"BE A LOT COOLER IF YOU DIDN'T":

WHY JUDGES SHOULD REFRAIN FROM POP CULTURE REFERENCES IN JUDICIAL OPINIONS

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"Whatever the court's statutory and constitutional status, the written word, in the end, is the source and the measure of the court's authority."[1]

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1. FED. JUD. CTR., JUDICIAL WRITING MANUAL: A POCKET GUIDE FOR JUDGES, at vii (2d ed. 2013).

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I. INTRODUCTION

The use of pop culture references in judicial opinions—sometimes referred to as "dropping pop"[2]—is a growing trend.[3] This Article argues that judges should generally avoid this practice, as it has numerous downsides while offering very few benefits. Pop culture references are often misunderstood, which can lead to a misunderstanding of the case. Traditionally marginalized populations are particularly vulnerable to this, as they often do not share the same exposure to pop culture as predominantly white judges. Such references blur the lines between fictional entertainment and the real-life legal system. They result in litigants believing that the judge was arbitrary, irreverent, and making fun of their plight. They are perhaps indicative of a judge who is focusing on self-promotion at the cost of sound legal analysis. And they can be distracting, especially when the reader finds the reference offensive.

Furthermore, the alleged benefits of pop culture references in judicial opinions are likely exaggerated and far outweighed by the downsides. Any net benefit gained by the entertainment value some experience from a pop culture reference is offset by the confusion and disagreement by others. And pop culture references are not necessary to create an engaging opinion. These references can serve as "seductive details" drawing attention away from the legal holding. They are likely not as persuasive as some advocates claim, and, even if they were, persuasion is not a primary goal of a judicial opinion. The general public may find pop culture references in judicial opinions interesting, but this may come at a cost of diminished respect for the judicial system.

This Article presents the 2021 *Briseño v. Henderson* opinion[4] as an illustration of the harms of unnecessary pop culture references. It provides a thorough analysis of the numerous ways in which pop culture references in judicial opinions are ill-advised. It also provides arguments in favor of the practice with counterarguments. It then gives advice for judges, including best practices. The Article concludes by providing suggested language for the Model Code of Judicial Conduct regarding pop culture references.

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2. Victoria S. Salzmann, *Honey, You're No June Cleaver: The Power of 'Dropping Pop' to Persuade*, 62 ME. L. REV. 242, 242 (2010).
3. Amelia Ashton Thorn & Mark Klingensmith, *On the Record: Lyrics in Judicial Writing*, 104 JUDICATURE 76, 79 (2020).
4. Briseño v. Henderson, 998 F.3d 1014 (9th Cir. 2021).

A. Briseño v. Henderson

The 2021 case of *Briseño v. Henderson* is a particularly egregious example of some of the problems with pop culture references in judicial opinions that are discussed in this Article. It was written by Judge Kenneth K. Lee of the Ninth Circuit. The opinion contained more than ten pop culture references despite having nothing to do with pop culture—it involved a dispute over reasonable attorney's fees from a class-action lawsuit regarding the false claim of "100% natural" vegetable oil.[5] The following are examples of pop culture references from the case:

- "We can perhaps sum up this case as 'How to Lose a Class Action Settlement in 10 Ways.'"[6] (This quote is a reference to the 2003 movie, *How to Lose a Guy in 10 Days*.)
- "While courts should not casually second-guess class settlements brokered by the parties, they should not greenlight them, either, just because the parties profess that their dubious deal is 'all right, all right, all right.'"[7] (This is likely a reference to a Matthew McConaughey catch phrase, although it could possibly be a reference to the 1970s band The Doors.)
- "ConAgra thus essentially agreed not to do something over which it lacks the power to do. That is like George Lucas promising no more mediocre and schlocky Star Wars sequels shortly after selling the franchise to Disney. Such a promise would be illusory."[8] This passage was accompanied by a footnote stating, "As evident by Disney's production of *The Last Jedi* and *The Rise of Skywalker*."[9]
- "In reality, this promise is about as meaningful and enduring as a proposal in the Final Rose ceremony on the *Bachelor*."[10] (This is a reference to the reality television show *The Bachelor*, in which roses are given out to contestants who advance to the next stage and ultimately to the final winner who is supposed to then marry the bachelor, which often does not happen.[11])

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5. *Briseño*, 998 F.3d at 1018–19.
6. *Id.* at 1018.
7. *Id.*
8. *Id.* at 1028.
9. *Id.*
10. *Briseño*, 998 F.3d at 1028.
11. *See* Roxxi Rivera & Mauli Whitney, *Finding Love*, SITES DOT MIDDLEBURY: CRITICALLY EXAMINING THE BACHELOR, https://sites.middlebury.edu/bachelorgenderimages/finding-romance/ (last visited July 30, 2021) (explaining that only two-thirds of seasons for *The Bachelor* and *The Bachelorette* end with a proposal).

- "'Two Virginians and an immigrant walk into a room/ diametrically opposed/ foes/ They emerge with a compromise/ Having opened doors that were previously closed/ Bros/ . . . No one else was in the room where it happened . . . No one really knows how the game is played/ The art of the trade/ How the sausage gets made/ We just assume that it happens/ But no one else is in the room where it happens.'
  Hamilton: An America[n] Musical (2016).
  Though that process suffices for political compromise and even most settlements, it does not for class action settlements."[12]

Like most pop culture references in judicial opinions, the ones in *Briseño* do more harm than good. They are unnecessary, invite confusion, distract from the legal analysis, and demonstrate a lack of professionalism.

II. THE CASE AGAINST POP CULTURE REFERENCES

There are a number of reasons why pop culture references should generally not be used in legal opinions. Since readers will have different interests outside of the legal field, not all readers will be familiar with the reference and thus may not understand it without it being explained. Relatedly, some readers may be generally familiar with the reference but not familiar enough to fully understand it, leading to a misunderstanding of the reference—and thus the point the author is attempting to show. Use of pop culture references is also judicially uneconomic and may increase the need for concurrences. Pop culture references may also be viewed negatively by litigants, who likely expect a higher degree of professionalism from judicial officers involved in their cases. Judges may be motivated to use pop culture references in order to attract attention to their opinions, but such motivation is inappropriate. That being said, legal opinions do not need to be boring. This section explains these points in more detail and provides an example of the potential problems with the use of pop culture references.

A. Some Will Not Get the Reference

The first problem with using pop culture references in judicial opinions is that some readers will not get the reference. This can lead to the opinion

12. *Briseño*, 998 F.3d at 1031 (alteration in original).

losing momentum in the mind of the reader as he stops, turns to the footnote, learns about the reference, and then goes back to the text and applies this new understanding. This could further distract the reader in that the practice of explaining a reference often comes across as condescending, thus creating animosity between the reader and the author. Or worse, since judges are not required to cite non-legal sources,[13] the reader may have to conduct an investigation to understand the reference. Or perhaps more commonly, the reader will simply read on in willful ignorance, hoping that understanding the pop culture reference is not relevant to understanding the case.

The egocentric tendencies of humans explain why we tend to overestimate the likelihood that others will understand our references. Egocentrism is the inability to understand that others have different views and experiences than ourselves.[14] This egocentrism, therefore, results in the inaccurate assumption that one's personal views and experiences are shared—and understood—by others. Egocentrism is demonstrated when someone condescendingly asks, "How did you not watch that television show growing up?" or "How have you never heard of that musician?" Using *Briseño* as an example, Judge Lee was familiar with *The Bachelor's* rose ceremony and the musical *Hamilton*.[15] It appears he imputed this knowledge to the readers, assuming they had the same life experiences that led to his understanding.

The problem with the egocentric assumption that others have had the same experiences—and therefore will understand the same references—is exacerbated when one considers cultural differences. Even among native-born Americans, exposure to pop culture varies greatly from person to person. For example, someone born into poverty is likely to be confused by the Supreme Court's reference to the often erudite premium cable show *Veep*, especially since it is not accompanied by any explanation.[16] Additionally, analogies to pop culture often involve hyperbole,[17] thus further inviting misunderstandings from diverse individuals. Therefore, the use of pop culture references puts minority cultures at an unfair disadvantage.

Pop culture references do not only cause problems when modern-day readers do not get the reference. Some of these cases establish precedents

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13. MARK W. KLINGENSMITH, LYRICS IN THE LAW: MUSIC'S INFLUENCE ON AMERICA'S COURTS 317 (2020) ("[U]nlike academic scholarship, judges are not required to cite non-legal sources. Judges routinely use songs but often do so without providing credit to them.").

14. *Egocentrism*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/egocentrism (last visited August 2, 2021) (defining "egocentrism" as "excessive interest in oneself and concern for one's own welfare or advantage at the expense of or in disregard of others").

15. *Briseño*, 998 F.3d at 1028, 1031.

16. Chiafalo v. Washington, 140 S. Ct. 2316, 2320 (2020) ("One might think of this as fodder for a new season of Veep.").

17. Salzmann, *supra* note 2, at 253.

that will be referenced 100 years from now. These future readers are not just less likely to get the reference but will be at a chronological disadvantage in trying to find it. Imagine how much harder reading *Marbury v. Madison* would have been if it were riddled with references to the popular entertainment of 1803.

Modern trends in media consumption make pop culture references in judicial opinions increasingly ill-advised. People are transitioning away from traditional forms of entertainment, such as network sitcoms, and into more niche outlets, such as YouTube and Instagram.[18] This will likely result in the absence of near universally recognized references that were enjoyed in the past.

B. Risk of Misinterpretation

Unfortunately, the reader having to look up a reference or just move on knowing that he does not get the reference is not the worst-case scenario. Worse is when a reader incorrectly believes he understands a reference when in fact he does not, thus drawing the wrong conclusion. This misunderstanding is to be expected, as pop culture references are often cryptic and utilize hyperbole.[19] What adds to the potential for confusion is that people often mistake real-life events for fictional ones depicted in television and movies.[20]

Even when a reader is familiar with the source material of a pop culture reference, the author's intent for using the reference may be different from the reader's understanding of why the reference was used. Readers may erroneously apply the pop culture reference beyond what the author intended, thus leading to a misunderstanding.

For example, a judge may reference the dangers of "big brother" in an opinion, intending for the reader to imagine the oppressive surveillance state from George Orwell's novel *1984*. While many will understand the reference, some will not. Perhaps they will think of the highly popular twenty-first century reality television show *Big Brother* instead of the over-seventy-year-old book.[21] This would cause confusion as the reader wonders what is so bad about people who consent to be on a reality show being constantly under surveillance by a private company. Or perhaps the reader would inter-

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18. Sarah Whitten, *As Gen Z Shuns Traditional Media, Content Creators Adapt and Bring Television and Movies Where They Live — YouTube*, CNBC (Mar. 2, 2019, 1:10 PM), https://www.cnbc.com/2019/03/02/as-gen-z-balks-at-traditional-tv-content-creators-shift-to-youtube.html.
19. Salzmann, *supra* note 2, at 253.
20. *Id.* at 262.
21. *Id.* at 259.

pret the reference to that of the charitable organization Big Brothers Big Sisters of America and wonder what is so wrong with the organization and what that has to do with the case. Furthermore, even if the reference is understood, the practice of drawing real-world applications from fictional sources is problematic. For example, a judicial opinion that analogizes government action to that of "big brother" may unjustifiably cause the reader to believe that the government surveillance in the case is likely to result in the oppression from the novel *1984*. Evidence regarding the consequences of government actions should be limited to real-world occurrences and not works of fiction.

C. General Counterproductivity

Pop culture references inevitably involve the entertainers who created the work of pop culture. This situation is problematic because socially acceptable behavior is ever-changing. While something may be an innocuous pop culture reference one day, it may soon become distracting and inappropriate in the near future. Likewise, pop culture icons who enjoy near-unanimous adoration today can quickly turn into social pariahs. Therefore, today's pop culture references may evoke negative reactions from readers in the near future, thus limiting the effectiveness of the reference.[22] Examples could include referencing Bill Cosby as an example of a positive role model for young black men, Michael Jackson as an example of someone charitable to children, or Rudy Giuliani as a pragmatic bipartisan. While such references would have been acceptable in the past, reading them today would be highly distracting to the reader.

The use of pop culture references in appellate cases could result in fewer unanimous decisions. This consequence would have the negative effect of minimizing the impact of the holding, and it would artificially promote the notion of a divided judiciary. This is because pop culture references are an additional element in an opinion on which judges can disagree. Using the *Briseño* case as an example, a colleague may agree with Judge Lee's relevant legal reasoning and holding in the case but disagree about the quality of the *Star Wars* sequels and the longevity of relationships from *The Bachelor*.[23] Writing a concurring opinion for such reasons would make opinions unnecessarily complex. Furthermore, this would likely cause legal practitioners to view these courts as not taking their case seriously, as such matters are trivial.

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22. KLINGENSMITH, *supra* note 13, at 11 (explaining that pop culture references are most effective when the reader has a positive perception of the artist and are least effective when the perception is negative).

23. *Briseño*, 998 F.3d at 1028.

The increasing length of judicial opinions is a problem.[24] Most pop culture references only negligibly contribute to this problem, but some require considerable length. For example, in a 2021 D.C. Circuit case, Judge A. Raymond Randolph made an 1800s Sherlock Holmes reference to "the dog that did not bark."[25] This reference, which contributed very little to explaining the court's holding in the case, required an explanation of over 150 words. Much like explaining why a joke is funny, explaining what a pop culture reference means largely defeats the purpose of using it in the first place. With judicial opinions, "less is better,"[26] not only because it makes them less onerous to read, but also because unnecessary tangents create speedbumps in the opinion, distracting the reader from what is important.

The real-life participants to litigation are unlikely to fit neatly into stock archetypes and plotlines as found in pop culture references.[27] Therefore, attempting to analogize the facts of a case and the parties involved to something that occurred in a fictional depiction is likely to be disanalogous in a variety of ways. This may lead to misunderstandings as to which aspects are fictional and which are real as well as displeasure from the litigants who feel they have been unfairly mischaracterized. Relatedly, by focusing on pop culture references, it necessitates the practice of judges forcing references that do not perfectly fit the facts of the case. Unfortunately, when faced with this conundrum, some judges choose to alter their opinion rather than alter or delete the pop culture reference. For example, when discussing how a judge crafted rap lyrics in an opinion regarding rapper Eminem, a commentator pointed out that by doing so, the judge "must fit the case's substance into the desired format rather than allow the facts and law to lead the writer and reader to a logical conclusion that the law supports."[28]

The use of pop culture references is also harmful in what they take the place of. Judges, like everyone, have a finite amount of time and effort to invest in their jobs. Time and effort focused on analogizing pop culture references to their cases is time and effort that could have otherwise been invested more productively into researching the law and writing an opinion that clearly conveys the holding of the case to a diverse audience. Similarly,

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24. Gerald Lebovits, Alifya V. Curtin & Lisa Solomon, *Ethical Judicial Opinion Writing*, 21 GEO. J. LEGAL ETHICS 237, 253 (2008) (paraphrasing Judge Bruce M. Selya); *see also* Bruce M. Selya, *Judges on Judging: Publish and Perils: The Fate of the Federal Appeals Judges in the Information Age*, 55 OHIO STATE L.J. 405, 414 (1994); Bruce M. Selya, *Favorite Case Symposium: In Search of Less*, 74 TEX. L. REV. 1277, 1279 (1996).

25. Leopold v. Cent. Intel. Agency, 987 F.3d 163, 167 (D.C. Cir. 2021).

26. Lebovits, Curtin & Solomon, *supra* note 24, at 253 (paraphrasing Judge Selya).

27. Nina Varsava, *Professional Irresponsibility and Judicial Opinions*, 59 HOUS. L. REV. 103, 136 (2021) (on file with author).

28. Lebovits, Curtin & Solomon, *supra* note 24, at 250.

judges may use pop culture references as a substitute for a more accurate explanation. This is because some believe that "popular-culture references may do a better job compressing complex fact patterns than a pure explanation would."[29] While this is ultimately a matter of opinion, the analysis provided in this Article is strong evidence that pure explanations are generally superior to those involving pop culture references.

A reader's interpretation of pop culture references is highly subjective. For example, correctly understanding the *Star Wars* reference in *Briseño* requires the reader to share Judge Lee's opinion that the sequels are "mediocre."[30] This act of a judge interjecting his personal opinions about entertainment as part of a judicial opinion damages the important image of judges as a neutral arbiter. This is somewhat similar to how judges are advised against pronouncements of how they personally disagree with the law being applied in the case.[31]

Due to the judiciary's power to interpret law, judicial opinions have a similar effect to legislative enactments.[32] Understanding judicial opinions, much like understanding legislation, is essential to understanding what is legally required. Therefore, the highly problematic nature of legislative drafters trying to utilize pop culture references is also applicable to judges writing opinions.[33] In both instances, a clearly communicated message is best.

D. Effects on Litigants

Some of these cases may be just another routine day for the judge writing the opinion, but represent the culmination of years' worth of suffering, uncertainty, and financial hardship for the parties involved. These litigants are therefore at a heightened risk of interpreting such references as the judge making light of their predicament. Even in cases that do not involve a particularly sensitive subject matter, both sides have invested a lot of time and money into the process, and the side that does not get its desired outcome is going to be unhappy. Judges can help the losing side accept the decision by demonstrating they were given a neutral hearing and that their arguments were considered and understood. A large part of accomplishing this is having

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29. Salzmann, *supra* note 2, at 247.
30. *Briseño*, 998 F.3d at 1028.
31. Lebovits, Curtin & Solomon, *supra* note 24, at 253 (paraphrasing Judge Selya); *id.* at 293–94 (quoting Richard A. Posner, *Law and Literature: A Relation Reargued*, 72 VA. L. REV. 1351, 1381 (1986)) ("Many judges voting to uphold statutes that they personally dislike will say so, to make themselves sound more impartial. This is an ethical appeal, but of a somewhat crass and self-congratulatory sort.").
32. Varsava, *supra* note 27, at 173. ("[O]pinions are closer in purpose to legislation than to literature.").
33. *Id*. at 103.

the parties trust that the judge is serious. The use of unnecessary pop culture references damages this trust.[34] To illustrate, imagine someone delivering to you the worst news of your life. Now, imagine the delivery of this news was accompanied by references to popular music and television shows. This would likely be poorly received, causing you to believe this person was not taking the matter seriously, and thus furthering your displeasure.

The use of pop culture references could also cause the parties involved to suspect that the judge may have been improperly influenced by arbitrary, outside influences, and that a just outcome was therefore not reached. If the judge references a popular movie in an attempt to persuade readers that his verdict was just, it is not unreasonable to wonder what role the movie played in arriving at that conclusion. Parties to the case might wonder if the judge would have ruled differently if that movie, television show, or emotionally laden song did not exist. Such occurrences may also cause litigants to view legal outcomes as arbitrary since they are apparently dependent on the pop culture exposure of different judges.

The losing litigant may perceive the use of pop culture references in the opinion as indicative of an unfair litigation process. This is because the references likely did not come up during the litigation process; therefore, the litigant was denied an opportunity to provide counterarguments.[35] This is not necessary for a trivial, passing reference, but it may be when an opinion uses a pop culture reference to draw an analogy to the holding. The losing party may have had an explanation for why the pop culture analogy, properly understood, supports the opposite conclusion. It is easy to see how such an occurrence would be frustrating and lead to a diminished level of confidence in the legal system.

In instances in which a judge is explaining why he does not agree with a specific argument presented by the losing side, the use of pop culture references is particularly ill-advised.[36] Going beyond simply explaining why the law does not justify such an argument, the judge is in essence making it personal and unnecessarily adding insult to injury. An opinion that focuses on

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34. Jacqueline Thomsen, *Cool or Cringe? Judicial Pop Culture References Rankle Some Lawyers*, LAW.COM (June 4, 2021, 12:34 PM), https://www.law.com/nationallawjournal/2021/06/04/cool-or-cringe-judicial-pop-culture-references-rankle-some-lawyers/.

35. It is likely of little consolation to the losing party that he may bring this up on appeal, as winning the lawsuit at the lower level would be far preferable. Furthermore, a superior court reviewing the opinion is unlikely to give much weight to the potential consequences of pop culture references.

36. Thomsen, *supra* note 34 (quoting Emory University School of Law professor Timothy Terrell explaining that these references seem to be used most often "when the judge wants to disparage a litigant's argument more colorfully than ordinary legal prose would permit,")

the legal reasoning will likely result in the losing side focusing on that legal reasoning instead of the personal characteristics of the judge.

And the negative perceptions of the legal system from pop culture references are not limited to the losing party. The prevailing party, while happy with the ultimate outcome, may view the arbitrary nature of pop culture references as indicative that he "got lucky." This perception of the legal system could lead to a lack of adequate preparation in future cases or an increased focus away from legal arguments and more toward intangibles, such as personal likability.

Judicial opinions lack much of the context present in a face-to-face conversation, such as physical gestures, tone, speech rate, and volume. Because of this, pop culture references in judicial opinions are more likely to be interpreted as disrespectful, regardless of whether that was the judge's intent. Such an occurrence is further problematic in that an attorney who feels a judge has targeted him for unfair treatment may alter his advocacy when in front of that judge in the future, thus resulting in a suboptimal representation of future clients.

It is easy to see how pop culture references are highly counterproductive when viewed from the perspective of the parties involved. While the losing party is never going to be completely satisfied with the opinion, pop culture references are likely to exacerbate feelings of discontent. They give the impression that the judge did not take the case seriously. They imply that the holding may have hinged on arbitrary, fictional narratives. They may cause the losing side to believe the judge had a personal vendetta against him. The inability to respond to such references may cause the losing party to believe he was treated unfairly. They may cause both sides to conclude that judicial outcomes depend on arbitrary factors. Additionally, crafting pop culture references takes time. This may lead the losing party to wonder if the outcome might have been different had the judge invested more time in considering the actual legal arguments and relevant case law.

E. Selfish Motivations

Pop culture references in judicial opinions are accompanied by undertones of "look at me!" This is inconsistent with the proper role of a judge.[37] The legal holding should be the center of attention, not the judge's ability to demonstrate his fluency in pop culture references.[38] The praise from peers and coverage in popular media outlets for references to pop culture is likely

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37. Barb Howard, *Literary Judgements: Doing More Harm than Good?*, 22 GREEN BAG 2D 125, 133 (2019).
38. *Id.*

enticing.[39] This is perhaps the leading explanation for our current "celebrity-driven legal culture,"[40] which incentivizes self-promotion over the accurate application of the law.

The increasing problem of pop culture references[41] is beginning to receive criticism in legal academia. A recent book on musical references in judicial opinions concludes that much of the motivation for pop culture references is the result of a judge attempting to attract attention to himself.[42] Judges who give in to these self-serving desires run the risk of starting with the desired pop culture reference and then reverse-engineering the legal analysis to make it applicable. Doing so even to a mild degree would be highly detrimental to the rule of law, as it would make the judge's arbitrary interpretations of whatever pop culture he happens to be familiar with exert influence over his judicial holdings.

F. Keeping Opinions Interesting

This Article is not to be interpreted as advocating for boring judicial opinions. Yes, judges should be encouraged to avoid unnecessary "legalese" and verbose, esoteric writing. While pop culture references do not fit into this category, that does not mean they are the antidote. The argument against unnecessarily complex legalese—properly understood—is actually evidence against the use of pop culture references, not for it. Unnecessarily complex legalese in judicial opinions creates misunderstandings and necessitates translation into plain English for many to understand. Likewise, pop culture references are easily misunderstood and require translation for many to understand. Judicial opinions should, therefore, avoid both unnecessary legalese and pop culture references.

Reasoning by analogy is a staple in explaining judicial rulings. Advocating against the use of analogizing to pop culture should not be interpreted as a ban against all analogies. A non-pop culture analogy to legal precedent or a common life experience can be a powerful illustration of what the holding is in the present case and why the judge came to that conclusion. Such analogies can also breathe life into an otherwise mundane opinion. Additionally, there is nothing wrong with a judge writing an opinion in a unique voice that

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39. Varsava, *supra* note 27, at 108–10.
40. *Id.*
41. Thorn, *supra* note 3, at 79.
42. KLINGENSMITH, *supra* note 13, at 9–11 (stating that reasons for using pop culture references are primarily because the author "seek[s] to acquire whatever gravitas may be inherent in the cited source," to "change some readers' perceptions on a matter," "to remind readers in a very subtle way of the judicial author's wide-ranging experience and education," and to "show off their cultural literacy, hoping to enhance their image in the eyes of certain readers.").

provides for an engaging reading experience. Proper analogies and an engaging writing style are recommended over the use of pop culture analogies because they provide similar benefits—a more entertaining and engaging opinion—without the numerous downsides discussed in this Article.

G. June Cleaver Example

A recent law review article advocating for the effectiveness of pop culture references provides an example that, properly understood, illustrates the numerous problems with the practice. The example involves a hypothetical child custody hearing in which the husband describes his wife by stating that "she is no June Cleaver."[43] The author touts this reference as "a vivid popular-culture allusion that immediately taps into the psyche of anyone familiar with the show."[44]

Despite this hypothetical about a 1950s television show being written in 2010, the author claims that "[m]ost people" would get the reference.[45] This appears to be the author taking her understandings and imposing them on society at large. An informal survey of this author's colleagues found that slightly less than 50% of them understood the reference. And even if more than 50% of the intended audience got the pop culture reference, that would be a poor threshold for its use. Any part of a writing that would not be understood by, say, 40% of the audience should be substituted for an alternative writing with a much higher comprehension rate. The negative result from the author's overconfidence that people will get the reference is illustrated by her assertion that the reference is so good it needs no further explanation.[46]

The author claims that the reference conveys "so much information . . . in such a concise manner."[47] But the information conveyed is likely not consistent from one person to the next. Even to those familiar with the 1950s show, there may be mixed takeaways. Is this supposed to refer to how the wife was not cheery? Not supportive? Not skinny? Not a good cook? Not someone of high ethical standards? Not attentive to her children? Not a modest dresser? Any of these interpretations—or any combination thereof—are possible. Furthermore, such a reference may convey unintended messages. For example, the takeaway from some, upon hearing this statement, is that this husband has unrealistic, sexist, and dated expectations regarding his

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43. Salzmann, *supra* note 2, at 242.
44. *Id.*
45. *Id.*
46. *Id.* at 247 ("The advocate does not need to elaborate or detail the ways in which the mother is unfit . . . .").
47. *Id.* at 242.

wife. For these people, the reference is counterproductive and causes sympathy for the wife and disdain for the husband.

As illustrated in this section, even an allegedly ideal pop culture reference entails numerous problems. A large number of people will not get the reference. Of those who do get the reference, they will draw varying conclusions from it, many likely not intended by the author. The reference would be counterproductive to all those who view it negatively. And finally, the reference is nothing more than an assertion with no evidence and is, therefore, not likely to be very persuasive. Weighing any potential benefits of using this purportedly ideal reference against the numerous costs provides a strong warning against the practice.

III. THE CASE FOR POP CULTURE REFERENCES

The issue of pop culture references in judicial opinions is not completely one-sided. There are advocates for the practice and they posit arguments to substantiate their position. However, these arguments are either based on a misunderstanding or, if valid, are exaggerated and therefore do not provide enough benefit to overcome the downsides previously discussed. The focus on entertainment value is misguided. While memorable, pop culture references draw the reader's attention away from the legal analysis. Any benefits from increased persuasion are minimal since that is not a primary goal of judicial opinions. And finally, while they may garner attention in popular media, this comes at the cost of diminished respect for the judiciary. This section provides these arguments along with counterarguments.

A. More Entertaining

Perhaps the best argument in favor of using pop culture references in judicial opinions is that they entertain the reader, which keeps the reader interested and improves comprehension.[48] Discussing the *Briseño* opinion, one commentator noted that rewriting it without the myriad of pop culture references would produce a "boring version."[49]

A tangible benefit to the entertainment value of using pop culture references is that it may provide an effective cognitive shortcut for lawyers trying to locate the case in future research. Using *Briseño* as an example, imagine

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48. *See, e.g.*, *id*. at 248.

49. Short Circuit, *When Are Judges "Too Cool?"*, INST. FOR JUST., at 27:05 (June 11, 2021), https://soundcloud.com/institute-for-justice/short-circuit-177.

an attorney who needs to cite to the holding in future litigation. If all he remembers is that the case involved acceptable attorney's fees in class action litigation, that may prove time-consuming to search for. However, if the attorney remembers the unique reference to *Star Wars* sequels, a search for "class action" and "Star Wars sequels" will be far more productive.[50]

While there may be instances in which someone remembers a case and is easily able to find it due to the presence of a pop culture reference, the net result of the practice likely leads to less efficient legal research. Using *Briseño* as an example, the unnecessary interjection of a variety of pop culture topics contributes to more cluttered search results for those conducting legal research. Someone searching for legal precedents involving movie sequels, negative movie reviews, reality television, or musicals may now have to sort through cases like *Briseño* that have nothing to do with the subject.

Pop culture references are not a necessary element to creating an entertaining opinion. And even if they were, entertainment value is not the primary goal of a judicial opinion. Focusing too much on reader entertainment risks an opinion that leaves the reader with memorable takeaways not relevant to the case. In psychology, these are called "seductive details."[51] A seductive detail is something sensational added to increase audience attention, but people tend to remember the sensational concept rather than the substantive part that the sensational element was intended to enhance.[52] Examples include the advertising campaigns featuring memorable lines of "That's a spicy meat-a-ball" and "Where's the beef?"[53] While highly memorable, the campaigns are viewed as a commercial failure because consumers remembered the catchphrase but not what product or brand was being promoted—Alka-Seltzer and Wendy's, respectively.[54]

B. Persuasiveness

Some claim that pop culture references explain shared experiences and therefore help persuade.[55] Some believe that lyrics from popular music serve

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50. A Westlaw search for "attorney's fees" AND "class action" returns over 10,000 cases, while a search for "class action" AND "Star Wars sequels" returns only one, the *Briseño* case.

51. *See* Jeffrey Maloy, Laura Fries, Frank Laski & Gerardo Ramirez, *Seductive Details in the Flipped Classroom: The Impact of Interesting but Educationally Irrelevant Information on Student Learning and Motivation*, 18 CBE—LIFE SCI. EDUC., No. 3, at 1 (2019).

52. *Id.*

53. Matt Culkin, *5 Famous Ad Campaigns That Actually Hurt Sales*, CRACKED (July 10, 2011), https://www.cracked.com/article_19297_5-famous-ad-campaigns-that-actually-hurt-sales.html.

54. *Id.*

55. KLINGENSMITH, *supra* note 13, at 316.

to build trust with the reader and therefore help persuade.[56] As one advocate explains, "They can inspire and persuade, telling us how to feel about a subject by bringing listeners into a story."[57] Chief Judge Judith S. Kaye makes the comparison that "[w]riting opinions is a lot like writing briefs. Both are, at bottom, efforts to persuade."[58] Others claim that pop culture references improve persuasiveness by building familiarity.[59] These references cause the readers to feel they are sharing an inside joke with the author.[60] This, in turn, creates a bond between the reader and the author, which improves the reader's perception of the author's credibility.[61]

This Article largely rejects this alleged benefit of how pop culture references create a more persuasive judicial opinion. Furthermore, the ability of a judicial opinion to persuade is overrated.[62] Judicial opinions are binding regardless of whether the reader is persuaded that the legal holding is appropriate or not.[63] As Law Professor Richard B. Cappalli explains, rhetoric in judicial opinions "need not be utilized for its power of persuasion because, right or wrong, the precedent binds."[64] Therefore, it is far more important that a judge focus on communicating the legal analysis behind an opinion rather than trying to persuade readers that they should agree with the legal analysis.

To the extent that judicial opinions need to be persuasive, the persuasiveness is primarily focused on superior courts.[65] And the persuasion there would generally be focused on convincing the superior court not to overturn the holding.[66] Therefore, the focus is more on sound legal reasoning and existing legal precedent rather than entertaining pop culture references.[67] If anything, pop culture references may be counterproductive to this audience.

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56. Alex B. Long, *[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing*, 64 WASH. & LEE L. REV. 531, 559 (2007).
57. KLINGENSMITH, *supra* note 13, at 316.
58. Lebovits, Curtin & Solomon, *supra* note 24, at 286.
59. Salzmann, *supra* note 2, at 252.
60. *Id.*
61. *Id.*
62. Varsava, *supra* note 27, at 122.
63. Lebovits, Curtin & Solomon, *supra* note 24, at 261 (quoting Richard B. Cappalli, Viewpoint, *Improving Appellate Decisions*, 83 JUDICATURE 286, 286 (2000)).
64. *Id.*
65. One could argue that judicial opinions should attempt to persuade losing parties that the judge was right to rule against them or, at the least, that the judge understood and honestly considered their arguments. While true, it is likely that the majority of a judge's persuasion is not focused on the losing party. After all, the losing party is not likely to be happy with any judicial opinion that is the result of a loss. Regardless, losing parties are unlikely to be persuaded that they should have lost due to a judge's use of a pop culture reference in the opinion.
66. *See* Michael H. v. Gerald D., 491 U.S. 110 (1989).
67. *See* Ryan B. Witte, *The Judge as Author / The Author as Judge*, 40 GOLDEN GATE U. L. REV. 37, 48 (2009).

Superior court judges may view them as indicative of a lack of seriousness, distracting from the legal analysis, and an insultingly elementary attempt to persuade.

Finally, even if persuasiveness were a key aspect of judicial opinions, the use of pop culture references may not be the ideal tactic to persuade. "It is through reasoning and solemnity that a judge's opinion becomes persuasive."[68] It is true that "familiarity lends credibility."[69] But this assumes that everyone is familiar with, and agrees with, the reference. As demonstrated in this Article, pop culture references are often misunderstood, not understood, or viewed negatively. In such instances, not only is credibility not improved but it is likely diminished. Pop culture references in judicial opinions are similar to inserting a third party into a conversation. They can distract and diminish the personal connection between the reader and the writer.[70]

C. Public Perceptions

Various claims have been put forth regarding how pop culture references benefit public perceptions of the law. Some claim that the use of pop culture references makes opinions more accessible to the general public and therefore humanizes judges,[71] and that these references cause the general public to view the judge as in touch with society.[72] It is important, these people argue, for judges to demonstrate that they are not "making pronouncements from an 'ivory tower.'"[73] Such advocates seem to be successful in gaining adherents. The practice of inserting pop culture references in judicial opinions is increasing,[74] and even the Chief Justice of the Supreme Court has commented on its significance. When asked why he used the Bob Dylan song lyric "when you have nothing, you've got nothing to lose" in one of his opinions, Chief Justice John Roberts stated that it was to make the point more understandable to nonlawyers.[75]

While there is some benefit to making judicial opinions more accessible to the public, the benefits of using pop culture references to do so are far outweighed by the costs. Very few members of the general public have read

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68. Lebovits, Curtin & Solomon, *supra* note 24, at 286.
69. Salzmann, *supra* note 2, at 246.
70. Long, *supra* note 56, at 563.
71. Witte, *supra* note 67.
72. *Id.*
73. KLINGENSMITH, *supra* note 13, at 315.
74. Thorn, *supra* note 3, at 79.
75. KLINGENSMITH, *supra* note 13, at 315.

a judicial opinion.[76] Therefore, customizing judicial opinions to the general public is not a high priority.[77] Judicial opinions should be drafted with their primary audience in mind – judges and lawyers.[78]

Even when considering only the effects on the few members of the general public who read judicial opinions, pop culture references likely do more harm than good. Studies show that the more impersonal the legal system is perceived, the more legitimate it is also perceived.[79] Therefore, efforts to "humanize" judges through the use of pop culture references will likely lead to diminished perceptions of the legal system.

Pop culture references in judicial opinions likely send the wrong message to the public about how judges reach their legal conclusions. As Justice Elana Kagan explains, "part of what we do [in judicial opinions] is show the American public *how* we reason about cases."[80] Therefore, the presence of pop culture references may give the general public the harmful notion that such movies, television shows, and music lyrics are relevant factors in deciding cases.

Pop culture references are dangerous because they generally ask the audience to draw conclusions about the real world from a fictional source.[81] If the pop culture reference involves a depiction of the legal system, this is further problematic because such depictions are often inaccurate.[82] Therefore, comparing them to real-life legal proceedings risks confusion in the minds of the general public—and perhaps even inexperienced attorneys—as to what is real and what is not.[83] Furthermore, analogizing a real-life case to

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76. Charles H. Franklin, *Public Views of the Supreme Court*, MARQ. UNIV. L. SCH. 1, 2 (2019), https://law.marquette.edu/poll/wp-content/uploads/2019/10/MU-LawPollSupremeCourtReportOct2019.pdf ("While written decisions of the Court provide the explicit bases of rulings (and of dissenting views), few among the mass public ever read those decisions, and news accounts can at best provide a simplified summary.").

77. Varsava, *supra* note 27, at 116.

78. *Id.*

79. *Id.* at 148.

80. Jacob Shamisan, *6 Writing Tips from a Sitting Supreme Court Justice*, BUS. INSIDER (Aug. 31, 2015, 2:47 PM), https://www.businessinsider.com/us-supreme-court-justice-gave-some-amazing-tips-on-how-to-be-a-better-writer-2015-8.

81. *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, 416-17 (2005) ("What the individual views as entertainment today becomes the reality to which she compares the events of tomorrow.").

82. *Id.* at 444-45 (noting "a disparity between popular culture portrayals of lawyering activities and the reality of those activities").

83. *See id.* at 427 (citing David Ray Papke, *Conventional Wisdom: The Courtroom Trial in American Popular Culture*, 82 MARQ. L. REV. 472, 485 (1999)) (stating that "the public takes the media-created legal proceedings for granted").

a movie with a legal theme may lead to readers attempting to apply the analogy back in the other direction.[84] This could result in lay readers pointing to certain occurrences in movies and assuming the same procedure or outcome should have been applicable in a real-life case.[85] For these reasons, it is particularly important for judges not to blur the lines between entertainment and the law by referring to popular depictions of the legal system in their judicial opinions.

Writing judicial opinions with the general public in mind would also require explaining basic legal concepts and procedures in a way the public would understand. This would result in more inefficient opinions for the more important audience, lawyers and judges.[86] Additionally, all of the previously mentioned problems with pop culture references would also apply to the general public. They would frequently be either misunderstood or completely not understood, viewed as not serious or as evidence that legal outcomes are contingent upon arbitrary factors, and they would distract from the more important legal holding of the case.[87]

D. Wider Dissemination

Some may attempt to argue that the use of pop culture references results in wider dissemination of the opinion to the public and those in the legal profession.[88] This could lead to a better understanding of the law and a heightened interest in the legal profession from traditionally underrepresented groups. The *Briseño* case is a powerful illustration of the first part of this argument. While not an incredibly substantial case, and not addressing a particularly interesting topic,[89] *Briseño* received a large amount of attention due to the numerous pop culture references it contained. It was not only covered in legal blogs—many of which spent more time focusing on the pop-culture references than the legal content—but it was also covered in numerous movie and comic book media outlets.[90]

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84. *See* Salzmann, *supra* note 2, at 261.
85. *See id.*
86. *See* Varsava, *supra* note 27, at 116.
87. *See id.* at 129-30 (asserting that judges who place an undue emphasis on accessibility "risk compromising the guidance value of their opinions").
88. *See* Salzmann, *supra* note 2, at 248 (asserting that "[e]ntertaining writing . . . is more likely to reach a larger audience.").
89. The *Briseño* case involves reasonable attorney's fees from class action litigation regarding the false claim of "100% natural" vegetable oil. *Briseño*, 998 F.3d at 1018–19.
90. Caleb Howe, *Wait, What? Federal Judge Hilariously DRAGS Star Wars Sequels—in a Court Opinion About Cooking Oil?*, MEDIAITE (June 5, 2021, 11:28 AM), https://www.mediaite.com/weird/wait-what-federal-judge-hilariously-drags-star-wars-sequels-in-a-court-opinion-about-cooking-oil/ (providing an example and referencing how "the story rocketed through social media and onto sites like

However, wider dissemination is not necessarily a goal to be sought. The previous section addressed the problems with focusing on reaching the general public as an audience, so this section will focus on wider dissemination within the legal profession.

A judge who writes with the intent to maximize the dissemination of the opinion to the legal community is misguided. This is because judicial opinions are essentially a zero-sum game. Meaning, those involved in the study of law only have so much time to dedicate to reading opinions. And time spent reading one opinion is time that could have been spent reading another. Therefore, pop culture references do not result in a net increase of judicial opinions read; they just alter which opinions are read. Furthermore, pop culture references may result in attorneys reading less relevant cases because the use of pop culture references may make those cases more enticing.

Finally, the wider dissemination is not necessarily indicative of a positive response. For example, some of the coverage of the *Briseño* case in the legal field was negative. It was referred to as "snarky"[91] and "cheesy."[92] One headline read, "9th Circuit Judge Tries to Be Funny, Fails."[93] And the coverage in popular media targeted at the general public, while not negative, likely has the negative effect of diminishing the prestige of the legal system.[94]

E. Miscellaneous Arguments Against

Some advocates of pop culture references claim that their use creates "a deeper understanding of the issue . . . much deeper than had the author merely made his point without the references."[95] While such references may create deeper emotional feelings, these feelings are not the equivalent of a deeper understanding of the facts. As discussed above, such references are likely to be "seductive details," drawing attention away from any relevant legal holding and leaving a lasting memory of only the reference.[96]

ScreenRant and Bounding Into Comics that might not normally be chatting about Ninth Circuit Rulings").

91. Alison Frankel, *Snarky 9th Circ ConAgra Opinion Obscures Big Question in Consumer Cases*, REUTERS (June 3, 2021, 4:53 PM), https://www.reuters.com/legal/litigation/snarky-9th-circ-conagra-opinion-obscures-big-question-consumer-cases-2021-06-02/.

92. *When Are Judges "Too Cool?"*, *supra* note 49, at 26:45.

93. Joe Patrice, *9th Circuit Judge Tries to Be Funny, Fails*, ABOVE THE L. (June 2, 2021, 11:44 AM), https://abovethelaw.com/2021/06/9th-circuit-judge-tries-to-be-funny-fails/.

94. *See supra* Section III.C.

95. Salzmann, *supra* note 2, at 255.

96. *See supra* Section III.A.

Even some critics of pop culture references in judicial opinions admit that it is not a very significant problem. For example, legal writing consultant Ross Guberman says, "I wish haughty, rambling opinions riled everyone up as much as a stray reference to 'The Bachelor' seems to."[97] Ted Frank, one of the attorneys who argued the case in *Briseño* seems to agree. "If I had to choose between an opinion that makes a pop culture joke and an opinion that lazily misconstrues the law and the record, it's no question in my mind that the latter is more disrespectful and scandalous by orders of magnitude," he explains.[98] But pop culture references are not causally related to the other problems of judicial opinions. Meaning, reducing pop culture references will not result in more "haughty, rambling opinions" or "opinion[s] that lazily misconstrue[] the law."[99] Voicing an opinion against pop culture references does not constitute an acquiescence to poorly written opinions.

IV. GUIDE FOR JUDGES

Given the limited benefits and significant harm of using pop culture references in judicial opinions, this Article generally recommends against it. The more outlandish examples—such as those in *Briseño*—arguably violate Rule 1.3 of the Model Code of Judicial Conduct: "A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge . . . ."[100] But this does not mean that every pop culture reference in a judicial opinion is unacceptable. The following are examples of when referencing pop culture in a judicial opinion is acceptable:

- When it is used to explain a common usage of a word, phrase, or behavior. For example, if a party to a lawsuit used a slang term to refer to someone, the judge could reference movies or song lyrics that also use that same term to demonstrate it has a negative connotation.
- When it is used to explain how commonly understood a word, phrase, or behavior is. For example, if a corporation that is party to a lawsuit claims that nobody on staff knew something, the judge could explain how numerous movies and television shows assume this knowledge from the audience and how the topic has even been discussed on children's shows such as *Sesame Street*.

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97. Thomsen, *supra* note 34.
98. *Id*.
99. *Id.*
100. MODEL CODE OF JUD. CONDUCT r. 1.3 (AM. BAR ASS'N 2020). Note that "personal" interest is listed separately from "economic" interest. Meaning, a judge who is seeking to gain attention for himself, absent any economic interest in doing so, could still be held to violate this aspect of the model code.

- When it is used because it relates to an integral part of the case. Examples could include intellectual property disputes and contractual disputes in the entertainment industry.
- When it is used to discuss a pop culture reference used in a prior judicial opinion that was cited as precedent in the present case.

Part of the problem with judicial opinions is that judges are largely advised to write opinions the same way that lawyers are advised to write briefs.[101] And lawyers are advised to write briefs that focus on telling a story rather than a technical recitation of the facts.[102] Perhaps this is why judges—many of whom are former trial attorneys—attempt to turn their opinions into more than a recitation of the facts and the holding. The creative storytelling and focus on entertainment value present in legal briefs are not highly problematic because a judge knows he is receiving a biased story from an advocate and that he will hear from both sides.[103] But when a judge engages in the practice, there may be no counterbalancing story unless there is a dissent.[104] And unlike a brief, the main goal of a judicial opinion is not to persuade.[105]

The following are some best practices for judges to keep in mind when considering the use of a pop culture reference in their judicial opinions:

- Consider whether the pop culture reference will appeal to a diverse audience. If the reference does not share a near-universal understanding among all ages, genders, races, and socioeconomic backgrounds, then it should not be used.[106]
- Only use self-explanatory pop culture references. For example, a California Court of Appeals referenced the Bob Dylan lyric "you don't need a weatherman to know which way the wind blows" to illustrate why expert testimony is not necessary to answer questions that can be answered with common knowledge.[107] Regardless of the reader's background—and regardless of whether they have even heard of Bob Dylan—all of the information necessary to understand the reference is provided.

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101. Varsava, *supra* note 27, at 150 n. 191 (citing Judith S. Kaye, *Judges as Wordsmiths*, 69 N.Y. ST. B.J. 10, 10 (1997) (stating "that, '[w]riting opinions is a lot like writing briefs': '[b]oth are, at bottom, efforts to persuade'" (alterations in original)).
102. *Id.* at 150.
103. *Id.* at 151.
104. *Id.*
105. *Id.* at 125 (noting the frequent tension between "persuasiveness" and "sound legal justification").
106. *See* Salzmann, *supra* note 2, at 259 (noting the risk that "the reader may have no idea to what the author is referring").
107. Jorgensen v. Beach 'n' Bay Realty, 125 Cal. App. 3d 155, 163 (1981).

- At the very least, provide an explanation of the reference for the reader. For example, instead of saying, "The ending of this case is similar to that of *The Usual Suspects*," say, "Much like the movie *The Usual Suspects*, the true villain in this case is not who you first suspect." This hypothetical opinion would likely be best without either reference, but the latter example is preferable to the former.
- Do not use pop culture references that contain a personal opinion about the referenced material. A judge's personal opinion on pop culture entertainment is likely not relevant to the case.[108] Furthermore, the reference can be confusing and off-putting to readers who do not share the same opinion.
- Keep in mind that others have had very different experiences than yourself. Just because the people you associate with are all familiar with a reference does not mean that everyone who reads the opinion will be.
- Consider your intentions. For example, question whether the pop culture reference is more for the reader or for yourself.[109] Also, consider if the point made with the reference would be any less clear if it were made without the reference. Remember that the main point of judicial opinions is to effectively communicate the legal reasoning to lawyers and judges, not to entertain or wow the reader with your grasp of pop culture.
- Consider how the reference will age over time. Remember that people may need to understand the opinion fifty years from now. If the pop culture reference is something that likely will not be remembered in the distant future, then it is best to leave it out.[110]
- When in doubt, leave it out. Given the myriad of ways a pop culture reference may cause problems, and the limited benefits they provide, judges should err on the side of not using them.

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108. *See* Varsava, *supra* note 27, at 155 (quoting Chief Justice John Roberts saying during his nomination hearing that "[N]obody ever went to a ball game to see the umpire.") (citing NEAL DEVINS & LAWRENCE BAUM, THE COMPANY THEY KEEP: HOW PARTISAN DIVISIONS CAME TO THE SUPREME COURT 1 (2020)).

109. *See* Thomsen, *supra* note 34 (quoting Georgetown University Law Center professor Aderson Francois discussing the contrasting goals of persuasion and "the sake of being funny" or "cute").

110. *See* Lebovits, Curtin & Solomon, *supra* note 24, at 283 (asserting that "[p]lanting an opinion in a particular time period by referring to popular culture takes away from the opinion's . . . ability to be a transitory piece of writing, moving from the present to the future and connecting with the past.").

V. CONCLUSION

Nothing in this Article should be interpreted as support for statutory enactments to protect against pop culture references in judicial opinions. Some have advocated for legislation mandating judicial anonymity in opinions in an effort to disincentivize judges seeking notoriety.[111] Others have proposed that opinions include "framing arguments" from each side at the beginning of the opinion, drafted by each side to the litigation.[112] Proponents say that this would help provide a more well-rounded perspective on the case.[113] Still others want to consider a rule against "fun in opinions."[114] While this Article does not endorse any of these policies, it is in favor of adding a warning against the use of pop culture references in judicial opinions to the Model Code of Judicial Conduct. This would raise awareness of the problem without unduly limiting judges in instances where a pop culture reference is called for. The warning language in the Model Code of Judicial Conduct could be concise, such as "Pop culture references in judicial opinions are frequently misunderstood, blur the lines between fiction and reality, distract from the legal analysis, and create the appearance of an arbitrary, irreverent, condescending, and self-aggrandizing judge. Therefore, their use is strongly discouraged."

Because the judiciary has command of neither an army nor of the purse, judges' rhetoric must command respect.[115] Additionally, "Judges must write precisely, simply, and concisely."[116] Pop culture references do not command respect and fail all three of the standards for ideal judicial writing. The occasional use of a pop culture reference that follows the best practices guidelines laid out in this Article is probably fine. But overall, the use of these references—which include those that are esoteric, ambiguous, offensive, and culturally insensitive—do more harm than good and should be avoided.

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111. Varsava, *supra* note 27, at 163-64.
112. *Id.* at 166.
113. *Id.*
114. *Id.*
115. Lebovits, Curtin & Solomon, *supra* note 24, at 237.
116. *Id.* at 249.