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# The Runaway Judge: John Grisham's Appearance in Judicial Opinions

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# The Runaway Judge: John Grisham’s Appearance in Judicial Opinions

NICHOLAS MIGNANELLI\*

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## I. INTRODUCTION

Each year, countless scholars publish articles in law reviews across the country, hoping to have some impact on the way courts interpret and apply the law. To have one’s labors approvingly cited or

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discussed by a court is one of the highest compliments a legal scholar can receive. Thus, it is the height of irony that judges have discussed or alluded to the works of novelist John Grisham—an attorney who has never authored a law review article—in over two dozen opinions. Ironic though it may be, it is not entirely unexpected, given that even the *Harvard Law Review* and the *Index of Legal Periodicals* are no match for *Penguin Random House* and the *New York Times Bestsellers List*. While clerks skimming a database or flipping through bound volumes in the stacks of a law library can overlook an essay or a study, the tales of John Grisham, whether in paperback or on the silver screen, are difficult to escape. But do Grisham's legal thrillers have literary merit? Are they suitable for inclusion in judicial opinions?

The question of literary merit is a controversy that plagued the American university in the last years of the 20th century. Following the 1987 publication of political philosopher Allan Bloom's *The Closing of the American Mind*—a damning indictment of higher education for what Bloom saw as its intellectual and moral bankruptcy—a debate erupted in English departments about which authors properly belong in the canon: those texts essential to attaining a liberal education.<sup>1</sup> The traditionalists, Bloom's allies, firmly believed that colleges and universities should teach only the "Great Books."<sup>2</sup>

Their opponents, the "cultural relativists," many of whom witnessed or participated in the counterculture movement of the 1960s, were troubled by the fact that the canon consisted almost entirely of "dead white European males"; marching under the banners of

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1. Rachel Donadio, Essay, *Revisiting the Canon Wars*, N.Y. TIMES: BOOK REV. (Sept. 16, 2007), <https://www.nytimes.com/2007/09/16/books/review/Donadio-t.html>. The dissident feminist scholar Camille Paglia famously called Bloom's book "the first shot in the culture wars." Camille Paglia, *Ask Camille*, SALON (July 22, 1997), <http://web.archive.org/web/20060524092405/http://www.salon.com:80/july97/columnists/paglia2970722.html>.

2. Bloom defines the "Great Books" as "certain generally recognized classic texts." ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* 344 (1987). Although he concedes to certain criticisms of this approach to education, he opines that "one thing is certain: wherever the Great Books make up a central part of the curriculum, the students are excited and satisfied, feel they are doing something that is independent and fulfilling, getting something from the university they cannot get elsewhere." *Id.*

Marxism, critical theory, feminism, critical race theory, etc., they argued that these authors did not sufficiently represent the breadth of human experience.<sup>3</sup> In some cases, they rejected the very notion of a universal human experience.<sup>4</sup> For this reason, they insisted on including books written by women and racial minorities.<sup>5</sup> The cultural relativists won this dispute, and English departments expanded reading lists accordingly.<sup>6</sup>

Despite the decline of the traditional canon and the more expansive view of literature found on the contemporary university campus, the distinction between literary and genre fiction persists.<sup>7</sup> Whereas the first is said to be an artistic work that is difficult to classify, the latter easily falls into a genre and is thought to be written primarily for the purpose of entertainment and, thus, commercial success.<sup>8</sup> These labels are complicated, however, when one considers

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3. See generally STEPHEN R.C. HICKS, *EXPLAINING POSTMODERNISM: SKEPTICISM AND SOCIALISM FROM ROUSSEAU TO FOUCAULT* 16–18 (2004).

4. E.g., Rux Martin, *Truth, Power, Self: An Interview with Michael Foucault*, in *TECHNOLOGIES OF THE SELF* 9, 11 (Luther H. Martin et al. eds., 1988) (“All my analyses are against the idea of universal necessities in human existence.”); Richard Rorty, *Unger, Castoriadis, and the Romance of a National Future*, in 2 *ESSAYS ON HEIDEGGER AND OTHERS: PHILOSOPHICAL PAPERS* 177, 189 (1991) (“[R]eason usually means working according to the rules of some familiar language-game, some familiar way of describing the current situation. . . . [S]uch familiar language games are themselves nothing more than frozen politics that they serve to legitimate, and make seem inevitable, precisely the forms of social life . . . from which we desperately hope to break free.” (quotations omitted)).

5. Donadio, *supra* note 1.

6. *Id.* See also NAT’L ASS’N OF SCHOLARS, *LOSING THE BIG PICTURE: THE FRAGMENTATION OF THE ENGLISH MAJOR SINCE 1964*, at 78, 80 (2000), [https://www.nas.org/images/documents/report\\_losing\\_the\\_big\\_picture.pdf](https://www.nas.org/images/documents/report_losing_the_big_picture.pdf) (finding that in the 1964–1965 academic year the most read authors in college and university English classrooms were William Shakespeare, John Milton, Geoffrey Chaucer, John Dryden, Alexander Pope, and T.S. Eliot, whereas in the 1997–1998 academic year this same list consisted of William Shakespeare, Geoffrey Chaucer, Jane Austen, John Milton, Virginia Woolf, and Toni Morrison).

7. See, e.g., Arthur Krystal, *Easy Writers*, *NEW YORKER* (May 28, 2012), <https://www.newyorker.com/magazine/2012/05/28/easy-writers>; Stephen Marche, *How Genre Fiction Became More Important than Literary Fiction*, *ESQUIRE* (Mar. 11, 2015), <http://www.esquire.com/entertainment/books/a33599/genre-fiction-vs-literary-fiction/>.

8. See generally Steve Petite, *Literary Fiction vs. Genre Fiction*, *HUFFINGTON POST*, <http://www.huffingtonpost.com/steven-petite/literary-fiction-vs->

the participation of prominent authors of literary fiction in areas of genre fiction. One thinks, for instance, of Margaret Atwood's science fiction novels *The Handmaid's Tale* (1985) and *Oryx and Crake* (2003).

While those who hold to the use of these labels would surely characterize John Grisham's legal thrillers as "genre fiction," the consistent application of postmodernism—the pinnacle of which is deconstructionism<sup>9</sup>—invalidates privileging certain texts on the basis of this binary dichotomy. As Professor Mary Beth Pringle has written on the scholarly treatment of Grisham's works: "postmodernism and, in particular, postmodern literary criticism have done much to break down barriers between so-called levels of fiction, occasionally showing detective and romance novels as well as fantasy fiction to be subtly epistemological texts."<sup>10</sup>

This is all well and good, but what of the judges? Surely those who occupy the nation's benches do not much care about the deconstruction of literary hierarchies or academic quarrels over which books belong on a course syllabus. In recent years, however, a somewhat scholarly interest has developed in how judges use literature in judicial opinions and which authors they select.<sup>11</sup> Unfortunately,

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genre-fiction\_b\_4859609.html (last updated Apr. 28, 2014), for a brief explanation of this proposition.

9. See generally JACQUES DERRIDA, *OF GRAMMATOLOGY* (Gayatri Chakravorty Spivak trans., Johns Hopkins Univ. Press 2016) (1967). Derrida took his concept of deconstruction from Heidegger's *destruction*. See MARTIN HEIDEGGER, *BEING AND TIME* 44 (John Macquarrie & Edward Robinson trans., Harper & Row 1962) (1927) ("If the question of Being is to have its own history made transparent, then this hardened tradition must be loosened up, and the concealments which it has brought about must be dissolved. We understand this task as one in which by taking *the question of Being as our clue*, we are to *destroy* the traditional content of ancient ontology until we arrive at those primordial experiences in which we achieved our first ways of determining the nature of Being—the ways which have guided us ever since." (citation omitted)). In the United States, Heidegger's fellow Nazi partisan Paul de Man popularized deconstructionism. See Carlin Romano, *Deconstructing Paul de Man*, *CHRON. HIGHER EDUC.* (Mar. 3, 2014), <http://www.chronicle.com/article/Paul-de-Man-Deconstructed/144991>.

10. MARY BETH PRINGLE, *REVISITING JOHN GRISHAM: A CRITICAL COMPANION* xvi (2007).

11. Scott Dodson & Ami Dodson, *Literary Justice*, 18 *GREEN BAG* 2D 429, 429–34 (2015); M. Todd Henderson, *Citing Fiction*, 11 *GREEN BAG* 2D 171, 171–85 (2008).

these empirical studies into the use of literature in judicial opinions have—either consciously or as a result of methodology—ignored those books outside the traditional canon.

Despite this, there is nothing to suggest that judges have a closed view about which literature is acceptable for use in their opinions. In *Law & Literature*, the most in-depth commentary we have by a jurist on the subject, Judge Richard A. Posner writes that “[p]opular novels about law . . . can profitably be studied as literature. John Grisham’s runaway bestsellers will illustrate, though they are unlikely to attain classic status.”<sup>12</sup> Indeed, we are forced to accord cultural significance to Grisham’s novels and their film adaptations when we consider how they have served as a major source of exposure to the inner workings of the courtroom and the legal profession for countless Americans over the past three decades.<sup>13</sup> Therefore, it should come as no surprise that judges have chosen to refer to Grisham’s novels.

Perhaps this phenomenon indicates that judges also enjoy Grisham’s suspenseful accounts of lawyers and litigants faced with a system stacked against them from the outset. It could also be that judges believe that analogizing to popular literature will make the law at hand easier to comprehend and their opinions more entertaining to read.<sup>14</sup> Whether it points to a shared literature or an attempt by jurists to write more readable opinions, the results are surely encouraging for those who fear that the legal system grows increasingly alien to the average person. It may be a small sign that judges have some

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12. RICHARD A. POSNER, *LAW & LITERATURE* 55 (3rd ed. 2009). Indeed, Posner’s main criticism of Grisham’s novels—and much more his early novels than his later ones—is not so much that they lack merit, but that they display a certain moral simplicity. *Id.*

13. For a discussion of the way media depictions of the law influence popular perception of the same, see Victoria S. Salzmann & Philip T. Dunwoody, *Prime-Time Lies: Do Portrayals of Lawyers Influence How People Think About the Legal Profession?*, 58 *SMU L. REV.* 411 (2005); see also Lisa K. Dicker & Shane K. Hebel, *The Litigators: Perceptions of Predictability, Definitions of a Good Outcome, and an Alternative to Mass Tort Trials*, 48 *U. MEM. L. REV.* 987 (2018).

14. For a discussion of references to popular culture as tools of persuasion in legal rhetoric, specifically Grisham’s novels, see Victoria S. Salzmann, *Honey, You’re Not June Cleaver: The Power of “Dropping Pop” to Persuade*, 62 *ME. L. REV.* 241, 256–57 (2010).

conception of the cultural lens through which the public views their profession.

Of course, all of this raises the embarrassing question of whether the law is upstream or downstream of culture. Do judges hand down law that informs culture, or does culture mold judges who remake law in its image? This modest bibliographical study does not seek to answer such a difficult and troubling philosophical question, but merely explicates the phenomenon so that readers can draw their own conclusions about why judges use literature and, more specifically, Grisham's legal thrillers.

This study begins with an explanation of methodology and an annotated bibliography of the results. Next, the author discusses the various ways that courts have used Grisham's works, categorizing each case according to its function. The author concludes with further speculation about why judges are drawn to Grisham's novels.

## II. METHODOLOGY

The author searched for "John Grisham" in cases across several commercial databases. These searches included both state and federal courts in all United States jurisdictions. The author then examined the yield and retained only cases in which the judge unilaterally used some part of the Grisham corpus as a literary tool according to Henderson's definition.<sup>15</sup> The study preserves the remaining cases as annotated for context.

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15. In his article *Citing Fiction*, M. Todd Henderson defines a literary tool as an instance "where the author's name, the title of a book, or . . . a quote or idea[] is used to evoke an image that helps color the argument." Henderson, *supra* note 11, at 174.

## III. ANNOTATED BIBLIOGRAPHY

A. *Federal Courts*

## 1. U.S. Courts of Appeals

***United States v. Erpenbeck*** (6th Cir. 2012)<sup>16</sup>

Judge Jeffrey Sutton characterizes a case in which the FBI discovered over \$250,000 in a cooler buried on a private golf course as having “a fact pattern befitting a John Grisham novel.”<sup>17</sup>

***Roth v. U.S. Department of Justice*** (D.C. Cir. 2011)<sup>18</sup>

This case involves a FOIA request brought by an attorney who believes that the Department of Justice possesses files about his death-row client that might lead to exoneration. Judge David S. Tatel cites *The Confession* (2010) as an example of media interest in the exoneration of inmates on death row.<sup>19</sup>

***Living Designs, Inc. v. E.I. Dupont de Nemours and Co.*** (9th Cir. 2005)<sup>20</sup>

In this case, the plaintiffs bring a Racketeer Influenced and Corrupt Organizations Act (“RICO”) claim alleging that law firms employed by a fungicide corporation were an enterprise of that entity. Chief Judge Sidney Runyan Thomas writes that the plaintiffs are “taking a page out of a John Grisham novel,” alluding to *The Firm* (1991).<sup>21</sup>

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16. *United States v. Erpenbeck*, 682 F.3d 472 (6th Cir. 2012).

17. *Id.* at 474.

18. *Roth v. U.S. Dep’t of Justice*, 642 F.3d 1161 (D.C. Cir. 2011).

19. *Id.* at 1176.

20. *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353 (9th Cir. 2005).

21. *Id.* at 361 n.6.

***Campbell v. Citizens for an Honest Government, Inc.***  
(8th Cir. 2001)<sup>22</sup>

Judge C. Arlen Beam writes that the record in this case, in which two law enforcement officers brought a defamation claim against the producer of a video that implicated them in the deaths of two teenage boys, “reads like a John Grisham novel.”<sup>23</sup>

***Vining on Behalf of Vining v. Enterprise Financial Group, Inc.*** (10th Cir. 1998)<sup>24</sup>

In a footnote, Judge David M. Ebel compares defendant insurance company’s conduct and loss ratios “to those of the fictional insurance company portrayed in John Grisham’s novel *The Rainmaker* and in the motion picture of the same name.”<sup>25</sup>

***Figueroa v. Rivera*** (1st Cir. 1998)<sup>26</sup>

In a case in which family members of an inmate who died while incarcerated brought a 42 U.S.C. § 1983 action alleging that the prison in which he was residing had framed him for murder and failed to provide him with adequate medical care, Judge Bruce M. Selya writes that “the complaint would seem to have been lifted from the pages of a John Grisham thriller.”<sup>27</sup>

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22. *Campbell v. Citizens for an Honest Gov’t, Inc.*, 255 F.3d 560 (8th Cir. 2001).

23. *Id.* at 563.

24. *Vining ex rel. Vining v. Enter. Fin. Grp., Inc.*, 148 F.3d 1206 (10th Cir. 1998).

25. *Id.* at 1212 n.4.

26. *Figueroa v. Rivera*, 147 F.3d 77 (1st Cir. 1998).

27. *Id.* at 79.

## 2. U.S. District Courts

***Van Stelton v. Van Stelton*** (N.D. Iowa 2013)<sup>28</sup>

Judge Mark W. Bennett writes that the plaintiff's complaint "reads like a literary mashup of John Grisham's novel, 'the Firm,' and John Steinbeck's 'East of Eden,'"<sup>29</sup> in that the complaint included allegations of a powerful law firm involved in organized crime and a conflict between brothers over their interests in a family trust.

***United States v. ITT Educational Services, Inc.*** (S.D. Ind. 2012)<sup>30</sup>

In this action for attorney's fees and sanctions, Judge Tanya Walton Pratt opines that the attorney's actions at issue, namely trolling public dockets and employing a private investigator to cold-call potential plaintiffs who had previously sued the defendant, "are far worse than the garden-variety 'ambulance chasing'—seen in movies and read about in John Grisham novels—that gives the public a negative perception of the legal profession."<sup>31</sup>

***Bagsby v. Gehres*** (E.D. Mich. 2005)<sup>32</sup>

In introducing a dispute over assets between two attorneys who married, divorced, reconciled, and separated again, Magistrate Judge Charles S. Binder laments that, "Some cases are the stuff of John

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28. *Van Stelton v. Van Stelton*, No. C11-4045-MWB, 2013 WL 3776813 (N.D. Iowa July 17, 2013).

29. *Id.* at \*1.

30. *United States v. ITT Educ. Servs., Inc.*, No. 1:07-cv-0887-TWP-MJD, 2012 WL 1028794 (S.D. Ind. Mar. 26, 2012).

31. *Id.* at \*13.

32. *Bagsby v. Gehres*, No. 00-CV-10153-BC, 2005 U.S. Dist. LEXIS 13115 (E.D. Mich. Feb. 16, 2005).

Grisham. Some cases are the stuff of Greek tragedies, or possibly Norse sagas.”<sup>33</sup>

***International Tobacco Partners, Ltd. v. Beebe*** (W.D. Ark. 2006)<sup>34</sup>

In a lawsuit brought by a tobacco importer against the Attorney General of Arkansas assailing the allocable share amendment in the state’s escrow and contraband statutes, Judge Jimm Larry Hendren complains that “the Amended Complaint is 37 pages long, and reads like a John Grisham novel.”<sup>35</sup>

***United States v. Kouri-Perez*** (D.P.R. 1997)<sup>36</sup>

Here, the defendant filed a motion to disqualify a prosecutor and her assistant because defense counsel’s assistant told the prosecutor’s assistant that a codefendant had arranged to pay some of the defendant’s legal expenses. Judge José A. Fusté writes that the defendant’s “motion builds on the quicksands of distortion to present a portrait of deviousness that recalls a John Grisham novel, rather than the facts of this case.”<sup>37</sup>

***Burge v. Parish of St. Tammany*** (E.D. La. 1997)<sup>38</sup>

Judge Marcel Livaudais Jr. describes a set of facts recounting the investigation of a murder, the trial and conviction of the plaintiff for that murder, and his subsequent acquittal in a retrial as “bear[ing] some resemblance to a John Grisham novel.”<sup>39</sup>

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33. *Id.* at \*2.

34. *Int’l Tobacco Partners, Ltd. v. Beebe*, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

35. *Id.* at 992.

36. *United States v. Kouri-Perez*, 992 F. Supp. 511 (D.P.R. 1997).

37. *Id.* at 512.

38. *Burge v. Parish of St. Tammany*, No. 91-2321, 1997 WL 10243 (E.D. La. Jan. 8, 1997).

39. *Id.* at \*1.

***Krieger v. Adler, Kaplan & Begy*** (E.D. Ill. 1996)<sup>40</sup>

In a wrongful termination suit brought against a law firm, Judge Harry Leinenweber writes that the plaintiff's complaint reads "more like a John Grisham novel than an acceptable initial pleading."<sup>41</sup>

*B. State Courts*

1. State Supreme Courts

***Hall v. Elected Officials' Retirement Plan*** (Ariz. 2016)<sup>42</sup>

Justice Clint Bolick refers to a judicially-constructed implied contract between the state and elected state officials for pension benefits as "a work of legal fiction to which the likes of John Grisham could only aspire."<sup>43</sup>

***Artiga-Morales v. State*** (Nev. 2014)<sup>44</sup>

In a dissent, Associate Justice Michael A. Cherry decries the inherent unfairness of not requiring prosecutors to disclose veniremember information to defense counsel.<sup>45</sup> He expresses worry that failing to do so will result in unintended consequences, such as "the use of a 'war room' [similar to the one] that is portrayed in John Grisham's book and movie *Runaway Jury*."<sup>46</sup>

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40. *Krieger v. Adler, Kaplan & Begy*, No. 94 C 7809, 1996 WL 6540 (N.D. Ill. Jan. 5, 1996).

41. *Id.* at \*1.

42. *Hall v. Elected Officials' Ret. Plan*, 383 P.3d 1107 (Ariz. 2016).

43. *Id.* at 1123 (Bolick, J., dissenting).

44. *Artiga-Morales v. State*, 335 P.3d 179 (Nev. 2014).

45. *Id.* at 182 (Cherry, J., dissenting).

46. *Id.* at 183.

***State v. Schaefer*** (Wis. 2008)<sup>47</sup>

In this opinion, the majority found that a defendant does not possess a right to compel production of police reports because there is no “enforceable right to subpoena police investigation reports and nonprivileged materials before a preliminary examination.”<sup>48</sup> In a concurring opinion, Chief Justice Shirley S. Abrahamson argues that the majority “errs in musing that law enforcement and the district attorney perhaps may be treated as one.”<sup>49</sup> In a footnote, she adds:

Law enforcement’s task is to objectively gather all the evidence in pursuit of the truth, rather than to attempt to hone in early on a suspect and build a case against him or her. . . . [P]remature concentration on one suspect, has been shown to lead to wrongful convictions. For a chilling non-fiction description of non-objective police investigation resulting in an innocent person being convicted and sentenced to death, see John Grisham, *The Innocent Man* (2006).<sup>50</sup>

***State v. McCoy*** (Iowa 2007)<sup>51</sup>

Following the reversal of a conviction for first-degree murder, the exonerated defendant applied to the court requesting a determination that he was wrongfully imprisoned and, therefore, entitled to compensation. Writing for the majority, Justice Mark S. Cady found that “the crux of the right to seek recovery as a wrongfully imprisoned person [under Iowa’s wrongful imprisonment statute] is the . . . finding that

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47. *State v. Schaefer*, 746 N.W.2d 457 (Wis. 2008).

48. *Id.* at 481.

49. *Id.* at 487 (Abrahamson, C.J., concurring).

50. *Id.* at 487 n.34 (Abrahamson, C.J., concurring) (citation omitted).

51. *State v. McCoy*, 742 N.W.2d 593 (Iowa 2007).

requires the person to be an ‘innocent man’ or woman.”<sup>52</sup> In a footnote Justice Cady adds:

“The Innocent Man” is the title of a book by John Grisham that chronicles the life of a wrongfully imprisoned person, Ron Williamson, in the State of Oklahoma. Williamson was eventually exonerated by DNA evidence after serving 11 years of incarceration on death row following his conviction for capital murder in 1988. He died in 2004, an innocent man.<sup>53</sup>

***Charles J. Vacanti, M.D., Inc. v. State Compensation Insurance Fund*** (Cal. 2001)<sup>54</sup>

In an action brought by a group of medical providers against a group of workers’ compensation insurers, Associate Justice Janice Rogers Brown compares a scheme to put plaintiff medical providers out of business by “delaying payment or refusing to pay for services rendered by plaintiffs to injured workers”<sup>55</sup> with “the methods used by Great Benefit Insurance Company, the villain in the John Grisham thriller, *The Rainmaker* (Doubleday, 1995).”<sup>56</sup>

***Cantley v. Lorillard Tobacco Co.*** (Ala. 1996)<sup>57</sup>

The plaintiff, the administrator of the estate of a smoker who died of cancer, sued defendant cigarette manufacturers claiming fraudulent suppression and design defect. Defendant filed for summary judgment on preemption grounds.<sup>58</sup> Finding that the fraudulent suppression claim was preempted while the design

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52. *Id.* at 597.

53. *Id.* at 597 n.3.

54. *Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund*, 14 P.3d 234 (Cal. 2001).

55. *Id.* at 241.

56. *Id.*

57. *Cantley v. Lorillard Tobacco Co.*, 681 So. 2d 1057 (Ala. 1996).

58. *Id.* at 1059.

defect claim was not, Justice J. Gorman Houston Jr. of the Alabama Supreme Court writes in a footnote that “[t]his opinion deals with a subject of great current interest, both in fact . . . and in fiction (see, e.g., John Grisham, *The Runaway Jury* . . .).”<sup>59</sup>

***Dycus v. Sillers*** (Miss. 1990)<sup>60</sup>

This “case about a fishin’ hole”<sup>61</sup>—more specifically about the public’s right to ingress and egress to a crevasse—is laden with literary imagery. The court quoted passages from Grisham’s *A Time to Kill*<sup>62</sup> alongside the works of Mark Twain,<sup>63</sup> William Faulkner,<sup>64</sup> Eudora Welty,<sup>65</sup> and Walter Percy,<sup>66</sup> among others. The author of the opinion, Justice James L. Robertson, employs the Grisham passages to describe life in rural Mississippi and how a lake changes with the seasons.<sup>67</sup>

2. State Intermediate Appellate Courts

***R.J. Reynolds Tobacco Co. v. Allen*** (Fla. Dist. Ct. App. 2017)<sup>68</sup>

In an appeal brought by defendant tobacco company alleging juror misconduct, Judge Ross L. Bilbrey contrasts the facts of the present case against the plot of *Runaway Jury* (1996). He writes:

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59. *Id.* at 1059 n.2.

60. *Dycus v. Sillers*, 557 So.2d 486 (Miss. 1990).

61. *Id.* at 487.

62. *Id.* at 491 n.47.

63. *Id.* at 490 n.33.

64. *Id.* at 488 nn.13 & 17.

65. *Id.* at 487 nn.4 & 6, 491 n.50.

66. *Id.* at 488 nn.10 & 15, 489 n.20.

67. *Id.* at 492 n.55.

68. *R.J. Reynolds Tobacco Co. v. Allen*, 228 So. 3d 684 (Fla. Dist. Ct. App. 2017).

If Mr. Taylor had intended to be a stealth juror leading a runaway jury, he did a poor job of concealing it by providing answers in the questionnaire that he was a 28-year former smoker now “clean” for five years, mentioning his many attempts to quit smoking, and acknowledging his family members who smoked or who he believed were adversely affected by smoking. *Cf.* John Grisham, *The Runaway Jury* (1996) (a work of fiction where a prospective juror actively hid his past and hid strongly held beliefs in order to be selected as a juror and influence a substantial verdict against a tobacco company).<sup>69</sup>

***Garcia v. Commonwealth*** (Va. Ct. App. 2012)<sup>70</sup>

On appeal, defendant alleges that a biased juror prejudiced the case against him. Judge Stephen R. McCullough writes that “[p]opular movies and fiction at times depict jurors being approached by persons who seek to influence their deliberations—a rare circumstance in actuality, but one that laypersons unfamiliar with the legal system easily might misapprehend.”<sup>71</sup> In a corresponding footnote he elaborates: “For example, in the novel and movie *Runaway Jury*, by bestselling author John Grisham, members of the jury in a high profile case are subjected to attempts at bribery and blackmail.”<sup>72</sup>

***Picozzi v. Miller*** (Cal. Ct. App. 2008)<sup>73</sup>

In a case involving a law firm, sexual harassment allegations, false charges, and the overbilling of a state agency, Presiding Justice David G. Sills comments that these facts are “the makings of a plot

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69. *Id.* at 688 n.3.

70. *Garcia v. Commonwealth*, 726 S.E.2d 359 (Va. Ct. App. 2012).

71. *Id.* at 363.

72. *Id.* at 363 n.3.

73. *Picozzi v. Miller*, No. G038627, 2008 WL 2487868, at \*1 (Cal. Ct. App. June 23, 2008).

involving law firm intrigue worthy of John Grisham . . . .”<sup>74</sup>

***Herring v. Bocquet*** (Tex. Ct. App. 1996)<sup>75</sup>

In a dispute over attorney’s fees—especially those fees generated through in-house conferences—Justice Phillip D. Hardberger reproduces a passage about “the art of billing” from *The Rainmaker* (1995) to illustrate that conferences are “a part of the fabric of the law.” He goes on to say that “Grisham’s quote implies potential abuse of conferences, and no doubt it happens. The more common problem though is that the conference, while well-meaning, turns out to be useless: nothing accomplished.”<sup>76</sup>

3. State District Courts

***Chase v. Burlington Northern Santa Fe Corp.*** (Minn. Dist. Ct. 2009)<sup>77</sup>

In a court order granting in part and denying in part plaintiff’s motion to impose sanctions upon defendant for, among other things, “the loss, destruction, and/or alteration of critical evidence, misrepresentations . . . and the general obstruction of Plaintiffs’ ability to prosecute their case,”<sup>78</sup> Judge Ellen L. Maas writes that “Plaintiffs contend that [defendant] engaged in a systematic exploitation of the civil-justice system of a pervasiveness seldom seen outside of John Grisham novels.”<sup>79</sup>

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74. *Id.* at \*1.

75. *Herring v. Bocquet*, 933 S.W.2d 611 (Tex. Ct. App. 1996).

76. *Id.* at 614–15.

77. *Chase v. Burlington N. Santa Fe Corp.*, Nos. C4-05-1607, C2-03-10995, 02-C0-04-10312, C1-06-10212, 2009 WL 6356932, at \*1 (Minn. Dist. Ct. Oct. 15, 2009) (mem.).

78. *Id.* at \*3.

79. *Id.*

## IV. ANALYSIS

Comparing the above cases, we can group them according to how they interact with the Grisham corpus. In doing so, three distinct categories arise: (1) John Grisham *qua* brand; (2) acts of intertextuality in which the text of the opinion relies upon the text of one of Grisham's legal thrillers; and (3) citation to one of Grisham's novels as an authority to be considered. The following section discusses the cases in each of these categories.

A. *Brand*

One potential methodological criticism of this Essay is that even the most superficial mentions of Grisham and his works appear in the study's bibliography. This recognizes, however, that the advent of a pop-culture reference to a figure or work can tell us more about its influence than a detailed recitation of its attributes. As Grisham himself told *The Guardian* in a November 2011 interview, "My name became a brand and I'd love to say it was the plan from the start . . . but the only plan was to keep writing books."<sup>80</sup>

Accordingly, judges have used Grisham's name as a synonym for the legal thriller and have done so in a variety of formulations: "a fact pattern befitting a John Grisham novel,"<sup>81</sup> "reads like a John Grisham novel,"<sup>82</sup> "the complaint would seem to have been lifted from the pages of a John Grisham thriller,"<sup>83</sup> "far worse than the garden-variety 'ambulance chasing'—seen in movies and read about in John Grisham novels,"<sup>84</sup> "some cases are the stuff of John Grisham,"<sup>85</sup> "the Amended Complaint is 37 pages long, and reads like a John Grisham

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80. Nicholas Wroe, *A Life in Writing: John Grisham*, THE GUARDIAN (Nov. 25, 2011), <https://www.theguardian.com/culture/2011/nov/25/john-grisham-life-in-writing>.

81. *United States v. Erpenbeck*, 682 F.3d 472, 474 (6th Cir. 2012).

82. *Campbell v. Citizens for an Honest Gov't, Inc.*, 255 F.3d 560, 563 (8th Cir. 2001).

83. *Figueroa v. Rivera*, 147 F.3d 77, 79 (1st Cir. 1998).

84. *United States v. ITT Educ. Servs., Inc.*, No. 1:07-cv-0887-TWP-MJD, 2012 WL 1028794, at \*13 (S.D. Ind. Mar. 26, 2012).

85. *Bagsby v. Gehres*, No. 00-CV-10153-BC, 2005 U.S. Dist. LEXIS 13115, at \*2 (E.D. Mich. Feb. 16, 2005).

novel,”<sup>86</sup> “a portrait of deviousness that recalls a John Grisham novel,”<sup>87</sup> “bear[ing] some resemblance to a John Grisham novel,”<sup>88</sup> “more like a John Grisham novel than an acceptable initial pleading,”<sup>89</sup> “a work of legal fiction to which the likes of John Grisham could only aspire,”<sup>90</sup> “the making of a plot involving law firm intrigue worthy of John Grisham,”<sup>91</sup> and “systematic exploitation of the civil-justice system of a pervasiveness seldom seen outside of John Grisham novels.”<sup>92</sup> In almost all of these cases, however, the purpose is the same: critiquing or mocking the melodramatic elements of the facts at bar.

### B. Intertextuality

More interesting to those intrigued with deciphering how judges think about literature are those cases which share an intertextual relationship with one of Grisham’s books—those cases in which the judge relies on one of Grisham’s legal thrillers to create meaning in a way that is not merely superficial.

First, there are instances of direct quotation such as that found in *Dycus v. Sillers*,<sup>93</sup> a masterpiece of literature in law<sup>94</sup> that—in addition to quoting passages from Grisham’s *A Time to Kill* (1989) to describe the life and landscape of rural Mississippi—quotes from, among others: Mark Twain’s *Huckleberry Finn* (1885); William

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86. *Int’l Tobacco Partners, Ltd., v. Beebe*, 420 F. Supp. 2d 989, 992 (W.D. Ark. 2006).

87. *United States v. Kouri-Perez*, 992 F. Supp. 511, 512 (D.P.R. 1997).

88. *Burge v. Parish of St. Tammany*, No. 91-2321, 1997 WL 10243, at \*1 (E.D. La. Jan. 8, 1997).

89. *Krieger v. Adler, Kaplan & Begy*, No. 94 C 7809, 1996 WL 6540, at \*1 (N.D. Ill. Jan. 5, 1996).

90. *Hall v. Elected Officials’ Ret. Plan*, 383 P.3d 1107, 1123 (Ariz. 2016).

91. *Picozzi v. Miller*, No. G038627, 2008 WL 2487868, at \*1 (Cal. Ct. App. June 23, 2008).

92. *Chase v. Burlington N. Santa Fe Corp.*, Nos. C4-05-1607, C2-03-10995, 02-C0-04-10312, C1-06-10212, 2009 WL 6356932, at \*1 (Minn. Dist. Ct. Oct. 15, 2009) (mem.).

93. 557 So. 2d 486, 491 n.47, 492 n.50 (Miss. 1990).

94. Indeed, it calls to mind the famous “Ghostbusters ruling” assigned in contracts, property, and law & literature courses across the country each year. *Stambovsky v. Ackley*, 169 A.D.2d 254 (N.Y. App. Div. 1991).

Faulkner's *Go Down, Moses* (1942) and *The Reivers* (1962); Eudora Welty's *Losing Battles* (1970) and *Collected Stories* (1980); and Walter Percy's *The Moviegoer* (1961) and *The Last Gentleman* (1966). Another example appears in *Herring v. Bocquet*,<sup>95</sup> in which the court uses a passage from *The Rainmaker* (1995) about the incessant presence of conferences in litigation to illustrate the pervasiveness of the problem.

Next, there are cases like *Vining on Behalf of Vining v. Enterprise Financial Group, Inc.*<sup>96</sup> and *Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund*,<sup>97</sup> which incorporate Grisham's works by reference. In these cases, the purpose is to compare the dubious practices of the insurer that is party to the suit with the actions of "Great Benefit Insurance Company," the villain in the John Grisham thriller, *The Rainmaker* (1995).<sup>98</sup> Another example surfaces in *Artiga-Morales v. State*<sup>99</sup> where the war room featured in *Runaway Jury* (1996) is adduced to warn against the negative consequences of allowing prosecutors to withhold disclosure of veniremember information from defense counsel.

Finally, there is the passing footnote or aside, usually to draw attention to the fact that the issue before the court has received a great deal of attention in popular culture, for example, "[t]his opinion deals with a subject of great current interest, both in fact . . . and in fiction (see, e.g., John Grisham, *The Runaway Jury* . . . )."<sup>100</sup>

### C. Authority

In a handful of cases, courts cite Grisham's books as persuasive authority. In *Roth v. U.S. Department of Justice*,<sup>101</sup> *State v. Schaefer*,<sup>102</sup> and *State v. McCoy*,<sup>103</sup> courts discuss or cite *The Innocent*

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95. 933 S.W.2d 611, 614 (Tex. App. 1996).

96. 148 F.3d 1206, 1212 (10th Cir. 1998).

97. 14 P.3d 234, 241 (Cal. 2001).

98. See *Vining*, 148 F.3d at 1212; *Charles J. Vacanti, M.D., Inc.*, 14 P.3d at 241.

99. 335 P.3d 179 (Nev. 2014).

100. *Cantley v. Lorillard Tobacco Co., Inc.*, 681 So.2d 1057, 1059 (Ala. 1996).

101. 642 F.3d 1161, 1176 (D.C. Cir. 2011).

102. 746 N.W.2d 457, 487 (Wis. 2008).

103. 742 N.W.2d 593, 596 (Iowa 2007).

*Man: Murder and Injustice in a Small Town* (2006) in the context of the need for safeguards against the breakdown of the justice system leading to the conviction of an innocent person.

The more interesting example in this category, however, is *R.J. Reynolds Tobacco Company v. Allen*,<sup>104</sup> a case about juror misconduct in which Judge Ross L. Bilbrey distinguishes the facts at bar from the plot of *The Runaway Jury* (1996). On this basis, among others, he determines that juror misconduct has not occurred because the juror in question did not conceal his bias in the jury questionnaire as happened in Grisham's novel.

## V. CONCLUSION

What do we make of these cases and the various ways judges have used Grisham's legal thrillers? Perhaps Grisham's presence in some of these instances has served to "humanize the law." Such was the original aim of the law and humanities movement, a subset of which is the study of law and literature.<sup>105</sup>

While Grisham himself would surely reject comparison to the literary figures typically cited and discussed in this area of study, there can be no doubt that his tales have a strong moral component which might serve as a "compass" to guide lawyers, as Judge John B. Owens

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104. No. 1D15-4197, 2017 WL 729817 (Fla. Ct. App. Feb. 24, 2017).

105. See, e.g., Guido Calabresi, *Introductory Letter*, 1 YALE J.L. & HUMAN. vii (1988); Roscoe Pound, *The Humanities in an Absolutist World*, 39 CLASSICAL J. 203 (1943). But see Austin Sarat, Matthew Anderson, & Catherine O. Frank, *Introduction to LAW AND THE HUMANITIES: AN INTRODUCTION* 11 (Austin Sarat et al. eds., 2010) ("Today . . . critical impulses abound, not looking to save or humanize law or lawyers, but to expose the hidden assumptions that structure their work, the values that privilege some views and silence others, the identities that law privileges and those it pushes to the margins and, in doing so, to call law and lawyers to account."). Yet, is this objective not the very thing critical legal studies ("CLS") has already sought to accomplish? Does not the "critical impulse" suffer from its own messianic complex, its own tendency to see itself as a savior of the law and those affected by it? If law and the humanities has become nothing more than CLS with a literary flare, what unique contribution does it make? Perhaps a shift to the view, articulated by Stanley Fish, that "it is not the business of the humanities to save us" and that "[t]he humanities are their own good" would serve to revitalize the field and draw the legal community's attention to it. Stanley Fish, *Will the Humanities Save Us?*, N.Y. TIMES: OPINIONATOR (Jan. 6, 2008, 5:31 PM), <https://opinionator.blogs.nytimes.com/2008/01/06/will-the-humanities-save-us/>.

of the U.S. Court of Appeals for the Ninth Circuit suggested well before he was appointed to the bench.<sup>106</sup> It could be, as Professor William H. Simon has suggested, that this is because Grisham's characters possess "[m]oral [p]luck," "a combination of transgression and resourcefulness in the vindication of justice"<sup>107</sup> that stands in sharp contrast with "the authoritarianism of Conformist Moralism."<sup>108</sup>

Whatever the case, there can be no doubt that Grisham has broad appeal in the legal profession. Of course, Grisham has his political biases. His novels display strong opposition to capital punishment and tort reform, while the legal community has long been divided on these issues. His characters, however, speak to that element inside every lawyer, that initial motivation for studying the law, which loves justice—whether in the form of social change or the restoration of an old order—and desires more than anything to be that protagonist who faces off with 'the system' and prevails.

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106. John B. Owens, *Grisham's Legal Tales: A Moral Compass for the Young Lawyer*, 48 UCLA L. REV. 1431, 1431 (2001).

107. William H. Simon, *Moral Pluck: Legal Ethics in Popular Culture*, 101 COLUM. L. REV. 421, 422 (2001).

108. *Id.* at 425.