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ON FILM: A SOCIAL HISTORY OF WOMEN LAWYERS IN POPULAR CULTURE 1930 TO 1990

Ric Sheffield

I. INTRODUCTION

The year 1929 remains indelibly imprinted in the minds of millions of Americans as the year of the great stock market crash. To most, American society would never again be the same. 1929 was also an important year in the history of popular culture in that the Academy Awards were presented for the first time; Station WGY in Schenectady, New York, was the first to broadcast a regular television schedule; the infamous but popular *Amos 'N' Andy* radio show made its national premiere; and American cinema began production of its first portrayal of a fictional woman attorney. A crash of another sort, the introduction of the motion picture industry's first big-screen "lady lawyers," irreversibly changed the face of the lawyer-courtroom film genre. The presence of women attorneys in American cinematic fare, while generally inauspicious, began and remained noteworthy, primarily for marketing purposes. However, the real import may have been the impact these portrayals had in shaping the public's perception and acceptance (or lack thereof) of real-life women lawyers.

Many of the themes, story lines, and subplots in today's cinematic and televised tales of lawyer intrigue can trace their origins to the very first filmic depictions of women attorneys in the 1930s. Despite the passage of over half a century, a millennium in terms of technological and artistic advances in filmmaking, most contemporary dramatic vehicles which feature a female lawyer character subscribe to the stereotypical formulae of yesteryear.

Feminist film and media criticism is replete with indictments of American popular culture for its negative portrayal of women. "Images are focused forms of media sexism. Year after year, the media returns to their

limited stock of images of women”¹ Since it is indisputable that contemporary media depictions of women remain firmly entrenched in sexist stereotypes, a comprehensive review of the portrayal of women within the legal profession as presented in popular film and television must begin with the construction of a social history with an eye toward tracing the evolution of such roles and a comparison of such depictions to the integration of women into the American legal profession. It is also useful to examine the other media interpretations of popular culture, particularly film reviews, as they also served to shape the attitudes and opinions of the public toward the feminization of the bar.

II. EARLY DEPICTIONS OF FEMALE ATTORNEYS IN FILM

By 1930, there were an estimated 3,385 women licensed to practice law in the United States, then comprising approximately 2% of the national bar. The presence of women within the legal profession must be viewed in light of the fact that at that time, women accounted for 23.6% of the United States’ workforce.² It is important to note that some important changes took place in the labor force around the time of the Great Depression. “Men’s labor force participation rate declined slightly, whereas women’s rose slightly. During the Depression, many married women entered the paid labor force to support their families when their husbands were out of work.”³ These economic realities, while not completely unnoticed within the motion picture industry, nonetheless, remained subjugated to the “dominant middle-class ideology [which] dictated that the so-called true woman was the woman at home who supposedly did not work.”⁴

These attitudes of both the motion picture industry and public, which embraced and demanded female domesticity, were reflected in the cinematic offerings of the Depression and New Deal era. Nowhere was it seen more strongly than in filmic depictions of women who were cast in traditionally “male” roles. Up to that time, few occupational roles were viewed by the

1. MATILDA BUTLER & WILLIAM PAISLEY, *WOMEN AND THE MASS MEDIA: SOURCEBOOK FOR RESEARCH AND ACTION* 45 (1980).

2. Census Bureau statistics prior to 1947 included in the figures all persons 14 years and older in the paid labor force.

3. CLAIRE M. RENZETTI & DANIEL J. CURRAN, *WOMEN, MEN, AND SOCIETY* 178 (1992).

4. *Id.* at 176.

public as more patriarchal than that of lawyer.⁵ The motion picture industry did its part to perpetuate, and in many ways construct, a masculine persona for fictional attorneys.⁶ That persona, along with, and in spite of, the realities of the participation of women within the legal profession, immediately conflicted with traditionally prescribed roles for women in film. The introduction of fictional women lawyers into American cinema became somewhat antithetical to both the socially constructed image of lawyers as macho as well as the increasingly intense desire to return women to their "natural sphere" of wife, mother, and homemaker.

One of the first appearances of a female attorney character in an American motion picture occurred when Elsie Ferguson appeared as a lawyer in the 1930 First National production *Scarlet Pages*.⁷ It was not until three years later, however, that the stage was set for story lines involving the presence of a "lady lawyer." In 1933, America encountered its second fictional female attorney when actress Fay Wray played the title character in Columbia Pictures' *Ann Carver's Profession*. Even the title warned the public of the trouble to come when a woman had the audacity to enter a male profession; the use of such a characterization assumed that there were "professions" in which females were welcome. In the story line summary provided by the studio to the infamous industry censor, the Motion Picture Producers and Distributors Association of America [hereinafter MPPDA], Columbia asserted that the film "tells the story of a lady lawyer whose career almost wrecks her home life. Fay Wray and Gene Raymond give a good account of themselves in the leads."⁸

The theme of domestic conflict for aspiring women legal practitioners, one which would recur in virtually every subsequent portrayal of fictional women lawyers, appears to have its filmic origins in *Ann Carver's Profession*. The dominant theme focused primarily, if not exclusively, upon how ambition and consequent sacrifices of the professional woman took their

5. See MICHAEL GROSSBERG, *LAW AND THE FAMILY IN NINETEENTH-CENTURY AMERICA* (1986).

6. For example, a murder trial drama, *The Bellamy Trial* (Metro-Goldwyn-Mayer 1929), began as a silent film and concluded with dialogue added in the culminating trial sequences. Within the next five years, courtroom drama became standard fare for the feature film industry, with releases like *For the Defense* in 1930, *Criminal Code* in 1931, and *Lawyer Man* (note this title) in 1932.

7. CAROLYN L. GALERSTEIN, *WORKING WOMEN ON THE HOLLYWOOD SCREEN: A FILMOGRAPHY* 227 (1989). Little is known about this film. It is doubtful that it was widely seen or known, as none of the trade journals carried reviews.

8. Letter from Columbia Pictures to James Wingate of the MPPDA staff (on file in the Production Code Administration files [hereinafter PCA files] with the Academy of Motion Picture Arts and Sciences in Beverly Hills, Cal. [hereinafter AMPAS]).

toll upon her personal life (i.e., her ability to find happiness with a man). By reinforcing the notion that the legal profession is particularly ill-suited to women, the film hearkened back to Justice Bradley's concurring opinion in *Bradwell v. Illinois*:⁹

The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things . . . is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband

[Single women were] exceptions to the general rule. The paramount destiny and mission of women are to fulfil [sic] the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.¹⁰

And so, too, for the motion picture industry, for the words written by a U.S. Supreme Court Justice in the late 19th century seemingly could have easily found a comfortable home in the Motion Picture Production Code. In the review report of *Ann Carver's Profession*, the MPPDA's censor concluded that the film was "another story of the modern girl who decides that marriage is preferable to a career."¹¹ The promotion of the cult of domesticity for women lawyers became a part of the "success" formula in this film genre. The messages continually reiterated the point that women heeding the call to the legal profession were destined to suffer domestic discord, risk the coarsening of their "female sensibilities," and worse yet, perhaps cause "those best equipped for motherhood to refuse its 'sacred call.'"¹²

In 1934, Columbia Pictures released its second film depicting a woman lawyer. Actress Jean Arthur was cast as the counselor in *The Defense Rests*. In this film, as well as Twentieth Century Fox's 1936 entry into the "lady lawyer" genre, *Career Woman*, the industry crystallized the theme of the "novice" woman lawyer. In *The Defense Rests*, Jean Arthur

9. 83 U.S. 130 (1872).

10. *Id.* at 141-42.

11. James Wingate, *Review Report*, Mar. 2, 1933 (on file in the film archives of the Association of Motion Picture Producers with AMPAS).

12. LAURA L. CRITES & WINIFRED L. HEPPERLE, *WOMEN, THE COURTS, AND EQUALITY 14* (1987).

played "the young female law school graduate who attempts to expose [a successful mob mouthpiece],"¹³ while in *Career Woman*, "Claire Trevor, a legal newcomer who believes in the dignity and honor of the profession,"¹⁴ defended an innocent girl who was charged with her father's murder. Consumers of American cinema quickly learned that women lawyers, while always young, naive, and inexperienced, were committed to the high ideals of justice.

Claire Trevor is bent on a career as a lawyer The lawyer is about to see her client convicted when Michael Whalen, a slick legal opportunist from the city steps in and aids her. She has detested him for his lack of ethics, his shrewd horseplay with the courts, but comes to love him for the humanity behind the maneuvers in outwitting the hick inquisitors.¹⁵

Commitment to ethics and ideals has sometimes given way to affairs of the heart for fictional women lawyers¹⁶ in an apparent extension of the old adage "woman is the weaker vessel." "Womanhood's 'gentle graces . . . its tender susceptibility, its purity, its delicacy, its emotional impulses, its subordination of hard reason to sympathetic feeling' were particularly ill suited for the 'forensic strife' and 'nastiness which finds its way into courts of justice.'"¹⁷ It also became clear that female attorneys were rarely, if ever, capable of accomplishing their goals alone: a man always arrived to lend a helping hand or rescue the woman lawyer (and her client) from certain failure. More often than not, the rescue was too late to save her from the cold realization that the nature of the profession, its attendance to "all the nastiness of the world . . . [and] all the unclean issues,"¹⁸ was incompatible with womanhood. "There are many employments in life not unfit for female character. The profession of law is surely not one of these."¹⁹

These lessons were not lost on the cinema's next woman lawyer,

13. Paul J. Mastrangelo, *Lawyers and the Law: A Filmography II*, LEGAL REFERENCE SERV. Q., Spring 1988.

14. 'Career Woman' Good Comedy-Satire on Court: Writing, Direction, Cast All Deliver, HOLLYWOOD REP., Nov. 20, 1936, at 3.

15. *Film Previews: 'Career Woman'*, DAILY VARIETY, Nov. 20, 1936, at 3.

16. Dorothy L. Sayers, *Are Women Human*, in THE GENDER READER 31 (Evelyn Ashton-Jones & Gary A. Olson eds., 1991).

17. Deborah Rhode, *Justice, Gender, and the Justices*, in CRITES & HEPERLE, *supra* note 12, at 15 (citing *In re Goodell*, 39 Wis. 232, 244 (1875)).

18. KAREN BERGER MORELLO, THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA: 1638 TO THE PRESENT 25 (1986) (citing the opinion of Judge Ryan in *In re Goodell*, 39 Wis. 232 (1875)).

19. *Id.*

appearing in the 1936 First National production, *The Law in Her Hands*. This film, starring Margaret Lindsay, featured a “woman lawyer newly past the bar [who] becomes quickly disillusioned and eventually becomes the underworld’s leading mouthpiece.”²⁰ The inevitability of the loss of “female innocence” was clearly demonstrated in this film and those which followed.

While the presence of women lawyers in film was far from becoming perfunctory in 1937, the next film in this genre was different from the five previous films in several very significant respects. In Republic Pictures’ *Portia On Trial*, Frieda Inescort was cast as Portia Merriman, a “highly successful woman lawyer.”²¹ For the first time, the femme protagonist was not only an experienced lawyer but also a successful one. In addition, there is some evidence that this character’s portrayal was intended to enhance the image of women lawyers and their ability to compete effectively in the legal arena. While not quite feminist by contemporary standards, the film was described by one recent filmographer as a “melodrama of a female trial lawyer and crusader for women’s rights defending a woman charged with murder.”²² More telling evidence of what would be a radical departure from the formulaic presentation of the dependent woman lawyer rests in the words of the film’s author.

Portia On Trial was written by Faith Baldwin, the daughter of an attorney and the first and only woman writer of a legal genre film depicting a woman lawyer until the 1980s. Contained in her personal notes is the following account:

There was also a period during which I regarded women lawyers with suspicion. The first of the guild whom I encountered was a tall, willowy lady with a euphonious and almost strikingly sweet name, who wore frills, ruffles, large hats and bead[s], and insisted upon addressing my startled parent as “Brother Baldwin.” I was very young at the time and this simpering damsel dismayed me. When I was asked, not infrequently, “Will you study law?” my reply was always, “Heaven forbid.” As a matter of fact, how wise I was, even if my wisdom was based on ignorance and intolerance. For all the world knows that there is nothing as illogical as a novelist. Add woman to that, and what have you? Besides law, its purity, is, or should

20. Mastrangelo, *supra* note 13, at 51.

21. *The Barrier*’ *Fine Effort*; *Portia on Trial*’ *Pleasing*; *Writers and Cast Share the Honors*, HOLLYWOOD REP., Oct. 28, 1937, at 3.

22. Mastrangelo, *supra* note 13, at 61.

of candidates for admission. Baldwin recalled this woman coming to the meeting with her father to establish her fitness to practice law. Besides the customary attention that she, as might most persons in society, paid to the physical appearance of the female candidate,²⁵ she recalled the visitor possessing a presence which suggested that she was "going to set the world on fire." Her demeanor was such as if to show "that women lawyers need not be relegated to the musty files, brief work, and domestic relations of the quieter kind."²⁶

The Portia who emerged from the pen of Baldwin was clearly a woman lawyer unlike any who had ever graced the screen. She was "tough and ambitious" as was evidenced by the types of cases she took (and won).²⁷ The story synopsis submitted by Republic Pictures to the Production Code Administration elicited the following response from the review committee.

[The story] seems to offer possibilities of treatment as to two main themes. The first might be the follow of any woman attempting to be successful in a profession such as law, with the hostility of men toward any woman being in such a profession. The second possibility would be the theme merely of the life story of Portia who triumphs in her profession in spite of many personal handicaps and much opposition to her career.²⁸

Although she was competent and successful, some critics were concerned about her tactics. "Miss Inescort is noted for her defense of women in trouble and disliked for her continued success in heart-balm suits which she wins with shyster methods."²⁹

The characterization of Portia became the subject of a complaint filed by the Los Angeles Bar Association on November 10, 1937, with the MPPDA.³⁰ The censors at the MPPDA, prodded by the bar association's

25. Faith Baldwin's personal notes contain entries describing the woman bar applicant as "short, well-built . . . , [with an] engaging smile" who wore "excellent clothes, which were not too feminine, nor yet too utilitarian, and which so well became of her." Baldwin, *supra* note 23.

26. *Id.*

27. The original story line suggested that "under necessity of making good, [she] took on all sorts of lurid cases." *Id.*

28. Interoffice memorandum from Joseph I. Breen & Charles Metzger (Nov. 16, 1937) (on file in film archives with AMPAS).

29. *Reviews of the New Films*, *FILM DAILY*, Nov. 5, 1937, at 8.

30. Internal memorandum from staff of the MPPDA standards committee (Nov. 10, 1937) (on file in the PCA files with AMPAS).

be, one of the more exact sciences.

Since that date, many years ago, I have met a number of women lawyers. I have even addressed a considerable and impressive gathering of them, following a brilliant speech, forty-five minutes long, rendered by one of the most prominent male members of their clan. And I have a profound admiration for these women and the others of their impression, struggling as their [sic] must, against considerable odds. And that brings me to the story, in the notebook, of the girl and the woman I shall call Portia, because it is not her name and is superficially appropriate.²³

Thus, Faith Baldwin, who grew up in the home of an attorney father, found herself repelled by her first exposure to a woman lawyer, which was an extreme rarity in the first couple of decades of the twentieth century. While she does not say how her father regarded his new woman colleague, it is reasonable to assume that he was no more receptive or accepting of women in the profession than most male attorneys of his time. Thus, it is quite likely that Ms. Baldwin's attitudes were shaped by exposure to her father's expression of annoyance and dismay about the intrusion of women into the profession.

Later, for some untold reason, Faith Baldwin's attitude toward women lawyers changed. She became interested in writing a story which chronicled the struggle for acceptance into the profession. This change of heart is evidenced as well by the choice of name for the story's heroine:

Portia is one of the first women "lawyers" to be named in western culture. In [William Shakespeare's] *The Merchant of Venice*, Portia, disguised as a man (which is the only way she can argue the law), appears as a learned doctor of laws and eloquently pleads for mercy when others ask only for justice:

"But mercy is above this scept'ed sway;
It is enthroned in the hearts of kings,
It is an attribute to God himself,
And earthly powers doth then show likest God's
When mercy seasons justice."²⁴

Baldwin's "Portia" was a composite character based upon a real woman attorney who came to the writer's house to talk with her father. Her father was the chair of the bar committee which passed upon the fitness

23. Faith Baldwin, *Portia on Trial: From the Notebook of Faith Baldwin*, Feb. 17, 1936 (on file in the PCA files with AMPAS).

24. MARY JO FRUG, *WOMEN AND THE LAW* 41 n.23 (1992).

complaint,³¹ investigated and responded within a mere six days to the expressed concerns about this radical female lawyer and her potentially corrupting influence upon other women.

Possible objections are: That Portia was unethical, in that she was admitted to the practice of law under a name which was not her own; that she took sensational cases, although details of these are not shown; that some of Portia's assistants engaged women to cry at the trial to influence the jury, but that Portia did not use these women; and that as a girl of 18, due to her intense love for a young man, was guilty of a sex affair at that time, which resulted in the birth of a child a few weeks after Portia married the child's father.³²

Surprisingly, the reviewing committee did not require changes to soften the professional activities of the character. "As to the unethical acts of Portia: As mentioned above, these are not unlike actual incidents occurring within the legal profession in every city in the country."³³ What caused greater concern for the censors, an ironic twist to where the portrayal of women lawyers would eventually lead, was the reference to Portia's sexual past: "Other than the indiscretion at the age of 18, Portia is thoroughly moral throughout the picture."³⁴

While it was not sufficiently aggrieved by the treatment of the sexual issues in the film to require a revision, the committee did note that a woman lawyer's sexual history actually may be a proper subject for concern by the profession.

There is the possibility that some objection might have been made Whether such youthful indiscretion on her part would have disqualified her in later years from being admitted to the practice of law is a question which would undoubtedly lead to many different answers on the part of members of the

31. At this time, the industry's Production Code of Ethics was administered by the Production Code Administration of what was then called the Motion Picture Producers and Distributors of America, Inc. Joseph I. Breen, a former newspaper man, was its director. The Code, although prohibiting the "ridicule" of law, was not amended until 1954 to add the Special Regulations On Crime in Motion Pictures which amplified the general proscription against ridiculing law. "The courts of the land should not be presented as unjust . . . the court system of the country must not suffer as a result of this presentation." The organized bar regarded this rule as a general ban against depicting lawyers and judges in an unfavorable light.

32. Interoffice memorandum, *supra* note 28.

33. *Id.*

34. *Id.*

bar of any city.³⁵

One of the remarkable things about this film is that it managed to survive in substantially the same form in which it was conceived. This is especially noteworthy because substantial objections to the concept were indicated in its earliest stages: "The present treatment . . . we would reject [because] the heroine, Portia, is presented in a way as to make her unethical acts appear attractive . . . Courts are shown as influenced largely by her sex appeal, and that of her clients."³⁶ Further review and consideration of the film found it to be in violation of the code due to its "excessive and unnecessary amount of illicit sex."³⁷ It is difficult to explain how so much of the original story line remained intact, unless upon reconsideration the review committee determined that sufficient provisions had been made, after all, to save the wayward woman from herself. The film's saving grace with the review committee might well have been the "promise" in the story line, submitted by Republic Pictures to Joseph Breen, which intended the "somewhat unethical woman lawyer, Portia . . . [to be] convince[d] . . . of the error of her manner of practising [sic] law . . . [by] a fine, young D.A., highly ethical"³⁸ who also just happened to be "hopelessly in love"³⁹ with her.

Perhaps in the end, the "real" threat posed by this fictional Portia would be diminished: [This] successful woman lawyer . . . dropped her practice when she married. Divorced, she resumed practice to defend the mistress of her ex-husband, who was accused of killing him. She remarried a man nine years her junior and retired from trial work, but continued to help her new husband, David, by doing the office work. David was happy that she retired from the limelight. While it is a struggle, Portia continued to remain in the background; her not being with him gave David courage.⁴⁰

35. *Id.*

36. Letter from Joseph I. Breen, of the Association of Motion Picture Producers, to Nat Levine, President of Republic Pictures (Apr. 3, 1936) (on file with AMPAS).

37. The Production Code Administration found the film to be violative of the Code in three primary respects: "1) excessive and unnecessary amount of illicit sex; 2) condonation [sic] and flavor of justification of illicit sex; and 3) excessive amount of detailed dialogue in connection with illicit relationship." Letter from Director Joseph I. Breen to M.J. Seigel of Republic Pictures (June 16, 1937) (on file with AMPAS).

38. Story line submitted from Republic Pictures to Joseph Breen (1937) (on file in the PCA files with AMPAS).

39. *Film Previews*, DAILY VARIETY, Oct. 28, 1937, at 3.

40. Excerpt from original story summary submitted by Republic Pictures to the Production Code Administration (Apr. 1, 1936) (on file in the PCA files with AMPAS).

Following the controversy surrounding *Portia On Trial*, Columbia Pictures signed Frieda Inescort to reprise her "lady lawyer" role in the 1939 film, *A Woman is the Judge*. Although it could loosely be described as a sequel or update to her previous film, this film cast Inescort as Judge Mary Cabot, a superior court judge. Drawing upon her prior convincing portrayal of an effective trial attorney, Columbia used her professional "reputation" to justify her elevation to the bench. This film marked the first such appearance of a female jurist in American film. Although variably described as a "widely respected woman judge"⁴¹ and "one of the most advanced and humane jurists in her community . . . noted for her integrity,"⁴² her legal skills serve only as a backdrop to the emotional conflict she encounters in the story. This Portia emerges as:

[A] superior court judge still mourning the disappearance of her infant daughter after twenty-one years Presiding over the trial of a woman accused of murdering a policy racket biggie, Frieda Inescort finds that the defendant refuses legal assistance and admits guilt to accept punishment. The judge gets evidence of the woman's innocence and resigns from the bench and defends the accused "femme," winning her an acquittal on final argument.⁴³

What made this film distinctive, besides its preposterous plot, was the apparent attempt by the studio to target a female audience. "Women will be moved by this tale of emotions of a mother who finds herself sitting as judge with her own daughter accused in a murder case."⁴⁴ Responding to the success of Paramount Pictures' earlier release in this genre, Columbia crafted a story that appealed to "sentimental fans in general and femmes in particular"⁴⁵

The successes and capabilities of Inescort's character were grossly overshadowed by the domestic discord in her life.⁴⁶ Facing what was to

41. Story summary submitted by Columbia Pictures to the MPPDA (on file in the PCA files with AMPAS).

42. Edward Greif, *A Woman Is the Judge*, MOTION PICTURE DAILY, Oct. 4, 1939, at 9.

43. *Preview*, VARIETY, July 24, 1939.

44. Greif, *supra* note 42, at 9.

45. *A Woman Is The Judge*, FILM DAILY, Oct. 3, 1939, at 7.

46. It should be noted that a film review in a major newspaper placed an unusual emphasis on the appropriateness of the character's elevation to the bench:

Frieda Inescort, who has been a practising [sic] attorney for a long time now, [was] at last deservedly installed on the bench. In view of her past career, one cannot question the fact that Miss Inescort was in line for a judgeship, yet there are few women judges who are called upon to face so tragic a situation

N.Y. TIMES, Sept. 28, 1939.

become an all too common dilemma for fictional women lawyers, she wound up in the middle of a love triangle played out at sidebar. "A slight romance between the prosecuting attorney [to whom she eventually becomes engaged] and Miss Inescort is injected into the story."⁴⁷ Much of the courtroom drama centered on the anguish of a distraught mother and the discomfort Inescort experienced while facing her suitor in court, the man whose responsibility it was to prosecute the young girl she "loves."

While not yet a decade old, the practice of casting women as lawyers in feature films took on new meaning with the 1939 release of the Paramount Studios film, *Disbarred*. Although the story line touted the novelty of a woman lawyer, *Disbarred* merely continued the industry formula in this genre.⁴⁸ Once again in *Disbarred*, a young and innocent woman lawyer, portrayed by Gail Patrick, was exploited by one of the seedier elements of the profession.⁴⁹ Love, or the woman's inability to control her heart, remained a culprit: "[R]omance is thinly threaded [Patrick's character] loves either the bad guy lawyer or the good guy prosecutor."⁵⁰ What made this film extraordinary was the promotional campaign mounted by Paramount Pictures and the effect it had upon the public's perception of lawyers, particularly women lawyers.

As part of its promotional campaign for *Disbarred*, Paramount distributed a multi-page, glossy studio flyer to each of the theatres which were scheduled to screen the film. Included in the promotional flyer were suggested strategies for attracting audiences. Most notable among the suggestions was the proposal that theatre owners send letters to members of the local bar inviting them to view the film. With its campaign aimed at lawyers and civic leaders, the studio encouraged theatre owners to hold "special screenings [for] the local bar association, members of the district attorneys['] staff, [and] prominent jurists . . ." to solicit their "comment

The review was written in a way which nearly convinced the reader that it was about a real person instead of a fictional character.

47. 'Woman Is Judge' Courtroom Melodrama for Dual Bills: Formula Story Gets Lift From Cast, HOLLYWOOD REP., July 24, 1939, at 3.

48. Most of the reviewers of the early woman lawyer films noted the theme of "having a feminine attorney as its angle of novelty . . ." *The Law in Her Hands*, FILM DAILY, June 5, 1936. It should also be noted that *The Law in Her Hands* was the first American film to feature two women attorneys in the same movie as well as the first all-women law firm. "[The story's] basic novelty is in establishing Margaret Lindsay and Glenda Farrell as a firm of clientless rookie attorneys." *'Law in Her Hands' Amusing Comedy of War on Crime: Good for Average Business on Duals*, HOLLYWOOD REP., Apr. 7, 1936, at 3.

49. The crooked attorney "arranges for the girl to act as mob's legal mouthpiece without knowledge of what goes on behind the scenes." *Disbarred*, DAILY VARIETY, Jan. 5, 1939, at 3.

50. *Id.*

on the social implications in the picture”⁵¹ Law schools were to be targeted as well.

The dramatic example exhibited in the picture of what generally happens to a lawyer who gets himself involved with the underworld should impress the dean of a local law school, the instructor of the high school’s commercial law class, etc., as a particularly timely and valuable object lesson to law students. You can send the teachers an invitation to the special screening for this purpose—and post letters stressing the social implications of the picture on school bulletin boards.⁵²

While the principal focus of the “object lesson” was crooked lawyers, the massive promotional campaign probably had as great an effect in shaping the public’s attitudes about women lawyers as well.

In targeting the bar, Paramount proclaimed that “lawyers, male and female, will be interested in ‘Disbarred’.” For the women, though, the studio had special designs.

A special tea matinee can be held for female lawyers in the name of Gail Patrick, the female star of the picture, who was a brilliant law student at the University of Alabama, and who intends to resume her studies some day. The ladies can be presented with photographs of Miss Patrick which you can obtain in quantity lots⁵³

Paramount also issued prepared press stories which boasted of Ms. Patrick’s alleged legal expertise:

[Patrick] was called upon to serve as technical advisor on her own productionwhen she pointed out to Director Robert Florey certain “boners” in the law-office and courtroom scenes of the film. Startled at this display of technical knowledge on the part of Hollywood’s most beautiful brunette, Florey asked: “How do you know so much about this sort of thing, Gail?” When his star explained that she was once a law student at the University of Alabama and still planned to have a legal career, Florey failed to call the studio expert, as is usual in such cases, and put the responsibility on Miss Patrick’s shoulders. And Florey’s faith in her was justified! A few days later, when an eminent Oregon judge was visiting on the set, the director asked

51. *Disbarred*, Paramount Pictures promotional flyer 2 (1939) (on file in the PCA files with AMPAS).

52. *Id.*

53. *Id.*

him to watch the filming of a courtroom scene and express his opinion on it. "Why it's so realistic, it makes me want to rap my gavel," said the jurist. That satisfied Florey, while Miss Patrick regarded it as the compliment of the week.⁵⁴

Given that there is no record of Gail Patrick having ever attended law school at the University of Alabama,⁵⁵ it is likely that this publicity story was fabricated to increase attorney interest in the film, especially among women lawyers.

Several other prepared press releases and stories with proposed headlines such as "New Film Opens Diary of Girl-Lawyer's Life," "Girl-Lawyer's Career Traced in *Disbarred*," and "Film Shows Thrills in Girl-Lawyer's Career" seemed calculated to entice female viewers, attorneys and non-attorneys alike, with their promise of "a spectacular behind-the-scenes view of the legal profession and the court . . ."⁵⁶ As evidence of the increasing acceptance of women in the legal profession, the studio released the results of an informal survey conducted by the film's director that concluded "if the rest of the United States shared Hollywood's sentiments on the subject, women lawyers would find it as easy to rise to the top of their profession as members of the 'stronger sex.'"⁵⁷

54. *Id.* at 16.

55. Telephone calls placed to the alumni affairs offices of the University of Alabama and the University of Alabama Law School determined that no person by the name of Gail Patrick graduated or even attended those institutions. The computer search was done alphabetically by the student's last name. The search failed to show any person by that name for any matriculation or graduation year. An examination of class pictures hanging on the walls at the law school revealed a total of eight women in the six graduating classes from 1930 through 1935, none with either the same first or last name as the actress. While this evidence is not conclusive, since Patrick could have attended school under another name, the likely explanation is that the claim of law study by the actress was merely part of the publicity hype manufactured by Paramount Pictures.

56. *Disbarred* promotional flyer, *supra* note 51, at 16.

57. *Id.* at 17. The prepared story, entitled "Liberal Hollywood Give Lady-Lawyers An Even Break," made the following claim:

To test out studio opinion on the subject of ladies in the legal profession during the filming of "*Disbarred*," the story of a modern Portia, . . . Director Robert Florey polled every one on the set on two questions:

"Do you approve of keeping the legal profession open to the members of the feminine sex?"

"Do you think women can ever make as good lawyers as men?"

Id.

The result of the poll surprised Florey, for even in liberal Hollywood, he expected some degree of opposition to the idea of women lawyers. However, on the question of keeping the profession open to the girls, thirty were in favor of it, while only six were against. As for the relative abilities of men and women lawyers,

In addition to influencing the acceptability and perception of competence of women lawyers, *Disbarred* had another significant effect. This film, more so than perhaps any film prior to it or since, was instrumental in shaping public attitudes about the physical appearance and personal attributes of women lawyers.

III. THE PHYSICALITY STANDARD FOR FEMALE ATTORNEYS

Every female attorney portrayed in films prior to *Disbarred* would be considered by conventional public and industry standards to be physically attractive, as was the case for most actresses who were cast in featured film roles. In fact, *Disbarred* was not the first film of its genre which referred to the protagonist's appearance. "Miss Lindsay [Margaret Lindsay in *The Law in Her Hands*] . . . makes an unbelievably youthful, attractive, and quick-witted lawyer, and it seems no wonder that the susceptible juries fall for her impassioned pleadings."⁵⁸ It was, however, the studio's intensive promotion of Patrick's attractiveness that was unprecedented.

The impact on both real and fictional lawyers of Paramount's effort to focus attention on Gail Patrick's appearance was more complicated than its submitted story line about the "attractive female attorney"⁵⁹ would suggest. By casting "the screen's most perfect brunette beauty"⁶⁰ as a lawyer, American cinema began to associate, however illogically, legal competence and acceptability with physical attractiveness. While not necessarily requiring fictional women lawyers to be portrayed by the most beautiful actress obtainable, the Gail Patrick model seemed to affirm the desirability of matching "beauty with brains" in America's ideal "lady lawyers."

This occupational requirement was promoted in the nonfictional professional arena as well when Paramount embarked upon a massive campaign to sell film stills and posters to dress shops and fur stores.

You can go after cooperative windows and inside store displays in dress shops and stores selling furs by making use of a set of six stills which show Gail Patrick wearing a "coney" fur coat.

nineteen thought the women might prove just as able, while seventeen were opposed to the proposition.

Id.

58. 'Law in Her Hands' Amusing Comedy of War on Crime: Good for Average Business on *Duals*, *supra* note 48, at 3.

59. Review by F. Stinnette (Oct. 17, 1938) (on file with AMPAS).

60. *Disbarred* promotional flyer, *supra* note 51, at 18.

Round out your campaign by getting fur shops in your town to use 'em, with copy pointing out the fact that Gail Patrick plays a sensational role as a woman lawyer in *Disbarred*.⁶¹

The studio also made available free radio scripts, including a script which was "ideal for selling the fashion angle to your feminine patrons on the air, especially on morning programs."⁶²

Paramount's promotional material even provided specific fashion tips to professional women, particularly attorneys. Paramount's strategy was intriguing, given that it acknowledged the expectation that professional women should dress differently than nonprofessional women while emphasizing the importance of professional women maintaining their femininity. "Although professional women are on the whole better-dressed than any other feminine group in America, they have usually been neglected by motion picture fashion authorities all too intent on glorifying debutants, society leaders and assorted playgirls."⁶³ The studio offered a series of movie stills of Gail Patrick in a variety of garments, each subtitled to suggest the appropriateness of the apparel for various occasions in the life of a "career-girl."⁶⁴

The correct professional woman would as soon be without a fountain pen as a smartly-tailored suit! Whether she is out to dazzle twelve men, "tried and true," on a reluctant jury, secure a fat contract from a susceptible business tycoon or merely impress the "one and only man" at lunch, the tailored girl has the edge.⁶⁵

Thus, the bottom line in fashion for women lawyers was to meet the expectations of her public. She must dress so as to maintain the dignity of the profession. In essence, she must distinguish herself from other women in traditional female roles, while at the same time, make herself attractive to her most important audience — prospective male suitors. "The law courts, business offices and board-rooms may all be important to the professional woman in their way, but the impression she makes on her evening engagements can often make or break her career!"⁶⁶

The "attractive and feminine" appearance standard for America's women lawyers, whether flesh and blood or celluloid, was a double

61. *Id.* at 5.

62. *Id.*

63. *Id.* at 17.

64. *Disbarred* promotional flyer, *supra* note 51, at 17.

65. *Id.*

66. *Id.*

standard like many others within the profession. On one hand, the industry, arguably reflective of society in general, found the casting of an attorney who was "too attractive" to be lacking in credibility. This is as if to say that "real" women, those who are feminine and possess stereotypical female attributes, would have neither the inclination nor ability to operate effectively in the legal profession.⁶⁷ On the other hand, the film industry intimated that unattractive professional women run the risk of limiting or jeopardizing their careers for failing to measure up to the appearance standard. In the end, American cinema served up a special admonition, an indictment of attractive women who entered the professions by accusing them of resorting to playing on their looks to achieve success.⁶⁸ This problem was dramatized by Paramount's distribution of promotional lobby display pieces depicting "a scale of justice holding Gail Patrick in one pan and Otto Kruger [who played the crooked, disbarred lawyer] in the other, with a sign reading 'Not on Trial but she's GUILTY- of using her beauty to sway justice for a lawyer who was lower than the crooks he protected!'"⁶⁹

67. The use of the phrase "attractive lawyer" in describing Margaret Lindsay in reviews of *The Law in Her Hands* is a good example of attitudes about credibility in regard to the supposed correlation between serious, competent professionalism and physical attractiveness. See *'Law in Her Hands' Amusing Comedy of War on Crime: Good for Average Business on Duals*, *supra* note 48, at 3. Another review claims that her casting as a lawyer "never convinces. She is of the type who looks better wrassling with tea rather than technicalities." *Film Reviews*, VARIETY WEEKLY, July 29, 1936, at 15.

Two years earlier, the public was told that Jean Arthur, who played a "pretty" lawyer Joan Hayes in *The Defense Rests*, "looks and sounds even less like a femme lawyer." *Film Reviews*, VARIETY WEEKLY, Aug. 21, 1934, at 25. Apparently there was a distinctive sound or voice for women attorneys since other reviews of that era frequently commented upon their language skills. The oral skills of Frieda Inescourt's lawyer in *Portia on Trial* were described as such: "She is . . . a real Portia, and her enunciation is a joy to hear." DAILY VARIETY, Oct. 28, 1937, at 3. Inescourt must have appeared to reviewers as especially adept since her next appearance as a judge in *A Woman is the Judge* was met with similar accolades. "Miss Inescourt has a made-to-order role. Her poise and crisp diction go far to make the interpretation sincere even though surrounded by a lot of clap-trap events." *Film Reviews*, VARIETY WEEKLY, Oct. 4, 1939, at 12. These comments seem to suggest that women were not expected to have sufficient oratorical competence to handle hyperbolic legal jargon. Even after demonstrating such abilities, some reviewers found the specter of such seriousness exceedingly humorous. "Helen Broderick as the woman lawyer whose restrained delivery makes even the gag-lines furnished her funny . . ." *Musical Farce Stupid and Dull: To Beat the Band*, HOLLYWOOD REP., Oct. 18, 1935, at 3.

68. This was a charge levied by the Production Code Administration in one of its early communications to the studio producing *Portia on Trial*. "Courts are shown as influenced largely by her sex appeal, and that of her clients . . ." Letter from Joseph I. Breen of the MPPDA to Nat Levine, President of Republic Pictures (Apr. 3, 1936) (on file with AMPAS).

69. *Disbarred* promotional flyer, *supra* note 51, at 4.

IV. THE GROWTH OF FEMALE ATTORNEYS IN FILM

The 1940s ushered in more than a dozen motion pictures which featured or contained a role for a woman lawyer. Presumably, films of this genre did reasonably well at the box office since no fewer than nine studios released a film of this type, four of them releasing two during that decade.⁷⁰ The two most significant films released during the 1940s were characterized by their focus on women lawyers who challenged custom and convention as to the "proper place" for women. They still adhered, though, to the standard formula of showing the domestic discord resulting from women's efforts to be independent of their men. In the 1946 RKO release, *The Truth About Murder*, Bonita Granville played the pretty but business-like attorney Chris Allen. In the most telling scene of the film, the rookie woman lawyer attempted to reclaim her professional identity while declaring her independence. The excerpted scene below opens with a lie detector test:

Chris:

The girl's name was Christine Allen, a law school graduate?

Les:

That's right.

Chris:

And what was *your* position at that time?

Les:

The same as now. District Attorney . . . and you know it.

70. ADAM'S RIB (starring Katherine Hepburn) (Metro-Goldwyn Mayer 1949); COURTIN' TROUBLE (Virginia Belmont) (Mono 1949); EYES OF TEXAS (Lynne Roberts) (Republic 1948); I, JANE DOE (Ruth Hussey) (Republic 1948); SMART WOMAN (Constance Bennett) (Mono 1948); THE WALLS OF JERICHO (Anne Baxter) (TCF 1948); SUDDENLY IT'S SPRING (Paulette Goddard) (Paramount 1947); THE TRUTH ABOUT MURDER (Bonita Granville) (RKO 1946); GOOD MORNING JUDGE (Louise Allbritton) (Universal 1943); DESIGN FOR SCANDAL (Rosalind Russell) (Metro-Goldwyn-Mayer 1942); SHE COULDN'T SAY NO (Eve Arden) (Warner Bros. 1941); DANGEROUS LADY (June Storey) (PRC 1941); THE MAN WHO TALKED TOO MUCH (Virginia Bruce) (Warner Bros. 1941). See CAROLYN L. GALERSTEIN, *WORKING WOMEN ON THE HOLLYWOOD SCREEN* (1989). Two additional films were released near the end of that decade. *The Bachelor and the Bobby-soxer* (1947) cast Myrna Loy as "the lady judge who sentences playboy [Cary Grant] to babysit her sister [Shirley Temple]." In 1949, Columbia Pictures released another light-hearted look at women in law, *Tell it to the Judge* (Columbia 1949), starring Rosalind Russell in a comedy about a woman lawyer anxious to be appointed federal judge and her recently divorced lawyer husband. This was Russell's second comedy of the forties about women on the bench. *Id.*

Chris:

And did you . . . as District Attorney, promise this Christine Allen that if she'd come into your office as a deputy you'd give her a chance as a prosecuting attorney within six months?

Les:

Well . . . a sort of . . . I mean . . . (eyes machine) Yes.

Chris:

Do you realize I've been here *eight* months?

Les:

(unhappily) Yes, but . . . Chris . . . we've been all through that a—

Chris:

(angrily) Isn't it true that you never intended to keep that promise?

Les:

No.

(close shot on the graph pens as they react to a lie. Two shot on Les and Chris as Les notes the pen reaction.)

Les:

Take this darn thing off and let me explain.

Chris:

Not until I find out what I want to know.

Les:

But, honey . . .

Chris:

(persistently) Isn't it true that you gave me a job here in the belief I'd get tired of the law business in those first six months and marry you . . . ?

Les:

Why . . . uh . . . no! That's not true-not exactly, anyhow . . .

(close shot of the graph pen as it registers a terrific lie. Two shot on Les and Chris.)

Les:

(exasperated) Why does this have to happen to *me*? I meet a beautiful girl . . . I fall in love with her and all I want her to do is lead a normal life . . . stay home and grow rosebushes and kids

. . . and *she* wants to be a lawyer.

Chris:

(icily) I *am* a lawyer.

Les:

All right. But why? What do you want a career for?

Chris:

(angrily) Because that's what I studied for . . . and no man's going to stop me until I've had a crack at it! . . . No matter how much I love him.

Les:

(triumphantly) So, you *do* love me?
(he starts to reach for her but is still wrapped up in the lie detector equipment.)

Chris:

(pushing him back in the chair) Sit down! . . . [Y]ou'll wreck the works.

Les:

(grinning at her) Want to ask me some more questions?

Chris:

No! I'm going to give you the answers . . . and here's Number One!
(she hands him the note the secretary brought in)

Les:

What's this?

Chris:

My resignation . . . as of *now*!

Les:

(excitedly) Aw look now, Chris . . . That's ridiculous . . . You can't do that to me!⁷¹

As love and rigidly structured sex roles in America would have it, the lady lawyer came to her senses and ended up in the arms and professional shadow of her man.

The second and more widely known film from the 1940s to feature a woman attorney starred Katharine Hepburn in MGM's *Adam's Rib*. This film is especially noteworthy in that it presented not only the element of resistance by the woman lawyer to conventional role expectations but also

71. THE TRUTH ABOUT MURDER (RKO 1947), final script, June 29, 1945, at 6-9 (on file with Turner Entertainment).

introduced the general theme of women's rights. In addition to being portrayed as a competent, effective trial attorney, Hepburn's character was also shown to be committed to championing the rights of women.

The issue here is equal treatment for women before the law. In this Tracy-Hepburn pairing as a legal couple, they are on opposite sides as she defends a woman accused of shooting her philandering husband Hepburn makes her case, that "woman as the equal of man should be equal before the law," in court, but Tracy shows her that no one has the right to twist the law; and he ridicules her with, "You're so cute when you get causy." He maintains that marriage is a contract and that Hepburn has violated its terms, presumably those that oblige the wife not to excel over the husband. "I'm old fashioned," he admits; "I like two sexes. All of a sudden I don't like being married to what is known as a new woman."⁷²

Although she defeated her spouse in the courtroom battle, the Hepburn character reminded the audience that there is a price to pay for rejecting gender norms. "'Win the case and lose my husband' is Hepburn's lament."⁷³

V. FEMALE ATTORNEYS IN COMEDIES

The title of *Devil's Doorway*, the first cinematic offering of the 1950s to depict a woman lawyer, foreshadowed the movement into another formulaic genre for the female attorney film. While five films of this type made their debuts in the 1950s,⁷⁴ the most significant event affecting the portrayal of fictional women lawyers was the appearance of television's first program to feature a female attorney. The 1954-55 season saw the premiere of CBS' *Willy*, which was the first situation comedy about professional women. Comedies later became the primary vehicle used to introduce Americans to women lawyers in both film and television. The program starred June Havoc as "a woman lawyer in a town that mistrusts women lawyers."⁷⁵ It lasted only a season.

72. GALERSTEIN, *supra* note 7, at 228.

73. *Id.* at 229.

74. GOD IS MY PARTNER (starring Marion Ross) (TCF 1957); JUST THIS ONCE (Janet Leigh) (Metro-Goldwyn-Mayer 1952); THE GROOM WORE SPURS (Ginger Rogers) (UI 1951); DEVIL'S DOORWAY (Paula Raymond) (Metro-Goldwyn-Mayer 1950); SIERRA (Wanda Hendrix) (UI 1951). *Id.*

75. See RICK MITZ, THE GREAT TV SITCOM BOOK (1988).

It seemed inevitable that fictional women lawyers would be relegated to comedic productions, since many people had difficulty taking female attorneys seriously. While the participation of women in the legal profession was growing, by the 1950s, women still represented less than four percent of the practicing bar and a substantially smaller percentage of attorneys on the screen. From the earliest appearance of women lawyers on film, the idea, for some, was quite preposterous. "To date no one has been able to devise a really interesting story around a female lawyer, unless it had plenty of comedy or at least the old saw about choosing between a home and a career."⁷⁶ The motion picture industry continued to suggest that female legal competence was an absurdity by inserting comedic elements into story lines along with emphasizing societal resistance to women pursuing legal careers. By the mid-1950s, dramatic portrayals of women lawyers had all but disappeared. Except for very infrequent appearances on the popular CBS show *Perry Mason*,⁷⁷ the *forum conveniens* for fictional women attorneys became comedies. The motion picture and television industries cast women in legal roles when they wanted to show the humor and absurdity of women who thought they could stand up to the rigors of law.

The major motion picture studios did not have nearly the interest that television producers did in women lawyers. Over the next thirty years, while no notable film featured a woman judge or lawyer and six more sitcoms with female attorneys entered the airwaves, the number of women practicing law in the United States increased significantly. In the 1965-66 season, CBS presented its second humorous lady lawyer. The premise of *The Jean Arthur Show* revolved around the predicaments of a "mother and

76. HOLLYWOOD REP., Jan. 5, 1939, at 5.

77. Of the 52 actors who portrayed judges during the show's nine seasons (nearly every show had a judge), only two were women. "Lillian Bronson appeared three times as a female judge; Fay Roope appeared in two shows . . . [In 1963], when minor surgery for Raymond Burr forced him to miss several episodes," renowned actress Bette Davis was among those big-name actors cast "as lawyer friends of Perry's who were handling his caseload while he was 'away in Europe.'" See BRIAN KELLEHER & DIANA MERRILL, *THE PERRY MASON TV SHOW* (1987). Executive producer for the show was Gail Jackson, "known to filmgoers of the thirties and forties as Gail Patrick [and] also no stranger to the legal profession. She had spent some time studying law at the University of Alabama before winning a beauty contest and heading for Hollywood." *Id.* It should be noted that no citation was given for the reference to Gail Patrick's alleged law study. That assertion remains unsubstantiated. Calls to the alumni affairs offices of the University of Alabama and the University of Alabama Law School determined that no person by the name of Gail Patrick attended those institutions. See *supra* note 55.

son legal team."⁷⁸ During the 1973-74 season, ABC, not to be outdone, stole an idea from a successful and popular movie when it offered *Adam's Rib*, starring Blythe Danner alongside Ken Howard.

By the 1980s, the funny female attorney formula was fully entrenched. As in the 1950s, the American public would learn that there is something terribly funny about law, especially when practiced by women. In 1980, CBS presented *Park Place*, a show which drew its laughs from lawyers working at a legal aid clinic, two of whom were women. Two seasons later, ABC introduced *It Takes Two*, which starred Patty Duke Astin as the "doctor's wife [who] finally finishes law school and is now assistant district attorney."⁷⁹ Within two years, NBC joined the fold with the popular *Night Court*, featuring Ellen Foley and then Markie Post as the female public defender member of the court's "looney staff."⁸⁰ Also in 1984, ABC premiered *Sara*, which starred Geena Davis in a comedy "about a young female attorney in San Francisco."⁸¹ By the mid-1980s, a time when over a third of all law students were women and there were nearly 100,000 women practicing law in the United States, the ultimate irony was the 1985 appearance of *Foley Square* on CBS. The story line of this comedy starring Margaret Colin centered around "an assistant district attorney [who] works in an office and hopes to meet a man."⁸²

Meanwhile, the motion picture industry's few featured women lawyers appeared in comedic vehicles as well. Examples include Goldie Hawn, in *Seems Like Old Times*⁸³ and Jill Clayburgh in *First Monday in October*.⁸⁴ The latter film, whose title refers to the traditional opening date of the annual Supreme Court Session, was:

78. See MITZ, *supra* note 75. Jean Arthur returned to the role of on-screen lawyer over thirty years after her first appearance as the young female law school graduate and novice lawyer in *The Defense Rests* (Columbia Pictures 1934) and *Career Woman* (Twentieth Century Fox 1936). *Id.* It was not uncommon for actors to be called upon to reprise lawyer and judge roles, especially for women who gave "convincing" performances, such as Frieda Inescourt and Rosalind Russell.

The same was true and remains so for African-American actors. In 1955, for example, Juano Hernandez was cast as the first African-American judge in a major motion picture, MGM's *Trial*. He was subsequently cast as a judge in a 1961 episode of television's *Route 66* program as well as other dramatic vehicles. Also, Paul Winfield, cast as Judge Larren Lyttle in the box office hit *Presumed Innocent* (Mirage Enterprises 1990), has appeared as a lawyer on NBC's *L.A. Law* as well as in the Broadway production of *A Few Good Men*.

79. See MITZ, *supra* note 75.

80. See *id.*

81. See *id.*

82. See *id.*

83. SEEMS LIKE OLD TIMES (Rastar Productions 1980).

84. FIRST MONDAY IN OCTOBER (Paramount Pictures 1981).

A seriocomic story of the first woman on the Supreme Court and her encounters with a particularly obstreperous male colleague Ironically, the man who probably did the most to help *First Monday in October* in October at the box office was ex-actor and President of the United States, Ronald Reagan. In 1981, a few months before the film was scheduled to be released, Reagan appointed Sandra Day O'Connor to be the first female Supreme Court justice. Suddenly life was imitating art, making *First Monday in October* more than merely a political comedy. It was a cinematic gloss on an important bit of current affairs, and although the film's box-office receipts did not equal the producer's expectations, the real life tie-in guaranteed a modest success.⁸⁵

VI. DRAMATIC ROLES FOR FEMALE ATTORNEYS IN TELEVISION

It would be incorrect to suggest that the motion picture and television industries were oblivious, if not impervious, to the impact of the women's liberation movement in the 1980s. The television industry would counter charges of sexist insensitivity with claims that its comedic portrayals of women lawyers were balanced by dramatic series which featured female attorneys in serious roles. In the early 1970s, a few women were cast in supporting roles as lawyers. For instance, in the 1970-71 premiere season of CBS' *The Storefront Lawyers* (which interestingly enough was later retitled *Men at Law*), Sheila Larken appeared as a young woman lawyer.⁸⁶ The 1971-72 season saw Julie Cobb as deputy public defender Katy Benson on NBC's *The D.A.*

The mid-1970s saw the introduction of television's first dramatic series about a woman lawyer; in fact, two premiered during the 1975-76 season. CBS' *Kate McShane* led the way with Anne Meara in the title role.⁸⁷ The series was short-lived, premiering September 10, 1975 and

85. FRANK N. MAGILL, *MAGILL'S CINEMA ANNUAL* 151 (1982).

86. See LARRY JAMES GIANAKOS, *TELEVISION DRAMA SERIES PROGRAMS: A COMPREHENSIVE CHRONICLE 1959-1975* 670 (1980).

87. This program is recognized as the first dramatic program featuring a woman lawyer as the main character. TIM BROOKS & EARLE MARSH, *THE COMPLETE DIRECTORY TO PRIME TIME NETWORK TV SHOWS 1946 TO THE PRESENT* 397 (3d ed. 1985). It is ironic that someone known principally at that time as a comedic actress would be cast as the lead in television's first dramatic series about a woman lawyer. Ann Meara was the female half of the standup comedy team of Stiller (Jerry Stiller, her husband) and Meara.

bowing out just two months later on November 12, 1975. Next was NBC's *McNaughton's Daughter*, a show revolving around the exploits of deputy district attorney Laurel McNaughton (played by Susan Clark). The program, about a woman lawyer who the producer apparently felt needed to derive her identity from her father, did not last long either. It survived a mere three episodes, opening March 24, 1976 and leaving the air after its April 7, 1976 showing.⁸⁸

Several of television's lawyer shows which aired at that time and shortly thereafter cast women in secondary or supporting lawyer roles. In the 1977-78 season on NBC's *Rosetti and Ryan*, Jane Elliot appeared as Assistant District Attorney Jessica Hornesby in six episodes, which aired between September 22, 1977 and November 10, 1977. In 1981, CBS aired *Chicago Story*, which featured Molly Cheek as attorney Megan Flowers, and *Simon and Simon*, which presented Jeannie Wilson as district attorney Janet Fowler. In 1982, ABC followed suit with Pamela Hemsley appearing as attorney C.J. Parsons on *Matt Houston*.

In the 1980s, with the increasing number of women cast as serious, professional lawyers on television, although usually in supporting roles to a male superior, their portrayal shifted from that of young, inexperienced and marginally competent to a much more positive image. The single most influential depiction of this new-age woman lawyer came during the 1981-82 season — NBC's *Hill Street Blues* — which led the way with the character of Joyce Davenport, a street smart, savvy Assistant Public Defender played by Veronica Hamel.

The creation of the Joyce Davenport character represented a radical departure from the traditional screen image of women lawyers. Her physical attractiveness was used rarely as the basis for her success or even as an issue in her work, except to point out standard sexist assumptions about professional women who also happen to be attractive. The Davenport role seemed to serve as a model for future female attorneys on television. Hamel's character has been described as tough-minded, brassy, cool, dauntless, resourceful, and an ardent advocate. It became acceptable for women to be tough, to talk tough, and to never back down from a man, whether he is a client, opposing counsel, or a superior.

The Davenport role set a new standard of character development for television women. Although Hamel was initially noticed by most viewers for the features which made her a successful high-fashion model, followers

88. Perhaps three was an unlucky number for fictional women lawyers. In the 1974-75 season, Barbara Boxley was cast "as the sadistic lady judge" in NBC's telefeature *The Law*. She lasted three episodes. *Id.*

of *Hill Street Blues* came to realize that she was much more than simply beautiful.⁸⁹ Hamel, by maintaining that she and the Davenport character were close and shared many personal traits, has been described along with her alter-ego as “no-nonsense women, independent, outspoken, prideful and feminine in a way that challenges a man’s intellect and libido simultaneously. They are bright, straightforward, given to making fine distinctions, clearly competitive and supportive of other women. They share a quick sense of humor.”⁹⁰ All this led to the opinion that the role of Davenport was the most fully-developed female character on television and “the best . . . feminine role in series TV.”⁹¹ Hamel said:

Joyce owns her own life She’s a whole human being unto herself. She’s independent and very strong — which doesn’t mean tough. There’s a big difference there.

Women who see the show come up to thank me for what I’m doing for women as a role model for the ’80s. And men admire the way Joyce handles herself. It is a very gratifying thing.

I love playing Joyce for her integrity.⁹²

This new breed of fictional woman lawyer was not only professionally competent, but she was also in control of her own life, rather than being obsessed with defining her own identity in a way that would be inextricably linked to a relationship with a man. “[Hamel and her character are] both independent We are not appendages, living through someone else.”⁹³ Amazingly, this independence carried over into the portrayal of the

89. Typical of Hollywood industry reviews, nearly every article about *Hill Street Blues* which mentioned Veronica Hamel described her as beautiful or at least mentioned her physical appeal. This appeal carried far beyond the lay viewing public. In August of 1982, Hamel was the scheduled luncheon speaker at the American Bar Association’s annual convention in San Francisco, California. It was reported that of the various legal luminaries who attended the conference, “no lawyer . . . attracted more interest than Joyce Davenport Miss Hamel was immediately surrounded by adoring lawyers. Several of them, including a justice of the North Carolina Supreme Court, stood in line for her autograph.” David Margolick, *A Reporter’s Notebook: ABA Blends Inspiration and Adoration at Its Parley*, N.Y. TIMES, Aug. 14, 1982, at 9. One attorney from New Jersey was quoted as stating, “I came a day early just to see this girl . . . I’d rather see her than two Alexander Haigs.” *Id.*

90. Vernon Scott, *Scott’s World: Veronica vs. Joyce*, UPI, Oct. 8, 1981, available in LEXIS, Nexis Library, UPI File.

91. Vernon Scott, *Scott’s World: ‘Hill Street’s’ Veronica Hamel Guard’s TV’s Best Feminine Roll[sic]*, UPI, Sept. 28, 1983, available in LEXIS, Nexis Library, UPI File.

92. Scott, *supra* note 90.

93. David Gritten, ‘*Hill Street Blues*,’ *The Cop Show That Couldn’t Get Arrested, Hits with Sexy Trio*, PEOPLE, Feb. 22, 1982, at 89.

character's sexuality, an area in which there are few departures from sexist stereotyping. "There is little of TV's stereotypical female in Joyce's aggressive premarital sex with Capt. Frank Furillo . . . Veronica invests Joyce with the entire spectrum of female faults and virtues. Viewers, by turn, love, hate and admire Joyce but rarely are indifferent to her."⁹⁴

The movement toward legitimizing television's female attorneys continued with an effort to fully integrate them into the fictional legal workplace. In 1986, the appearance of NBC's *L.A. Law* brought with it an ensemble cast which included three regularly appearing women lawyers. Two of those characters became some of the most well-known and liked fictional women lawyers to date, Ann Kelsey (played by Jill Eikenberry) and Grace Van Owen (played by Susan Dey). Both of these women have been portrayed as very competent and ethical, as well as being what some writers are also calling very feminine, as if to suggest that "competent" and "feminine" are oxymora. Few regular watchers of the series would doubt their abilities as effective lawyers. In fact, their colleagues often selected them to handle some of the toughest cases in court. Few viewers would question their honesty and integrity; they have been seen on several occasions refusing to accede to the demands of their clients, or the firm, when they believed requests to be unjust or unethical.

Ann Kelsey, the most developed character among *L.A. Law's* female attorneys, is arguably its most liked, for many of the same reasons for which the Joyce Davenport role was hailed. Kelsey has been described variously as a strident, forceful, intelligent, capable, idealistic, gutsy, determined, sensitive, and high-powered do-gooder. These adjectives suggest that she was presented as a relatively multifaceted personality. On the one hand, this idealist displayed sensitivity in being bothered by the moral questions. On the other hand, she was "a female steamroller capable of threatening a client's opponent with sexual blackmail."⁹⁵ Eikenberry described her lawyer character as "ballsy, brave and determined to succeed in what is still very much a man's world."⁹⁶ Generally, it was clear that "the women on *L.A. Law*, unlike those on many TV series, are as complex and strong-willed as the men."⁹⁷

Another impressive aspect of *L.A. Law's* portrayal of women is the frequency and quantity of women lawyers and judges who have appeared

94. See Scott, *supra* note 91.

95. Harry F. Waters & Janet Huck, *Lust for Law*, NEWSWEEK, Nov. 16, 1987, at 84.

96. Jane Hall, *Laying Down the Law; Television Gets a Sizzling Series and New Rules for Treating Life and Love*, PEOPLE, Feb. 3, 1987, at 76.

97. *Id.*

on the show. Nearly every episode has had at least one woman lawyer or judge in addition to those regularly featured, often two or more. There have even been entire female courtrooms in the sense that both attorneys and the judge were women. In addition, story lines for several episodes have broached legal issues thought to be of special importance to women, such as battered-wife syndrome, rape trauma, post-partum stress, sexual harassment, and date rape. Each has been presented in a thoughtful and sensitive manner.

The third featured woman attorney in *L.A. Law*, Abigail Perkins (played by Michelle Greene), was a character written more along the lines of the traditional fictional female lawyer. Perkins was presented as the young, inexperienced lawyer who was looking to develop confidence and gain respect in the profession. In some respects, *L.A. Law* was guilty of resorting to the tired old plot of having its youngest woman lawyer suffer the humiliation of an inadequate trial performance. Her initial courtroom appearance was a disaster, and she found herself being soundly scolded by the judge for her ineffective handling of the case. Despite the fact that some real life lawyers applauded the episode as realistically depicting the disappointment of an attorney's first trial,⁹⁸ it was unfortunate that the show's writers chose to inflict that experience upon one of its women lawyer characters. Whether or not first trial disasters are common for all new lawyers, it remains a fact that men are rarely, if ever, placed in the role of the sacrificial lamb. Fortunately, the serial format of the show, aided by its longevity, allowed Greene's character to develop over time so that regular viewers watched Abby "grow from a shy clerk to an assertive, assured attorney."⁹⁹

In recent years, *L.A. Law* has introduced some additional regularly-appearing women attorney characters into the ensemble. Particularly notable among those new additions are two unique portrayals of female lawyers in the genre, which, despite significant improvements, continues to adhere to old formulas about appearance and demeanor. While newcomer C.J. Lamb (played by Amanda Donohoe) conformed to the mold of the film

98.

"That was very realistic," said Alan Yockelson, a deputy in the sex crimes and child abuse division of the Los Angeles County district attorney's office [about Greene's character]. "Almost no one is happy with his first trial, though usually the problem is that you over-prepare and get put down by the judge for trying to be too eloquent."

Linda Mathews, *Judging the Trial and Tribulations of 'L.A. Law'*, *L.A. TIMES*, Aug. 31, 1987, at F1.

99. Andy Edelstein, *A Meaty Opener for 'L.A. Law'*, *NEWSDAY*, Oct. 18, 1990, pt. 2, at 9.

and television's young and attractive woman lawyer, her nonchalance¹⁰⁰ and status as a sexual enigma¹⁰¹ set her apart from all previous characters. Although the ultra-progressive series had previously aired at least an episode or two wherein a presumably lesbian lawyer¹⁰² was engaged to argue a case, usually involving homosexual rights, no dramatic vehicle in mainstream film or television had ever featured a homosexual encounter involving women lawyers. Thus, Lamb, along with Perkins, was a party to one of the most talked about scenes in television history.

One of the drama's biggest controversies sprang from a lesbian kiss . . . between C.J. and Abby Perkins (Michelle Greene) . . . The producers said they got a lot of positive and negative mail about the scene, but decided on their own not to follow through with a lesbian affair. "We don't knuckle under to pressure," executive producer [Patricia] Green said.¹⁰³

Whether or not the show's producers retreated under fire from nervous advertisers, who acted quickly to have their commercials moved off that episode, provocatively titled *He's a Crowd*,¹⁰⁴ television's first "sexually-flexible,"¹⁰⁵ regularly-appearing woman lawyer has since shown romantic interests only in men.

The second character departure from the industry's physicality standard came in the somewhat larger form of entertainment lawyer Susan Bloom (played by Conchata Ferrell). Bloom's appearance, which was in stark contrast to the other women lawyers of the show, caught the audience's attention. Reviewers, seemingly compelled to respond to this rude departure from the "lovely-to-look-at"¹⁰⁶ precedent for fictional women lawyers, referred to Bloom as "chunky" as well as "big and

100. The writers claim that C.J. Lamb was designed to be a character who "liked the practice of law but didn't live for it." Steve Weinstein, *Steven Bochco on the Case: 'L.A. Law' Co-Creator Returns to Fine-Tune Troubled Series*, L.A. TIMES, Apr. 2, 1992, at F1.

101. *The New Legal Eagles; C.J.: Amanda Donohoe Likes Surprises*, USA TODAY, Apr. 25, 1991, at 4D.

102. This presumption is based upon dialogue in the script wherein the attorney referred to "we" in arguing her position supporting the rights of homosexuals.

103. Phil Kloer, *Law Courts More Excitement; Feuds Will Settle Down Next Season, But C.J. Won't*, *Producers Say*, ATLANTA J. & CONST., July 30, 1991, at B8.

104. Diana Lundin, *L.A. Law Producer Promises to Shake Things Up*, VANCOUVER SUN, Aug. 13, 1991, at C3.

105. "I think she's still discovering what her sexuality is," Ms. Donohoe said of her character. She said C.J.'s bisexuality has not been dropped but is "an ongoing situation. She sees it as: Why should she limit her choices?" Kloer, *supra* note 103, at B8.

106. "[L]et's face it, that's a big part of conventional series TV." Nicholas Read, *'L.A. Law': Where Are All the Hunks?*, VANCOUVER SUN, Feb. 22, 1992, at D10.

blowsy.”¹⁰⁷ Further disconcerting traditionalists was the fact that this woman lawyer was also “loud and aggressive . . . ‘Susan Bloom is the attorney from hell.’”¹⁰⁸ While demonstrating considerable effectiveness at her craft, she was condemned by her on-screen colleagues and critics for the “(un)lady)lawyerlike” traits of being bossy, brassy, and shrewd. This character, like the unorthodox woman lawyer before her on the show, was eventually written out of the show.

Perhaps the single most talked about woman lawyer on television also ended up working for *L.A. Law*'s MacKenzie Brackman firm. Rosalind Shays (played by Diana Muldaur), the one-time managing partner and rainmaker par excellence at America's best known law firm, took television's legal world, as well as the firm, by storm. Referred to as scheming, bitchy, crafty, loathsome, shrewd, cutthroat, and a shark, the Shays character was a fascinating study of the double standard applied against women in the professional world. She represented the epitome of a driven, ambitious, clever, resourceful, tough, tenacious, effective, and successful lawyer. In many ways, she was just the type of “guy” a litigant would want on his team, except she was not a “guy.” She had the scruples of the firm's callous Arnold Becker, but she was much more discreet. She had the timidity about making money of Managing Partner Douglas Brackman, but she was much better at it. Being a better Arnie Becker and a more successful Douglas Brackman, however, is not usually what a law firm desires from female attorneys.

The firm's hypocrisy, as well as that demonstrated throughout society in general, was poignantly presented in an episode titled *The Bitch is Back*. In this episode, the universally condemned Shays is successful in her multi-million dollar sex discrimination lawsuit against the firm. The clinching evidence in her case was Ann Kelsey's remark to Shays upon her ouster from the firm that “the same thing wouldn't have happened if Shays were a man.”¹⁰⁹ “Women characters who are portrayed as strong and smart

107. *Id.* The issue of physical appearance was addressed in one of the *L.A. Law* episodes when a full-figured woman lawyer retained the MacKenzie Brackman firm to represent her in a wrongful discharge suit against her former law firm. The storyline featured the allegation by this woman that she was being denied partnership because her appearance was repulsive to clients; the firm conceded that her appearance was a factor. The episode ended with a jury verdict in her favor following the stirring deliverance of her own closing statement.

108. Dennis McDougal, *Jury's Out on Susan Bloom: Does New Lawyer on 'L.A. Law' Come Too Close to the Truth?*, *L.A. TIMES*, Dec. 5, 1991, at F1.

109. Edelstein, *supra* note 99, at 42. It is also worth noting that the firm's newly acquired woman partner, Grace Van Owen, was chosen to litigate the case. The episode awkwardly pitted one woman against another, the former condemning the latter for her ambition and competitive-

aren't safe . . . ;"¹¹⁰ they get the shaft.¹¹¹

Other television series from the late 1980s and early 1990s portray women lawyers as featured or secondary characters. Virtually all of them have followed the pattern of presenting young, attractive, and reasonably competent female attorneys. Although most have avoided the usual stereotypical portrayals involving competence (or lack thereof), occasionally a woman lawyer is sacrificed to the wolves in her first court appearance.¹¹²

One program of this era warrants special mention for its positive portrayal of women in the legal profession. Premiering during the 1990-91 season, CBS' *The Trials of Rosie O'Neill* was another welcome entry in this genre. In this program, Sharon Gless assumes the role of Fiona Rosemary "Rosie" O'Neill, an assistant public defender for the City of Los Angeles. Although she was not the most experienced criminal lawyer, due to her previous corporate law practice, O'Neill was quite competent and extremely conscientious. Her character was a departure from the norm. Rosie was not the typical young, legal novice: She was 44 years old, divorced, and plagued by an Irish Catholic family which attempts to impose their choices upon her.¹¹³ O'Neill received good reviews from a signifi-

ness. One of the more disturbing scenes occurred when Van Owen tirelessly worked to paint a picture of Shays as a lonely, loveless woman who was so consumed by her career that she hadn't even seen her own grandchild. In effect, she resurrected the century old charge of abandoning her sacred duty of motherhood. The defense was that Shays had not been ousted due to her sex but due to her defective, hard personality. Failures at matters involving "motherhood" have been known to bring down the highest placed women lawyers.

There is further irony in the appointment of Grace Van Owen as the firm's assassin. Beyond her appeal as a competent litigator, Dey's character has been praised for softening the image of women lawyers. Reminiscent of Gail Patrick's effect on the profession in the 1930s, "Susan Dey . . . proved just how soft and feminine a business suit can be with the addition of a particular style blouse." Rose-Marie Turk, *Strong, Feminine Case for 'Law' Blouse*, L.A. TIMES, Aug. 19, 1988, at E10. She has been hailed for the popular success of what has become known in the fashion industry as "the 'Law' blouse . . . Loree Parral, women's costumer for 'L.A. Law,' says she hit on the 'silky, sophisticated' blouse for Susan Dey's screen persona because 'she is feminine, sexy, intelligent.'" *Id.* Just how far have women lawyers indeed come?

110. Darlene G. Stevens, *Age Old Problem: Job Gains Made by Young Don't Translate to Later Years*, CHI. TRIB., May 12, 1991, at A12.

111. In the end, Rosalind Shays met a violent and unexpected death when she plunged down an elevator shaft just after suffering the indignity of having her marriage proposal rejected by the MacKenzie Brackman senior partner who deposed her. *Id.*

112. For example, Sarah Jessica Parker's initial trial experience was a traumatic one on ABC's *Equal Justice*, which aired from 1989-91.

113. Regarding O'Neill's career choices, her family complained that "Rosie has fallen down the economic ladder, not climbed it." Tish Dace, *Sharon Gless's Rosie Return*, MS., Jan./Feb. 1991, at 70.

cant number of women lawyers who appreciated the portrayal of a female attorney who was not superhuman, yet was competent, ethical, and independent:

Despite Rosie's personal trials (too preoccupied with her ex-husband), she still succeeds in the courtroom. She never falls into the usual television stereotypes sex goddess, bumbling nincompoop, bitch, passive victim, or madonna. Instead, she's a good lawyer, trying to combat racism, violence, and bigotry. Rosie is real and ideal; we identify with her, but also want to emulate her.¹¹⁴

Some have even touted this program as being the first to legitimize women lawyers wearing pants in court,¹¹⁵ though the issue of appropriate apparel for women lawyers remains controversial among some members of the profession.¹¹⁶

114. *Id.*

115. Marjorie E. Goss, a vice president at Chemical Bank and ethics panel chairperson, wrote the opinion of the New York County Lawyer's Association ethics panel which concluded that the wearing of an appropriately tailored pants suit did not violate the Code of Professional Responsibility:

There is nothing inherently disrespectful about pant suits, [Goss] quickly concluded. As an authority, she cited no less an arbiter of popular culture than the TV Guide, which asserted recently that Sharon Gless, the star of the television program *The Trials of Rosie O'Neill*, had once and for all established that there was "a place for casual chic in the courtroom."

David Margolick, *At the Bar*, N.Y. TIMES, Jan. 17, 1992, at B16.

116. Suzanne Rosengarten, an attorney with the Legal Aid Society in New York, reviewed *The Trials of Rosie O'Neill* for the New York Times. "Rosie seems to spend more time in her car than in court. And her outfits! Maybe in California you go to court in a sports jacket and a pair of slacks, but in New York you do not. I wear suits." Laura Morice, *Are TV's Career Women the Real Thing?*, THE OREGONIAN (Portland), June 24, 1991, at C12.

The issue of appropriate apparel for women in court has generated and continues to generate considerable attention. Judges have even issued "opinions" on the subject. Superior Court Judge James Clement of Crown Point, Indiana, sent a preference memo to the county prosecutor stating that "'to maintain the dignity' of the court, women should stick to 'tradition' and wear dresses, and that it was the 'consensus among women' that dresses look better." *Judge Ad-dresses Unpopular Issue, Then Slack-ens Off*, NAT'L L.J., Oct. 15, 1984, at 43.

Some firms have issued memos to associates, clerks and even partners about dress codes. In New Jersey, the firm of Wilentz, Goldman & Spitzer reportedly issued such a memo informing "attorneys that 'skorts,' a combination of a short skirt and culotte, are not considered professional attire. The memo was followed by a flurry of tongue-in-cheek take-offs, including memos banning Hawaiian shirts, announcing the formation of a dress committee and warning of a 'skort police.'" Suzanne Riss, *Dress Code for Women: Skorts, No. Pants, Maybe*, N.J. L.J., Aug. 2, 1990, at 4. The subject, however, is much less amusing to female attorneys in Washington, D.C., where "one D.C. Superior Court judge is said to have outlawed all women lawyers in slacks." Ann Geracimos, *Dressing Supreme in Court*, WASH. TIMES, Oct. 9, 1990, at F1. No doubt that

Throughout the late 1980s and into the early 1990s, women lawyers have been and are continuing to be cast in a variety of vehicles. On television, female attorneys were seen regularly and, in some instances are still being seen, on ABC's *Equal Justice*, *Gabriel's Fire*, *Eddie Dodd*, *Criminal Justice*, and *Civil Wars*; NBC's *Matlock*, *Law and Order*, *Shannon's Deal*, *Perry Mason* movies, *I'll Fly Away*, and *Reasonable Doubts*; CBS' *The Antagonists*; and Fox's *Against the Law*.

Three of these deserve brief mention because of their uniqueness or unusual events associated with the programs. Two of NBC's most recent entries are noteworthy in that *I'll Fly Away*, "set in the changing racial climate of the 1950s South,"¹¹⁷ featured defense trial attorney Christina LeKatvis (played by Kathryn Harrold). This program, in all likelihood, presented the first depiction of a southern woman lawyer, a special status which aptly coincided with the character's assertion in an episode that "I

it was not funny in 1968 to attorney Carolyn Peck of Syracuse:

[She] represented her client while wearing a skirt with a hemline that was some five inches above her knees — a level, according to the court documents, that was 'extremely and excessively short' and that 'revealed substantially more of the human frame than is customarily displayed in the courtroom.' She was held in contempt and ordered never to appear in court so attired again . . . [I]n an appeal supported by the American Civil Liberties Union . . . they persuaded an appellate court to overturn the judge's order.

Margolick, *supra* note 115, at 16.

Perhaps the most telling event in the history of this controversy was the issuance of an opinion by the Committee on Professional Ethics of the New York County Lawyer's Association. The question posed to the bar ethics committee was "whether a woman lawyer 'wearing an appropriately tailored pants suit' violated the Code of Professional Responsibility. . . . The panel explained that it took in the subject after being "told that judges in this state have remarked negatively in open court on the attire of women lawyers appearing before them." Martin Fox, *Bar Panel Tackles Sticky Issue of Appropriate Garb for Women*, N.Y. L.J., Dec. 23, 1991, at 1. Despite the fact that "[t]he physical appearance of lawyers is not a subject directly covered in the Code" and "that several of the committee's 19 members felt the matter 'was not worthy of us responding,'" the panel did nonetheless issue an opinion. *Id.* Its conclusion was that the Code "does not prohibit a female lawyer from wearing appropriately tailored pant suits or other pant-based outfits in a court appearance." *Id.* What if it had come out the other way?

The next great controversy likely to emerge from this issue of appropriate attire may involve the issue of unfair advantage given to one party due to the dress of her counsel. *L.A. Law* recently presented an episode, *Wine Knot*, in which new assistant district attorney Tommy Mullaney (played by John Spencer) objects to the representation of an accused by a nun dressed in her habit.

117. NBC's *'Fly Away' Gets Awards for High Values*, S.F. CHRON., July 9, 1992, at D5.

am one of three female trial attorneys in this state."¹¹⁸ *Reasonable Doubts* featured a deaf district attorney played by Marlee Matlin, who herself has a hearing impairment. This program was the first to present a woman lawyer who has a disability as the central character. Unfortunately, writers placed both of these unusual women in compromising romantic situations with male colleagues. However, the most blatant media exploitation in the history of television involving a female attorney character occurred in an episode of ABC's *Civil Wars*, in which Mariel Hemingway's divorce lawyer character partially disrobed on camera. It is clear that the progress made by America's fictional women lawyers will not be measured by the extent to which they have revealed their flesh.¹¹⁹

VII. THE ABSENCE OF AFRICAN-AMERICAN FEMALE ATTORNEYS IN TELEVISION AND FILM

Even with the considerable progress made by the motion picture and television industries in their depiction of women lawyers, there remains a conspicuous absence which serves as a reminder of the pervasive racism within these industries. There has never been a single film or television program which featured an African-American female attorney as the lead character.

Although black women have been featured in U.S. cinema since the early days of silent films—in *The Wooing and Wedding of a Coon* (1905) and *The Masher* (1907), for example—the basic representational paradigm governing their image has changed little until recently. Cast as mammy in *Gone With the Wind* (1939), *Pinky* (1949), and *Such Good Friends* (1971); seductress in *Hallelujah* (1929), *Porgy and Bess* (1959), and *Carmen Jones* (1954); matriarch in *A Raisin in the Sun* (1961); or whore in *Anna Lucasta* (1959), *Take a Giant Step* (1961), *The Pawnbroker* (1965), or *The Hit Man* (1972), black women have

118. Although rarely depicted in popular culture, real southern women lawyers were more numerous than film and television would have one believe. According to U.S. Census figures, by 1940, there were over 1000 female attorneys in the south, compared with less than 500 in the west.

119. The original storyline for *The Law in Her Hands* (Warner Bros. 1936) called for Dorothy (played by Glenda Farrell), the junior partner in the two-woman firm, to appear in a scene wearing a negligee. The scene was deleted at the direction of the Hays office as impermissably intended to sell sex. Letter from Joseph I. Breen of the Production Code Administration to J.L. Warner of Warner Brothers (Feb. 4, 1936) (on file with AMPAS).

served primarily as white women's Other, a dark continent of difference whose various lacks—of beauty, morality, and intelligence—subtend the cultural elevation and adornment of white womanhood. These stereotypes, drawn and nourished in the slave era, effectively exclude black women from cultural notions of the feminine—an exclusion that ironically provides the structural basis for such cultural articulations.¹²⁰

Unlike the African-American film industry, which cast black men and women in professional roles,¹²¹ prior to the mid-1980s the mainstream motion picture industry had never cast an African-American woman as an attorney, whether a primary, secondary, or even incidental character, prior to the late 1980s.¹²²

The television industry, despite the perception of its tendencies toward political correctness, has not fared much better than the film industry when it comes to casting African-American women as attorneys. It was not until 1970 that the American television audience was exposed to the possibility that African-American women might also become attorneys. Actress Judy Pace played law student Pat Walters in the ABC series *The Young Lawyers*, which involved a small group of law students interning in a poverty law clinic.¹²³ This is as close as television had come to acknowledging that African-American women could be attorneys.¹²⁴ It was over a decade later that the first African-American woman lawyer made her way onto television: During the 1981-82 television season, actress Jennie Wilson appeared on CBS' *Simon and Simon* as District Attorney Janet Fowler.

The paucity of African-American female attorneys in the United

120. LESTER D. FRIEDMAN, *UNSPEAKABLE IMAGES: ETHNICITY AND THE AMERICAN CINEMA* 313 (1987) (citations omitted).

121. A noted historian of African-American films has suggested that the first depiction of a fictional African-American woman attorney occurred with the appearance of the character Maria P. Williams, said to have been an assistant prosecuting attorney in the exclusively African-American film *Flames of Wrath* (Western Film Productions 1923). HENRY T. SAMPSON, *BLACKS IN BLACK AND WHITE* 116 (1977). It is more likely, as was the case in other films of that era, that women employed in the law office as an assistant were serving in clerical positions and not engaged in traditional lawyering activities.

122. A careful study of the most comprehensive listing of film roles for African-American and ethnic women failed to reveal a single African-American or ethnic woman lawyer before 1985. See generally MARYANN OSHANA, *WOMEN OF COLOR: A FILMOGRAPHY OF MINORITY AND THIRD WORLD WOMEN* (1985).

123. See GIANAKOS, *supra* note 86.

124. This acknowledgment came almost one hundred years after the first African-American woman attorney was admitted to practice in the United States (Charlotte Ray admitted to the District of Columbia bar in 1872). MORELLO, *supra* note 18, at 146.

States¹²⁵ may explain in part their absence in cinematic portrayals. By 1990, however, there were an estimated 10,000 African-American women practicing law in this country. Nonetheless, there has been only one African-American actress regularly cast as a featured attorney on prime-time television — Phylicia Rashad (*The Cosby Show's* Claire Huxtable).¹²⁶ Unfortunately, although Rashad was held out as a role model to attract African-American women to the profession, “she did little visible lawyering,”¹²⁷ which was a sharp contrast to the many episodes written around Cliff Huxtable’s medical practice. While African-American male attorney characters continue to find themselves in limited roles, African-American men of the fictional bar still easily outnumber their female counterparts. The handful of African-American actresses who have been cast as lawyers in the politically correct series of the 1980s and 1990s continue to play secondary roles, usually as government sector lawyers. For example, actress Rene Jones occasionally appeared as a law clerk hoping to land a job as an associate with *L.A. Law's* MacKenzie Brackman. Jones has been seen primarily as an intended love interest of the only other African-American in the firm, young associate Jonathan Rollins (played by Blair Underwood).¹²⁸

125. In 1940, only 57 of the more than 4,000 women lawyers were African-American.

126. Two African-American actresses appear as lawyers on daytime television. On CBS' *As the World Turns*, Tamara Tunies plays Jessica Griffin, a lawyer who regrettably has rejected her roots to make it in a large law firm in which she is the only African-American. The Griffin character is perhaps television's first African-American partner in an otherwise white law firm. ABC's *Days of Our Lives* includes Felicia Bell as assistant district attorney Glynnis Turner.

127. Julianne Malveaux, *'Cosby': That's Show Biz*, USA TODAY, Apr. 29, 1992, at 8A.

128. Maurice Weaver, *25 Years Ago Racial Hatred Fed Flames in Watts*, CHI. TRIB., Aug. 12, 1990, at 3C. Although Jones' character appeared more than once on *L.A. Law*, she was not considered to be a regular member of the cast. More recently, Lynne Thigpen has appeared on a few occasions on the program as the District Attorney who oversees Assistant Prosecuting Attorney Zoey Clemmons (played by Cecil Hoffman). The Clemmons character may take on importance for African-American women as she becomes a romantic partner of the series' regularly appearing African-American male lawyer. Given the infrequency of even irregularly appearing minority and ethnic women lawyers, this distinction is of little importance. There has never been a single minority or ethnic woman lawyer lead character in a motion picture or television program. Although *L.A. Law* stands out as a program which has included depictions of African-American, Latina, Asian, and Native American women lawyers and judges, even this paragon of equal opportunity has not seen fit to cast and feature such women in regular roles.

VIII. FAILINGS OF THE FILM INDUSTRY

Despite television's aforementioned shortcomings, the motion picture industry has failed to keep pace with the progress made on the small screen. The dominant image of women lawyers in the films of the 1980s and 1990s has been one of victims being driven by the blind love for a man. Love has caused otherwise competent attorneys to become persons with both questionable ethics and judgment. In 1980, Goldie Hawn portrayed a woman lawyer who risks her career for her ex-husband in the comedy *Seems Like Old Times*.¹²⁹ In *The Verdict*,¹³⁰ attorney Laura Fischer (played by Charlotte Rampling) slept with ambulance-chaser Frank Galvin (played by Paul Newman) as part of her firm's unethical tactics to keep tabs on opposing counsel's case.

In 1983, actress Jaclyn Smith's modern woman lawyer fell in love with a married attorney who is on the bar ethics committee investigating her in *Rage of Angels*.¹³¹ Smith's character was a sexual role reversal from Christine Lahti's ethics committee member, who slept with Arthur Kirkland (played by Al Pacino), an attorney under investigation in *And Justice For All*.¹³² Teddy Barnes (played by Glenn Close) fell in love with her client in *Jagged Edge*.¹³³ By 1986, American audiences found Debra Winger's attorney character, Laura Kelly, entertaining romance with her co-counsel in *Legal Eagles*¹³⁴ and Assistant District Attorney Anne Osborne (played by Ellen Barkin) sleeping with the macho detective she was assigned to investigate for alleged police corruption in *The Big Easy*.¹³⁵ The following year, Cher's attorney character, Kathleen Riley, even slept with a juror during the trial in *Suspect*.¹³⁶ The 1980s closed with Jessica Lange's attorney character in *Music Box* showing such poor judgment as to represent her own father, who was accused of being a Nazi war criminal.¹³⁷

Apparently some things do not improve with time. The two biggest

129. SEEMS LIKE OLD TIMES (Rastar Productions 1980).

130. THE VERDICT (Twentieth Century Fox 1982).

131. *Rage of Angels* (NBC television broadcast, 1983). This was a made-for-television movie, but since it did not involve a weekly television series, it is being discussed in the context of feature film despite different audiences.

132. AND JUSTICE FOR ALL (Malton Films 1979).

133. JAGGED EDGE (Columbia Pictures 1985).

134. LEGAL EAGLES (Universal Pictures 1986).

135. THE BIG EASY (Kings Road Entertainment 1986).

136. SUSPECT (Tri-Star Pictures 1987).

137. MUSIC BOX (Carolco Pictures 1989).

lawyer films of the 1990s also featured women lawyers. In the box-office smash *Presumed Innocent*,¹³⁸ the principal female attorney (played by Greta Scacchi) in the film was shown repeatedly positioning herself to climb the ladder of success in her office. This ambitious assistant prosecuting attorney sleeps with both her immediate supervisor as well as the district attorney, and is eventually killed, reinforcing the notion that bad things happen to ambitious, manipulative, ruthless lawyers who also happen to be women.

Similarly, *Class Action*¹³⁹ amounted to nothing more than just another portrayal of women lawyers who use sex to their advantage and possess bad judgment. Although quite competent, Mary Elizabeth Mastrantonio's Maggie, like her female attorney predecessors, was shown sleeping with her boss, a partner in her prestigious firm. Moreover, she repeatedly ignored ethical considerations when she failed to acknowledge the likely conflict of interest in taking an assignment to oppose her lawyer-father in court and then stood by as her co-counsel, the partner with whom she has been sleeping, perjures himself and misleads the court.

IX. CONCLUSION

Despite more than half a century of depictions of female attorneys in film, and later in television, the only demonstrable progress made in the world of fictional women lawyers has been popular culture's concession that women can be competent attorneys. While this allowance for effective lawyering skills, particularly in the traditionally male bastion of the courtroom, should not be seen as a wholly insignificant advance, the adherence to many other stereotypical portrayals of women has tended to offset these gains. For the most part, the motion picture and television industries continue to encourage, whether or not intentionally, an association between physical attractiveness of women attorneys and their desirability as legal colleagues or associates. It is unclear and perhaps indeterminable to what extent these media messages permeate the hiring processes and decisions affecting professional opportunities for women lawyers. While one might conclude that women who are not ordinarily described as "attractive" (however that elusive, subjective construct might manifest itself in the minds of the person(s) making employment decisions) will in most cases be disadvantaged in the legal marketplace, the social

138. *PRESUMED INNOCENT* (Mirage Enterprises 1990).

139. *CLASS ACTION* (Twentieth Century Fox 1991).

messages presented in the vehicles presented herein would tend to disadvantage women who are seen as being too attractive as well.¹⁴⁰

It is difficult to believe that media depictions of women lawyers have not influenced real world expectations of the appropriate dress, demeanor, and style of women engaged in the legal profession. While it may be argued that such depictions merely reflect the inhospitable realities confronting women lawyers in what many continue to call a male profession,¹⁴¹ it is undeniable that the mere presentation of such attitudes and behavior may work to reinforce them for both victims and victimizers. Many women lawyers likely are influenced by the dramatization of negative consequences for certain behaviors and thereby seek to avoid them altogether. This may explain the prevalence of what some have referred to as "androgynous" female attorneys.¹⁴² The pervasiveness of this "Catch-22" is readily apparent in many aspects of the legal profession. Responding to criticism for looking too feminine, women are also accused of trying to emulate men when they chose to wear the gray, drab uniform of the profession. This criticism is being leveled by female lawyers as well as males.¹⁴³

This article has recounted the numerous occasions upon which the central theme of popular culture vehicles casting women lawyers has been the enslavement of women to their emotions. The perpetuation of those sex

140. Various examples were given earlier about the unfair tendency to make assumptions about competence and commitment to a profession based upon the physical appearance of women. This author is aware of a hiring decision involving a female law graduate which was based upon a reviewer's evaluation containing the assessment that she was "perhaps a bit too glamorous."

141. Women currently comprise more than 21% of practicing lawyers in the United States and are approaching 50% of all law students in this country. It should be clear that by the next generation, women will not even constitute a numerical minority in the profession. At what point will the public, and profession as well, stop referring to law as a "man's profession?" Perhaps the answer lies in the theory offered by some feminist writers that as a profession or occupation begins to lose status and prestige, it becomes more accommodating to "undesirables" like women and minorities. The devaluation of lawyers may be the reason that legal professional status is becoming increasingly more attainable; it may also spell the end of its description as being race- and sex-exclusive.

142. David Margolick, *At the Bar: An Assessment of How Lawyers Dress: Most Are Cut from the Same Cloth*, N.Y. TIMES, June 5, 1992, at B8.

143.

Rosemary Alito, a partner at Carpenter, Bennett, agrees that pants on women could 'draw attention away from the substance of an attorney's work and focus on appearance.' Alito says pants suits are not part of her professional wardrobe because she prefers to dress 'in a way that makes me feel comfortable and makes clients and judges comfortable.'

Riss, *supra* note 116, at 4.

role stereotypes impacts both those inside and outside of the profession. For female members of the profession, the message is that true fulfillment comes not from career advancement but from finding love.¹⁴⁴ For the lay public, the message is that female attorneys will never fully succeed because they cannot stop being a woman. How else can one explain the events surrounding the presentation of a rose to Clearwater, Florida, Assistant State Attorney Beverly Andringa by jurors seated in a capital murder trial in 1990?¹⁴⁵ In Delaware, Ohio, defense counsel in a sex offense case filed a motion for a new trial asserting that the behavior of Assistant Prosecuting Attorney Sue Ann Reulbach was "unscrupulous in that her argument went beyond evidence to the point of crying in her rebuttal."¹⁴⁶

While most story lines promote the notion that excessive female emotionalism is dangerous to the profession, fictional women lawyers are found to be equally guilty when they exhibit behavior which is "inconsistent with their true nature." Kelly McGillis' performance as prosecutor Katheryn Murphy in *The Accused*¹⁴⁷ is a good example:

The troubling message of *The Accused* is that when Murphy behaves in a detached and professional manner she is somehow lacking. Only when she becomes emotionally involved in the case is she a good person and an admirable attorney. What the film fails to address is how a prosecutor can possibly become emotionally involved in all her cases yet continue to function, day to day, in the horrifying world of criminal law.¹⁴⁸

She's damned if she does, damned if she doesn't, and the media gives the public the language to describe these departures from gender-based expectations.¹⁴⁹

Competence, appearance, and demeanor aside, what may yet prove to be the longest lasting and most negative portrayal of women lawyers in film and television is their propensity for sexual indiscretion and will-

144. "[S]urrendering one's problems to a man is clearly a happier ending than is coping with life as a professional." Terry K. Diggs, *No Way to Treat a Lawyer*, CAL. LAW., Dec. 1992, at 51.

145. *Rose Turns Murder Trial Momentarily Thorny*, SAN JOSE MERCURY NEWS, Aug. 31, 1990, at 2A.

146. *Judge Rips Attorneys for Comments*, COLUMBUS DISPATCH, Nov. 24, 1990, at 4B.

147. *THE ACCUSED* (Paramount Pictures 1988).

148. *CLEARGOLAW NEWS*, May 22, 1989, at 5.

149. For example, *L.A. Law's The Bitch is Back* episode is about "a satanic she-attorney with the gall to have ambition." Christopher J. Farley, *The Law's TV Appeal: Court Still Commands an Audience*, USA TODAY, Oct. 18, 1990, at 1D.

ingness to compromise their professional integrity and responsibilities for "want of a man." Most motion pictures and television programs which feature a woman lawyer have included a romantic and/or sexual encounter between its women lawyers and some male character, whether client, boss, colleague, opposing counsel, or juror.¹⁵⁰ The likely long-term consequence of such portrayals is the continued objectification of women within the profession, along with an expectation that women lawyers are seeking romantic or sexual relationships with the men with whom they work.

Female attorneys work in environments which exacerbate personal, social and professional power disparities. With media images perpetuating beliefs that women colleagues welcome romantic involvement with their co-workers despite the obvious risks imposed upon their careers, males within the profession are socialized by these portrayals to believe that every relationship with a female colleague has the potential to become a sexual one.

In *Presumed Innocent* (1991), director Alan J. Pakula uses camerawork to show the subjugation of powerful female prosecutor Carolyn Polhemus (Greta Scacchi). When Rusty Sabich, Polhemus's supervisor (Harrison Ford), has sex with her atop her office desk, Pakula's camera places the viewer inside Sabich's head, seeing and savoring the sexual conquest along with him. The visual image—Polhemus seen from the male perspective, supine in sex-cuts to crime scene photographs of her, once again seen from the male perspective, this time supine in death.¹⁵¹

The executives who marketed *Presumed Innocent* chose this scene for ads hawking the film. The implication of the ad campaign was obvious: the sexual domination of a woman lawyer in the workplace is not only acceptable, it's attractive. Desk-sex sells.¹⁵²

The one possible legacy of the emergence of women lawyers in film and on television is the increase in the likelihood that women in the legal profession will be victims of sexual harassment, perhaps even rape, at the hands of their male colleagues.¹⁵³ Even TV-law's quintessential "sensi-

150. Even television's greatest enigma of woman lawyerhood, *L.A. Law's* Rosalind Shays, ended up in bed with the firm's senior partner, Leland MacKenzie.

151. Diggs, *supra* note 144, at 52.

152. *Id.*

153.

Task forces in New York and New Jersey conducted surveys which showed that a substantial majority of women attorneys (and up to 68 percent of male respondents) had heard judges and lawyers make sexist comments and jokes or use inappropriate forms of address ("honey," "dear,"

tive man," *L.A. Law's* Michael Kuzak, never accepted the fact that when a woman says "no" she means it.¹⁵⁴ Even if unsure, he, like his real world brethren, had no right to assume otherwise.

etc.) to and about women lawyers in court. And certainly, the defense attorney who brushed against the prosecutor, saying "Okay baby, let's see what you can show the judge, behaved abominably. He later admitted it."

JUDITH A. BAER, *WOMEN IN AMERICAN LAW* 271 (1991).

154. This statement can be qualified because of the mixed messages that programs of this sort give. Since many of the characters involved in rejection scenarios ultimately end up as presumably consensual lovers, the audiences are continually told that initial resistance is to be expected. The message is that eventually the persistent man will win a woman over:

Michael Kuzak's character initially was revealed on *L.A. Law* primarily through his pursuit of Grace Van Owen (played by Susan Dey). He falls in love within moments of first seeing her

In his pursuit, Kuzak does not play by the rules of courtship. When a woman repeatedly says she really does not want to be called again, many men would get the hint. Not Michael Kuzak. He does not bow out gracefully. He hounds the object of his passion, striving to realize what to him is right. He trusts his judgments and passions more than he does the actions of others. He is not deterred by Grace's decision to go through with [her] wedding. Dressed in a gorilla suit, he breaks up her ceremony. . . .

To tell Kuzak that it is important to respect a woman when she says 'no,' or to remind him that we live in a society in which date-rape is a serious problem, seem almost beside the point.

Robert E. Rosen, *Ethical Soap: L.A. Law and the Privileging of Character*, 43 *U. MIAMI L. REV.* 1229, 1249 (1989).