

Brady Justice:
How The Brady Bunch Taught Jurisprudence to Generations

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Introduction

For five seasons from 1969 to 1974 *The Brady Bunch* television series aired across America.¹ The familiar theme song – “Here’s the story of a lovely lady who was bringing up three very lovely girls...” – has become iconic. In the years that followed, *The Brady Bunch* continued in reruns, and generations of young Americans watched the exploits of the parents, Mike and Carol, the housekeeper, Alice, and the six children, Greg, Peter, Bobby, Marcia, Jan, and Cindy in reruns in the afternoons after school.² “*The Brady Bunch* was only a minor hit during its prime-time run from 1969 to 1974. It found a loyal niche audience of kids and

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¹ See e.g., ANDREW J. EDELSTEIN & FRANK LOVECE, *THE BRADY BUNCH BOOK 7* (1990) (“[T]he series premiered on September 26, 1969 – the start of a five-year, Friday night network institution, and eternal life in reruns...[and] spinoffs....”).

² Although statistics are hard to come by, there is a wealth of anecdotal evidence regarding the impact of the television series. For example, see SHERWOOD SCHWARTZ & LLOYD J. SCHWARTZ, *BRADY BRADY BRADY: THE COMPLETE STORY OF THE BRADY BUNCH* 48 (2010) (“During its 5-year run, *The Brady Bunch* knocked 11 different competing TV shows on NBC and CBS off the air.... As of 2010, *The Brady Bunch* has had all kinds of sequels and spin-offs, it has been running in syndication for 35 years, and it is still running in 43 countries.”); *Id.* at 89 (“In 2007, *The Brady Bunch* was still so popular, it received TV Land’s Pop Culture Award.”); *Id.* at 131 (“We only achieved real popularity when the series went to syndication.”); EDELSTEIN & LOVECE, *supra* note 1, at xi (In the book’s Forward, Florence Henderson, who played the role of Carol Brady, notes that *The Brady Bunch* television show “touched millions of lives all over the world”); BARRY WILLIAMS, *GROWING UP BRADY: I WAS A TEENAGE GREG* 2 (1992) (Writing in 1991, Williams said: “[F]or over twenty years our fantasy family has been beamed into living rooms all over the world. Through four successive decades, on all three major networks, in six separate reunions and in countless thousands of reruns, the Bradys have woven themselves into the fabric of Americana. Generations have grown up watching our harmless, pleasant, moralistic tales.”); *Id.* at 147 (1992) (“‘The Brady Bunch’ continued to thrive as a living, breathing, somehow *current* entity in the minds of tens of millions of Americans.... ‘The Brady Bunch’ *ruled* (and in a lot of markets *still* rules) syndication, consistently clobbering whatever sacrificial competition was lain in its path.”); LAUREN JOHNSON, *THE BRADY BUNCH FILES* 16 (2000) (“For some bizarre reason, these details have been implanted in the collective consciousness of those who were weaned on it. But why? How is it that most of us can’t remember our own phone numbers or a person’s name two minutes after we’ve been introduced, but we can remember the Bradys live at 4222 Clinton Way and that Alice’s sisters’ names are Emily and Myrtle?”).

teens, but it earned mediocre ratings. Following syndication in 1976, it began airing every afternoon nationwide. The show was arguably more popular in syndication than it ever was in prime time, as evidenced by its 1986 rise to the number one slot on the TBS Network.”³ In short, the series has had a tremendous impact on the minds of a substantial number of Americans.⁴

Television affects its viewers in powerful ways. Viewers absorb lessons, presumably positive, negative, and neutral, from the television shows that they watch. There is little doubt that *The Brady Bunch* producers desired to teach morals and values.⁵ The producers wanted to impart lessons about rules of law, right and wrong.⁶ It is likely that *The Brady Bunch* has influenced the thinking of a large number of Americans, many of whom eventually have attended law school and become lawyers.⁷

And as life imitates art, even *The Brady Bunch* characters acknowledged that television has the capacity to teach us about law. In the episode *The Fender*

³ Mimi Marinucci, *Television, Generation X, and Third Wave Feminism: A Contextual Analysis of The Brady Bunch*, 38 J. POPULAR CULTURE 505, 509 (2005) (citation omitted).

⁴ See SCHWARTZ & SCHWARTZ, *supra* note 2, at 139 (“I’ve been told by numerous people about the incredible influences The Brady Bunch has had on their lives.”); *Id.* at 238-39 (“[I]t is a show that is revered by millions of people. The characters are indelibly imprinted on the American psyche.”); *Id.* at 256 (“In 2010 *TV Guide* had a rating of the 50 greatest TV families. And the Brady family beat out everyone from the Huxtables to the Simpsons and was number one.”); see also EDELSTEIN & LOVECE, *supra* note 1, at 20 (Sherwood Schwartz described the show as having been “much bigger in syndication than in our original run.”).

⁵ See SCHWARTZ & SCHWARTZ, *supra* note 2, at 90 (“Occasionally, I get letters from priests or ministers or members of other clergy because they like the moral lessons and sentiments that are often the subject of stories in *The Brady Bunch*.”); see also Robert Reed, *Foreword* to WILLIAMS, *supra* note 2, at xii (“[T]he general tone and good nature of the scripts themselves, coupled with an effort to keep them within the bounds of reality and morality, tended to engender a positive influence.”); JEROME HALL, *FOUNDATIONS OF JURISPRUDENCE* 74 (1973) (“While it is true that people obey laws for reasons of expediency, habit, fear, and ‘because it is the law,’ it is also true that they are normally apt to believe that the core or bulk of the legal system is morally sound, that it binds them by its moral obligation....”).

⁶ See e.g., EDELSTEIN & LOVECE, *supra* note 1, at 34 (“it’s clear that *The Brady Bunch* did try to promote positive values: togetherness, sharing, getting along with strangers, respect for parents, telling the truth.”).

⁷ This Article is certainly not the first to use *The Brady Bunch* as a source for analyzing social values and views of the generations that watched it. See e.g., Marinucci, *supra* note 3, at 508 (“I suggest first that the *Brady Bunch* is worthy of analysis as part of the shared history of a generation that experienced childhood during the seventies, and second, that understanding the success of *The Brady Bunch* means understanding the generation that made *The Brady Bunch* successful and vice versa. Furthermore, if an analysis of *The Brady Bunch* is a potential source of insight about Generation X attitudes, and I think it is, then an analysis of *The Brady Bunch* in connection with feminism is a potential source of insight about Generation X attitudes toward feminism.”).

Benders, housekeeper Alice advises little Cindy about how a courtroom operates. Alice happily tells Cindy that she has learned a great deal about law from watching television; she's an amateur expert on law because of watching TV, although she's never been in court herself:

Alice: "I've learned a lot from *The Bold Ones*, and *Owen Marshall*, and I expect to pass the bar on the *Perry Mason* reruns."

Cindy: "You mean court's just like on TV?"

Alice: "Pretty much. The judge walks in and you stand up. When he stands, you stand, when he sits, you sit."

Cindy: "Sounds like "Follow the Leader."⁸

This Article examines jurisprudence in *The Brady Bunch*. Specifically, the Article considers how the things that the characters say and do reflect law in a general sense; therefore it examines issues such as truth and honesty, fairness, equality, right, wrong, and justice.⁹ Grant Gilmore has noted that those involved in the

⁸ *The Brady Bunch: The Fender Benders* (ABC television broadcast Mar. 10, 1972). As an interesting aside, it is worth noting that the actor who played Mike Brady, Robert Reed, had previously portrayed a young lawyer in the TV series, *The Defenders*. See EDELSTEIN & LOVECE, *supra* note 1, at 11 (Robert Reed, who played Mike Brady, had gained insight into law in the television series that he had previously been in, *The Defenders*); see also *id.* at 56 (explaining that Reed's "break came in a 1959 episode of *Father Knows Best*, "The Imposter," where he played a young lawyer, and describing *The Defenders* as a "law drama" that "was a tough, justly acclaimed show that took on subjects that are still controversial today, such as abortion and euthanasia."); *Id.* at 97 (*The Defenders* aired on CBS from "September 16, 1961 – September 9, 1965"); SCHWARTZ & SCHWARTZ, *supra* note 2, at 63. Given his previous experience, Reed was especially sensitive to legal issues and attention to detail. See *id.* at 69 ("Bob [Reed] insisted on picayune accuracy on everything and anything. He checked every minute detail in the script with his *Encyclopedia Britannica*, which was his bible. I wasn't striving for accuracy, but comedy is based on the willing suspension of disbelief to make it funny, and Bob Reed wouldn't bend at all."); *Id.* at 72 ("Bob checked every word in the script against a variety of legal sources. He wanted to make sure the writers weren't deviating from actual case procedure, word for word."); *Id.* at 73 ("Robert Reed brought qualities of integrity and honesty to the role."); see also EDELSTEIN & LOVECE, *supra* note 1, at 5 ("The creator of *The Brady Bunch*, Sherwood Schwartz, was no stranger to litigation. In 1971 he sued United Artists, arguing that he had not received proper compensation for his earlier hit TV series, *Gilligan's Island*. The case settled out of court.").

⁹ See HALL, *supra* note 5, at 148 ("For Weber, social action was the prime datum of sociology and he drew a hard line between the professional or doctrinal study of law and the sociology of law; the legal sociologist studies social action 'oriented to law.'") (referring to the scholarship of Max Weber); see also SCHWARTZ & SCHWARTZ, *supra* note 2, at 140 (explaining some of the goals of the series, Lloyd Schwartz states that they "wanted our shows to be universal not about what was happening currently in the world. That may well be one of the reasons that the shows hold up in syndication." "In doing so, we did episodes about peer pressure, acceptance, honesty, etc."); EDELSTEIN & LOVECE, *supra* note 1, at 20 (1990) (explaining the appeal of *The Brady Bunch*, Sherwood Schwartz said "Human, family stories. I don't care what the generation is, it's the same: the problems of communicating, of honesty, of being the middle child, of little things like wearing braces or glasses.").

legal profession like to consider themselves as philosophers,¹⁰ and it is not difficult to imagine that *The Brady Bunch* writers, producers, and staff appreciated their educational role. Although it would also be possible to consider substantive areas of law such as Torts, Contracts, Property, Criminal Law, and Civil Procedure, this Article does not directly address those kinds of topics. To be sure, the five television seasons are packed with legal issues and lessons that relate to these and other specific legal subjects. But this Article addresses law in a more general, foundational, sense.

Words and conduct often reflect values and core principles relating to justice.¹¹ There is little doubt that justice was important to the Brady's. Several core values that we associate with justice appear frequently and prominently. In particular, a number of episodes emphasize the importance of truth and honesty. Fairness and equality also occasionally take center stage. The characters also strive to make decisions with impartiality. Several episodes that address impartiality actually use courtroom settings. Sometimes the courtrooms are real and in other instances the characters engage in mock trials. The Brady's also routinely refer to "the law" and refer to it and "rules" with a certain reverence. In addition, the characters now and then refer to lawyers; they occasionally poke fun at the law or the legal system.¹²

Even casual viewers probably recall the frequency with which Mike Brady moralized. Mike, in his role as father, often told the children either one-on-one or as a group about the importance of truth, the importance of rules, the importance of fairness, and the importance of equality.¹³ It becomes crystal clear

¹⁰ GRANT GILMORE, *THE AGES OF AMERICAN LAW* 3 (1977) ("By the end of the [eighteenth] century, lawyers had put aside their plumbers' image and become philosophers – an upgrading of status which the legal mind naturally found irresistible. Indeed, we became students not merely of law but, much more grandly, of jurisprudence – an old word wrenched in new meaning.").

¹¹ See e.g., HALL, *supra* note 5, at 1 ("Savigny said, 'The law, as well as the language, exists in the consciousness of the people,' and he stressed the 'organic connection of the law with [their] being and character...' It 'is first developed by custom and popular faith, next by jurisprudence [*i.e.* case law] - everywhere, therefore, by internal silently-operating powers, not by the arbitrary will of a lawgiver.'" (quoting F. VON SAVIGNY, *OF THE VOCATION OF OUR AGE FOR LEGISLATION AND JURISPRUDENCE* 25, 27, 30 (A. Howard trans., 1831))).

¹² See e.g., *The Brady Bunch: Grand Canyon Or Bust* (ABC television broadcast Sept. 24, 1971) (the prospector Zachariah Brown hands the Brady's a piece of paper and says: "Sure, sure here it is all legal-like now, signed and everything; all you've got to do is fill in the details, that's all."); *The Brady Bunch: Adios, Johnny Bravo* (ABC television broadcast Sept. 14, 1973) (the shady record producer casually remarks about a recording contract: "You know, it's gotta be like legal, like you dig.").

¹³ See HALL, *supra* note 5, at 2 ("Thus, either mediately or directly, knowledge of jurisprudence permeates the entire enterprise of the study and practice of law even if that influence is not always consciously perceived.").

in Season Four why Mike is so adept at discussing legal issues. Although the audience had never heard Mike mention it previously, in March 1973 we learned that Mike's paternal grandfather was a judge.¹⁴ Presumably little Mike spent hours as a child listening to his grandfather wax eloquently about the virtues of law and its importance in society. In his only appearance on the show, Grandpa Brady makes clear that his life in the law was important and rewarding. With Judge Grandpa Brady as patriarch, it is unsurprising that truth and justice served as cornerstones of the Brady tradition.

Part I considers Brady viewpoints and lessons relating to Truth and Honesty. Part II examines episodes and interactions that concern Fairness and Equality. Part III focuses on the big-picture of Right & Wrong – Justice in a general sense, as we zoom-in on incidents, which gave the Brady's an opportunity to reflect on and express views regarding rules and Justice. Because of its focus on "Justice," Part III also examines Brady viewpoints relating to the role of law and the judiciary in society. The Article concludes with thoughts about how the Brady Bunch may have helped a generation of American citizens and lawyers maintain and advance a number of positive social values by providing weekly – and daily during reruns - role models relating to the role of law and justice. The Brady household displayed an abiding reverence for the rule of law.¹⁵ The family valued law and legal institutions. Jurisprudence scholar Jerome Hall writes: "[R]ules of law supply the rational factor that serves as a practical guide to officials and laymen, and...they provide the distinctive features of certain actions that otherwise dissolve in an amorphous ocean of behavior...."¹⁶ Mike Brady would have agreed wholeheartedly, and if we close our eyes and use our imaginations, we can certainly visualize and hear him offering Professor Hall's words of wisdom to the assembled Brady children.

I. Truth & Honesty

A. General

An essential element of jurisprudence is the value of truth. The Brady's both express the importance of truth and also put it into action. Several episodes are entirely devoted to truth, or have truth operating as an underlying theme.

¹⁴ See *infra* Part III for additional discussion regarding Judge Brady. Interestingly, Sherwood Schwartz's older brother, Albert, "attended...Brooklyn Law School – only to chuck it all and become a comedy writer and producer." EDELSTEIN & LOVECE, *supra* note 1, at 94.

¹⁵ See GILMORE, *supra* note 10, at 105 ("What is meant by the Rule of Law is rarely explained with any particularity, but the message is clear: we have the Rule of Law; our enemies do not have the Rule of Law; our possession of the Rule of Law is what makes our society a better society than their society.").

¹⁶ HALL, *supra* note 5, at 161 (footnote omitted).

Occasionally characters soberly articulate the importance of truth, frequently struggling with the difficulty of acknowledging that being truthful is the right thing to do. For example, in *Mail Order Hero*, Bobby lies to his friends and tells them that he knows the famous New York Jets quarterback, Joe Namath.¹⁷ He tells them that Joe comes over to their house to eat whenever he comes to town. So when the Jets come to play a game and his friends want to come over to meet Broadway Joe, Bobby realizes that he has been caught in a lie.¹⁸ Brother Greg counsels Bobby to tell the truth about his lie: "So I think I'd tell the truth before it gets any worse." Peter chimes in with a light-hearted spin on the topic: "Right, honesty is the best policy. Especially when nothing else works."¹⁹ A number of episodes treat truth and honesty as a matter of central importance. In *The Great Earring Caper*, Marcia insists that Cindy confess to Carol the truth about losing an earring.²⁰ When Peter breaks a lamp, in *Confessions, Confessions*, while playing with a basketball in the house, the children collude to keep the incident a secret.²¹ Peter plans to go on a camping trip, and he worries that he'll lose the privilege of camping as punishment.²² In another episode, an errantly thrown Frisbee breaks another lamp. When Carol directly asks Alice what happened, Alice reluctantly tells the truth and explains to Carol how the lamp got damaged.²³ These and other episodes will be discussed in greater detail below. But first, it will be useful to consider one episode in particular that actually uses a courtroom trial scene as a reality-play to emphasize the importance of truth. Because the majority of this episode deals with legal issues throughout the entire half hour and a courtroom scene, it merits detailed treatment. The episode also provides a social

¹⁷ "Broadway Joe" Namath played his college football at the University of Alabama and was MVP of Super Bowl III, when the NY Jets upset the Baltimore Colts 16-7. Namath was inducted into the NFL Hall of Fame on August 3, 1985. See MARK KRIEGEL, NAMATH: A BIOGRAPHY 405 (2004).

¹⁸ *The Brady Bunch: Mail Order Hero* (ABC television broadcast Sept. 21, 1973).

¹⁹ *Id.*; see also SCHWARTZ & SCHWARTZ, *supra* note 2, at 195 (commenting about this episode, the Schwartzs write: "Of course the Brady kids learn a valuable lesson about lying and what happens.").

²⁰ *The Brady Bunch: The Great Earring Caper* (ABC television broadcast Mar. 2, 1973).

²¹ Of course playing with a ball in the house violates a family rule. *The Brady Bunch: Confessions, Confessions* (ABC television broadcast Dec. 18, 1970).

²² Punishment is a common consequence for breaking rules in the Brady household. The children seem to accept punishment as a matter of course. See HALL, *supra* note 5, at 115 ("In the early history of jurisprudence many legal philosophers wrote about law without mentioning the sanction; this can be traced back to many pithy statements by Plato and Aristotle, to the Stoic Chrysippus, and to Cicero who defined law as right reason, commanding what should be done and forbidding what should not be done."); *Id.* at 119 ("Thus, Austin and Kelsen are in substantial agreement that the sanction is an essential part of positive law.") (citation omitted).

²³ *The Brady Bunch: Goodbye, Alice, Hello* (ABC television broadcast Nov. 24, 1972).

commentary on unethical courtroom tactics. *The Fender Benders* involves a minor supermarket parking lot collision.²⁴

B. *The Fender Benders* (March 10, 1972)

As Carol was pulling out of a parking space, she collided with a car driven by a man named Harry Duggan. The accident damaged the right rear fender of the family station wagon. Carol says it "wasn't even my fault." The story emerges that Carol looked back when backing up from her parking space at the supermarket. Duggan also backed up (according to Carol, without looking) and they collided. Carol explains to Mike that both cars sustained about the same amount of damage, and there were no injuries. She says that she and the other driver exchanged names and addresses and "decided to fix our own cars instead of making a big thing out of it." Mike says that he thinks that it would have been better to have "reported it...but as long as you both agreed."

Marcia tells Greg that the accident wasn't Carol's fault but instead "that dumb man-driver's fault." But soon the man with whom Carol had the accident, Harry Duggan, arrives for a visit at the Brady House. He turns out to be a classic sleezeball and now is changing his story, accusing Carol of being at fault. He suggests that the real problem is "women drivers."

Harry now says that his "car had to be towed from the scene of the accident to a shop." And he adds, "As a matter of fact, she banged up my car pretty bad." He then presents an itemized list of the damage, and he says that Carol is going to have to pay. He claims that he didn't agree to have each fix their own car, because "it certainly wasn't my fault." He wants to tell his side of the story, and says that he looked out of his rear window and "saw it was clear" and then "started to back out slowly." "When all of a sudden, she came screaming out of her parking place and banged right into me. Obviously, she just didn't look back."

Carol protests that he "couldn't have looked back because I was moving first." Duggan disputes Carol's statement and says that *he* was moving first. He says that the muffler needs replacing, along with several other things, for a grand total of \$295.11.²⁵ Mike tells Duggan to leave before he tosses him out. Duggan asks: "Sir, are you threatening me with bodily harm?" Mike replies: "Yes! Out!" And Duggan responds that he's going to sue: "I'll see you in court."

²⁴ *The Brady Bunch: The Fender Benders* (ABC television broadcast Mar. 10, 1972).

²⁵ \$295 in 1972 is roughly equivalent to \$1600 in 2014.

Mike's interpretation is that Duggan is "obviously trying to use the accident to get a whole lot of other repairs done on his car." And when Bobby and Cindy ask if they will have to go to court too, Mike says yes they might because they were witnesses, and "it's perfectly legal." Carol assures them that "it's nothing to be afraid of. All you have to do is tell the truth."²⁶ Mike explains that they definitely have to tell the truth. "Of course, especially in court."

Cindy asks if she has to tell "The exact truth?" Bobby tells Mike and Carol that "maybe the accident was Mom's fault." And Cindy adds that they didn't see her look back. When Mike pursues the issue, asking "Are you sure?" Bobby answers yes they are sure. Mike then presses the matter with Carol but she says that she's "positive" that she looked back. Carol becomes exasperated and laments: "Mr. Duggan's going to take me to court and my own kids are going to have to testify against me." Mike and Carol discuss it and reluctantly agree that they don't want to make Bobby and Cindy testify against Carol; so they decide just have to pay Duggan the \$295.11.

At this point Marcia steps in, however, and says that she guesses that she'll "have to be a witness too." In her view, it was *not* Carol's fault. She exclaims to Cindy: "Mom's fault?" To which Cindy replies: "What am I gonna do?" Marcia's sarcastic response to her little sister is quite blunt: "Well for one thing, get glasses!" Marcia then goes to tell Mike and Carol that she "saw Mom look back."

It is at this juncture that Alice has her discussion about courtroom procedures with Cindy.²⁷ Cindy tells Alice that she's scared because "The judge swears at you." Of course Alice sets her straight: "No Sweetie, the Judge swears you in." The conversation continues:

Alice: "And when he calls your name, you become the witness and you sit

²⁶ Under the CAL. EVID. CODE, specifically § 701, "a person is disqualified to be a witness if he/she is: 1) incapable of expressing himself or herself concerning the matter so as to be understood, either directly or through interpretation by one who can understand him; or 2) incapable of understanding the duty of a witness to tell the truth. In any proceeding held outside the presence of a jury, the court may reserve challenges to the competency of a witness until the conclusion of the direct examination of that witness..." CAL. EVID. CODE § 701. In *Bradburn v. Peacock*, a California Court of Appeals held that "in order to be a competent witness a child under 10 years of age must be capable of receiving just impressions of the facts and relating them truly." *Bradburn v. Peacock*, 286 P.2d 972, 973 (Cal. Dist. Ct. App. 1955) (citing CODE CIV. P. § 1880(2)). "Their competency is to be determined, not by their age, but by the degree of their understanding and knowledge." *Id.* (quoting *People v. Bernal*, 10 Cal. 66, 66 (1858)). "[A] child's extreme youthfulness [is] not, *per se*, sufficient to exclude him from the witness stand. There is no arbitrary age limit under which the testimony of a child is automatically rejected." *Id.* (quoting *People v. Delaney*, 52 Cal. Ct. App. 765, 768 (1921)).

²⁷ See *supra* text accompanying note 8.

in the witness chair."

Cindy: "Is that where I have to tell the truth?"

Alice: "Yep, the truth, the whole truth, and nothing but the truth."

Cindy then wonders if she does not sit in the chair, if she might be able to "fib a little."

Alice tells her that her mother wouldn't want that. Cindy, however, persists, and expresses her concern.

Cindy: "But if Bobby and I tell the truth, she'll lose, and go to jail for years and years."

Alice: "Honey, this is just small claims court. There's no jury. Your mother's not going to have to go to jail no matter what you say. The judge just listens to both sides, and then he decides...."

Mike formulates a plan to gather evidence. He proposes that the family "restage the scene of the crime" in order to figure out "why four people in the same car didn't see the same thing the same way." So, they all go to the car in their driveway and sit where they were sitting when the accident occurred, in order to try to see what they could see. They are trying to do "exactly" what they did in the supermarket parking lot. Carol says that they first fastened their seat belts, and Marcia agrees. Carol says that she looked back. Then Marcia recalls that Bobby and Cindy were "fighting about something" and Cindy says "Oh yeah!" and that Bobby had spilled ice cream all over her. So, facing one another, Bobby and Cindy re-enact their argument. Greg, meanwhile, is behind the wheel of the other car, playing the role of Mr. Duggan in the parking lot.²⁸ Mike points out to Bobby and Cindy that, if they were indeed arguing the whole time, perhaps they didn't see whether Carol looked back. And in fact Cindy concedes "Maybe we missed it."

The scene then shifts to the courthouse.²⁹ Duggan arrives late wearing a neck brace and feigning a limp. He says that he is late because he's suffered whiplash and was at the doctor. He says that Mrs. Brady hit him after he carefully looked back. He uses toy cars on a magnetic board to illustrate his version of the

²⁸ For comic relief, when Greg almost fails to stop the car, Jan says: "We almost had another court case." Alice chimes in "Yeah, Brady versus Brady."

²⁹ A close-up shot of a relief sculpture (presumably the relief is on the exterior of the courthouse building) reads: "Justice for all." There are figures of three men. The one in the center has two swords with fasces and a caduceus and a scale. Another may be Moses with the Ten Commandments.

accident. The judge tells him that he'll "hear both sides, and then the court will render a decision." Duggan complains that he can hardly turn his head. He remarks that his wife is "bedridden," apparently trying to elicit sympathy from the judge. The Judge admonishes him: "Just stick to what happened in the parking lot, Mr. Duggan." Duggan claims he looked out of the rear window "and saw it was clear." And that he "started to back up very slowly...." And he accuses Carol of barreling out of the parking space and hitting him. "Of course, you know how woman drivers are, your honor." Throughout the episode Duggan has cast aspersions on women and women drivers. This provides an opportunity for the judge to emphasize that gender "is not pertinent." And he asks if Duggan has any witnesses. When Duggan admits that he does not, the Judge asks Carol to tell her side of the story.

Carol agrees that they were both parked but says that *she* "was the one who sure everything was clear." Duggan tries to interrupt, but the Judge says that he has had his turn. The Judge then asks Marcia, Bobby, and Cindy if they were witnesses. When Duggan protests ("I object, Your Honor") that Carol has "probably told them what to say," the judge tells Duggan that he doesn't need his advice. Marcia corroborates Carol's story, agreeing that she looked back.

Judge: "Now children, the story that your mother told about the accident in the parking lot; is that true, did she turn around and carefully look before she backed up?"

Marcia: "Yes, Your Honor, I saw her look back."

Judge: "Are you sure?"

Marcia: Yes Sir, I'm sure."

Bobby and Cindy then explain that they were arguing and can't be certain about what they saw. The judge thus acknowledges that he has to deal with two conflicting accounts. "This leaves the Court to settle the decision entirely on the testimony of both litigants." Unfortunately, at this point in the episode, the writers resort to an unnecessary, sophomoric reuse. Mike purposely drops his briefcase, making a loud noise. Duggan, startled by the sound of the briefcase hitting the floor, turns around quickly to see what made the noise. The judge, along with everybody else, realizes that Duggan's ability to turn his neck impeaches his testimony, because it severely erodes his credibility. To be sure, the Judge just as easily could have rendered his decision based on credibility and witness testimony alone, without the additional briefcase-head-turning incident. Nevertheless, the Judge finds for the Carol, the defendant, and a disappointed Duggan rips up his itemized list of damages.

The tag scene to this episode features Peter and Jan arguing – actually having a

tug-of-war – over ownership of a candy bar. They each grab a candy bar and argue "it's mine!" Cindy, playing the role of the judge, sits down and says "Let me settle this." "I was just in court so I know all about settling things, really legal." Jan and Peter agree to allow Cindy to act as Judge. Each claims to have bought the candy bar (Peter..."yesterday" and Jan..."today"). Cindy says: "It's a very tough case, there's only one thing to do." She takes a big bite and runs away; Jan and Peter give chase.

C. Episodes & Incidents Focusing on Truth and Honesty

1. *The Slumber Caper* (October 9, 1970)

In *The Slumber Caper*, the characters wrestle with an interesting problem about truth. The problem also concerns circumstantial evidence and at least one difficulty inherent in drawing inferences from circumstantial evidence. Humans are fully capable of drawing false conclusions based on circumstantial evidence. In Mrs. Denton's English class, Marcia drew a picture of George Washington, which she says she copied from a picture on the wall in the classroom. Unfortunately, it is not a very flattering representation of the Father of our Country. In fact, it is not readily identifiable as the first President. A classmate, Paula Tardy, found Marcia's drawing and added a caption, which read: "Mrs. Denton? Or a hippopotamus?" Mrs. Denton found the picture and, apparently, turned it over to Mr. J.P. Randolph, the school principal. The monkey wrench in the plot, however, is that for most of the episode neither Mr. Randolph, Marcia, nor anyone (including the audience) except Paula knows that Paula was the person who added the derogatory remark. Mr. Randolph calls Marcia to his office and tells her that he has concluded that *she* is responsible for both the drawing and the caption. Consequently he punishes her with staying after school for one hour for a week. Marcia, however, is adamant. She admits that she drew the picture but denies that she wrote the caption. Mr. Randolph tells Marcia that it isn't logical to believe that it was her paper, that she drew the picture, but that she did not write the comment, "Mrs. Denton? Or a hippopotamus?"

At home Mike and Carol tell Marcia that, because of this incident, they are canceling the slumber party that had been planned. In tears, Marcia appears heartbroken that Mike and Carol refuse to believe that she is telling the truth. Devastated, she tells them: "You don't believe me either! And if you don't, I don't want a party or *anything ever* from you!" In the following scene, Mike, perplexed, says, "It's not like her honey. I've never seen Marcia so adamant." Carol replies, "That's one thing about Marcia, when she's wrong, she admits it." Thinking that Mr. Randolph might be mistaken, Mike pays him a visit, and they discuss the incident. But Mike respects Mr. Randolph's position and does not

argue with him. They add a bit of comic relief, however, when Mr. Randolph admits, in response to Mike's question, that Mrs. Denton does "unfortunately" look like the drawing. After Mike and Carol discuss the matter further at home, they determine that Mr. Randolph's conclusion may be incorrect. Thus they decide that they are willing to trust Marcia, and they revoke the slumber party cancellation.

Marcia, in the meantime, however, jumps to her own conclusion. She remembers that her best friend, Jenny Wilton, sits in the same desk in the class that meets after she (Marcia) has English with Mrs. Denton. Therefore, Marcia infers that it was Jenny who must have added the caption to Marcia's drawing. Marcia telephones Jenny and, without explaining why, un-invites Jenny to the slumber party, telling her that the party is only for her friends!³⁰

At the party (fourteen girls including the three Bradys), Paula, innocently tells Marcia that she was the one who had written the caption on the paper, and that she intended it merely as a joke. Paula then apologizes upon learning that Marcia was punished for it, and Paula then offers to tell Mr. Randolph the truth. Marcia now realizes that she also had falsely accused Jenny Wilton (the same sin of false accusation as Randolph – convicting without proper evidence) and she confesses to her parents and telephones Jenny to re-invite her to the slumber party. Mike admonishes Marcia: "You were blamed for something because somebody didn't have all of the facts. You turned around and did the same thing to Jenny."³¹ In the tag scene at the end, Mr. Randolph telephones to apologize because of Paula's confession.

³⁰ Perhaps this is the 1972 equivalent of "un-friending" someone on Facebook today?

³¹ When a witness's credibility is in question in a California court, that witness's credibility "may be attacked or supported by any party, even the party who called the witness." CAL. EVID. CODE § 785. Under CAL. EVID. CODE § 786, "evidence of traits of his character other than honesty and veracity, or their opposites, is inadmissible to attach or support the credibility of a witness." *Id.* When Mike and Carol agree that when Marcia is wrong she admits it they are evaluating facts that go to Marcia's veracity. This type of evidence would be admissible in a California court of law and support Marcia's credibility. Unfortunately, Marcia didn't do the same evaluation before she accused Jenny of the wrong doing; had she done so maybe she wouldn't have found herself scorning a friend and later having to apologize for it. This theme occasionally appears in the show. *See e.g., The Brady Bunch: Top Secret* (ABC television broadcast Feb. 15, 1974) (Bobby and Cousin Oliver have misinterpreted evidence, and Mike lectures about "what can happen when you jump to conclusions without getting all the facts.").

2. *Quarterback Sneak* (Nov. 9, 1973)

In *Quarterback Sneak*, Greg suspects that Fairview High's (a football rival of Greg's school, Westdale High) quarterback, Jerry Rogers is feigning romantic interest in Marcia for the sole purpose of gaining access to and stealing Greg's team playbook. And Greg's suspicion is correct; Bobby actually witnesses Jerry attempting to take the playbook when he was visiting Marcia one afternoon following school. Consequently, Greg, who's playing halfback for Westdale, manufactures a substitute, fake playbook with phony plays. Jerry indeed takes the bait and pilfers the fake playbook that Greg has planted in the house. Mike learns about Greg's deception and lectures Greg, telling him that Westdale could win dishonestly because the playbook is a fake, and the Fairview team, relying on false information, will misinterpret Westdale's signals. "A victory's only going to mean something if Westdale beats Fairview in an honest game" So Greg calls Jerry on the phone to tell him that the plays are fake, but Jerry doesn't believe him. In fact, Jerry lies and denies that he stole the book in the first place. Later Fairview's coach takes Jerry out of the game in the first quarter when he learns about the playbook incident, and Westdale wins the big game 20-7. Back at home post-game, Greg proudly tells Alice "We won fair and square." In this episode, honesty is rewarded while dishonesty, theft, and deception are punished.

3. *Eenie, Meenie, Mommy, Daddy* (October 10, 1969)

The episode *Eenie Meenie, Mommy, Daddy* presents a problem for Cindy. She is participating in a school play – the lead role of the fairy princess – but, because the size of the auditorium is limited, students will be allowed to invite only one parent to the performance. In an effort to avoid making a decision about which parent to invite, she fakes an injury and lies about hurting her left ankle in an effort to have an excuse not to be in the performance. But within a matter of seconds, she forgets and begins limping on her *right* ankle. The look on her teacher's face, Mrs. Engstrom, tells the audience that she knows that Cindy is lying about her injury. Yet Mrs. Engstrom doesn't challenge Cindy's lie. Instead she telephones Carol and explains the incident to her.

Mike, nevertheless, rather than communicating openly and honestly about the issue, decides to employ his own form of deception. Although he does not directly lie to Cindy, he presents a hypothetical. He begins his lie with "Suppose": "Suppose that I had a business meeting that night, out of town...?" Cindy's response is joyous, and she exits to telephone Mrs. Engstrom, presumably to reclaim her lead role as the fairy princess in the play.

But at the episode's end, we learn that, after his discussion with Cindy regarding his hypothetical business meeting, Mike contacted Mrs. Engstrom, explained the special circumstances surrounding Cindy's dilemma, and, as a result, the cast (and apparently all involved) stage an additional performance just for the Brady's. At the end of this episode, Mrs. Engstrom makes an interesting statement about jurisprudence. Following the "special performance for the Brady's," she says "I guess children don't understand sometimes it's possible to bend the rules a bit." This turn of events shows that there can be a positive outcome when people are honest and explain special circumstances fully to others. Mike's honesty is rewarded. As the closing camera shot zooms away from Mike, Carol, Greg, Marcia, Peter, Jan, Bobby, and Alice who are seated alone in an otherwise empty school auditorium, the TV audience, however, is left to wonder why the parents, family, and friends of the other children who also were limited to only one ticket for the regular performance were not invited to this additional show.

4. *Everyone Can't Be George Washington* (December 22, 1972)

Curiously, Peter uses the exact same reuse for the same reason in *Everyone Can't Be George Washington*. Peter has the role of Benedict Arnold in the school play but several classmates tease him about being a traitor (like the historical Benedict Arnold), so he tries to think of excuses to get out of playing the part. He, like Cindy in *Eenie, Meenie, Mommy, Daddy*, pretends to twist his ankle. But his lie backfires when Mrs. Bailey tells Peter that the real Benedict Arnold was wounded at the Battle of Saratoga and also limped. She even tells him that it was the same leg – "Isn't that lucky!" she adds.³² Not deterred, Peter next pretends to have laryngitis. Mike and Carol clearly know that Peter's lying about the laryngitis; Mike remarks to Carol "His laryngitis seems to have cured his ankle." "Yeah I noticed that too." Carol replies. Moments later Mrs. Bailey telephones Jan to tell her to stop working on making scenery. Throughout most of the episode Jan, who was put in charge of making scenery for the play, has enlisted the help of Mike, an architect, and the rest of the family to create elaborate sets. But, because of Peter's apparent inability to speak and the inability to find a substitute on short notice, Mrs. Bailey has canceled the play. Jan is crestfallen, presumably reflecting on how much effort she and the others have put into creating scenery. Mike and Carol then confront Peter with his lies about the ankle and laryngitis, and remind him about letting down Jan and the many others who have worked on the play. Staring truth in the eye and feeling guilty, Peter changes his mind and participates in the play.

³² In fact Mrs. Bailey's assertion was correct. Arnold was wounded (for a second time) in his left leg in that battle in 1777. BRIAN RICHARD BOYLAN, *BENEDICT ARNOLD THE DARK EAGLE* 32 (WW Norton & Co. Inc., 1973).

5. *Alice Doesn't Live Here Anymore* (October 17, 1969)

Even housekeeper, Alice, lies on occasion. In the opening scene of *Alice Doesn't Live Here Anymore*, Bobby runs into the house to ask Alice to help him because he fell off his bike and has a bloody knee. Alice begins triage but then Carol, the new mother, enters the kitchen to see if she can help. She looks at Bobby's knee and says: "Come on let's hobble upstairs and I'll get you bandaged up." To which Bobby replies, "Alice can do it." It becomes apparent that Carol's feelings are bruised, and Alice tries to encourage him to go with Carol. Feeling rejected, Carol exits the kitchen. Alice, having perceived Carol's reaction, then lies to Bobby and tells him to go upstairs to have Carol attend to his injury. "I'm too busy right now; I don't have time to fool around with scraped knees." Alice lies in order to manipulate Bobby to interact with Carol. Alice wants Carol to feel needed.

Moments later, Mike asks Alice to sew a button on a dress shirt. She initially promises to do so but then, apparently thinking that this situation presents another opportunity for Carol to be more involved, quickly changes her tune and says, "On second thought, Mr. Brady, I just won't have time to do it right now." Taken aback, Mike replies, "It'll only take you a minute." "I'm sorry I just can't do it; I'm way behind schedule," Alice counters, "Say I've got an idea. Why don't you ask Mrs. Brady."

Alice does much the same in the next scene when she tells Peter and Greg that she doesn't have time to referee their argument about the whereabouts of Peter's baseball glove. She instructs them to go inside to ask Carol to arbitrate instead.³³

³³ Every now and then we find discrepancies in the world of the Brady's. This might be such an instance but then again it might not be. In this scene, Peter has apparently taken Greg's baseball glove, and the two of them are literally tugging at the glove, two-fisted, trying to wrestle it away from one another. Peter says that he took Greg's glove because he couldn't find his glove, and accuses Greg of having taken his (*i.e.*, Peter's). That's the basis of their argument. Greg sounds furious and exclaims, "Now look what you did, you got the pocket in the wrong place!" "Look at this, Alice, he took my glove and now the whole pocket's messed up." Moments later Carol solves the boys' problem when she explains that it was *she* who moved Peter's glove from the top of his desk to a drawer. She says that she thought that baseball season was over. The potential discrepancy is this. In the episode which aired just one week earlier, *The Brady Bunch: Eenie, Meenie, Mommy, Daddy* (ABC television broadcast Oct. 10, 1969), when Peter and Bobby were in the backyard throwing a baseball, Peter was throwing left-handed and Greg was throwing right-handed. Thus, it seems illogical that Peter would have taken Greg's glove, since Greg's glove would fit the left hand and Peter's would fit the right. But perhaps there is no discrepancy. Young baseball players know that, in a pinch, a lefty can use a righty glove and vice-versa, although it's not ideal because of the finger positions and location of the pocket. But this would explain why Greg says that "the pocket's in the wrong place" and that "the whole pocket's messed up." A

And Alice's tactics begin to have the desired effect; Carol happily reports to Mike that the boys are starting to come to her with their problems. Alice overhears Carol and is pleased. But in the next two scenes all three boys encounter problems and they take them to Carol instead of Alice. Now it's Alice who begins to feel rejected. She feels even more left out when a new telescope arrives in the mail and the boys immediately run upstairs to show it to Carol. The girls then begin to feel rejected also. They bring Carol into their room to ask her why she's spending so much time with the boys and ignoring them. So Alice's lies have had at least two negative consequences: her own feelings are hurt and the girls' feelings are hurt.

At this point, matters escalate. Alice now thinks that the family dynamics would be better if she were to leave for good. She's not sure that she's really needed now that the boys and Mike have begun to rely on Carol for the kinds of things that she used to do. So Alice invents another lie. Rather than being direct with Mike and Carol about the situation, Alice concocts a yarn that her aunt in Seattle has a liver (or kidney...Alice says "it's one of those things in there") ailment, and claims that her aunt wants Alice to come to Seattle to be with her during her sickness. So she tells Mike and Carol that she plans to leave.

Now it appears that Alice's lies and efforts to direct the males in the household towards Carol have not only worked but have also backfired with serious consequences. That night, Carol says to Mike: "Mike, you don't believe that story about her aunt any more than I do! We've got to find out the truth!" To which Mike responds: "Honey, what do you want to do, put her under a bright light or drip water on her forehead?" Mike then gets the idea that perhaps he needs to give Alice a raise. He tells Carol that he hasn't increased her pay but that he has, as a result of marriage, doubled Alice's workload. The following morning Alice, says ironically: "Nothing could be farther from the truth." "Mr. Brady it's not the money." But when Mike directly asks, "What is it?" she repeats the lie again: "It's like I said, it's my aunt in Sacramento." As is the case with many a liar who's been caught because of inconsistency, Mike's suspicions have now been confirmed: "Sacramento?" he asks himself after she has left the kitchen.

Further confirmation of her lies arrives in the next scene when Marcia and Jan overhear Alice's telephone conversation wherein she confides in her friend

left-hander using a right-hander's glove certainly could alter the pocket formation. And, in fact, when Carol takes Peter's glove out of the drawer, it does appear to be a left-handers glove (perhaps a left-hander's first baseman's mitt). Christopher Knight, the actor who played Peter, is left-handed. *See Christopher Knight*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Christopher_Knight_\(actor\)](http://en.wikipedia.org/wiki/Christopher_Knight_(actor)) (last visited June 7, 2015).

Myrtle: “Now that Mr. Brady’s married, I’m just not necessary any more.” The family then decides to fabricate reasons to ask for Alice’s help to show her how much they need her. Of course they’re all guilty of lying in an attempt to convince her that she’s needed. Their ploy works but Alice catches on. In the end she decides to stay, remarking that they must care about her a great deal to have gone to the trouble of staging such elaborate escapades.

6. *Peter And The Wolf* (Oct. 12, 1973)

The episode *Peter And The Wolf* illustrates truth as an important value. Greg has a date with Sandra Martin scheduled for Saturday night. At school she tells Greg that she needs to cancel because her 18 year old cousin, Linda, is coming to visit from out of town “right out of the blue” and that she needs to be with her. Greg suggests that they double date, and he tells Sandra that he’ll find a date for her. After one friend at school rejects Greg’s proposal, back at home he begins calling other friends on the phone, looking for a date for Linda.³⁴

After striking out with his friends, Greg cooks up a plan to have Peter come on the double date. Greg creates a false identity for Peter, Phil Packer, from another high school. Sporting a false mustache, Peter goes on the double date to a drive-in movie with Greg, Sandra, and Linda. The girls are not fooled, and after the date they hatch a plan of their own. The next day Sandra telephones Greg and asks to go on another double date that night. Sandra and cousin Linda have decided to fawn over “Phil” just to play mind games with Greg. At the Pizza restaurant both girls flirt with “Phil.” As coincidence would have it, Mike and Carol wind up going to the same restaurant with one of Mike’s Mexican business clients, Mr. Calderon, and his wife. Mr. Calderon sees the girls throwing themselves at “Phil” and takes offense at their public display of affection. He says it’s embarrassing. Of course Mike and Carol share an awkward moment when they realize that Peter and Greg are causing the embarrassing situation. Greg and Peter then realize that their parents have caught them. Following this moment of crisis, however, the four teens decide that honesty is the best policy

³⁴ In his first phone call to Fred, we learn that in the first scene Sandra made a mistake. Although in the previous scene Sandra referred to their date on *Saturday* night, Greg asks Fred if he’s busy on *Friday* night. Subsequent dialogue and action reveal that the actress, Cindi Crosby, who played Sandra, mistakenly said “Saturday.” At the house, Mike tells Carol that he hopes to take her to dinner on Saturday night, and later it turns out that they bump into Greg, Peter, Sandra, and Linda. But that incident is the night *after* Greg, Peter (“Phil”), Sandra, and Linda go to the drive-in movie on Friday night. In a later scene, Peter and Greg are discussing their double date planned for that night. Peter remarks that it will be difficult to concentrate in class during the day. Presumably, this is additional evidence that Peter and Greg have their date scheduled for Friday (a weekday) not Saturday. Interestingly, Cindi Crosby is the sister of actress Cathy Lee Crosby.

and they explain everything to Mike, Carol, and the Calderons. Back at home, Carol tells Greg and Peter that the Calderon's "didn't exactly approve of your X-rated behavior, but they did admire the way you and the girls told the truth." Peter chimes in with his own moralistic summary, saying what he learned from the experience. "One, you act your age. And two, you don't try to be something you're not."³⁵ To be sure, this episode once again teaches that deceit and falsehood lead to negative consequences while addressing difficult situations openly and truthfulness bring about positive results.

7. *The Tattle-Tale* (December 4, 1970)

The Tattle-Tale presents difficult issues relating to truth. This episode is all about Cindy tattling. Cindy freely tells just about everything to anyone. When Bobby accuses her of being "a snitcher," she replies: "I'm not a snitcher, I just tell it like it is!" Both Mike and Carol quickly tell Cindy that she mustn't tattle. They emphasize the need to stay out of other people's business. This story illustrates an interesting problem with truth. Although we tend to prize truth and hold it up as a shining star in legal matters, humans also prize privacy and confidentiality. This is one reason why special rules of evidence and civil and criminal procedure govern spousal immunity and trade secrecy.³⁶

After a series of relatively minor incidents involving tattling on her brothers and sisters, Cindy and Alice are in the kitchen when the doorbell rings. Alice meets the postman at the door who tells her that she has a registered letter. Alice opens the letter to discover that she has won a contest. Happy about her contest win, she hugs the postman. Meanwhile, Sam Franklin, Alice's beau, telephones and Cindy answers. Cindy innocently tells Sam that she sees Alice hugging the postman. Gripped by jealousy, Sam fails to show up that evening to take Alice on their date. When Alice calls Sam to ask where he is, he tells her to let the postman take her to the dance. Alice doesn't understand Sam's passive-aggressive behavior until Cindy explains that she told Sam that she had seen Alice hugging the postman.

³⁵ For comic relief, Peter adds: "And three, you find out in advance what restaurant your Mom and Dad are going to...and go someplace else!"

³⁶ Under CAL. EVID. CODE, "[a] spouse, whether or not a party, has a privilege during the marital relationship and afterwards to refuse to disclose, and to prevent another from disclosing, a communication if he claims the privilege and the communication was made in confidence between him and the other spouse while they were husband and wife." CAL. EVID. CODE § 980. "Communication between husband and wife is presumed to be confidential and burden is on opponent of privilege to prove otherwise." (citing *People v. Carter*, 110 Cal. Rptr. 324, 327 (Cal. Ct. App. 1973)). This rule applies in both civil and criminal cases. GEORGE FISHER, EVIDENCE 1057 (Robert C. Clark et al. eds., Foundation Press, 3rd ed. 2013).

In one of his classic lectures, Mike sits down to explain the problem to Cindy. He perceptively explains that it's not always easy to determine what information about one person ought and ought not be passed along to another. Telling the truth, indeed, is often a more nuanced matter than some would have us believe. "I know it's difficult for a little girl to know what to say and what not to say. Grownups have that same problem. But you have to learn when to keep quiet." Of course in the ensuing scenes Cindy, too young to use judgment, simply refuses to disclose any information to anyone about anything. But perhaps that's really the point. Although truth may be an important value in life and law, it is necessary to balance the need for truth with other, competing values and interests such as privacy, confidentiality, and personal interests.³⁷

8. *Career Fever* (November 17, 1972)

In *Career Fever*, several characters have difficulty with honesty. The plot revolves around Greg and Mike. Greg has been thinking about careers, and he, like many boys, considers his father's profession, architecture. In the opening scene, Mike tells Carol, "I don't know, it may be corny, but I'm so proud Greg wants to following my footsteps." The audience quickly learns, however, that Greg has changed his mind and does not want to pursue architecture. He has confided in Marcia, and she counsels Greg: "You've got to let him know." But when she asks Greg if he has told Mike about his change of heart, Greg tells her that he plans "to show him" instead, in order to avoid disappointing him. Greg's idea is to draw terrible mock architectural plans. He shows Marcia a house plan that he has drawn. It is so bad that she has to ask him what it is. "When Dad sees that, he's got to say I don't belong in the architect business." Uncharacteristically, Marcia encourages Greg's deceit, telling him "That's a terrific idea." Thus the basis of the subsequent plot rests on Greg's unwillingness to communicate directly and honestly with Mike. In essence he attempts to manipulate Mike by dishonest conduct.

When Greg shows his drawing to Mike, Mike holds his tongue, trying not to discourage Greg. Mike then shows Greg's drawing to Carol. He tells her: "I couldn't tell him the truth; he's so excited about being an architect." As we might assume, the problems escalate. Mike gets the idea to give Greg architectural tools and a book to "help him with his perspective." Meanwhile, Greg tells Marcia that he's decided to face the music and tell Mike the truth. "Marcia, I've made up my mind. I'm going to have to do something drastic." "Like what?" she asks. "Tell

³⁷ See generally JOHN E. NOWAK AND RONALD D. ROTUNDA, CONSTITUTIONAL LAW VII. The Right To Privacy §§14.26-30, 1007-1091 (8th Ed. 2010).

him the truth! I'm just going to have to walk right up to Dad and say, 'Dad, I don't like it, I'm no good at it, and just don't want to be an architect.'" But Greg loses his resolve when Mike returns home and presents Greg with his old drafting kit: "Because the correct equipment can make all the difference in the work you do." So once again Greg decides to draw something terrible. Marcia asks if he thinks he can draw something worse than his last, and Greg tells her, "If you think that was bad, wait til you see this!" Ironically, in the very next scene, when Peter comes to talk with Mike and Carol about a problem of his own, Mike insists that Peter not beat around the bush: "Alright, Peter, what's this all about? The *truth* now!"³⁸

Finally, after Mike and Carol have looked over Greg's latest visual disaster (Mike remarks "What we have here is Frank Lloyd Wrong."), the episode concludes with Greg finally admitting to Mike that he does not want to be an architect. Both he and Mike acknowledge that it would have been better to have dealt with one another honestly from the start. "Dad, I should have leveled with you in the first place." "Well I guess I should have leveled with you too, son." Mike responds. The message is clear. This episode tells us that we're better off communicating truthfully with others rather than trying to protect them by second-guessing their feelings and reactions to the truth *ex ante*.

9. *Cindy Brady, Lady* (February 18, 1972)

The basic plot of *Cindy Brady, Lady* is that Cindy feels jealous of Marcia and Jan, because she wants to go on dates and do things that older girls do. So Bobby decides to be her "secret admirer." His first move is to leave a note with a candy bar in the mailbox for her. Next he leaves flowers and a note on the front steps. And the pattern continues for several days with assorted small gifts and notes. Mike and Carol learn that Bobby is Cindy's secret admirer, and they make him promise to tell her the truth. Mike advises Bobby: "Sure, she had to find out the

³⁸ In this episode, all of the other Brady children, except Marcia, have begun emulating Greg; they are exploring career ideas. Cindy wants to be a model. Bobby wants to be an astronaut. And Peter and Jan have checked out books about medicine and diseases from the library in hopes of learning to be a doctor and nurse respectively. Peter, in the manner of many a first-year medical student, has convinced himself that he has the symptoms of a fatal disease. Thus he has come to speak with Mike and Carol to break the sad news to them. For criticism of the sexist message in this episode, see Marinucci, *supra* note 3, at 517 ("In 'Career Fever,' Peter decides that he will become a doctor, and Jan decides that she will assist him as the nurse. At no time does any member of the Brady Family acknowledge that Jan could choose to become a doctor instead of a nurse. In each of these examples, male members of the Brady Family are portrayed as more active, more productive, or more intelligent than their female counterparts.").

truth sometime.” And Carol admonishes him, “You are going to tell Cindy the truth, first thing in the morning.”

But when Bobby sees her in the morning, he beats around the bush, unable to directly tell her. Later at school Bobby bribes a friend, Tommy Jamison, to come to the Brady house to pretend to be her secret admirer. Cindy tries to act older and more mature, and Tommy tells her that she’s too grown up for him. Cindy then tells him that she was “just pretending.” At that point Cindy and Tommy discover that they actually have a lot of interests in common, such as climbing trees, playing on the backyard teeter-totter, and collecting lizards. They start having fun, playing in the yard. And Tommy’s enjoying Cindy’s company so much that he tells Bobby that he wants to return the Kennedy half dollar (the bribe).

Mike and Carol confront Bobby. But this turns out to be one episode where a rather serious lie goes unpunished – on screen at least. Mike tells Bobby, “Well hang on because this incident isn’t quite closed yet, ya know.” Bobby replies, “Well, before you say anything, just remember it’s a happy ending.” To which Carol adds: “For him (*i.e.*, Tommy) maybe, but for you, we’re not so sure.” Mike and Carol certainly imply that, although not doled out on screen, there will be a punishment of some sort for Bobby.³⁹

D. White Lies

Not surprisingly, there are a number of instances where characters make light of dishonesty. For example, in *Cindy Brady, Lady*, Alice looks in her mirror before bedtime and sighs: “Oh wow. Gotta get a new mirror...one that lies a little!” In addition, there are a number of episodes in which one or more characters lie without any appreciable consequence. Perhaps the writers considered these “white lies.” For example, very uncharacteristically, in *Today, I’m a Freshman*,⁴⁰ Marcia lies about being sick on the first day of her freshman year in high school (because of her insecurity and fears). The doctor who has made a house call refers to it as “New-schoolitis.” And in *Pass the Tabu*,⁴¹ Greg tells the girls to “cover” for the boys and to lie about where they are going. Greg says, “If they ask tell Mom and Dad we went sight-seeing; and that’s all ya know. Okay?” Marcia agrees, “Okay,” Actually they are planning to take a “tabu” (a small wooden sculpture that has a reputation for bringing bad luck) back to its “burial

³⁹ For more regarding punishment, *see supra* note 22 and *infra* note 103.

⁴⁰ (ABC television broadcast Oct. 13, 1972).

⁴¹ (ABC television broadcast Sept. 29, 1972).

ground of ancient kings” in hopes of ridding themselves of bad luck. Mike and Carol had told the boys to ignore the superstitions.

Many of these “white” lying incidents occur in contexts where the person to whom the lie is being told appears to be aware of the lie but, nevertheless, decides not to confront the person who has told the lie. In these instances, the audience understands both that there has been a lie and that the individual being lied to knows it. For example, in *Dear Libby*⁴² the children lie a great deal to their parents. Marcia has read a newspaper column, “Dear Libby,” in which a reader (“Harried and Hopeless”) has written to Libby asking advice about how to deal with the difficult situation created in a family where both newlyweds have three children from a previous marriage. Harried and Hopeless says “I had no idea three new children could cause so much trouble” and asks “Should I continue pretending to love these new children and wait until they wreck my marriage or should I get out now?” Marcia incorrectly jumps to the conclusion that either Mike or Carol is Harried and Hopeless. She, therefore first removes that page (section B page 5) from the newspaper, apparently hoping to prevent Mike and Carol from reading the letter.⁴³

Both Mike and Carol, however, notice that a page is missing. When Mike says that he’ll go out to get another paper, Marcia volunteers to go buy another. Because of the late hour and darkness, Mike insists that Greg accompany Marcia. Greg, not thrilled about the prospect of missing the end of the TV show that he was watching to go on an errand with his step-sister, acquiesces. In response to Greg’s complaint about missing his TV show, Marcia tries to appease him with a lie: “It’s a rerun, I’ll tell you all about it.” Within a matter of seconds it becomes clear that she was lying in an effort to prevent Mike from going to purchase the substitute paper.⁴⁴ As soon as they close the front door, Marcia explains the quandary and gives Greg the column to read. After buying the new paper, Marcia and Greg apparently obscured the “Dear Libby” column in the new copy with a rather large smear of black ink, because upon their return home, Carol opens it and, in surprise, says “Well this page has a big black ink spot on it!” As she utters these words, she opens the page and the camera has a good view of the entire right-hand side of the page, blackened as if a bottle of ink had been spilled on it. Greg offers a potential explanation: “The printing press must have gone

⁴² (ABC television broadcast Oct. 3, 1969).

⁴³ See *supra* note 31 regarding other problems that arise in situations where characters jump to conclusions without sufficient facts.

⁴⁴ Interestingly, although Marcia has essentially “stolen” that page of the newspaper, when she tells Greg that she took that section from the paper, he says “You’re really weird.” But he doesn’t say “That’s stealing.”

haywire.” And Marcia adds :”That’s the trouble with machines; you can’t depend on them.” Greg then digs the hole deeper: “I heard about this one newspaper that printed a million copies of page nine right on top of page eight, and left page nine blank.” Marcia is quick to corroborate Greg’s lie and says “I heard about that too.” Both Mike and Carol’s faces look skeptical, and Mike presses the issue, asking “Really, what paper was that?” Their lies become manifest when they answer simultaneously, giving the names of different newspapers. Greg says “The Boston Times” and Marcia says “The Chicago Post.” And a fraction of a second later they each try to cover themselves by immediately changing their response to the name of the paper that the other had initially said. Mike and Carol roll their eyes and look at one another, and Marcia and Greg do the same. Although Mike and Carol (along with the audience) seem to know that Marcia and Greg are lying, they choose not to challenge or confront the children.

Later in the same episode, while Jan is watching TV, Peter enters and changes the channel. "Hey! I was watching that!" Jan exclaims. And the two step-siblings raise their voices and continue to argue. Greg comes in and tries to settle them down. But when Carol enters the room, alarmed by the sound of the children arguing, Greg intervenes and he lies to Carol about the argument, saying that the argument she heard “was on TV” and that “they’re telecasting a peace conference.”

But the episode ends happily. The “Dear Libby” writer visits the Bradys and reassures them that neither Mike nor Carol was “Harried and Hopeless.” The script writers, however, apparently decided not to comment either directly nor indirectly about the children’s white lies. Perhaps the lesson had more to do with the problems associated with drawing inferences from circumstantial evidence⁴⁵ than lessons relating to honesty.

Children aren’t the only ones who lie in the world of the Brady’s. In the episode *Getting Greg’s Goat*,⁴⁶ Greg and his friends have stolen Raquel, the goat who is Coolidge High School’s mascot. The Westdale students stole Raquel as revenge for Coolidge students having stolen Westdale’s mascot, a bear cub. Greg has hidden Raquel in his attic bedroom but Peter and Bobby accidentally allowed her to escape, and she eludes the children who try to catch her. Meanwhile Carol winds up hosting an emergency PTA meeting. Ironically, the PTA members want to discuss the problem of mascot-swiping, which has gotten “out of hand.” Carol is leading a house tour of the three PTA members and the Westdale Boys’ Vice-Principal, Mr. Binkley, while Greg frantically tries to stay one step ahead of them

⁴⁵ See *supra* Part I.C.1.

⁴⁶ (ABC television broadcast Oct. 19, 1973).

and nab Raquel without being found out. When Carol opens the linen closet door to discover Raquel hidden there in Greg's grasp, Carol shuts the door immediately and dissembles, pretending not to have seen Greg and the goat. "You've seen one linen closet, you've seen them all, right?" Complicit in the cover up, Carol hides the truth.⁴⁷

E. Negligence, Lies, & Property Damage

1. *Goodbye, Alice, Hello* (November 24, 1972)

Negligence that causes property damage is a recurrent theme in the series. In conjunction with that theme, characters also dishonestly attempt to cover up the damage and conspire to hide it as well. The characters, especially the children, seem to fear the consequences of their negligence so much that they are willing to risk later being caught in a lie – which typically is precisely what happens. This is especially true in cases like *Goodbye, Alice, Hello*. In this episode, Peter and Greg first break the family rule that prohibits throwing objects inside the house. Here it's a Frisbee. Bobby has left his Frisbee in the kitchen and Alice asks Peter to take it upstairs. As Peter and Greg are on their way, Peter tries to toss it to Greg but it caroms off the brick surface of the interior chimney and the post of the door to Mike's study, before hitting and knocking over an antique lamp. The lamp smashes into several pieces. Greg remarks, "Mom's gonna kill us!" Looking on, Alice weighs in, "Personally, I don't think you're gonna get off that easy."

But Greg and Peter decide to try to glue the lamp back together, and they ask Alice not to tell Carol about the incident. Alice agrees. Carol returns from shopping and asks Alice if anything new has happened. Alice, a little nervously answers very quickly, "Nope." Sensing an unusual nervousness in Alice's voice, Carol says, "Well, that's a pretty fast 'Nope.'" A moment later, Carol notices that the lamp is broken. She immediately asks Alice what happened. Alice, because she had promised Greg and Peter that she wouldn't say anything, begins by denying knowledge of what happened: "Oh my! How in the world do you suppose that happened?" But quickly Carol pursues the issue: "Look Alice, this is very important. Please, now you've always told me the truth before, now haven't you?" Alice admits that she has always told Carol the truth.

And in the next scene, we learn that Alice did, in fact, spill the beans to Carol about how the lamp got broken. Greg and Peter are displeased that Alice failed

⁴⁷ Greg does his share of lying in this episode too. For example, Greg lies about wanting to eat all of the breakfast food, so that he can take it up to his room for Raquel. And even Marcia, generally known for her integrity and truthfulness, participates in Greg's lie. Marcia "covers" for Greg, running interference with Alice.

to keep their secret. Both boys lose their allowance for a week as punishment. Alice comes to their room to apologize to the boys. She states the matter simply: "I couldn't lie to your mother." To which Greg asks, "Couldn't you have just said nothing?" Alice explains, "I tried. Honest, I did. I really tried." The boys, nevertheless, harshly don't appear willing to forgive her. In his book, *Foundations of Jurisprudence*, Professor Jerome Hall remarks: "It is doubtful that people usually think that they are making a sacrifice when they do what they ought to do; indeed, there is often much gratification in obeying 'the voice of conscience,' and some philosophers have thought virtue is the only road to happiness."⁴⁸ At this juncture, however, it is clear that Alice is experiencing little happiness as a result of doing that which she felt morally obligated to do.

Before long, Marcia gets in trouble with Carol because she accidentally left the record player running overnight. In addition to wasting electricity and overheating the motor, Marcia's negligence results in unnecessary wear and tear on the phonograph needle. As punishment, Marcia can't use the stereo for a week. Marcia, in turn, blames Alice because, when Carol asked her, Alice told Carol that it was Marcia who had been playing the stereo. When Marcia expresses her displeasure to Alice, Alice explains: "Oh Honey, I had no idea when she asked me who'd been using it *why* she wanted to know." "Sure you didn't!" Marcia sarcastically replies. Alice, feeling genuinely remorseful, says, "Honest, she just asked me a question and I answered it. I'm sorry, Honey."

This episode illustrates the tension between honesty and consequences. Although the children react bitterly to the consequences that they suffer as a result of their transgressions being revealed to Carol, Alice has merely responded truthfully to questions that Carol asked. Now Alice feels the interpersonal stress caused by this tension. The children perceive Alice's honest responses as a breach of trust. Moved to tears, Alice decides that she must leave. So she lies to explain why she plans to leave.⁴⁹ Carol listens but doesn't question the veracity of her explanation. Alice does, in fact, leave, and her friend, Kay, takes her place. Eventually, the children feel remorseful and Alice returns, as the Brady's housekeeper. Interestingly, however, before her return, she winds up lying to the children! Kay tells Peter and Jan that Alice is working as a waitress at a local restaurant, so all

⁴⁸ HALL, *supra* note 5, at 132.

⁴⁹ She makes up a story about an uncle who has offered her a job to manage a dress shop. There is another inconsistency here. Alice mentions that she needs to hurry in order not to miss her plane. But in the next scene, Kay, Alice's friend who takes over as housekeeper when she leaves, tells Greg and Marcia that she has gone "back home." However, in an episode the previous year, *The Brady Bunch: The Winner* (ABC television broadcast Feb. 26, 1971), we learned that Alice won a trophy for a modern dance contest at Westdale High School. It is inconsistent that she would need a take a plane to get home if she attended Westdale High.

six children go to pay her a visit. She tells them that she's just gotten back into town and that the other job "didn't work out." And the children, in turn, lie to her when she asks them why they are there. They say that they were just passing by, returning from school.⁵⁰

The lesson learned in this episode seems to be that, although the truth may occasionally produce painful results (*e.g.*, loss of allowance and stereo privileges), facing up to the truth is an important adult obligation that, in many instances, supersedes the confidence of keeping secrets among friends.⁵¹ Ironically, in the tag scene, Carol tells Alice that she believed the false excuse that Alice told her about why she had to leave. Alice replies: "Well I may not be the greatest housekeeper in the word but I'm a pretty good liar."

2. The Great Earring Caper (March 2, 1973)

*The Great Earring Cap*er features Cindy struggling with honesty. Carol has lent a pair of earrings to Marcia. Marcia tells Cindy that their Grandmother (presumably Carol's mother) gave them to Carol. She emphatically tells Cindy not to touch them. So, of course, a moment later, after Marcia and Jan have left the bedroom, Cindy opens Marcia's dresser and tries on the earrings. She then begins looking at herself in the bathroom mirror. Carol calls from the bedroom, interrupting Cindy's mirror-gazing. Rushing to avoid being caught with the earrings, Cindy hurriedly hides them under a towel next to the bathroom sink. Approximately 30 seconds later, after a very brief discussion with Carol about a new clothing purchase, Cindy returns to the bathroom but cannot find the earrings. "They're gone!" Cindy says aloud in disbelief.

Cindy enlists Peter's help. Peter is experimenting with being a detective in this episode. He surmises that the earrings fell down the sink, so while he's dismantling the pipes to look for them, Cindy busies herself trying to keep her siblings out of the bathroom. She over-does it; she lies, in a very obvious way,

⁵⁰ It is interesting how often characters tell lies in circumstances such as these, where the person(s) to whom the lie is being told seems to be aware of the lie but yet decides not to confront the liar.

⁵¹ The importance of this lesson is memorialized in the laws that govern the conduct of lawyers and judges. Under Rule 8.3(a) of the ABA Model Rules of Professional Conduct, "a lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority." MODEL RULES OF PROF'L CONDUCT r. 8.3(a) (AM. BAR ASS'N 2014). The same rule also applies if a lawyer knows a judge who has committed a violation. *See* MODEL RULES OF PROF'L CONDUCT r. 8.3(b) (AM. BAR ASS'N 2014).

telling the others that Jan or Greg (presumably anyone other than Peter!) is in the bathroom. Unfortunately for Cindy, Peter does not find them. To make matters worse, Carol plans to wear the earrings at an upcoming costume party. Cindy confesses to Marcia that she lost the earrings, and then, at Marcia's insistence, Cindy finally confesses to Carol.

To make a long story short, the earrings wound up first in the laundry bag and then in the washing machine. Unfortunately, one of them sustained severe damage in the machine. So the problem began with Cindy taking something that she wasn't suppose to take. And then because she failed to communicate promptly with either Marcia or Carol about her transgression, Carol's earrings were damaged. Timely truthfulness could have avoided the property damage. Perhaps the lesson is that others are more understanding and forgiving of a mistake (*e.g.*, taking the earrings without permission) than they are understanding and forgiving of dishonesty.

3. Confessions, Confessions (December 18, 1970)

In *Confessions, Confessions*, Peter tosses a basketball in the boys' room upstairs. The ball flies out of the room and bounces down the staircase where it hits Carol's "favorite vase." Of course, throwing a ball in the house violates a family rule. Peter predicts that his parents will ground him as a consequence. Thus, he's certain that he'll have to miss a much-anticipated over-night camping trip. Greg, however, suggests that they glue the vase back together, and then wait to tell Mike and Carol what happened *after* Peter has returned from his camping trip. All six children agree to keep the incident a secret. So although this begins as an accident caused, in part, by negligence, it then escalates into a conspiracy to hide and cover up the truth.

Maintaining secrecy turns out to be difficult. First Mike comes home with flowers for Carol. The girls, concerned that he might look for the broken vase, head him off and take the flowers, promising to put them in a vase. Meanwhile, the boys have gone to the hardware store in search of glue with which to repair the vase. Coincidentally, Carol bumps into them in the hardware store. She asks them what they are doing there, and they lie, telling her that they are buying a corn popper. But when the clerk hands them a small brown paper bag with the glue inside, Carol sarcastically remarks that it appears to be a very small corn popper. "Come on fellas, what's up?" she asks. All three lie to her saying that it's "nothing." She decides not to press the issue at that point.

Later, at dinnertime and after the children have glued the vase back together, Carol says that she wants to move the new flowers to that vase. Greg and Peter offer to help; Carol insists that they put water in the vase. Unfortunately for the conspiratorial kids, the glue has not set sufficiently, and, with the entire family in the midst of eating dinner, the vase begins to leak on the dining room table. Mike and Carol surmise correctly that it's been broken and glued, and want to know who broke it and who glued it. The children at first try to ignore the situation. Mike tells them that he expects an answer after dinner. After dinner, each child individually, except Peter, goes privately to tell a parent that they broke the vase. The siblings are lying in an attempt to cover for Peter. Then to top it all off, Alice, who is not even in on the secret, also falsely confesses to Mike and Carol. Mike and Carol, however, see through her and bluntly tell her that it was kind of her to try to protect the children.

Quickly Mike and Carol correctly deduce that Peter – the only one who has not falsely confessed – is probably the guilty party. Mike notes, however, that the others are also guilty of wrongdoing, since they have been “accessories to the crime.” Mike tells them that the ones who didn’t break the vase “are just as guilty for hiding the truth.” Interestingly, rather than communicating their conclusion directly about Peter’s guilt to the children, Mike and Carol decide to manipulate the situation. They tell the children that Peter must be the only *obviously* innocent person, since he alone did not confess. So they grant Peter the authority to decide the punishments for his siblings. Apparently they hope that Peter’s guilty conscience will push him to own up.

His siblings, nevertheless, encourage him to go ahead and dole out punishments so that he can still go camping. They conspire again. This time Peter asks the others to think up their own punishments. Once he’s talked with them, he proposes exceptionally lenient punishments to Mike and Carol.⁵² But Carol points out the deterrent function of law: “Peter, you’re brothers and sisters have done something wrong. We’re trying to discourage them from doing it again.” And although it takes him some time to come around, Peter himself finally breaks, and on Saturday morning just before his scheduled departure for camping, he admits that it was he who threw the ball that broke the vase. His friends have arrived to pick him up. Peter acknowledges that he’ll need to tell his friend’s father that he can’t go, and he asks his parents what reason he should give as an excuse. Mike counsels him just to tell the truth: “The truth. Peter. Just tell him the truth.”

⁵² For example, Jan has to help Carol bake cookies, Marcia must take Bobby to an amusement park, and Greg will be forced to accompany Cindy to a movie matinee.

F. Honesty as Exemplary Conduct

There are a number of episodes in which the children themselves act honestly in difficult circumstances. For example, in *The Winner*,⁵³ Bobby is jealous of his siblings who have all won trophies for winning at sports and other activities. He tries a number of things and decides to enter a contest to sell the most magazine subscriptions. Mike and Carol then try to help by selling subscriptions for Bobby to their friends. But he rejects the subscriptions sold to Mike and Carol's friends, because he didn't really sell them, they did. He wants to win the contest on his own or not at all.⁵⁴

Similarly, in *Her Sister's Shadow*,⁵⁵ Jan exhibits honesty in the face of adversity. In a plot that bears similarities to *The Winner*, this time it is Jan who feels low because she perceives that Marcia wins at everything she tries. Early in the episode, Jan is so frustrated by her lack of comparative success that she stoops to hiding Marcia's trophies and ribbons on the floor of the closet. After failing to succeed at pom-pom girl tryouts, Mike, Carol, and Marcia assume that Jan will return home despondent. But instead she comes home feeling happy because she won the "Americanism" essay contest, by scoring 98% – "First in the whole school." Then Jan realizes that the person who graded her history essay added up the points incorrectly, and that her essay should have totaled 93 points not the 98 points for which she had been given credit. She realizes that someone else should have won the prize. She struggles with her conscience. But finally Jan comes clean in dramatic fashion on stage in front of the whole school. Mrs. Watson profusely praises Jan for her honesty.

*The Wheeler-Dealer*⁵⁶ is an episode that contains an incredible amount of dishonesty, but, in the end, Greg sets a positive example with his honesty. Greg looks into buying his friend Eddie's used (very used) car. Eddie behaves like a prototypical used car salesman. The car has dents, chrome missing, a hole in the back seat, the door sticks, and the engine sounds like a tank. But Eddie tells Greg: "I've got five or six guys just waiting to buy this baby." He suggests to Greg that the auto body shop at school can straighten out the dents. He explains that, although the door sticks, it is possible to just hop over the door to get into

⁵³ (ABC television broadcast Feb. 26, 1971).

⁵⁴ This episode contains a production mistake. In an effort to win at something, Bobby enters an ice cream eating contest sponsored by a local TV station. When they pull out of the driveway, Mike, Carol, and Bobby are in a blue convertible. But when they return at dusk, they are in the older, brown station wagon. I'm not certain why they didn't correct that glitch. Perhaps they assumed that no one would notice?

⁵⁵ (ABC television broadcast Nov. 19, 1971).

⁵⁶ (ABC television broadcast Oct. 8, 1971).

the car because it is a convertible. “So it sticks a little!” “What hole? A little rip. Just sew it up. Only a dime for needle and thread.” When asked about the engine, Eddie says: “Purrs like a kitten.” In truth, it is loud and noisy, belching cannon-like explosions. But Eddie explains: “Runs a little rough until she warms up, then she’s great.” “The idle just needs to be adjusted.” Amidst the cacophony, he encourages Greg: “All this baby needs is a little bit of work.” “Greg, for a hundred bucks and a little bit of work, you’ve got yourself a car that’s worth maybe five hundred.”

So, Greg buys the car from Eddie and drives home. But Mike reminds Greg that he had promised to allow him look at it before buying. Mike and Greg discuss selling and buying.

Mike: “You made a business deal, he got the best of you, that’s all.”

Mike: “You take sellers....Naturally they’re going to make it sound as attractive as possible even if they have to exaggerate to do it.”

Greg: “You mean lie?”

Mike: “Yes, quite often they do, though they might call it ‘gilding the lily.’”⁵⁷

Mike: “But the important thing is that you are the buyer; you have to keep your guard up, see? It’s the old principle of caveat emptor.”

Greg: “Caveat emptor?”

Mike: “It’s Latin for ‘Let the buyer beware.’ Or to put it in the vernacular, ‘Them who don’t look, sometimes gets took.’”

So, then Greg decides to turn the tables and sell the car to somebody else. He uses a lot of the same jargon and schtick that Eddie had used when trying to sell the car to him. He tells Ronnie that he’s got five or six guys looking to buy “the classic.” Thinking that Greg has sold the car to Ronnie, Carol asks: “You didn’t lie to him, did you Greg?” Greg replies “Well I gilded the lily pretty good.” But he could not bring himself to sell it to Ronnie. He sighs and tells Mike and Carol. “I guess I’m a pretty crummy businessman.” But Mike reassures him. “No, no. You’re an honest one.” Instead, he sold it to the junkyard for \$50.

⁵⁷ Under California law, specifically CAL. CIV. CODE § 1770, “any person who uses unfair and deceptive acts, such as representing a good as a particular standard or quality if they are not, in a transaction which results in the sale of a good or service to any consumer is unlawful.” CAL. CIV. CODE § 1770. Thus, “gilding the lily,” might not always be the best tactic for a salesperson.

III. Equality

A. General

One principle that we often associate with Justice is the notion of “equality.” In his last dialogue, the *Laws*, the ancient Greek philosopher Plato stressed the importance of need for law to apply equally to all.⁵⁸ And the great Roman statesman and jurist Cicero embraced equality as one of the central tenets of Stoic philosophy.⁵⁹ It is also common to refer to this principle as “fairness.” The foundation of equality is that law must treat people the same, as equals. This sounds appealing but is very difficult to put into practice. It is difficult because the concept is subject to an important proviso. Law does not treat people as equals in circumstances where their characteristics are different in a way that materially alters their capacity to participate in the activity in question. To take a relatively non-controversial example, law treats a 5 year old very differently from a 21 year old. Generally speaking, 21 year olds can vote in state and federal elections, drive motor vehicles, join the military, marry, and make a will. Five year olds cannot because we, as a society, generally agree that 5 year olds lack certain characteristics – the cognitive and/or physical capacities to participate in those activities responsibly and safely. Thus, as a rule, law treats two persons differently only if we can identify characteristics of the two that are different in ways that materially alter their ability to perform the activity in question. The ancient Greek philosopher Aristotle referred to this nuance of equality as “distributive justice.”⁶⁰

One way to remove bias from decision making is to base a given selection on a random method such as a coin flip or another, neutral means of sortition such as a lottery or drawing names from a hat. This is fairness in one sense because it is unbiased. But it is not fair in the sense that it does not take into account differences based on logical or rational criteria. For example, an employer could make decisions about raises, promotions, or layoffs by flipping a coin. But in an employment setting human beings typically consider that such decisions ought to be based on job performance and/or productivity rather than random selection. Nor do we typically think that it would be “fair” to decide guilt or innocence in criminal trials by flipping a coin. Similarly, most high school, college, and professional sports use a merit-based system to determine which teams will participate in playoffs. For example, NCAA basketball has a committee that selects teams based on a variety of statistics. The NHL uses a point system and

⁵⁸ See Russ VerSteeg, *THE ESSENTIALS OF GREEK AND ROMAN LAW* 12 (2010).

⁵⁹ See *id.* at 110, 113-118.

⁶⁰ See *id.* at 13 (“Distributive justice operates to reward individuals for the benefits that they confer upon society. In simple terms, those who are equals receive equal rewards while those who are non-equals receive unequal shares.”).

conferences to select the teams that play in the Stanley Cup playoffs. In part merit-based decision making is normative. NCAA basketball teams and NHL hockey teams make concerted efforts to try to achieve the statistics and points necessary to receive a playoff berth. If the NCAA and NHL used a lottery to select playoff teams, the incentive for teams to try hard during the regular season would be diminished. In part, human beings believe that some decisions often ought to take into account factors such as effort, prior achievements, and truth.

What is sometimes difficult is to determine when fairness requires that selection be merit-based (*i.e.*, based on some criterion or criteria that have a meaningful relationship to the decision) versus when it is preferable to permit a neutral, random means of decision making (*i.e.*, based on a method designed to produce a decision based on chance not materially related to the decision). There were, indeed, some occasions when the Brady's did decide that a random means of decision making was appropriate without considering any specific factors as material. For example, in *Snow White and the Seven Bradys*,⁶¹ they draw names out of a hat to see who's going to get to play the role of Dopey (everyone, it seems, covets the role of Dopey). Presumably, they could have considered factors such as acting experience or a tryout. But instead they chose a random means of selection.

In a blended family of six children, it is not surprising that issues of fairness and equality arose frequently. Occasionally characters treat the topic in a light-hearted manner. For example, in *A Clubhouse Is Not a Home*,⁶² when Mike and Carol are discussing fairness in the allocation of their bedroom closet space, Mike reads from the dictionary: "To share: To divide into fair and equal portions." Carol moves the "shoe-divider" in their closet in such a manner to give her about 2/3 of the space and remarks: "Well, I think that's fair." Carol's remark insinuates that "fairness" is not necessarily always the same thing as "equality."

B. *The Liberation of Marcia Brady* (February 12, 1971)

The Liberation of Marcia Brady is an episode that addresses an equality concern that is global; namely, women's liberation.⁶³ At the episode's beginning, a TV

⁶¹ (ABC television broadcast Sept. 28, 1973).

⁶² (ABC television broadcast Oct. 31, 1969).

⁶³ This episode is one of several in which the characters address an important social issue. *See e.g.*, *The Brady Bunch: Kelly's Kids* (ABC television broadcast Jan. 4, 1974) (dealing with, among other things, racial bias. The neighbor, Mrs. Payne, comes over to complain about how destructive the Kelly boys might be and she suggests that "the minorities" might be special trouble. And Mrs. Kelly says: "She makes Archie Bunker look like a liberal."); *The Brady Bunch: Today, I'm a Freshman* (ABC television broadcast Oct. 13, 1972) (Marcia complains that all of her friends are going to

reporter, Ken Jones, interviews Marcia at school. The reporter asks: “Marcia, do feel girls are the equal of boys?” She responds, “Well if we’re all supposed to be created equal, I guess that means girls as well as boys.” Jones then asks, “Do you think you can do everything they [*i.e.*, your brothers] can do?” Marcia replies: “Well, I think I should have the chance to try.” The reporter then presses the issue and asks, “Tell me this, I mean, do they put you down sometimes just because you’re a girl?” Marcia quickly says: “They sure do! And it’s not fair.”

Back at home, after the other family members have seen Marcia’s interview on the evening news, the adults then briefly enter the fray. Carol asks: “Alice, what do you think about women’s lib? I mean, don’t you think that women are entitled to the same opportunities as men?” In order to prove her point, Marcia decides to join Greg’s scout troop (“Frontier Scouts”). At the Frontier Scout meeting, Mike and the other scout leader, Stan Jacobson, check the rule book,⁶⁴ and Mike says that he sees no rule stating that girls can’t join. Nor does, Stan: “I’m afraid there’s nothing in the regulations that says that a Frontier Scout *has* to be a boy. I’m afraid we’ve just always *assumed* it was for boys.”

In an effort to spar with Marcia, Greg decides to join the “Sunflower Girls,” an organization that appears to be similar to the Brownies or Girl Scouts. “I wonder how she’d like some of her own medicine?” he asks rhetorically. But upon checking the regulations of the Sunflower Girls, Greg discovers that he is too old. A Sunflower Girl must be between 10-14. So Peter gets “drafted” by Greg and Bobby to join. Interestingly, they readily accept – and never pause to question – that the organization has the authority to differentiate on the basis of age but not gender. Marcia, nevertheless, rather matter-of-factly, tells Peter that she appreciates the fact that he understands her point that: “There isn’t any reason why we all can’t join whatever group we want to.” Later when Bobby suggests to Greg that he (Greg) might be able sabotage to Marcia’s Frontier Scouts initiation test (“Can’t you goof up her test some way?”), Greg acknowledges, “That wouldn’t be fair.” He, nevertheless, resolves to try to “make her stick to every single rule.”⁶⁵ Even though Greg tries to make things difficult, Marcia does manage to pass her test. But when all is said and done, she decides not to join. As far as she is concerned, simply proving to herself (and others) that

Tower High but she's going to Westdale because of "this dumb street that we live on." Busing – also a racial issue – was an extremely important topic of concern in the 1970’s).

⁶⁴ A rule book of this kind actually represents internal or microcosmic law of the organization. *See* HALL, *supra* note 5, at 116. (“[Lon Fuller] finds no differences among the rules of the state and those of ‘clubs, churches, schools, labor unions, trade associations, agricultural fairs, and a hundred and one other forms of human association.’”).

⁶⁵ For additional discussion regarding adherence to rules, *see infra* Part III.

she could do it is what mattered most.⁶⁶

C. *The Treasure of Sierra Avenue* (November 6, 1970)

In *The Treasure of Sierra Avenue*, the three boys are playing with a football in a vacant lot when Bobby finds a wallet on the ground. When they return home, Greg counts out the money on the kitchen table as Peter, Bobby, Carol, and Alice look on. The wallet has \$1,100.00. But the wallet has no identification card (e.g., driver's license or credit card). Soon Jan is doing the math. She calculates that each child is entitled to \$183.33.333.... The girls (Jan and Marcia) explain to Alice that Mike is always preaching about the need for everyone to share. So surely the girls should get equal shares. Meanwhile, Greg is in the boys' room doing the math to calculate the money, divided by three: \$366.66. Just then the girls enter the boys' room (of course having knocked first), and begin discussing the division of their shares. They refer to themselves as the boys' "loving sisters." Peter disputes the girls' claim: "None of you were even there when we found it." And Greg challenges the girls, saying that that *they* wouldn't expect the girls to share it with them if it had been the girls who had found it.⁶⁷ Mike steps in (literally) and takes the wallet, and then he says he's going to turn it over to the police department "because that's where people usually go when they lose something, hoping somebody honest is going to turn it in." Greg inquires: "What if nobody claims it, then it's ours isn't it?" Mike agrees: "If nobody claims it."

Carol points out that they (Mike and Carol, and implicitly the girls) shouldn't be unfair to the boys, because "after all, they are the ones who found the money." Carol tells Mike that "the money doesn't belong to us." Mike is convinced that somebody's going to claim it. Greg discovers a "lost" advertisement in the newspaper, stating that someone lost a brown wallet with a large sum of money in it. Greg and Peter realize that they should call telephone the number in the advertisement in the paper. They do but it turns out that it wasn't the right person. Meanwhile Mike has placed his own "found" ad in the paper. And Carol

⁶⁶ The "cop-out" of the ending of this episode may reflect the subtle sexism that persisted at the time. See Marinucci, *supra* note 3, at 511-512 ("Other members of Generation X understand what it means to love *The Brady Bunch*. It does not mean that we buy (or bought) into the values it fosters. More often than not, it means that *The Brady Bunch* strikes us, in the words of *South Park* character Stan Marsh, as 'cheesy and lame, yet eerily soothing at the same time' (Episode 106, "Death"). By dismissing *The Brady Bunch* as presenting as harmless kitsch, we deemed the messages we believed the show to be presenting as unworthy of our attention. Because the sexist messages of *The Brady Bunch* were often hidden beneath an egalitarian façade, however, our dismissive attitude left us vulnerable to the show's subtly sexist subtext."); *Id.* 512-514 (criticizing the "sexist subtext" in this episode).

⁶⁷ Greg: "We wouldn't expect you to [share money with us if you found money]."

is keeping track of the number of phone calls that they have received about the "found" ad (16) so far. Alice takes another phone call and soon it's up to 18 calls.

At this point, the characters tell us some incidental details regarding the California statutes relating to lost property in the early 1970's. Mike tells Peter and Bobby that the police can hold onto the wallet "for a long time." Peter chimes in: "The law says six months." "Unless of course you assume liability." Peter continues: "Well, if you sign for it, we can ask the police to give us the wallet right now; and hold it ourselves six months in the bank, and collect the interest." Bobby adds: "That's how it works." Carol is nonplussed and asks: "Where in the world did you get all this information?" Peter explains that he asked Joey's Dad, who is a lawyer.

Soon the girls, in retaliation for the boys' unwillingness to share the wallet money, decide to quit sharing other things (paper, hairbrush, licorice). Mike reads the children the riot act. The boys decide to acquiesce and share the money with the girls. Then the person who lost the wallet, Mr. Stoner, surfaces. He picks it up at the police station.⁶⁸

Mr. Stoner then arrives at the Brady house to thank them. He says that he and his wife had been saving for a cross-country trip "for years." He gives the boys \$100 as a reward. Mike protests, saying that he thinks that that's too much. When Mr. Stoner insists, the boys agree to take \$20.⁶⁹ So each child keeps \$3.33 and Mike keeps the extra 2 cents. Carol says that she doesn't think that it's fair for Mike to keep the extra two pennies. Mike contends that he was the one who took the wallet to the police station. Carol notes that she was the one who gave the boys permission to play in the vacant lot in the first place. So Mike gives her one cent (to split his 2-cent share), plus "an extra reward" (a kiss). Carol says that Mike can have the penny back because she'd rather have some more "reward"

⁶⁸ Here we learn that persons have to pay tax on money that they find. Marcia: "Well at least there's one good thing about our not getting the money...No income tax." The Internal Revenue Code states, "[g]ross income means all income from whatever source derived." I.R.C. § 61. Treasure trove items are considered taxable income under § 61. *See Cesarini v. U.S.*, 428 F.2d 812 (6th Cir. 1970).

⁶⁹ Under California law, specifically California Civil Code § 2080, "any person that finds and takes possession of any money, goods...or other personal property...shall, within a reasonable time, inform the owner, if known, and make restitution without compensation, except a reasonable charge for saving and taking care of the property." It appears that the Brady's directly abided by California law in this situation, they returned the wallet to the rightful owner and Mike saw to it that the compensation for saving and taking care of the wallet was reasonable (by denying the originally proposed \$100 compensation). One must wonder, however, whether \$20 was reasonable compensation for saving and taking care of Mr. Stoner's wallet that had \$1,100.00 in it! *See CAL. CIV. CODE* § 2080.

(more kissing).

D. *Father of the Year* (January 2, 1969)

Father of the Year is a complex episode. In essence, Marcia nominates Mike for a newspaper's "father of the year" essay contest. In the process of writing her essay, Marcia lands in hot water when she gets caught in Mike's work Den without permission and then fails to do chores that she was given (*i.e.*, her punishment for being in the Den without permission). Mike grounds her for a week. However, in order to mail her nomination on time, she sneaks out of her bedroom window at night. This, however, is a transgression of her grounding punishment. And Mike and Carol actually catch her as she's climbing back in the bedroom window. Mike and Carol tell her that she will not be allowed to go with the rest of the family on an impromptu family ski vacation for the upcoming weekend.

Mike and Carol then discuss the matter further at the kitchen table over coffee. Mike says that he wishes he could see Marcia on skis. Carol reminds him: "Darling, we've been over that several times now, rules are rules." Mike wonders if perhaps they "ought to bend them just this once."⁷⁰ But Carol remains firm: "I want Marcia to go just as badly as you do, but she broke the rules. And it wouldn't be fair to the other children who didn't break the rules." Carol's comment reflects an important element of fairness. Fundamentally, because Marcia violated a family rule, she is not entitled to be treated the same as the others. As a rule-breaker, it is fair to treat her differently by not allowing her to participate in the family ski trip.⁷¹ This episode will receive additional treatment in Part III.⁷²

E. *54-40 and Fight* (January 9, 1970)

54-40 and Fight is a first-season episode that deals directly and extensively with fairness. In the introductory scene we learn that the girls have been saving

⁷⁰ See HALL, *supra* note 5, at 46 ("[T]he themes that rules of law [and congruent actions] having ethical significance, are intelligible and must be distinguished from desires and emotions, that (sound) rules of law and actions are intrinsically valuable and, also, useful, and that their validity can be objectively tested...."). For additional discussion on this episode and the importance of rules, see *infra* Part III.

⁷¹ See *supra* note 60 regarding Aristototele's concept of distributive justice.

⁷² Greg appeals to a similar sense of fairness when he protests his punishment in *The Brady Bunch: Greg Gets Grounded* (ABC television broadcast Jan. 19, 1973), because he believes that he did not, in fact, break the family rules: "I think it's unfair for you to ground me when I didn't disobey you."

“Checker Trading Stamps,” planning to use them to “purchase” a sewing machine. The boys, on the other hand, have also been saving “Checker Trading Stamps,” planning to “purchase” a rowboat. Apparently, the grocery store gives a certain number of Checker Trading Stamps to consumers, based on the dollar-amount of their purchase (like the now-defunct S & H Green Stamps⁷³). So when Alice returns from the store, the children (boys vs. girls) disagree about the appropriate allocation of stamps. Interestingly, the children begin the debate by attempting to identify meaningful criteria for decision making. Greg says to Marcia: “Go ahead give one good, logical, intelligent reason why you should have all those stamps.” She replies, “Well cuz they come from groceries, and taking care of groceries is a woman’s job.” Greg answers, “Yeah well eatin’ ‘em is a man’s job.” Carol and Mike intervene; Mike proposes his “simple answer to this that’ll make everybody happy,” like King Solomon and says, “Split ‘em up.” At this point Greg and Marcia agree to work together, presumably to divide the stamps that Alice has accumulated 50-50.

After some additional squabbling, Carol brings all six children together and proposes that they combine their books of stamps in order to pool their resources and get something for the entire family rather than something intended only for the girls (*i.e.*, sewing machine) or boys (*i.e.*, rowboat).⁷⁴ The girls say that they have 40 books and the boys say that they have 54. Initially, the children respond favorably to the prospect of buying something worth 94 books of stamps. When Marcia and Greg approach Carol and Mike with stamp catalogues in hand, Mike uses judicial terminology, asking “Well has the jury reached a decision?” They report, however, that they were unable to agree on what to buy. But what they did agree on was to ask Carol to make the decision for them. In

⁷³ The Wikipedia article, *S&H Green Stamps*, WIKIPEDIA, http://en.wikipedia.org/wiki/S%26H_Green_Stamps (last visited June 7, 2015), states: “Sperry & Hutchinson began offering stamps to U.S. retailers in 1896. The retail organizations that distributed the stamps (primarily supermarkets, gasoline filling stations, and shops) bought the stamps from S&H and gave them as bonuses to shoppers based on the dollar amount of a purchase. The stamps – issued in denominations of one, ten, and fifty points – were perforated with a gummed reverse, and as shoppers accumulated the stamps they moistened the reverse and mounted them in collectors books, which were provided free by S&H. The books contained 24 pages and to fill a page required 50 points, so each book contained 1200 points. Shoppers could then exchange filled books for premiums, including housewares and other items, from the local Green Stamps store or catalog. Each premium was assigned a value expressed by the number of filled stamp books required to obtain that item. Green Stamps were one of the first retail loyalty programs, retailers purchased the stamps from the operating company and then gave them away at a rate determined by the merchant. Some shoppers would choose one merchant over another because they gave out more stamps per dollar spent.” (footnotes omitted).

⁷⁴ One might well ask why the girls and boys didn’t simply keep the stamps that they had prior to the marriage, and then only divide equally any stamps acquired subsequent to the marriage?

terms of procedure, the children have been unable to agree and, therefore, have agreed instead to appoint an arbitrator to make the decision for them. And Carol quickly informs Mike that she expects him to help her so they can make the decision jointly.

To make matters more complicated, the following day's newspaper reports that the Checker Trading Stamp Company is going out of business. Consequently, according to the newspaper article, the company "has requested that all premiums, exchangeable for the stamps, be redeemed within the next 30 days. If such stamps are not redeemed...they will be of no value." In the scenes that follow, without explanation, however, Mike and Carol seem to have handed the reins of decision making back to the children. "I sure wish they'd hurry up and agree on something." Carol sighs.

At this juncture, Greg proposes – and Marcia agrees to his proposal – to use a different means of decision making: a contest: "Boys against the girls, winner-take-all." This is something akin to trial by combat or trial by ordeal.⁷⁵ Interestingly, this type of decision making is something of a hybrid. It does not use logical factors that relate to the subject matter or disputants. Nor does it use a totally random, chance method such as a coin flip or spin of a wheel. Instead, trial by combat requires that both parties agree to the type of contest and circumstances of the combat in order to reach a decision. Mike says, "As long as both sides are willing to take the risk, I guess it's okay." But the children cannot decide on what kind of contest would be "fair" for both boys and girls. They consider several suggestions that clearly would give an advantage to one side or the other. A bit exasperated, Carol remarks, "Well I guess there's just no such thing as fair competition between boys and girls."⁷⁶ But Alice, who we presume is neutral, suggests building a house of playing cards. All agree that neither the girls nor boys have special strength or skills that would provide an advantage over the other with that activity.

Each child takes turns, alternating boy-girl-boy-girl, placing a card on the house. If a boy causes the house to fall, the girls win, and vice-versa. Mike and Carol act as "the umpires." When the house of cards is on its tenth story, Mike and Carol think that the contest has gotten too stressful for the children, and they decide to change the decision-making mechanism; Mike suggests "tossing a coin or something." So here he suggests a decision making device that is completely

⁷⁵ See e.g., *Duel, The Judicial Combat*, 7 ENCYCLOPEDIA BRITANNICA 711-715 (1959).

⁷⁶ See Marinucci, *supra* note 3, at 518 ("[T]he episode takes for granted that, with very few exceptions, girls and boys are simply too different to enjoy the same prizes or to compete in the same activities.").

random – not even trial by ordeal or combat. The children protest, and decide to continue with the house of cards. But the family dog, Tiger, the “wild card,” enters the room and inexplicably jumps up on Greg from behind, knocking him into the cards as he is attempting to place another card on the house. The house topples. Peter protests: “That was an accident!” Jan rejoins: “Everything counts, you said so yourself.”⁷⁷ Mike says: “Yeah, I’m sorry fellows, those were the rules.” We might legitimately ask why the judges don’t excuse the act of an outside force, like Tiger. But when the girls go to the Checker Trading Stamp redemption store, they decide to get a color TV set, something that the entire family can use (rather than a sewing machine or rowboat that would be used primarily by either the boys or girls).

F. Additional, Miscellaneous Incidents Involving Fairness

To be sure, many episodes contain dialogue in which characters occasionally refer to fairness in a rather casual and general manner. These instances are distinct from those where fairness and/or equality form the centerpiece of an episode. For example, in an episode that is extremely important because of its relationship to law, *You're Never Too Old*,⁷⁸ Marcia has the following conversation with her great-grandfather, Judge Brady.

Marcia: "Grandpa, as a Judge, you always have to be fair and reasonable, don't you?"

Judge: "I have always been fair and reasonable."⁷⁹

Marcia: "Then, last night didn't you kind of convict Grandma Hutchins on circumstantial evidence?"

Judge: "My dear, that opinion is open to question."

Jan: "But Marcia and I are willing to swear that Grandma had nothing to do with arranging that dinner for two."

Judge: "Well, Jan, if you say so, then I must accept that fact."

⁷⁷ And he had, in fact, said just that a short while earlier in the dialogue.

⁷⁸ (ABC television broadcast Mar. 9, 1973). For more about this episode, see *infra* Part III.

⁷⁹ The ABA Model Rules of Judicial Conduct specifically state under Rule 2.2 that, “a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” MODEL CODE OF JUDICIAL CONDUCT r. 2.2 (AM. BAR ASS’N 2014). To make certain this standard of behavior a judge must handle his duties objectively and with an open mind. MODEL CODE OF JUDICIAL CONDUCT r. 2.2 cmt. 1 (AM. BAR ASS’N 2014). Additionally, “a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.” *Id.* During a proceeding, should a judge’s impartiality be questioned, a judge shall disqualify him or herself. MODEL CODE OF JUDICIAL CONDUCT r. 2.3 cmt. 1 (AM. BAR ASS’N 2014).

In *Dough Re Mi*,⁸⁰ Marcia points out that the initial idea for the children to establish a musical group was Peter's, and, therefore, she doesn't think that it would be fair to Peter to remove him from the group (even though with his adolescent voice changing, he simply can't carry a tune). Here the idea of fairness hinges on the notion of reciprocity. Humans tend to believe that people ought to be rewarded proportionately for their contributions to most endeavors. Thus, here Marcia expresses her belief that Peter's contribution (*i.e.*, the initial idea) deserves a proportionate reward (*i.e.*, he ought to be permitted to participate in the activity even though his changing voice is damaging the overall quality of the activity). In *The Drummer Boy*,⁸¹ Mike points out that Bobby's drumming isn't fair to the other 8 people in the house. In this instance, Mike is using the word "fair" in a wholly different sense. Here fair means that Bobby's noisemaking is unnecessarily disturbing the tranquility of the household.

IV. Justice, Rules & the Role of Law

A. Overview

Throughout history cultures have struggled to define "justice" in the abstract. And even though it is rarely simple to define it clearly and succinctly, it is common for us to acknowledge that justice and the role of law in society are critically important. A theme that we often see in *Brady* episodes is the tension between adherence to rules and individual freedom.⁸² The Brady characters routinely acknowledged the importance of following rules. For example, in *The Liberation of Marcia Brady*,⁸³ Greg reminds Peter to strictly go by the rules of the Sunflower Girls with respect to what he's supposed to say when he goes door-to-door to sell cookies.⁸⁴ And again Mike admonishes the children by invoking the family rules in *The Big Sprain*⁸⁵: "You violated a strict family rule about leaving

⁸⁰ (ABC television broadcast Jan. 14, 1972).

⁸¹ (ABC television broadcast Jan. 22, 1971).

⁸² Regarding the interplay between strict adherence to rules and the frequent need for adaptation, see GILMORE, *supra* note 10, at 96 ("However, the focus of litigation has a way of shifting unexpectedly and unpredictably. New issues, which no one ever dreamed of, present themselves for decision. With luck, the statute will turn out to have nothing to say that is relevant to the new issues, which can then be decided on their own merits. In this way any statute gradually becomes irrelevant and will finally be reabsorbed within the mainstream of the common law. But that takes a long time.") (footnote omitted); HALL, *supra* note 5, at 42 ("Freedom, for Kant, is the basic value from which other values flow and on which they depend; conformity to external duties is the *sine qua non* of 'the kingdom of ends,' where each individual has the maximum freedom compatible with the like for all other persons.") (quoting and citing KANT, THE PHILOSOPHY OF LAW 45 (Hastie ed. 1887)).

⁸³ (ABC television broadcast Feb. 12, 1971).

⁸⁴ See *supra* Part III.B.

⁸⁵ (ABC television broadcast Feb. 6, 1970).

your toys spread all over for people to trip over.” There are occasions when the strict adherence to rules strike most of us as pedantic.⁸⁶ For example, as was discussed,⁸⁷ in *54-40 and Fight*, the dog Tiger interferes with Greg’s attempt to place another playing card on the house of cards, and the house of cards collapses. When the boys begin to complain about losing the contest in this way, Mike says: “Yeah, I’m sorry fellows, those were the rules.”⁸⁸ But there are also situations in which we see Mike giving serious consideration to leniency. In *Father of the Year*, recall that it is Carol who holds the line, reminding Mike that they must strictly enforce their rules.⁸⁹

Carol: “Darling, we’ve been over that several times now, rules are rules.”

Mike: “Maybe we ought to bend them just this once.”

Carol: “I want Marcia to go just as badly as you do, but she broke the rules. And it wouldn’t be fair to the other children who didn’t break the rules.”

In the episode *Law And Disorder*,⁹⁰ Mike explains an important theme about justice and rules to Bobby, “we always have to have rules and laws but we also have to use them with reason, and justice.”⁹¹ Examples from seven episodes in particular shed light on *The Brady Bunch* perspective of justice and the role of law: 1) *You’re Never Too Old*; 2) *Greg’s Triangle*; 3) *Kitty Carry-All Is Missing*; 4) *Greg Gets Grounded*; 5) *Sorry Right Number*; 6) *Law And Disorder*; and, 7) *A Fistful of Reasons*.

⁸⁶ See GILMORE, *supra* note 10, at 10-11 (“I think it is also true that the American formulation of a legal rule has always tended to be more rigid, more abstract, more universal, than the English formulation. The result has been that, particularly during periods when we have taken our precedents and our theories seriously, we have had much more trouble than the English have ever had in adjusting to changing conditions.”).

⁸⁷ See *supra* Part III.E.

⁸⁸ See SCHWARTZ & SCHWARTZ, *supra* note 2, at 165 (“The series always followed that rule, so if one of the kids gets a big head or tries to find a way around a rule, he or she pays the consequences.”); see also HALL, *supra* note 5, at 135 (“The difficulty results from the fact that what seems to be a simple question turns out to be a very large array of problems that involve whole philosophies of law and an inevitable degree of subjectivity.”).

⁸⁹ See *supra* Part III.D.

⁹⁰ (ABC television broadcast Jan. 12, 1973).

⁹¹ See HALL, *supra* note 5, at 6 (“For some, the most important question to ask concerns the justice of enactments and decisions; this is the perspective of the citizen vis-à-vis his government. It first found critical expression in Plato’s dialogues and it continues to this day to inspire natural law philosophies.”); *Id.* at 26 (“Aquinas, too, held that law is imperative and, therefore involves the will, but he insisted that ‘in order that the volition of what is commanded may have the nature of law, it needs to be in accord with some rule of reason.’”)(citation omitted); *Id.* at 1 (“What matters here is that Aquinas’ stand on the primacy of reason places him with Plato and Aristotle as the principal representatives of the realist, classical theory of natural law.”).

B. Episodes

1. *You're Never Too Old* (March 9, 1973)

As was mentioned,⁹² *You're Never Too Old* is especially important because it establishes the foundation for Mike's reverence for law and his deep commitment to justice and the significant role that law plays in society. Although portrayed as something of a caricature, Mike's grandfather, a retired judge, presents himself as both conservative and caring. He appears to take himself very seriously, at one point proudly remarking: "Madam, I like to think that I dispensed justice fairly in the forty years I sat on the bench." He quotes Pliny the Elder, a famous Roman author in Latin, and paraphrases Homer, the ancient Greek epic poet. He is offended when Carol's great-grandmother tries to make-light of the legal profession, and does not want to hear suggestions that the judiciary is anything but dignified. For example, she asks whether, perhaps, on hot days Judges don't wear trousers under their robes. Judge Brady is offended at the question, and tells her that he always wore his trousers under his robe.

Nevertheless, after he begins to feel more comfortable with Great-Grandma Hutchins, Judge Brady begins to laugh and lighten up a little. It is abundantly clear, however, that Judge Brady established the foundation and lit the torch of justice that Mike passes forward to his children.

2. *Greg's Triangle* (December 8, 1972)

In the opening scene of *Greg's Triangle*, Marcia practices her cheerleading, hoping to be selected as head cheerleader. Her sisters tell her not to worry because Greg is the chairman of the judging committee, and Jan and Cindy seem to think that Greg will base his decision solely on familial relationship without regard, necessarily, to merit. Meanwhile, it turns out that Jennifer Nichols, whom later in the episode we learn is also vying to be head cheerleader, has (not so coincidentally) started dating Greg. And Greg is very smitten with Jennifer.⁹³ Practicing her cheer moves at home again, Marcia asks Greg for his opinion. But he tells her "Just because you're my sister, don't expect any favors." Marcia is indignant and replies, "Who's asking for any?" Greg smugly asserts, "When I vote, Marcia, it doesn't matter who the contestant is. I'm going to be fair and impartial."

⁹² See *supra* text accompanying note 78.

⁹³ In one scene, Greg, dreamy-eyed, returns home from school and is so caught up in his thoughts about Jennifer that he puts his schoolbooks in the refrigerator.

But as those words leave his lips, the telephone rings. It's Jennifer. Now she tells him that she will be trying out for head cheerleader, and "That's the dream I've always had – to be the head cheerleader." As he hangs up the phone, his statement to Marcia about judging with impartiality echoes in his head. At school Jennifer turns up the heat. She shows Greg the blue outfit she has chosen for tryouts, telling him that she's picked blue because it's his favorite color. Marcia overhears and expresses her concern about his bias towards his girlfriend. Later at home Jan asks Marcia: "Do you think that Greg would vote for his girlfriend against his own sister?" To which Marcia answers, "Jan, you don't know anything about life."

At the tryouts, the three judges split their votes: one for Marcia; one for Jennifer; and, one for Pat Conway.⁹⁴ Greg breaks the three-way tie by voting for Pat, because he "really thought she was the best." He's now worried that both Marcia and Jennifer will hate him. Marcia, however, returns home and seems happy. She tells Greg: "I take back what I said. You've got a lot more character than I gave you credit for." And she adds: "You know, I would have liked to have won but Pat was the best; she deserved to win." But as we might have guessed, Jennifer is not so forgiving; she hangs up on Greg when he telephones her. The lesson in jurisprudence here is that judges must decide on the merits, putting aside personal and familial bias.

3. *Kitty Karry-All Is Missing* (November 7, 1969)

Kitty Karry-All Is Missing is an episode that provides commentary about the role of law and the judicial system in general. Cindy's favorite doll, Kitty Karry-All, has disappeared. She set her down in the TV room, walked to the kitchen to get the doll's bottle, and then when she returned, the doll was no longer there. Cindy jumps to the conclusion that Bobby has "kidnapped" Kitty. In the previous scene, Bobby had said a number of disrespectful things about Kitty, and even said to Cindy "I wish she'd move out and never come back." Now Bobby insists that he's innocent. When his brothers question him, Bobby denies having taken Kitty, and is even willing to swear "the sacred oath." Peter remarks: "Boy that proves he didn't take it, no sir!" Mike tells Carol that he believes Bobby's truthfulness: "Honey, I know Bobby, if he says he didn't take the doll, I believe him." To which Carol says, "Well Cindy always tells the truth too."⁹⁵ Mike replies, "I believe she thinks he took the doll but maybe she dropped it somewhere...."

⁹⁴ Rita Wilson played the role of Pat Conway. She has been married to the actor Tom Hanks since 1988.

⁹⁵ Of course both Bobby and Cindy lied occasionally. See e.g., *supra* Part I.C.3. and I.C.9.

The episode – like several others⁹⁶ – gives us an opportunity to appreciate the potential weaknesses of drawing too many inferences from circumstantial evidence. Bobby has openly admitted that he dislikes Kitty. Cindy tells Marcia and Jan that Bobby had said that he "hated Kitty." And Bobby frankly tells Greg and Peter, "I'm glad she's gone; I hated that doll!" His siblings infer that his dislike must have created a motive for him to have taken her. The other children begin to exclude him. Carol remarks, "They're treating Bobby as if he were a criminal."

Mike, seizes this moment to teach the children a lesson in legal procedure. He pulls Greg and Marcia aside, because they are the oldest:

Mike: "You see, in this country, we're very proud to have a process known as the law. And under the law, a man is presumed innocent until he's *proven* guilty."

Marcia: "Right, Dad."

Mike: "In other words, we don't hang anybody without a fair trial."

Greg: "Everybody knows that."

Mike: "Sure, but sometimes we tend to forget."⁹⁷

Mike excuses himself, saying that he and Carol are about to go shopping. Greg and Marcia then continue the conversation.

Greg: "You know someth'n, Dad's right. We don't know for sure Bobby's guilty. Nobody saw him take that doll."

Marcia: "Right. Let's give him a fair trial."

Greg: "Good."

Marcia: "Then we'll hang him."

Marcia and Greg try to convince Alice to be the judge for a trial, because, as Marcia says, "Mom and Dad aren't home." Alice finally agrees, but warns: "Okay, okay, but no loopholes, no habeus corpuses, I've got a pot roast in the oven." The children then stage a courtroom scene in the living room. Alice begins: "Oyez, Oyez, Oyez, Court is now in session. Judge Alice, presiding."

Marcia: "I'll be the D.A. cuz everybody knows he's guilty."

Greg: "I object, there's something illegal about that."

Alice: "Come on, come on. let's get this case on the road."

⁹⁶ See e.g., *supra* Part I.C.1. and I.D.

⁹⁷ Mike's explanation comports with modern perspectives of jurisprudence. See e.g., GILMORE, *supra* note 10, at 109-110 ("The function of law, in a society like our own...is to provide a mechanism for the settlement of disputes in the light of broadly conceived principles on whose soundness, it must be assumed, there is a general consensus among us.").

Marcia calls her first witness, Cindy. She sits her down in a chair and says: "Now tell the jury what happened, in your own words."

Cindy: "Well, Kitty's gone and Bobby took her, 'cuz nobody else was there, and those are my own words."

Jan: "Does that mean that we vote 'guilty' now?"

Bobby: "Hey, I want a chance to say someth'n."

Alice: "Barrister, you may proceed."

Greg: "Okay, Defendant, what's your name?"

Bobby: "You know my name."

Greg: I know but I want the jury to hear it."

Bobby: "They know my name too. Everybody here knows my name."⁹⁸

Marcia: "Let me at 'em! Where were you on the night of March 9th?"

Bobby: "Before or after 9 o'clock?"

Marcia: "What's difference does it make?"

Bobby: I'm not allowed up past 9 o'clock."

Marcia: "He's guilty alright!"

Bobby: "I'm not guilty. I didn't take that doll no matter what she says. I wouldn't do a thing like that. Maybe we fight sometimes but Cindy's my sister. Well, well, I just wouldn't do a thing like that."

Alice: "Well, jury, you've heard both sides, now it's deliberat'n time. And make it snappy, I can smell that pot roast from here."

Then Greg and Marcia discuss the biases of the jurors. But each predicts wrongly. Marcia: "I know Jan'll vote 'guilty.'" Greg: "Peter and Bobby are just like that (crossing his fingers to illustrate their closeness), he won't vote against him." Jan votes "not guilty," and when Marcia questions her vote, Jan says: "I changed my mind after his speech." Greg and Bobby begin shaking hands, thinking that they have prevailed, but Peter interjects and says that he's voting "guilty." Greg blurts out: "That's immaterial! A while ago you said he was innocent!" Peter: "So what? I did a lot of deliberat'n, and he's guilty. Alice: "Well, looks like we've got a hung jury."

Then Bobby's kazoo goes missing just moments after he put it down. So he accuses Cindy of having taken it. When Mike has Bobby empty his pocket to search for the kazoo, he tells both Bobby and Cindy that he believes that Cindy is telling the truth about not being a kazoo snatcher just as he had believed

⁹⁸ This exchange is really a subtle criticism of the hyper-technical formality of courtroom procedure isn't it? Everybody has to adhere to the rituals, even when we often know that these formalities are completely unnecessary.

Bobby when he said that he didn't take Kitty.

Then Mike says to both: "Sometimes we can be deceived by circumstantial evidence."

Bobby says: "Circum-special?"

Mike explains: "No, circumstantial. That's when things look different than they really are."

Cindy: Like when a lady puts on false eyelashes?"

Mike: "Well, something like that."

Mike: "You see, now each one of you knows that he's innocent, but the way things look, they think that the other one is guilty."

Bobby: "And that's not right?"

Mike: "No, no far from it. Do you know sometimes innocent men go to jail because of circumstantial evidence?"

Bobby: "Okay, then I believe Cindy's innocent."

Cindy: "And I believe Bobby's innocent."

Mike: "Good."

Cindy: "Even if he's guilty."

Bobby is experiencing a moral dilemma. He decides to go into his piggy bank to buy a new Kitty Karry-All doll for Cindy: "My whole life savings!" He takes his piggy bank to the toy store and purchases another Kitty Karry-All for Cindy. The episode concludes with the discovery that it was the dog Tiger who absconded with both Kitty and the kazoo. He had taken them to his doghouse. All's forgiven, and apparently all involved have learned lessons about the judiciary and some of the difficulties that our legal system incurs when trying to resolve disputes.

4. Greg Gets Grounded (January 19, 1973)

Greg Gets Grounded highlights the importance of paying attention to the *intent* of those who make laws. Intent, on occasion, may be more important than a literal reading of the language used.⁹⁹ While driving the family car with Bobby as a

⁹⁹ "To interpret statutes, 'intent of the legislature' is by far the most common such criterion." In fact, the U.S. Constitution's separation of powers principle makes this approach mandatory, and courts are required to carry out the will of the lawmaking branch of the government. Courts use various strategies to determine legislature's intentions. "Judicial opinions overwhelmingly emphasize the legislature's words as the most reliable source of legislative intent, particularly when a statute is 'unambiguous.' Courts have invoked 'concepts of reasonableness' and, when necessary, disregard statutory language to follow legislative intention. Courts may consider the history of the subject matter involved, the end to be attained, the mischief to be remedied, and the purpose to be accomplished. Still others rely on extrinsic evidence from an act's legislative history, or sequential drafts of legislation, or look to administrative interpretations, to determine

passenger, Greg becomes distracted when he looks at the back cover of a newly-purchased record album. As a result of being distracted, Greg fails to maintain control of the car, and he skids between two other cars, nearly causing an accident. Fortunately it's a near-miss, and no harm occurs. But Bobby tells Mike and Carol about the incident, and they decide to punish Greg, by taking away his driving privileges for a week. Mike imposes the consequence, directly stating: "You cannot drive the car for one week. Period."

Later in the episode, however, Greg admits that he drove his friend, George's, car. Mike is nonplussed.

Mike: "After you'd been told not to drive?"

Greg: "You didn't tell me not to drive."

Mike: "Yes I did."

Greg: "You said not to drive *our* car."

Carol: "Greg, we told you not to drive..."

Greg: (finishes her sentence) "...our car." "You didn't say I couldn't drive *any* car."

Mike: "Yes, but you knew what we meant; now you were grounded, right?"

Greg: "Dad, you said not to use *our* car for a week, and I haven't used it."

Carol: "Ahh come on Greg, that's walking a pretty fine line." "Are you trying to say you didn't understand what we meant?" "No driving?"

Greg: "I just know what you told me." "And that was not to drive *our* car."

So Mike decides to increase the penalty. "Okay, Greg, okay. But let's make no mistake about this. Except to school, you are not to leave this house for the next ten days." Greg appeals the sentence: "I think it's unfair for you to ground me when I didn't disobey you." Greg asks for them to recognize that he was simply going by their "exact words." Mike then asks Greg if he is prepared to live by

legislative intent. Courts may consider the title of a statute to determine legislative intent, as the title is a legislative declaration of the tenor and object of the act. A subsequent statutory amendment may be an appropriate source to determine legislative intent. Courts even may locate legislative intent through the omission of language."

However, courts must refrain from any approach that results in an attribution of false or doubtful legislative intent. "In the end, probably no single canon of interpretation can absolutely provide an answer to the question about what a legislature intended. The question of meaning lies deeper than the law. It involves subtle questions of judgment and issues about transferring knowledge not fully understood by lawyers, scientists, or psychologists, *inter alia*." 2A NORMAN J. SINGER & SHAMBE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 45:5 (7th ed. 2007).

that precept too.¹⁰⁰ Mike and Carol, therefore reconsider, and decide to allow Greg not to be grounded in return for his agreement to abide by his "exact words." As we might anticipate, throughout the remainder of the episode, Greg encounters hardships as he tries to follow through with strict interpretations of things that he has promised (*i.e.*, his "exact words").¹⁰¹ Presumably, the lesson Greg learns is that justice is sometimes best served if we place primary importance on a person's intent rather than merely a literal reading of the "exact words" that have been expressed.

5. *Sorry Right Number* (November 21, 1969)

As is clear by now, several episodes emphasize the importance of rules, and Mike routinely chastises the children when they have broken rules.¹⁰² He and Carol typically impose punishment as a consequence for violating rules.¹⁰³ In *Sorry Right Number*¹⁰⁴ Mike finds Greg talking on the telephone in Mike's home office ("the Den"), and nearly explodes: "What happened to the rules?" Greg's not supposed to be "in the Den." Rather, he's supposed to use the other phone "unless it's an emergency." Greg tries to plead that it is an emergency.¹⁰⁵ Peter uses the phone in the Den next, and, like Greg, Peter claims that his call is an emergency, because his friend will fail math if he doesn't talk with him. This episode may also illustrate a rather common theme in the study of jurisprudence; namely, that advances in technology – in this case the expanded role of telephones to communicate – often require legal adaptations. Here Mike responds to the increased usage of his telephone by changing the family rule regarding under what circumstances others have permission to use his Den telephone.¹⁰⁶ Mike

¹⁰⁰ See HALL, *supra* note 5, at 78 ("So far as any generalization may be ventured, it may be said that their [*i.e.*, examples of linguistic jurisprudence] salient feature is concentration on the use of words.") (citations omitted).

¹⁰¹ For example, Greg promised to wash Carol's car "today." So as night falls, Mike insists that Greg go outside in the dark to comply with his exact words. And then the dagger-to-the-heart ensues when Greg realizes that he promised to drive Peter and Bobby to a frog jumping contest, yet he has also promised to take Rachel on a date – on the same night!

¹⁰² See *e.g.*, *supra* Part III.G. and IV.A.

¹⁰³ See HALL, *supra* note 5, at 104 ("[Bentham] concluded that punishment is the only sound way to regulate 'the conduct of people in general: reward ought to be reserved for directing the actions of particular individuals.'") (citing BENTHAM, THE RATIONALE OF REWARD 25 (1825)).

¹⁰⁴ The title of this episode is a humorous reference to the 1948 movie, *Sorry, Wrong Number* (which was based on a 1943 radio play). See *Sorry, Wrong Number*, WIKIPEDIA, http://en.wikipedia.org/wiki/Sorry,_Wrong_Number (last visited June 7, 2015).

¹⁰⁵ He says something about a rabbit about to have babies!

¹⁰⁶ See *e.g.*, GILMORE, *supra* note 10, at 14 ("But even during periods when no one challenges the basic rules, the society we live in continues to evolve and change – in response to technological developments, to shifts in patterns of moral or religious belief, to the growth or decline of population, and so on. The process by which a society accommodates to change without

concludes that he's going to have to issue an "ultimatum" and establish a new rule about using the Den phone because he can't call out or in. No more "emergency" exception. This rule change, however, is especially interesting because, in the episode *Law And Disorder*,¹⁰⁷ the principal life-lesson turns out to be just the opposite; namely, that emergency situations sometimes justify conduct that would otherwise be considered a rule violation.¹⁰⁸

6. *Law And Disorder* (January 12, 1973)

Law And Disorder presents several nuances relating to the role of law in society. Bobby takes his job as a school safety monitor seriously. As a safety monitor, Bobby experiences, first-hand, difficulties when trying to exert authority and police power. Mike explains to Bobby one of the difficulties associated with having authority: "Well, take the police for instance, you know it isn't part of their job to *like* arresting people. They share a responsibility to enforce the rules." Carol adds, "And rules are very important, Bobby. They're made to protect people." And she explains, "If the kids at school break a rule, it's the safety monitor's job to report them." Armed with their advice, Bobby sets about strictly enforcing rules. He writes up one boy for chewing gum in the hall. He writes up a girl who inadvertently missed the trash can, trying to throw away a piece of paper without looking. Then he writes up several students who are throwing books in the halls, for "disorderly conduct."

Bobby continues wielding his authority by citing Cindy and two of her friends for running in the hallway. Cindy protests that he can't turn in his own sister! But Bobby defends his actions, saying "She was running in the hall. When you break a rule, you have to get punished." When Cindy complains to Carol about it, Carol tells her that the same rules apply to her as to everyone else. Feelings bruised, Cindy replies: "I don't see why they should." Carol, sensing the need to explain further, tells Cindy that, if her son were a police officer and she accidentally ran a red light, she'd still expect him to give her a ticket. Cindy humorously responds, "Boy if I ever had a son who was a policeman, and he gave me a ticket, I'd give him a spanking."

abandoning its fundamental structure is what we mean by law."); *Id.* at 65 ("Rapid technological change unsettles the law quite as much as it unsettles people.").

¹⁰⁷ See *infra* Part III.6.

¹⁰⁸ In many respects this concept is like the Tort concept of necessity. Necessity is commonly considered a justifiable excuse for rule breaking. See DAN B DOBBS ET AL., TORTS AND COMPENSATION, PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY 82-87 (West Acad. Publ'g, 7th ed. 2013).

As the episode develops, Bobby begins to expand his authority beyond the school grounds, by reporting his siblings' transgressions at home. He wants to report Greg for coming in at 11:55 p.m., when he was supposed to be home by 11:30. After Greg tells him that he's got a very good reason for being late, Bobby replies, "That's what they all say." Marcia then informs Greg that she too will be in Bobby's "Report" because she borrowed a bracelet of Carol's without permission. And Bobby even plans to report Alice for throwing away spray bottles without separating them from the other trash.¹⁰⁹ Undaunted, Bobby tells Jan that he's going to report her for failing to set the table.¹¹⁰ Bobby has decided that "rules are rules" and refuses to listen to Jan when she tries to explain *why* Alice was setting the table instead of her: "I've got a very good reason for not setting the table."

Now the stage is set for Bobby to learn a lesson about the role of affirmative defenses and justifications in the dispensing of justice. Jill, Bobby's friend, approaches him saying that her cat, Pandora, has run away and darted into an abandoned building that is slated for demolition. Jill is crying and asks Bobby to get Pandora out of the building to save her. Bobby protests, saying that there is a "No Trespassing" sign in front of the house. Nevertheless, Bobby reluctantly decides to go into the house to retrieve Pandora. He goes in, rescues the cat, and gets his good clothes very dirty in the process.

Afterwards, Mike and Carol discuss the matter with him. In this instance, an emergency situation necessitated his actions. They point out to him that you don't *always* have to get punished for breaking rules. "Well, you did break a rule, but you saved the little girl's cat, and that's a good reason for breaking a rule," Carol explains. The parents decide not to punish Bobby under these circumstances. Now Bobby gets a lecture about the legitimate excuses that the other members of the household had for having broken other rules. For example, Greg returned home after his curfew because he waited for his date's

¹⁰⁹ Presumably this is a reference to Environmental law and state and/or municipal regulations regarding recycling plastics. While there is not mandatory law requiring consumers/citizens to recycle, California has established a comprehensive program for the recycling of beverage containers. This comprehensive program is called The California Beverage Container Recycling and Litter Reduction Act. "The purpose of the Act is to create and maintain a marketplace where it is profitable to establish sufficient recycling centers and locations to provide consumers with convenient recycling opportunities through the establishment of minimum refund values and processing fees and, through the proper application of these elements, to enhance the profitability of recycling centers, recycling locations, and other beverage container recycling programs." 50 CAL. JUR. 3D POLLUTION AND CONSERVATION LAWS § 550 (2002). California has various regulations regarding how these recycling centers are supposed to be operated. *See* CAL. CODE. REGS. tit. 14, §§ 2500-2550 (West 2014).

¹¹⁰ Alice was setting the table instead of Jan.

parents to come home (she had forgotten her house key), and Alice set the table for Jan so that she could read a book to prepare for a test.

It may not merely be coincidence that this episode contains a brief, humorous exchange about the role of necessity as it relates to Admiralty law. Mike has some sort of book about boating, and he asks Peter: "When two boats meet, who has the right of way?" Peter hazards a guess: "The biggest boat." But Mike says: "No, no, no. The boat that's on the right. It's the same as the rules of the road." Jan interjects: "Yeah. But what if they're coming straight at each other?" To which Mike: replies with a smile "Then we're back to the biggest boat."

7. *A Fistful of Reasons* (November 13, 1970)

A Fistful of Reasons explores the role of law in conflict resolution. Buddy Hinton and other bully-types have been teasing Cindy at school because of her lisp. So Cindy begins addressing the problem (with encouragement of course from Mike and Carol) by practicing tongue twisters in a book to improve the pronunciation of her letters' sounds. Back at school, Buddy Hinton persists teasing and tormenting her again, and when Peter tries to defend Cindy (being a chivalrous older step-brother), Buddy challenges Peter and calls him "chicken."

Mike explains to his boys that fighting isn't the appropriate way to resolve problems and conflicts.¹¹¹ He asks whether Peter has ever tried reasoning with Buddy. "Reasoning, calm, cool reasoning; that's a lot better than violence. And it's the only sensible way to settle differences," Mike counsels. Grant Gilmore, quoting Justice Oliver Wendell Holmes, expresses much the same sentiment: "In this bleak and terrifying universe, the function of law, as Holmes saw it, is simply to channel private aggressions in an orderly, perhaps in a dignified, fashion."¹¹² But even with Mike Brady, Grant Gilmore, and Oliver Wendell Holmes cheering him on, Peter, nevertheless, comes home with a bruised left eye after the next Buddy Hinton encounter at school.

So Mike then decides to talk with Hinton's father. "Too bad your kid don't know how to fight," Ralph Hinton tells Mike when Mike confronts him with the issue. Ralph then tells Mike to get off of his property, and asks "or would you like to be helped off?" They stand toe-to-toe, face-to-face, but then Mike leaves. At this

¹¹¹ Interestingly, before the show was canceled after five seasons, Barry Williams, the actor who portrayed Greg, had suggested to the producers that the subsequent season ought to include an episode wherein "Mike and Greg get into an argument which would ultimately lead to Greg getting slugged." See WILLIAMS, *supra* note 2, at 140. Of course a sixth season never happened.

¹¹² GILMORE, *supra* note 10, at 49.

point Mike realizes that this situation may be one of those situations where reasoning is not a practical solution. He therefore gives Peter permission "to defend himself."

Then comes the next Buddy Hinton encounter at school, with an audience of students looking on. Hinton starts teasing Cindy again "Baby-talk, Baby-talk." Peter confronts Buddy and Buddy swings a fist at Peter and misses. Then as he begins to throw another punch, Peter closes his eyes and literally beats Buddy to the punch – landing his fist on Buddy's mouth. Peter's blow has knocked out one of Buddy's teeth. And in a nearly ironic, Hammurabi-like manner of justice, Buddy begins to speak with a lisp as a result of the missing tooth. Then Peter apologizes to Buddy, and chastises the students who witnessed the confrontation, because they had begun laughing at Buddy. Peter tells Cindy that it's not right to tease Buddy for the same reason that it wasn't right for Buddy to tease her. In this instance, physical force as a means of self defense was justified.¹¹³ And Peter's compassion after the fact provides a positive role model for those who must administer justice in this manner.

Conclusion

The Brady Bunch characters did far more than pay lip service to the importance of truth and honesty. They routinely demonstrated that a lack of honesty has the potential not only to hurt others but to yield unfortunate consequences for ourselves. And even though there are occasions when being truthful is difficult and even painful, more often than not, it is a wise course. In the quest to uncover truth, numerous Brady situations illustrated the importance of verifying facts and the potential pitfalls associated with jumping to conclusions on the basis of circumstantial evidence.

The world of the Brady's also prized equality and fairness. They did recognize, nevertheless, that those values were flexible – occasionally necessitating that some individuals receive unequal treatment when circumstances demanded it. And although the show's position may not have been a particularly strong one by today's standards, the willingness to take a stand for social justice on issues such as gender and racial equality deserve our respect, and presumably helped to shape the attitudes of millions of viewers for the better.

Although they occasionally poked fun at law and its formalistic procedures, the Brady's also taught us to respect judges, the judicial system, and the rule of law.

¹¹³ See HALL, *supra* note 5, at 108 ("We shall assume that the use of physical force is regarded by some as an essential characteristic of the legal sanction.").

But as much as the Brady's revered rules, they also came to understand that there were occasions when changed circumstances, such as advances in technology and emergencies, provided a counter-weight that allowed for exceptions and rational adjustments to what would have otherwise been a blind, irrational adherence to rules.

The Brady Bunch is a television series that has enjoyed remarkable success over the course of the past nearly half century. In today's increasingly diverse multimedia world – with hundreds of television channels available via cable and satellite services, the emergence of the Internet and its attendant media potential, including YouTube, Netflix, Hulu, and many other means by which people are able to view entertainment content – it is likely that we may never again witness one solitary television show reach and affect such a significant percentage of the viewing audience. Chances are that Sherwood Schwartz, the writers, cast, staff, and sponsors of the original show never dreamt that they would influence so many people. Fortunately, Schwartz and all involved during the five-year run of *The Brady Bunch* possessed a sound moral compass and a sophisticated understanding of many of the nuances of jurisprudence that have helped to guide us into the twenty-first century.