the level of advocacy is sufficiently execrable.

Community – This offbeat comedy is set in a community college full of crazy doings. The show is endlessly creative, full of meta-humor, and it pretty much never goes where you think it will go. Consequently, it has abysmal ratings and NBC has placed it on hiatus. (This is the same network that revived **Fear Factor**.) We cannot think of too many cases involving higher (or not-so-high) education, but we did blog about a case loaded up with perfectly ridiculous allegations against a university hospital. In [*Milton v. Robinson*](#), 131 Conn. App. 760 (Conn. App. 2011), the plaintiff claimed an adverse reaction from her involvement in a clinical trial. The injury was a rash, and the plaintiff appears to have taken the placebo, not the active drug. The plaintiff proffered her husband as an expert witness. And there's lots more silliness in that case. We have little difficulty imagining Joel McHale, Chevy Chase, Danny Pudi, and the rest of the cast having a sport with that story.

Parks & Recreation – This mockumentary at first looked like a weak sister to **The Office**, but it's now the most consistently fine sitcom on the air. Amy Poehler heads up tv's best ensemble cast about a municipal department dedicated to creating nice places for its citizens to play. We read somewhere that its take on local politics was somehow inspired by **The Wire** (only the greatest drama in the history of television). That is so hard to believe that we think it simply has to be a joke. But the show offers a lot of texture. All of the characters are vivid. Aziz Ansari barely reels-in his frantic stand-up persona – which is fine by us. Rob Lowe brings his incredible energy and brings the funny. (We have a theory that guest-hosting on **Saturday Night Live** is a finely calibrated test for real talent. It turns out that Alec Baldwin, Justin Timberlake, and Rob Lowe are vibrant, open performers. The less said about January Jones, the better.) Adam Scott was already a favorite from his appearances on the Doug Loves Movies podcast, and he plays a splendidly sincere and awkward romantic interest in **P&R**. How does this show remind us of DDL litigation? Here we must stretch. (Okay, this whole post is a self-indulgent stretcharama.) Playing games or sports in the park can lead to painful injuries. What's better for pain than a nice pain pump? And what's better for our defense-oriented selves than a pain pump case where the court soundly rejected plaintiff motions in limine? In *Musgrave v. Breg, Inc.*, 2011 U.S. Dist. LEXIS 113661 (S.D. Ohio Oct. 3, 2011), the court issued a series of pretty good rulings on warning, causation, and *Daubert*. You can revisit

our scintillating coverage of that case, complete with wildly inapposite analogies to George Harrison songs, [here](#).

Breaking Bad – For a couple of years we felt outrage that Bryan Cranston (who played the father in **Malcolm in the Middle** and an overly-sensitive dentist in five episodes of **Seinfeld**) prevailed over Jon Hamm (**Mad Men**) for the best actor Emmy. But that was before we started watching **Breaking Bad**. (By the way, we still think Hamm should have won an Emmy for his remarkable monologue in “The Wheel” episode at the end of **Mad Men** season One. We dare you to watch [this](#) and disagree.) The folks at AMC have a pretty good thing going where they always have the best drama on the air – either **Mad Men** or **Breaking Bad**. Last season’s **Breaking Bad** was transcendent. Gus Fring (played by Giancarlo Esposito) was the best villain on tv. Unless, you want to call Walter White a villain -- and how could you not? After all, this one-time high school teacher has now become a meth dealer, a child poisoner, and “the one who knocks.” We thought of the Synthes criminal sentencing of executives under the *Park* doctrine, a story that is sad beyond our poor powers of expression.

Boardwalk Empire – It’s a close call whether this HBO drama belongs on the list. The last couple of episodes of Season Two redeemed what had been a so-so string. We admire Steve Buscemi (**Reservoir Dogs**, **The Big Lebowski**, and **Ghost World**), but aren’t sure he’s a lead, or at least the right lead for this show. The character he’s based on really did run Atlantic City in the 20’s, but he was a tall hulking guy whereas Buscemi is diminutive. Still, the show has terrific production values and some wonderful actors. Plus, it’s always great to see Omar from **The Wire** back in business, even if he’s wearing spats. The show has two weird parallels to the other HBO drama listed here, **Game of Thrones**: (1) one of the main characters was killed off, reminding us of what an uncertain universe we dwell in, and (2) the penultimate episode had an incest scene that was beautifully filmed, but it made us squirm. Know what else makes us squirm? Litigation in Atlantic City, both this year and in the past. Nuff said.

Homeland – This Showtime drama is the opposite of **Boardwalk Empire** insofar as the first four or so episodes were tense and unsettling, but it started to become too conventional. A tale of terrorism and turncoats edged into more standard cop procedural territory. We’ve always adored Clare Danes. Mandy Patinkin cuts back on his usual scenery mastication and is an arresting presence. The third main character is played by Damian Lewis, yet another British actor who plays an American so well that it can be a shocker when you hear him speak in his

native voice. (Think of Hugh Laurie in **House** or Dominic West in **The Wire**.) Lewis was the lead in **Band of Brothers**, playing the late, great Richard Winters (who, by the way, deserves a [Congressional Medal of Honor](#). Too bad it'll be posthumous if it comes.) **Homeland** oozes with paranoia about the bad intentions of certain foreigners, even though some of the prime threats are domestically-grown. We are reminded of the [Heparin case](#) where a plaintiff's lawyer attempted to exploit anti-foreigner animus by proffering an "expert" on Chinese culture.

Modern Family – This is the only one of our top ten shows that might actually reside in the top ten for ratings. We've come a long way from **I Love Lucy** and **Leave it to Beaver**. We [mentioned](#) this show after Ty Burrell uttered our single favorite line of the year about his fists being England Dan and John Ford Coley. The point of the show is that "Modern" does not necessarily mean dysfunctional, at least not where it really matters. Of course, most of us think of our own families as utterly dysfunctional. How many of us geezers reluctantly signed up for Facebook, only to see five wall postings per day from some nephew whom we remember as a sweet little boy, but who now festoons the internet with the most gross, vulgar twaddle? Yikes. Anyway, there have been interesting developments on the discoverability of social media, such as Facebook. We wrote about it here. And, no, it's none of your business what our "status" is, and we don't want to help you win Farmville.

Curb Your Enthusiasm – By every right, Larry David's comedy should have grown stale and tired in its eighth season. (There's an interesting intersection of this show and legal affairs. Back in 2003, an outtake from Curb showed that a murder suspect was in Dodger Stadium at the time of the killing. Larry David has gone on record that supplying an alibi to an innocent man might be the one swell thing he has done in his life. Not true: putting JB Smoove on tv also counts as a good deed.) This season's "Palestinian Chicken" episode is on the Mt. Rushmore of comedy. Someone calls out Larry for being a "social assassin" because he has a genius for saying hurtful things that nobody else will dare say, and he seems to get away with it. It's kind of like the *DiCosolo* case, which we wrote about [here](#), where the plaintiff's lawyer somehow got away with a closing argument accusing the defendant of "killing" the decedent out of "corporate greed run amok," and of mounting a "frivolous defense." We found this argument to be, unlike **Curb**, not the least bit funny.

Louis – Louis CK constantly walks the line between painful revelation and gut-busting comedy. For a couple of years, Louis CK has been called the "comedians' comedian." We're

not sure what that means, though we'd love to be called "the defense hacks' defense hack." Louis wrote for other comedians, including Chris Rock. Louis wrote and directed **Pootie Tang**. (What we wouldn't do to get that credit into our Martindale-Hubbell listing.) (By the way, JB Smoove was in **Pootie Tang**. Be honest: what other ABA top 100 blawg brings you the inside dope on **Pootie Tang**?) Louis now seems to be creeping into the wider public consciousness. He guested on an arc on **Parks and Recreation** a couple of years ago. On his new show on FX (he earlier did **Lucky Louie** on HBO) Louis plays somebody very like himself, a comedian battling between commerce and principle, raising two cute daughters who are actually raising him. There were great scripts on entertaining troops in Afghanistan and dealing with a suicidal friend. (Louie's argument against suicide is one of the best we've ever heard.) Here is Louie on relationships: "It's hard to really, like, look at somebody and go, hey, maybe something nice will happen.... Or you'll meet the perfect person, who you love infinitely, and you even argue well, and you grow together, and you have children, and then you get old together, and then she's going to die. That's the best-case scenario." There's so much wisdom in the show, we'd like to share it with our kids. But a key part of Louie's comedy is the incessant foul language. To be sure, there have been some cases this year about foul language, but they either haven't been in our area or they haven't been that interesting. So we'll instead mention a case of fowl language. In [Gonzalez-Servin v. Ford Motor Co.](#), 2011 WL 5924441 (7th Cir. Nov. 23, 2011), the issue was *forum non conveniens*. The appellant lawyer failed to address controlling case law. Judge Posner likened that lawyer to an ostrich sticking its head in the sand, even supplying helpful photographs. That's about as close as the F.3d will ever get to slapstick comedy.

We think it was a great year for television. The proliferation of channels has induced the production of shows that are less broad and more nuanced. It's fine that lots of people like The Big Bang Theory or Two and a Half Men. But it's better that somewhere in the 500 channel universe there's room for Louis and Breaking Bad. If you don't like what you're watching, you can change the channel.

Would that we could do that with some of the opinions we read this year.