

Farm Management

Real law — it's not 'Matlock'

IT'S hard to flip through the TV channels without coming across a legal show. When a TV show is made about what you do, it's only natural to critique it for everything that's inaccurate.

Here are a few of my favorite examples of how things do not happen in the real world of litigation.

The last-minute, secret witness

The TV show "Matlock" often incorporated the tactic of the surprise, last-minute witness. The trial would be going badly for Matlock, but at the last minute, he would rush a surprise witness into the courtroom to save the day. I often wonder how many cases I could have won if only I could have brought in my secret undercover feed salesman at the last second to present the elusive bill of sale. However, secret witnesses don't work in the real world.

Prior to any trial, both sides must disclose the witnesses they will use, and the opposing party has the ability to depose (interview) any witness under oath prior to trial to discover what the witness will testify to. If the witness is not disclosed prior to trial, he or she cannot testify at trial.

Our legal system is designed to prevent surprises so the matter is decided on facts that are out in the open for the judge and jury to see. Last-minute witnesses, surprise evidence and other



Country Counsel

By ROBERT MOORE

clever strategies dreamed up by TV show writers would lead to a higher chance of unfair or unjust results.

The Brady defense

There's an episode of "The Brady Bunch" where Carol Brady rear-ends a person, and he sues her for fake injuries to his neck. Mike Brady saves the day when during the trial he throws a briefcase on the floor and causes the bad guy to turn his head quickly, showing he has no injuries. The judge dismisses the case and the Brady Bunch celebrates as they head toward their next misadventure. While I would love to actually try the Brady defense at trial someday, things just don't work this way in the real world.

This episode was really about proving damages. That is, the injured party must prove he was actually injured and the extent of the injury. It is often harder for the plaintiff to prove damages than it is to prove that the other party was responsible. Here, Carol Brady was at fault for the accident, but that doesn't mean she must pay whatever the bad

guys ask for. The injured party must show they have been damaged and the extent of the damage. Lawsuits are often dismissed because the injured party cannot prove they have in fact been injured or the extent of their injuries.

To use an agricultural example, Sam the Butcher fills in a depression on his land that causes an unreasonable increase of water to run onto the Bradys' land. The increase of water causes the Bradys' pond to have an algae problem, and wildlife seem less attracted to the pond. The damage is mostly aesthetic, and the Bradys are not able to put a dollar value on loss of wildlife. Their lawsuit against Sam for \$10,000 must be dropped because they cannot prove the problem has cost them \$10,000. Always be sure damages can be proved before initiating a lawsuit.

Fees, please!

Noticeably absent from lawyer shows are discussions about fees. These TV shows often seem to involve a downtrodden person being treated unfairly by big business or the government. Attorneys in a big downtown firm in their \$10,000 suits gladly accept the case from the person who obviously has little or no money. This is definitely not the real world.

Practicing law is like any other business; you must get paid for your services

or you won't be in business. Even simple country lawyers like me and Matlock must get paid for our work.

To this end, a lawyer will almost always ask for a substantial retainer before agreeing to represent a new client in litigation. Too many attorneys have seen their bills go unpaid after an unfavorable outcome or after discovering the client does not have the ability to pay the bill. Paying legal bills tends to be rather low on most people's priority list. Depending on the complexity of the litigation, a lawyer may ask for anywhere from \$1,000 to \$10,000 or more to even begin a lawsuit. When the retainer runs out, the lawyer will require the retainer to be refreshed before proceeding with more work.

Also, legal fees almost never get paid by the other party even if the other party loses. Whether it be right or wrong, our legal system requires each party to pay for his own legal fees even if they prevail. Unfortunately, this prevents many people from getting their day in court because they cannot afford to pay an attorney to represent them.

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