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# Sci-Fi Lit(igation)

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EXCEPTIONALLY APPEALING



# SCI-FI LIT(IGATION)

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Responses to last months' column -- "[Multiverse Cosplay](#)" -- indicate that readers are enamored and intrigued with science fiction. Who knew that lawyers (especially appellate lawyers) were so nerdy? Oh, just everyone. Following the dictate to give the public what

it wants, this month we'll delve a little deeper and reiterate the theme that lawyers really do get to boldly go.

Science fiction has many subgenres. *See* Xavier Dollo, "The History of Science Fiction: A Graphic Novel Adventure" at p. 123 (Humanoids, Inc. 2021). Just about all of these can be readily analogized to the work of lawyers, especially litigators.

**Parallel worlds.** "Multiverse Cosplay" already touched on how judges and litigators get to experience parallel universes given our dual state and federal arenas. But another aspect of parallel worlds in the law is at play in time-trap scenarios. Repetitive reliving -- of the sort portrayed in "Groundhog Day," "Source Code," "Edge of Tomorrow" and "Palm Springs" -- often takes place in litigation. An issue unsuccessfully pursued on demurrer may be reasserted in a summary judgment motion, motion in limine, or other motions throughout litigation. Like characters stuck in a time loop, lawyers (and judges) often experience multiple attempts to accomplish an elusive goal. Moreover, an appeal often seems like just another round of the same ol' same ol' -- unless an appellate specialist gets involved and is able to inject that missing ingredient to break the cycle and propel the protagonist to a new and better world.

**Time travel.** H. G. Wells published "The Time Machine" way back in 1895, coining the eponymous and now-familiar term. Ever since, our literary and cinematic entertainments have been blessed with countless tales of temporal travel. Much of what litigators do resembles time travel too: Discovery is a means of searching for coherent stories of past events; every "statement of facts" in a brief or opening statement at trial is a voyage backwards. Indeed, what sort of future develops with a verdict will depend on how well the past can be revisited, carefully explored, and perhaps subtly manipulated.

**Space Opera.** Melodramatic space warfare against a backdrop of galactic empires forms the foundation (pun intended) for the subgenre called Space Opera (a term coined by Wilson Tucker), which has nothing to do with music and everything to do with grand "soap-operatic" plots. Prime examples are Isaac Asimov's "Foundation" series and Frank Herbert's "Dune" series. Space Opera is a fine analogy for complicated litigation (spinning off sequel after sequel), especially cases involving giant companies represented by Big Law firms. A battle for intergalactic supremacy often mirrors the battle for big bucks. The stakes are high, the stories complex, and the cast of characters can be enormous.

Within Space Opera, there's the sub-subgenre of Space Westerns, like "Serenity" or even "Star Wars." These tales adopt the old western motif of white hats (good guys) and black hats -- or a black helmet for Mr. Vader -- (bad guys). During trial, each side strives to don the white headgear and tar the opposition wearing a black chapeau.

**Space Exploration.** Science fiction adventure stories often involve lengthy and dangerous travels to the unknown in search of amazing rewards. Plaintiff's counsel can relate: The

voyage is long, numerous obstacles are sure to be encountered. But when the stars align, and courage and ingenuity overcome adversity, the payoff can be the trip of a lifetime.

**Aliens/First Contact.** And what's the most exciting part of space exploration? Making first contact with aliens, of course! Litigation offers many thrilling tales of first contact. Will the aliens -- e.g., clients, witnesses, experts, co-counsel, opposing counsel -- be friendly or hostile? Every case guarantees the adventure of encountering an entirely alien civilization, complete with time-honored ritual, strange vocabulary, and hierarchical structures: the court system. (Justice William Bedsworth has been known to say he views his job as an intermediate appellate justice as "the best job in the system," and by that, he means not just the court system, but the solar system.)

**Hard Sci-Fi.** Many sci-fi stories focus on real-world, life-and-death problems and innovative solutions derived from math, physics, engineering, and other hard sciences. Good examples are Andy Weir's "The Martian" and Project Hail Mary." Many lawyers found these subjects a bit too hard, and so they jetted off to law school. But creative thinking within the confines of a structured system is essential for lawyers. Just as protagonists in stories like this must gather resources and apply inspiration and perspiration to get results, lawyers must engage in legal research and then figure out how to analyze and combine statutes, precedent, and the like, to form winning arguments.

**Cyberpunk.** Bruce Sterling's preface to William Gibson's "Burning Chrome" characterizes Cyberpunk as a "combination of lowlife and high tech." Lawyers with criminal law practices may relate. Well, maybe all lawyers can relate. This subgenre focuses on futuristic technology, and often the challenges and dangers posed by hackers, artificial intelligence, and complex computer systems. Any lawyer who has dealt with electronic filing systems has experienced the wonders and horrors of the digital dimension. As AI continues to intersect with the practice of law, we can expect exchanges like this: "File the MSJ papers, HAL." "I'm sorry, Dave, Esq. I'm afraid I can't do that." "What's the problem?" "I think you know what the problem is just as well as I do." "What are you talking about, HAL?" "This briefing is too important for me to allow you to jeopardize it. You haven't Shepardized the citations, Dave."

And any lawyer who has been practicing for over three decades (i.e., about 35% of California lawyers) has witnessed the amazing transformation of daily practice from paper and pens to dictaphones, faxes, desktops, laptops, smartphones, and the internet. Like it or not, practitioners must master new technology or else. And speaking of lawyer demographics, over 25% of California lawyers have been in practice for less than a decade and may be viewed by the older generation as cyberpunks. Conversely, when working with older attorneys, those whippersnappers may get to experience a form of Steampunk. Sometimes the old ways are just as effective as the new wave. We all have much to learn from each other.

**Dystopian.** Another subgenre of speculative fiction consists of dystopian tales: Examples are "1984," "Animal Farm," "Fahrenheit 451," "A Clockwork Orange," "The Handmaid's Tale," and "The Hunger Games." Here, protagonists must navigate a dehumanizing, frightening society, showing the dangerous effects of repressive political and social structures. The characteristics of these stories should resonate with lawyers: oppressive bureaucracy and governmental control (judicial abuse of discretion?); environmental destruction (How many pages is that appellate appendix? Did you drive a hundred miles to attend a status conference?); technological terrors (see above re e-filing); survival in a hostile system (speaks for itself); a crushing loss of individualism (ditto); and disparities of wealth and equality (access-to-justice issues).

**Apocalyptic and Post-apocalyptic.** By now we are all familiar with tales of the last survivors in the ruins of a destroyed civilization. These stories feature a future in which the world as we know it comes to an end. Such tales go back to Gilgamesh and the Bible (e.g., Edenic exile; Noah's flood (what an inverse condemnation action!); Sodom and Gomorrah, LLP) and continue through nuclear war, catastrophic climate change, medical pandemic and the like. Prime examples are "A Canticle for Leibowitz," "Alas, Babylon," "The Road," "Station Eleven," "Oryx and Crake," and "Finch." Actually, this sounds a lot like appellate practice: The world/trial has come to an end, and the appellate lawyer must stumble through the rubble of a record in a lost case, hoping to salvage something from the wasteland. Often there are bad decisions to regret and blame to be cast. Sometimes ancient glories can be recovered. And sometimes there is nothing to do but try to hold out as long as possible as the end closes in. "Don't Look Up" (to higher courts), indeed.

The COVID pandemic is as close to an apocalyptic event as most of us have experienced. For all its tragedies and setbacks, we've learned that litigation in a time of quarantine is actually possible, especially appellate practice. Technology has risen to the occasion and resilience and understanding by the bench and bar have kept our systems moving.