



When judges channel their inner Seinfeld.

BY JOHN G. BROWNING

Although the last original *Seinfeld* episode aired in 1998, the “show about nothing” has influenced subsequent television comedies, launched many careers, and of course made a pile of money for its creators Jerry Seinfeld and Larry David. And as it lives on thanks to syndicated reruns, perhaps it is time to acknowledge the sitcom’s influence not just on the medium of TV or the genre of comedy but on a somewhat unexpected field—the law. Believe it or not, modern jurisprudence is replete with *Seinfeld* references.

Our own Texas Supreme Court, via its resident pop culture guru Justice Don Willett, has channeled its inner Jerry Seinfeld. In the 2009 case of *Edwards Aquifer Authority, et al. v. Chemical Lime, Ltd.*, the court had to decide whether a judgment is fully effective when it's first issued or when it becomes final and enforceable. In a concurring opinion that expressed some frustration over the majority's lack of clear guidance as to when a decision truly takes effect, Justice Willett wrote, "Why enact rules and statutes that tie finality and enforceability to something that amounts to *Seinfeld*-ian nothingness? It seems odd that a decision would be fully effective yet neither final nor enforceable."¹ A clearer indication that Justice Willett has watched a lot of *Seinfeld* came in his accompanying footnote, which said, "Not that there's anything wrong with that. As a matter of fact—and law—there is something wrong with that."²

Seinfeld has even inspired lively debate about constitutional issues like freedom of religion. The comedy introduced us to the Costanza family alternative to Christmas, Festivus ("for the rest of us"), which was marked by "feats of strength," "airing of grievances," and, of course, the unadorned aluminum Festivus pole. But Festivus had an effect beyond inducing laughter. In 2010, convicted drug dealer Malcolm Alarmo King cited his religious belief in Festivus to protest the meals being served to inmates in Orange County, California. King successfully argued that his, um, *unique* religious convictions entitled him to kosher meals and not the salami-riddled diet imposed on the general inmate population. It worked for the majority of the time that King was incarcerated. And atheist activists have taken their fight against municipality-supported Christmas displays to *Seinfeld*-ian lengths, arguing that the inclusion of a Festivus pole on government property makes as much sense as displaying the Nativity scene. As a result, Festivus poles appeared at holiday displays in the Florida and Wisconsin state capitals.

Seinfeld episodes have also been present in employment-related court decisions. In the 2001 Wisconsin case of *Mackenzie v. Miller Brewing Co.*, an employee alleged that he was wrongfully fired after discussing with a female co-worker the subplot of "The Junior Mint" episode (in which Jerry can't recall the name of a woman he's dating, only that it rhymes with a part of the female anatomy).³ In a 2005 case, 1st Circuit justices pondered the taunting of an employee for needing a "Costanza chair"—a reference to the glide chair used by George while faking a disability in the episode "The Butter Shave."⁴

Other *Seinfeld* episodes have figured prominently in judicial opinions. In 2008, the 10th Circuit cited the episode "The Strike" (in which Elaine earns a free sub as a "submarine captain" after buying 24 Atomic Sub sandwiches) as an example of the type of customer loyalty

promotions at issue in that lawsuit.⁵ The harebrained scheme in the episode "The Bottle Deposit" (in which Kramer and Newman hatch an ill-fated plan to drive a truck full of bottles from New York to Michigan to collect double the bottle deposit refund) was referenced by the 7th Circuit in a 2008 case with a similar conspiracy to take advantage of the difference in cigarette taxes between Indiana and Illinois.⁶ Even the 9th Circuit's Chief Judge Alex Kozinski channeled "The Bizarro Jerry" episode to illustrate the underpinnings of the right of publicity in deciding a case brought by actors from the TV show *Cheers* over unauthorized use of their likenesses.⁷

Perhaps the greatest homage came from the Court of Appeals of Maryland, which quoted extensively from "The Wig Master" episode in a 2008 opinion about breaching the duty of good faith in a contract case.⁸ In that episode, Jerry returns a jacket "for spite" (he doesn't like the salesman who sold it to him) but is told by the store manager that this is not an acceptable reason. Calling *Seinfeld* "an unlikely legal illustrator," the appellate court said the exchange between Jerry and the manager was one that "epitomized the duty of good faith in contracts."⁹

Yes, *Seinfeld* certainly inspired, even as it doled out nods to the legal system (who can forget the appearances of Jackie Chiles, the Johnnie Cochran-like trial lawyer, and his representation of Kramer in a hot coffee case?). Perhaps that's because of Jerry Seinfeld's actual respect for lawyers. As he put it in the opening monologue of "The Visa," "A lawyer is basically the person that knows the rules of the country. We're all throwing the dice, playing the game, moving our pieces around the board, but if there is a problem, the lawyer is the only person that has read the inside of the top of the box."

So here's to the folks who read the inside of the top of the box—not that there's anything wrong with that. **TBJ**

NOTES

1. *Edwards Aquifer Authority, et al. v. Chemical Lime, Ltd.*, 291 S.W.3d 392 (Tex. 2009).
2. *Id.*
3. *Mackenzie v. Miller Brewing Co.*, 241 Wis.2d 700, 623 N.W.2d 739 (2001).
4. *Webber v. Int'l Paper Co.*, 417 F.3d 229 (1st Cir. 2005).
5. *Parish Oil Co., Inc. v. Dillon Companies, Inc.*, 523 F.3d 1244 (10th Cir., 2008).
6. *United States v. Daryl Harper*, 463 F.3d 663 (7th Cir., 2006).
7. *Wendt et al. v. Host Int'l*, 197 F.3d 1284 (9th Cir., 1999).
8. *Clancy v. King*, 954 A.2d 1092, 405 Md. 541 (Md. Ct. App., 2008).
9. *Id.*



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