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ALLY MCBEAL AND HER SISTERS: A QUANTITATIVE AND QUALITATIVE ANALYSIS OF REPRESENTATIONS OF WOMEN LAWYERS ON PRIME-TIME TELEVISION

Diane Klein*

I. INTRODUCTION

Calista Flockhart, a Golden Globe recipient for her portrayal of the title character on Fox's *Ally McBeal*, is the latest actress to play what has become a familiar television role: the female lawyer in prime-time.¹ In times past, even a woman who graduated first in her law school class might end up with Della Street's job—secretary to lawyer Perry Mason.² However, television art imitates life, and the flood of women into the legal profession is reflected in a growing number of prime-time network³ roles for women attorneys.⁴ In the past twenty-five years, at least seventy

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1. See *Ally McBeal* (Fox television broadcast, 1997–Present); Jack, 'Ally' Win Globes, CINCINNATI ENQUIRER, Jan. 9, 1998, at A1.

2. For example, Justice Sandra Day O'Connor started her career as a legal secretary after graduating from Stanford Law School. Laurence Bodine, *Sandra Day O'Connor*, 69 A.B.A. J. 1394, 1396 (1983) (cited in Nancy Farrer, *Of Ivory Columns and Glass Ceilings*, 28 ST. MARY'S L.J. 529, 547 n.104 (1997)). Still, she was more fortunate than her future colleague Ruth Bader Ginsburg, who was not offered any job at a firm. *Id.* at 547 n.106 (citing KAREN IBERGER MORELLO, *THE INVISIBLE BAR* 194, 207 (1986)).

3. For the purpose of this Article, "network" includes ABC, CBS, NBC, Fox, and UPN.

4. In 1960, there were 7434 women lawyers, 3% of the total, a percentage figure that remained stable until 1971. Jennifer Kaae, *Feminine Critique*, CAL. LAW., Mar. 1998, at 34. By 1991, there were 159,377 women lawyers, 20% of the total. *Id.* The American Bar Association estimates that by the year 2000 there will be 269,068 women lawyers, 27% of the profession. *Id.*

female lawyer characters have graced the airwaves.⁵ With original network programming, syndication, and cable, fictional women lawyers can be seen on television every day of the week.⁶

Unfortunately, some commentators find significance in women lawyers on television only from their impact on the real-life dress code for female attorneys. The *New York Times* reported that Marjorie Gross, a vice-president of Chemical Bank and chairperson of the Ethics Committee of the New York County Lawyers' Association, looked to Sharon Gless's character "Rosie O'Neill" on *The Trials of Rosie O'Neill*⁷ to validate her decision that tasteful pantsuits were suitable courtroom attire for women.⁸ According to the staid *International Herald Tribune*, "The television program *L.A. Law* showed female attorneys wearing trousers into the courtroom. Real-life lawyers didn't take to pantsuits in droves, but the show spawned articles and discussions about acceptable courtroom dress."⁹

As the third decade of televised women lawyers draws to a close, clearly something more significant may be gleaned about our culture and the legal profession. What do these representations tell us about women lawyers in America? Do they tell the truth? Who is included? What (or whom) is excluded?

This Article argues that substantial biases, in the form of representational inaccuracies, persist in prime-time television's depiction of women lawyers. For example, government lawyers, especially those involved in criminal justice, are considerably over-represented, while female lawyers in private and corporate practice are underrepresented.¹⁰ The racial composition of the television bar exaggerates the presence of African American female attorneys, while Hispanic and Asian female lawyer characters are nonexistent.¹¹ A higher percentage of female attorneys on television than actual women attorneys are single.¹² Female lawyers on television, especially those in government work, seem to form relationships with non-professional men, especially those in law enforcement, with much more frequency than in the real world.¹³ Finally,

5. See generally ALEX MCNEIL, *TOTAL TELEVISION* (4th ed. 1996).

6. See *id.*

7. *The Trials of Rosie O'Neill* (CBS television broadcast, 1990-92).

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

9. Robin D. Givhan, *WorkWear: Reflection of Change; No Need Now for Uniforms*, INT'L HERALD TRIB., Oct. 14, 1995, at 21.

10. See discussion *infra* Part V.

11. See discussion *infra* Part V.

12. See discussion *infra* Part V.

13. See discussion *infra* Part V.

women lawyers on television are typified by inaccurately low maternity rates and small family sizes, although they more accurately continue to occupy the traditional role of the primary care-giver.¹⁴

This Article presents statistical data supporting these conclusions, based on more than twenty years of television prime-time programming. It also discusses the influence of representational inaccuracies on public perceptions of female lawyers and the legal profession in general. While this Article is more descriptive than normative, systematic representational bias and inaccuracy are criticized when it appears warranted.

Part II consists of a brief history of women lawyers on television from the 1970s until the present. Part III sets out the research methodology employed in this Article. Part IV addresses normative issues, including a comparison of cinematic and televisual representations. This Part also addresses the question of whether bias matters, that is, whether art should imitate life. Part V consists of findings and case studies. Empirical data regarding the real-life and television women's bar address women lawyers' personal characteristics: race, marital status, partner's occupation, and motherhood. Part VI draws conclusions about the significance of the findings and possible future trends.

II. A BRIEF HISTORY OF WOMEN LAWYERS ON TELEVISION FROM THE 1970S UNTIL TODAY

Before presenting detailed data about the women who comprise the television bar, and how they compare with real-life women lawyers, a quick overview of the television history is in order. This Part discusses the appearance of female lawyer characters on prime-time television in the 1970s, 1980s, and 1990s.¹⁵

A. The 1970s

Between 1972 and 1978, the number of women in law school rose dramatically, from 11,878 to 35,775.¹⁶ By the late 1970s, women were entering the legal profession in significant numbers. Television responded accordingly, creating a handful of women lawyer characters, mostly in supporting roles. The female lawyer characters, however, were generally

14. See discussion *infra* Part V.

15. The television characters' names appear in quotes the first time they are mentioned, followed in parentheses by the name of the actress who played the role. Thereafter, only the character's name is used.

16. LORRAINE DUSKY, *STILL UNEQUAL* 21 (1996).

overshadowed by crime-fighting male leads.¹⁷ In fact, very few shows with female lawyer lead characters were produced in the 1970s, and of the few produced, none of them were successful.¹⁸

B. The 1980s

The tide began to shift in the 1980s as an increasing number of women lawyers entered real legal practice. On NBC's drama *Hill Street Blues*,¹⁹ city police "Captain Frank Furillo's" girlfriend, public defender "Joyce Davenport" (Veronica Hamel), was nevertheless an entirely new sort of television character.²⁰ She was the first female character on a successful show whom viewers observed practicing law. However, most shows of the early '80s continued to portray female lawyer characters as the cliché lawyer-girlfriend who uses her legal skills to help a crime-fighting male lead.²¹

The 1980s also saw NBC and CBS turn to comedies as a potentially congenial space for woman lawyer characters. CBS launched several unsuccessful comedies featuring female lawyer characters in the early '80s.²² In 1984, NBC released the hit ensemble *Night Court*,²³ featuring a handful of women lawyer characters, including "Christine Sullivan"

17. The very first recurring woman lawyer character, "Beth Davenport" (Gretchen Corbett), appeared on NBC's *The Rockford Files*, as girlfriend to "Jim Rockford" from 1974 to 1978. See generally MCNEIL, *supra* note 5, at 703.

18. CBS's *Kate McShane* was the first program in which a female lawyer played the lead and title role (played by Anne Meara). *Id.* at 446. However, the show ran for less than one season in 1975. *Id.* Another short lived detective show, NBC's *Rosetti and Ryan*, featured Assistant District Attorney "Jessica Hornesby" (Jane Elliot) during the 1977 season. *Id.* at 710. The first sitcom with a legal theme to include women lawyers was ABC's *The Associates*, which aired briefly in 1979. *Id.* at 65. This show featured the characters of "Leslie Dunn" (Alley Mills) and "Sara James" (Shelly Smith) as two among several associates in a Manhattan law firm. *Id.* The failure of *Kate McShane* and *The Associates* suggests that no one wanted to watch a television show specifically about women lawyers, although a lawyer girlfriend was apparently unobjectionable.

19. *Hill Street Blues* (NBC television broadcast, 1981-87).

20. See MCNEIL, *supra* note 5, at 379-80.

21. ABC's *The Greatest American Hero* featured "Pam Davidson" (Connie Selleca) a lawyer girlfriend to school teacher-turned-super-hero "Matt Hinkley" (William Katt) from 1981 to 1983. *Id.* at 342-43. "C.J. Parsons" (Pamela Hensley) was a close friend and attorney to private investigator and title character on ABC's *Matt Houston* from 1982 to 1985. *Id.* at 532. Finally there was friendly lawyer ex-wife "Mary Parker" on CBS's *I Had Three Wives* in 1985. *Id.* at 400.

22. CBS's first comedy, *Park Place*, aired in 1981, with attorney "Jo Keene" (Mary Elaine Monti), but did not even last a season. *Id.* at 642. In 1985, its *Foley Square* with Assistant District Attorney "Alex Harrington" (Margaret Colin) and attorney "Molly Dobbs" (Cathy Silvers) in *Molly Dobbs* did not fare much better. *Id.* at 293, 642.

23. *Night Court* (NBC television broadcast, 1984-92).

(Markie Post), that ran for seven years.²⁴ Premiering the same season as *Night Court*, NBC also produced a non-legal comedy featuring a woman attorney: the mega-hit *The Cosby Show*.²⁵ On *The Cosby Show*, "Clair Huxtable" (Phylicia Rashad) was a successful lawyer, a mother of five, and the first Black woman lawyer regularly portrayed on prime-time television.²⁶ The next season NBC tried again, with *Sara*,²⁷ an unsuccessful comedy featuring two actresses who went on to great success: Geena Davis as "Sara McKenna" and Alfre Woodard as "Roz Dupree," the first Black woman lawyer character we saw at work.

In 1986, *L.A. Law* became the longest running television program featuring women lawyer characters.²⁸ As one of the most successful prime-time television shows for NBC, *L.A. Law* dominated the legal drama genre for years. The show included such powerful women lawyer characters as partner "Ann Kelsey" (Jill Eikenberry) and Assistant District Attorney "Grace Van Owen" (Susan Dey).²⁹ The '80s closed with networks introducing more conventional crime-solving shows with women lawyers, reflecting the public acceptance of women lawyers in general.³⁰

C. The 1990s

In the early 1990s, *The Cosby Show* and *L.A. Law* continued to air on NBC.³¹ The major networks produced several new legal dramas in the early '90s, some more successful than others.³² NBC's Emmy-winning

24. *Id.* at 602. Before settling on Christine Sullivan, the show featured "Lana Wagner" (Karen Austin), "Liz Williams" (Paula Kelly), and "Billie Young" (Ellen Foley).

25. *Id.* at 180-82; see *The Cosby Show* (NBC television broadcast, 1984-92).

26. See generally *id.*

27. *Sara* (NBC television broadcast, 1985).

28. See MCNEIL, *supra* note 5, at 459-60; *L.A. Law* (NBC television broadcast, 1986-94).

29. *Id.* Other characters included new associate "Abigail Perkins" (Michele Greene), rainmaker "Rosalind Shays" (Diana Muldaur), associates "Gwen Taylor" (Sheila Kelley), "Melina Paros" (Lisa Zane), and virginal fundamentalist "Jane Halliday" (Alexandra Powers), prosecutor "Zoe Clemmons" (Cecil Hoffman), entertainment lawyer "Susan Bloom" (Conchata Ferrell), and bisexual "C.J. Lamb" (Amanda Donohoe).

30. CBS featured *The Law and Harry McGraw*, starring Barbara Babcock as "Ellie Maginnis" in 1987-88. *Id.* at 71. ABC's *MacGyver* added "Nikki Carpenter" (Elyssa Davalos) in 1987-89. *Matlock* portrayed a lawyer-daughter "Charlene Matlock" (Linda Purl) in partnership with her father, who also dated Assistant District Attorney "Julie Marsh" (Julia Sommars). *Id.* at 503, 531-32. In 1992, when *Matlock* moved to ABC, he took another daughter, "Leanne" (Brynn Thayer), into the practice. See *id.*

31. *Id.* at 180-82, 459-60.

32. In 1990, ABC premiered three series all lasting less than a season: *Gabriel's Fire*, featuring "Victoria Heller" (Laila Robbins); *Equal Justice*, starring "Linda Bauer" (Jane Kaczmarek), "Julie Janovich" (Debrah Farentino), and "JoAnn Harris" (Sarah Jessica Parker); and *Civil Wars* with "Sydney Guilford" (Mariel Hemingway). *Id.* at 166, 259, 311. CBS

*Law & Order*³³ first premiered in 1990, and hit its stride by introducing New York Assistant District Attorney "Claire Kincaid" (Jill Hennessy).³⁴ ABC's popular *NYPD Blue* features Assistant District Attorney "Sylvia Costas" (Sharon Lawrence).³⁵

The 1996-97 network prime-time television season gave us three new women lawyer leading characters: Baltimore Assistant State's Attorneys "Lisa Hunter" (Lisa Ann Walters) and "DeeDee Lucas" (Molly Hagan) on ABC's comedy *Life's Work*,³⁶ and Stanford graduate "Wilma Cuthbert" (Robin Givens) on UPN's *Sparks*.³⁷ Premiering in the first week of March 1997, three mid-season replacement series featured women lawyers in leading roles: "Ellenor Frutt" (Camryn Manheim), fresh Harvard Law School graduate "Lindsay Dole" (Kelli Williams), and Boston Assistant District Attorney "Susan Alexander" (Kate Burton) on ABC's *The Practice*,³⁸ U.S. Attorney "Erica Stanton" (Blair Brown) and two of her Assistant U.S. Attorneys, "Sandra Broome" (Regina Taylor) and "Jessica Graham" (Grace Phillips) on CBS' *Feds: The War Against Crime*,³⁹ and private practitioner and newlywed "Vivian Atwood" (Vivica Fox) on ABC's *Arsenio*.⁴⁰ Of all these new shows, only *The Practice* survived into the 1997-98 regular season, and the character of Susan Alexander has been replaced with Lara Flynn Boyle's "Helen Gamble."⁴¹

Recently departed characters also include "Gina Wilkes" (Charlayne Woodard), a senior associate in a prestigious Chicago firm, on CBS' medical drama *Chicago Hope*,⁴² and "Justine Appleton" (Mary McCormack) and District Attorney "Miriam Grasso" (Barbara Bosson) on ABC's *Murder One*.⁴³

experienced more success with its Sharon Gless vehicle *The Trials of Rosie O'Neill*, which ran for two seasons. *Id.* at 865. The network had a bona fide success with the non-legal comedy *Evening Shade*, co-starring District Attorney and mother of four "Ava Evans Newton" (Marilyn Hener), which aired from 1990 to 1994. *Id.* at 263. CBS also introduced female public defender "Veronica Gilbert" (Nia Peeples) on *Courthouse* in 1995.

33. *Law & Order* (NBC television broadcast, 1990-Present).

34. MCNEIL, *supra* note 5, at 471. In 1996, the character of "Claire Kincaid" was replaced by "Jamie Ross," a criminal defense attorney-turned-prosecutor. *See Law & Order* (NBC television broadcast, 1990-Present).

35. MCNEIL, *supra* note 5, at 587; *see NYPD Blue* (ABC television broadcast, 1993-Present).

36. *See Life's Work* (ABC television broadcast, 1996-97).

37. *See Sparks* (UPN television broadcast, 1996-97).

38. *See The Practice* (ABC television broadcast, 1997-Present).

39. *See Feds: The War Against Crime* (CBS television broadcast, 1997-Present).

40. *See Arsenio* (ABC television broadcast, 1997).

41. *See The Practice* (ABC television broadcast, 1997-Present).

42. *See Chicago Hope* (CBS television broadcast, 1994-Present).

43. *See Murder One* (ABC television broadcast, 1995-97).

Continuing characters still on the air include Black divorce attorney "Maxine Shaw" (Erika Alexander) on Fox's *Living Single*;⁴⁴ and "Lt. Meg Austin" (Tracey Needham), a member of the Judge Advocate General Corps on NBC's *JAG*.⁴⁵ 1997's hit, Fox's *Ally McBeal*, features associates "Ally McBeal" (Calista Flockhart), "Georgia Thomas" (Courtney Thorne-Smith), and Ally's Black roommate, Assistant District Attorney "Renee Raddick" (Lisa Nicole Carson).⁴⁶

III. RESEARCH METHODOLOGY

This Article presents information based on data about seventy female attorney characters, not including characters who debuted in the fall of 1997 or later. Twelve categories for each character are examined: (1) race; (2) age; (3) show type (drama or comedy); (4) show theme (legal or non-legal); (5) when the show aired and for how many seasons; (6) whether the show is currently on the air; (7) role type (lead or support); (8) marital status;⁴⁷ (9) partner or spouse's occupation; (10) whether the character has children, as well as the ages of those children; (11) practice area;⁴⁸ and (12) geographical area.⁴⁹

Collecting all of the above information for each character was impossible. In many cases, shows were not aired long enough for the characters to be developed in the necessary degree of detail. In other cases, the viewer is never told who (if anyone) waits at home for the woman lawyer, what city she lives in, or the type of law she practices (especially on non-legal shows). Some shows are off the air and difficult to find in archives. For these shows, reliance was placed on incomplete contemporary reviews and descriptions. Educated guesses were made, when possible, from other clues in the show. For example, if an upscale lawyer character mentions "a meeting with a client," private practice rather than criminal defense is assumed to be her practice area in the absence of other clues.⁵⁰

44. See *Living Single* (Fox television broadcast, 1993–Present).

45. See *JAG* (NBC television broadcast, 1995–96, CBS television broadcast 1997–Present).

46. See *Ally McBeal* (Fox television broadcast, 1997–Present).

47. Marital status includes single, married, divorced, widowed, and separated.

48. Practice areas include job title (federal, state, or county prosecutor, judicial clerk, Judge Advocate General Corps, public defender) and firm type and size (private criminal defense, private family law, private entertainment law, public interest, medium-to-large general civil practice firm, or solo or small firm).

49. Geographical areas included New York, Los Angeles, Chicago, San Francisco, Baltimore, Boston, Atlanta, Texas, other unnamed major cities, and rural or small towns.

50. Where such inferences were made, those characters were included in relevant statistics. If no guess could be made, the character was excluded from the calculation of those statistics.

The basic unit of analysis is the "character-season," presented statistically in two forms: raw and adjusted. The adjusted percentages reflect weighing the number of seasons in which a character appeared. In the raw percentages, each character's traits are weighed equally, regardless of the show's theme, length, duration, popularity, or whether the character is a leading or supporting role. Thus, for purposes of raw statistics, a supporting role on a thirty-minute non-legal comedy that lasted less than a full season counts the same as a leading role on a sixty-minute legal drama that aired for several years. If a character changed marital status or had children, the character was divided into two on the basis of the number of seasons spent with each trait. For example, *Hill Street Blues*' Joyce Davenport spent two seasons single, four as the wife of "Frank Furillo" (Daniel J. Travanti);⁵¹ *ER*'s "Jennifer Greene" (Christine Harnos) spent one season married, one season divorced.⁵²

In order to gauge the impact or exposure of a particular character accurately, a season multiplier was applied to the adjusted statistics for the number of seasons a character appeared.⁵³ For characters on new shows or shows canceled before completing a full season, the season multiplier is 0.5. No other adjustment was made for the relative popularity of a show. Ratings data, which indicates how many households tune in to a particular program at a particular time, will not be considered because longevity is a satisfactory substitute for ratings. Simply put, if no one watches a show it is canceled.

In the raw percentages, characters on thirty-minute sitcoms were weighed equally with sixty-minute dramas. In the adjusted percentages, this equality was preserved, rather than halving the value of the comedic characters, for several reasons. First, in legal comedies, the roughly twenty-two minutes of program time are likely to portray as much or more of the character on average than any one lawyer in a dramatic ensemble cast.⁵⁴ A comedic lead is not necessarily a smaller part than a dramatic lead or one that reveals less about lawyer representation. Second, this equality avoids formalizing any assumption that the greater *gravitas* or apparent realism surrounding dramatic programs makes them more

This most notably affected statistics about characters' personal lives, where there is information on only 52 characters.

51. See *Hill Street Blues* (NBC television broadcast, 1981–87).

52. See *ER* (NBC television broadcast, 1994–Present).

53. A television season typically consists of 22 to 26 new episodes, aired from September to May.

54. For example, in the legal comedies *Night Court* and *Foley Square*, a woman lawyer may have as much or more air time than a woman lawyer in the sixty-minute drama *NYPD Blue*.

they were cold and self-centered.⁵⁸ Women lawyers were penalized in their personal lives for excessive interest in work.⁵⁹ They had few women friends, and those they had were often their professional inferiors.⁶⁰ Although not unattractive, some women lawyers were portrayed as “unfeminine” and were often sexually repressed.⁶¹ On the other hand, if the woman lawyer was conventionally physically attractive, she was likely to be an evil “femme fatale,” unbecomingly sexually aggressive.⁶² In either case, she was not maternal. Almost all women lawyers were childless, and those who had children were not portrayed as “good” mothers.⁶³

The cinematic women lawyers’ romantic relationships were all heterosexual and all followed a formula whereby the man’s persistence eroded her initial indifference or hostility.⁶⁴ In addition, his romantic pursuit often involved helping to win her case, despite his lack of legal training.⁶⁵ These men typically humiliated the woman lawyer personally and professionally as part of the “courtship.”⁶⁶ A deeper theme about the emotional needs of women lawyers drawn from these films is that any man could “win over these professional, seemingly unreachable women. . . . [Even] a corrupt police detective, a short, fat, vulgar, heartless, takeover artist, a womanizing, manipulative lobbyist, a dissolute, drunk, defrocked police detective, a questionably honest but rags-to-riches business success or an endearingly disorganized and insomniacal district attorney.”⁶⁷ Cinematic pairings often cross class boundaries in a non-traditional direction. For example, film often presents the working class guy as the best match for the tough professional woman. An open question persists, however, whether her “marrying (or pairing) down” should be taken as a sign of her freedom from convention, her lack of femininity, or both.

In contrast, the portrayal of women lawyers on television is considerably better.⁶⁸ The economics and demographics of television may

58. *Id.* at 1004.

59. *Id.* at 978–79.

60. *Id.* at 979.

61. Shapiro, *supra* note 56, at 980.

62. *Id.* at 981.

63. *Id.* at 984.

64. *Id.* at 999, 1004.

65. *Id.* at 1003–04.

66. *Id.* at 995.

67. Shapiro, *supra* note 56, at 999.

68. As of 1996, television producer Robin Schiff declared, “I can’t think of a time that was better in terms of images of women on TV.” Drew Jubera, *Women on TV*, ATLANTA J. & CONST., May 12, 1996, at 8L.

important or meaningful in a study of women lawyers on television.⁵⁵ Finally, the significance or interest of a character should not be based on as crude a measure as screen time. To some extent the season multiplier already reflects this assumption. Rather than amplify this effect, the research treats each character's presence on each season's set of episodes equally.

Based on this methodology, five major characters emerge, each a lead role appearing for six seasons or more. Not surprisingly, the characters are those most viewers would recall if asked to name a fictional female lawyer on television: Joyce Davenport, Clair Huxtable, Christine Sullivan, Ann Kelsey, and Claire Kincaid. These characters include one Black woman and four White women; three government lawyers and two private practitioners. Three are married and two are single; two are mothers; and their ages range from late twenties to approximately forty. Three appear on dramas and two on comedies, and only one of these characters appeared on a non-legal show. The variety of characteristics in this small group suggests that there is no single formula necessary for the success of a woman lawyer character on television. If these women have a unifying characteristic, it is physical attractiveness, a feature not necessary for the success of male television lawyer characters.

IV. NORMATIVE ISSUES

A. Cinematic as Compared to Televisual Representations

In a study of more than twenty Hollywood films featuring women lawyers from 1979 to 1993, Professor Carole Shapiro found that women lawyers were "intellectually sharp and professionally successful," but they "exhibit[e] poor judgment in connection with their work" and rejected good advice from men.⁵⁶ Their legal success was treated ambivalently at best and often brought harm to those close to the lawyer or ended a significant relationship with a man.⁵⁷ Legal failure was often accompanied by personal success. Furthermore, being smart and accomplished signified

55. Sitcoms and melodramas are well-developed televisual forms in their own right, with distinct narrative, character, and stylistic conventions that ought not to be weighted differently without justification. As the data presented herein demonstrate, the comedies, for all their legal buffoonery, are actually more "realistic" in their depiction of certain aspects of women's lives in the legal profession. See discussion *infra* Part V.

56. Carole Shapiro, *Women Lawyers in Celluloid: Why Hollywood Skirts the Truth*, 25 U. TOL. L. REV. 955, 1001 (1995).

57. *Id.* at 970.

account in part for this. In general, television programs are aimed more directly at women:

Female viewers are—and always have been—more important to the networks than men. Advertisers, believing that women control the household income, covet women. And women watch more television than men—almost five hours a day, compared to men's four hours, 16 minutes. The folks who make television finally have figured out that you can program to women, but still create shows that men want to watch.⁶⁹

The first generation of women to attend law school in significant numbers came of age in the early to mid-1970s.⁷⁰ These women comprise part of the highly desirable eighteen to forty-nine year old viewer demographic so sought-after by television advertisers.

By the late 1980s or early 1990s, women at almost every stage of a legal career could identify with at least one of television's female lawyer characters.⁷¹ This is no accident. Warren Littlefield, president of NBC Entertainment, says, "We like to reflect what's going on in society, and even be ahead of it. . . . We don't want a gap between characters on TV and people in the real world—identification is very important for TV success."⁷² Ted Harbert of ABC openly concurs: "We realize (creating strong roles for women) is the right thing to do. It's who we are as people. And it happens to make good business sense."⁷³ Pop cultural critics have

69. Norm Schaefer, *It's Prime Time for Women on Networks*, CHI. SUN-TIMES, Sept. 11, 1994, at NC1. Lisa Schwarzbaum concurs:

[Women] dominate the [commercial television] audience. Women 18 and over constitute 60% of the viewers of prime-time network TV and 46% of prime-time cable. In the 80s, their network-viewing majority was boosted when cable began drawing men away with its heavy diet of sports and news. . . . [S]ilk-and-steel public defender Joyce Davenport appeared on *Hill Street Blues*. . . . Next came . . . the attorneys who gave lawsuits new meaning on the well-dressed *L.A. Law*. . . .

Lisa Schwarzbaum, *We're Gonna Make it After All*, WORKING WOMAN, Oct. 1995, at 34.

70. Glamorous but gritty Joyce Davenport would have graduated from law school around 1975, along with the first wave of women lawyers and viewers.

71. For example, today's law students and wet-behind-the-ears new lawyers can relate to recent graduates *The Practice's* Lindsay Dole and *Ally McBeal's* Georgia Thomas, or slightly more experienced but sometimes overwhelmed lawyers like *Ally McBeal* and *The Practice's* Helen Gamble. High-ranking attorneys might have identified with *Murder One's* Miriam Grasso or *Feds's* Erica Stanton. Ambitious strivers can look to *Feds's* Jessica Graham or *Murder One's* Justine Appleton. Mid-career lawyers (and others) struggling to balance career and family laughed with Lisa Hunter from *Life's Work* and cried with *NYPD Blue's* Sylvia Costas and *Chicago Hope's* Gina Wilkes. Singles (or those who remember being single) share the humor of *Living Single's* Maxine and *Sparks's* Wilma. Newlyweds may identify with *Arsenio's* Vivian Atwood, and divorcees with *Law & Order's* Jamie Ross.

72. Schwarzbaum, *supra* note 69, at 33.

73. Jubera, *supra* note 68, at 8L.

noticed the results. As one critic said, "If the blond bimbos, stripping housewives and "Milk Money" hookers in this summer's rash of misogynistic movies make you queasy, try a home remedy. Turn on your TV set."⁷⁴

Undoubtedly, the networks' real customers—advertisers, not viewers—analyze and ultimately shape the content and style of programs with a goal toward moving products. Advertising agencies unabashedly characterize the symbiotic relationship between television programs and the sale of consumer products as "a marriage made in heaven."⁷⁵ Discovering which products can be most successfully advertised during commercial breaks in a program is the key to television advertising. Crucial interpretive tools are themes of validation and escape. A program provides its viewers with validation when it assures them that the lifestyles they choose, the decisions they make, and the values they hold are correct.⁷⁶ Programs provide escape in the form of "some relief from the world in which they [have] to cope, giving them a picture of some idealized existence as far away from their own as possible."⁷⁷

Both of these themes are detected in representations of women lawyers. Regardless of one's phase of life or area of practice, a woman lawyer or other professional can find validation in a similar character on television. Television encourages a woman's freedom to choose, be it private practice or public service; marriage or the single life; children or no children. In addition, the legal profession is portrayed as a positive choice for both Black and White women.⁷⁸

Television's glamorization of the legal profession also provides some measure of escape, for both women lawyers and non-lawyers. Unlike working attorneys, television lawyers do not spend months in discovery, try boring cases, or argue trivial motions. Even when television cases settle before trial, the settlement itself is exciting. Characters do not spend much time reading or writing, nor explaining to clients why documents are not yet drafted. For the non-lawyer viewer, the image is fascinating, glamorous, and dramatic. However, most lawyers know otherwise. Significant percentages of lawyers surveyed complain about the monotony and boredom of their jobs.⁷⁹

74. Schaefer, *supra* note 69, at NC1.

75. Betsy Frank & Myra Stark, *Semiotics and Entertainment: A Marriage Made in Heaven*, 35 J. ADVERTISING RES. RC2 (1995).

76. *Id.*

77. *Id.*

78. For a discussion of the invisibility of other races, see *infra* Part V.B.

79. Raquel Avina Hunter, *The Alarming Growth of Dissatisfaction Among Lawyers*, 4 UCLA WOMEN'S L.J. 117, 123 (1993) (book review).

For the working woman lawyer, steeped in the daily realities of law practice, the televised world of law is a special kind of escape. It may remind her of why she entered the profession, renew her idealism and create positive feelings of status and importance. Each episode or storyline can provide satisfying feelings of closure absent from real-world practice, and the professional viewer can take heart from being in the company of such smart, beautiful, and committed women lawyers.

The themes Professor Shapiro identified in cinematic representations are considerably muted, if not absent altogether, on television.⁸⁰ As in the movies, most of the televised women lawyer characters are reasonably creditable as attorneys. Only a handful are embarrassments, and they have already been forgotten by the viewing public. For example, divorce lawyer Sydney Guilford of *Civil Wars* posed topless for a photographer in the first breast-baring scene on prime-time commercial television.⁸¹ Public Defender Veronica Gilbert on the premiere of *Courthouse* called a judge an "asshole" and was thrown in jail for contempt.⁸²

While almost three-quarters of television women lawyers are single, this is not presented as an unhappy status. The characters are not desperately chasing men, and are neither sexually repressed nor voracious femmes fatales. For example, although Ally McBeal wishes she was married, she is not attempting to break up the marriage of her ex-boyfriend Billy and his wife Georgia, a co-associate at the firm.⁸³

In contrast to movies, many female lawyers characters on television are mothers and are usually considered to be "good mothers." Only one, "Reggie Love" (Jobeth Williams) of CBS's *The Client*, did not have custody of her children, but she fought to regain it.⁸⁴ Divorced mother Jennifer Greene, although an unsympathetic character to some after cheating on *ER*'s good-hearted "Dr. Mark Greene" (Anthony Edwards), was always presented as a good mother to their daughter.⁸⁵ More typical are characters like Lisa Hunter, of *Life's Work*, Ann Kelsey of *L.A. Law*, and Sylvia Costas of *NYPD Blue*, each of whom are devoted to both job and family, and anxious about meeting their competing demands.

80. See *supra* text accompanying notes 56–67.

81. See *Civil Wars: Grin and Bare It* (ABC television broadcast, Sept. 30, 1992).

82. See *Courthouse: Premiere* (CBS television broadcast, Oct. 1995). Again, art may have imitated life. See Standing Comm. on Discipline v. Yagman, 55 F.3d 1430 (9th Cir. 1995) (discussing disciplinary proceedings brought against an attorney for criticizing a Federal District Judge).

83. See *Ally McBeal* (Fox television broadcast, 1997–Present).

84. See *The Client* (CBS television broadcast, 1995).

85. Lon Grahnke, *Popular Pops Face Tests in Their Emotional Lives*, CHI. SUN-TIMES, June 16, 1996, at 4.

As in film, the theme of cross-class coupling appears on television. Approximately one third of television women lawyers are married or are involved with policemen, detectives, athletic coaches, or other non-professionals.⁸⁶ More than half are paired with lawyers or doctors.⁸⁷ The working-class spouses and boyfriends are also decent men, in contrast with the unsavory characters paired with cinematic lawyers.⁸⁸

Although television portrayals are more favorable than movie portrayals, “[a]s in the real world . . . we’re not in paradise yet.”⁸⁹ When compared to men, women do not play as many powerful roles. In addition, the majority of women find it hard to successfully balance work with relationships.⁹⁰ Many people long for “[m]ore lead actresses driving hour-long dramas. More women of color. More working-class women. More women who . . . resemble real women.”⁹¹

B. Does Bias Matter . . . or Should Art Imitate Life?

The following data compares the fictional women’s bar to the actual women’s bar, revealing patterns of over-representation and under-representation of particular traits. The collective result of these biases is that the lives of female television lawyers do not accurately represent the normal life experiences of most women lawyers.

Whether this misrepresentation harms anyone, and whether it is the responsibility of television producers to represent the legal profession in an accurate manner, are lingering questions. While some critics of television denounce its inaccuracy, others desire it, at least in those forms that give television a cultural leadership position. The notion that “life imitates art” is expressed by Eugenia Ross-Leming in her praise of *L.A. Law*:

People start imitating the fantasy. *L.A. Law* validated women lawyers. They were no longer oddities. So when you turned on the TV, you expected [to see] Leslie Abrahamson commentating on the Simpson trial. Half the lawyers doing commentary . . . were women. After seven years of *L.A. Law*, you expected to see them.⁹²

86. See discussion *supra* Part II and discussion *infra* Part V.

87. See discussion *supra* Part II.

88. See discussion *supra* Part II.

89. Schwarzbaum, *supra* note 69, at 33.

90. See *id.*

91. Juber, *supra* note 68, at 8L.

92. See *id.* at 8L (quoting Eugenia Ross-Leming, executive producer of *Lois & Clark: The New Adventures of Superman* (ABC television broadcast, 1993–97)).

The "role model" approach encourages and celebrates the appearance of non-traditional characters like *L.A. Law*'s bisexual C.J. Lamb and overweight Susan Bloom, *Reasonable Doubt*'s hearing-impaired "Tess Kaufman" (Marlee Matlin), and *Sweet Justice*'s⁹³ Black single mother "Reese Dawkins" (Cree Summer)—without regard to the actual percentage of practicing lawyers with such traits.

This Article does not suggest that those who produce and write for television are under any obligation to mirror the profession in gender, racial, geographic, socio-economic, practice area, or any other terms. Television writers and producers cannot be expected to present a more "realistic" portrayal of women attorneys, any more than we can expect less attractive attorneys or trials of boring cases. Serialized television is an entertainment medium, whether drama or comedy, and makers of television programs will create characters and select casts based on what they believe will entertain and sell. That is their prerogative; ours is to view critically.

V. INTRODUCTION TO FINDINGS AND CASE STUDIES

The data in this Part is silent as to whether television should reflect or lead the community. However, where inaccuracies result in the total absence on television of statistically significant segments of the actual bar (for example, Asian female and Latina lawyers, in-house counsel, lawyers in "mega-firms" of 100 or more lawyers), there is a concern that viewers, including both potential lawyers and clients, are obtaining an inaccurate picture of the legal profession. Television may breed complacency in other ways by presenting a utopian picture of the legal profession with fewer barriers of race and gender than women actually encounter.

The quantitative accuracy of the representations of women lawyers on television, evaluated as a representative sampling of the actual female bar, was examined through the following four subjects: practice areas, race, marital status and partner occupation, and motherhood. The discussion of each subject includes an overview of the empirical data, a presentation of the television data, an analysis of bias, and detailed "case studies" of television characters who illuminate that particular subject.⁹⁴

93. *Sweet Justice* (NBC television broadcast, 1994–95).

94. The data was compiled for female characters only. Thus, this Article does not explore whether female lawyers in general are over-represented or under-represented among all lawyers on television. No conclusion can be drawn as to whether certain forms of bias afflict all representations of lawyers on television, regardless of gender. The empirical data about the actual bar, however, will sometimes present different statistics about men and women where this seems significant.

A. Practice Areas

1. Empirical Data

Private law practice employs the largest percentage of lawyers. Since the 1960s, the percentage of lawyers in private practice has remained steady at 72–76%.⁹⁵ This figure is not accurate for female attorneys, although the percentage of female attorneys in private practice is increasing. In 1980, nearly 60% of female attorneys were in private practice.⁹⁶ By 1991, the percentage had grown to 72%.⁹⁷ A 1990 American Bar Association Young Lawyers Division survey found that 61% of female attorneys practiced in the private sphere.⁹⁸ Other studies show similar results.

A 1980 study reported only 56% of women lawyers in private practice.⁹⁹ In 1990, 66.4% of all female lawyers were in private practice.¹⁰⁰ A study of female University of Michigan Law School graduates from 1976 to 1979 indicated that five years after graduation, among those practicing law, 44% were in private practice.¹⁰¹ Taken together, these studies suggest that the percentage of women in private practice has risen from roughly 55–60% in 1980 to 65–70% today.

Lewis A. Kornhauser and Richard L. Revesz reported that by 1991, just 44.7% of private practitioners worked solo, down from 60.8% in 1960.¹⁰² Professor Robert L. Nelson found that the older the woman lawyer, the likelier she was to practice alone or in a firm of four or fewer lawyers.¹⁰³ Among all women working in private firms, 56.9% work in

95. Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 N.Y.U. L. REV. 829, 839 (1995).

96. *Id.* at 850.

97. *Id.*

98. THE STATE OF THE LEGAL PROFESSION 1990 63 (ABA Young Law. Div. ed., 1991). State studies reveal approximately the same situation. In 1990, 53% of the women lawyers in Indiana were in private practice, in Wisconsin in 1987, only 44% were in private practice, and in New Hampshire in 1988, the representation was 68%. *Report of the New Hampshire Bar Association Task Force on Women in the Bar*, 29 N.H. BAR J. 213 (1988).

99. Beverly J. Ross, *Does Diversity in Legal Scholarship Make a Difference?: A Look at the Law of Rape*, 100 DICK. L. REV. 795 (1996).

100. Robert L. Nelson, *The Futures of American Lawyers: A Demographic Profile of a Changing Profession in Society*, 44 CASE W. RES. L. REV. 345, 400 (1994).

101. David L. Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 L. & SOC. INQUIRY 251, 261–62 (1989).

102. Kornhauser & Revesz, *supra* note 95, at 839.

103. Nelson, *supra* note 100, 402–03.

firms with four or fewer lawyers.¹⁰⁴ Broken down by age, 56.9% of all women under forty working for private firms worked at firms of four or fewer lawyers, while 74.1% of women forty and over working in private firms worked in similar small firms. Of all women in private practice, 14% worked in "mega-firms" of more than 100 lawyers. For women under forty who work in private practice, 16.4% work in such mega-firms. The percentage of women over forty working for large firms is only 7.8%.¹⁰⁵ Just under 30% of women worked in firms of five to one hundred lawyers, 32.7% of those under forty, and only 18.1% of those over forty.¹⁰⁶

In-house legal and non-legal corporate work has remained steady for decades at about 10% of the population of active lawyers.¹⁰⁷ The most recent figure is 9.2% in 1991.¹⁰⁸ Figures for women are consistent. Professor Nelson reports that private industry accounts for 9.4% of all women lawyers, 9.8% of those under forty, and 8.3% of those over forty.¹⁰⁹

Government work has long been a preferred option for female law graduates. Supreme Court Justice Ruth Bader Ginsburg's first job was as a judicial clerk.¹¹⁰ In 1980, 9.8% of all lawyers were government lawyers, 39.9% of whom worked specifically for the federal government (3.9% of the total).¹¹¹ In that year, 18.2% of female attorneys and only 9.1% of male attorneys were in government positions.¹¹² An ABA report estimated that 13% of female attorneys and 7.2% of male attorneys in 1988 worked in public sector jobs.¹¹³ In 1991, 12% of women attorneys worked in government, compared to only 7% of male attorneys.¹¹⁴ In 1988, 4.8% of all women attorneys worked in federal government positions, and 8.1% in either state or local government positions.¹¹⁵ By 1991, government

104. *Id.*

105. *Id.*

106. *Id.*

107. Kornhauser & Revesz, *supra* note 95, at 841.

108. *Id.*

109. Nelson, *supra* note 100, at 400-01.

110. Morello, *supra* note 1, at 207.

111. Kornhauser & Revesz, *supra* note 95, at 841-42.

112. *Id.* at 841-42, 850.

113. See Grace M. Giesel, *The Business Client is a Woman: The Effect of Women as In-House Counsel on Women in Law Firms and the Legal Profession*, 72 NEB. L. REV. 760, 777 n.36 (1993) (citing COMMISSION ON WOMEN IN THE PROFESSION REPORT TO THE HOUSE OF DELEGATES (ABA ed., 1988)).

114. Kaae, *supra* note 4, at 35.

115. Nelson, *supra* note 100, at 400. Compare the figures for male attorneys. In 1988, 2.9% of all male attorneys worked in federal government positions, with 4.2% in either state or local government positions. *Id.*

lawyers constituted 8.6% of the profession in general, 42.3% (3.6% of the total) of whom worked specifically for the federal government.¹¹⁶

Research at the state level in Indiana revealed that 16.6% of female attorneys and 5.1% of male attorneys worked in the public sector.¹¹⁷ According to Professor Beverly Ross, "Statistics are not readily available detailing the number of women who have become state prosecutors We do know that a much higher proportion of women than men become government lawyers of all kinds: seventeen percent of women lawyers compared to only nine percent of men."¹¹⁸ In Professor Nelson's sample, government lawyers comprise 12.9% of women lawyers, more than one third of whom (4.8% of the total) work for the federal government.¹¹⁹ Slightly more of the lawyers under forty work in non-federal government jobs than lawyers over forty (8.4% vs. 7.1%).¹²⁰ In summary, the percentage of women lawyers in government jobs has fallen slightly, from nearly 20% to approximately 13%.¹²¹ Currently, less than 5% of all women lawyers work for the federal government.¹²²

For the purposes of this Article, "public interest" lawyers include legal aid lawyers, public defenders, professors and lawyers who work for organizations such as the ACLU and the NAACP Legal Defense and Education Fund.¹²³ This small sector represents 3% of the active bar in 1991 (approximately 23,000 lawyers).¹²⁴ In 1980, 9.2% of female attorneys and only 3.2% of male attorneys worked in public interest.¹²⁵ By 1991 this percentage decreased to 4.9% of female attorneys and 2.4% of male attorneys.¹²⁶ Public defense and legal aid together employ 2.3% of

116. Kornhauser & Revesz, *supra* note 95, at 841-42, 850. In 1991, 8.5% of all female attorneys and 7.7% of all male attorneys were in government positions. *Id.* at 850.

117. Ann J. Gellis, *Great Expectations: Women in the Legal Profession, A Commentary on State Studies*, 66 IND. L.J. 941, 944 (1990).

118. Ross, *supra* note 99, at 846-47.

119. Nelson, *supra* note 100, at 400. The latter figure does not vary by age.

120. Kornhauser & Revesz, *supra* note 95, at 857. In one relatively small job classification, clerkships for federal judges, women are over-represented by comparison to their presence in law school. Currently, women represent 40% of all law school students. *Id.* However, the proportion of women law clerks has increased from about one-seventh in 1972, to about one-third in 1976, and has been close to one-half since 1980. *Id.*

121. Nelson, *supra* note 100, at 400-01.

122. *Id.* at 401.

123. Kornhauser & Revesz, *supra* note 95, at 842. Kornhauser and Revesz found professors were 35.4% of the public interest sector. *Id.* at 843. Thus, the non-professor public interest sector includes 2% of the active bar. *Id.*

124. *Id.* at 843.

125. *Id.* at 850.

126. *Id.*

all women lawyers, 2.5% of those under forty, and 1.7% of those over forty.¹²⁷

An "inactive" sector of the legal profession includes 4.3% of all women lawyers, 2.9% of those under forty, 8% of those over forty.¹²⁸ Among the University of Michigan Law School graduates from 1976 to 1979, five years after receiving their J.D., 19% did not have legal employment and 4% were at home as full-time parents.¹²⁹

2. Television Data

Female television lawyers work in both large and small firms. Their employment covers the spectrum: federal, state, and local prosecutors, judicial clerks, military lawyers; public defenders and private criminal defense attorneys; family lawyers; and public interest attorneys. Nevertheless, important practice areas are entirely absent. Although 8–9% of women lawyers are employed as in-house counsel or are involved in corporate work, this career option is unavailable on television.¹³⁰ Similarly, the "mega-firm" setting, which is absorbing a growing percentage of women lawyers and is regarded by many as the very avatar of the contemporary law firm, is never seen.¹³¹ Furthermore, because this sample concentrates only on characters who are actually practicing law, another under-represented group on television are the women holding juris doctor degrees, yet not employed in law-related jobs.¹³²

Private practice represents 44.8% (50.7%) of all women lawyers on television.¹³³ For all shows premiering after 1980, 45.9% (50%) of the women lawyers are private practitioners.¹³⁴ For those programs that have continued into or began in the 1990s, this figure increases to 51.4% (53.7%).¹³⁵ Among television attorneys over forty years old in 1990,

127. Nelson, *supra* note 100, at 400–01. Another study also found that 2.3% of women attorneys work in legal aid or public defender offices. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* at 405.

131. It is possible that some of the female lawyers on non-legal shows who are never seen at work are employed at such firms (e.g., Clair Huxtable of *The Cosby Show*, Gina Wilkes of *Chicago Hope*). The size of the firm "Laura Hughes Kelly" (Sherry Stingfield) of *NYPD Blue* joins is unknown, and *The Associates* aired before the rise of the mega-firm in popular consciousness. See *The Associates* (ABC television broadcast, Sept. 23, 1979 to October 28, 1979).

132. Attorney Sylvia Costas of *NYPD Blue*, however, is contemplating staying home as a full-time parent. See *NYPD Blue* (ABC television broadcast, 1993–Present).

133. See discussion *supra* Part II.

134. See discussion *supra* Part II.

135. See discussion *supra* Part II.

52.6% were in private practice; among those under forty, 52.1% were in private practice.¹³⁶ In other words, television tracks women lawyers in private practice, but lags behind real-life statistics by roughly 10%.¹³⁷ Television has also failed to reflect that private practice is the preferred employment setting for young lawyers.¹³⁸ This neglect may be due to the large firm's impersonal environment, which does not contribute to the fictionalized creation of "work families," settings where everyone knows each other and individual idiosyncrasies can be cosseted.

Among television women lawyers in private practice, 37.7% (42%) work in small firms (consisting of four or fewer lawyers).¹³⁹ This figure is a substantial under-representation, but is much closer to the real representation of younger lawyers.¹⁴⁰

Becoming a government lawyer is a more popular choice for television women lawyers than for real women lawyers. More than a third (34.4% (34.7%)) of women lawyers work in this setting on television, almost three times as many as in real life.¹⁴¹ While *Feds* was briefly on the air, television federal prosecutors represented 5.2% (9.3%) of all women lawyers, a percentage closer to reality.¹⁴²

The public interest category (including public defenders) comprises 15.9% of the television bar, at least one-and-a-half times the actual percentage.¹⁴³ Of women lawyers on television, 12.6% (9.3%) are public defenders, more than five times the actual 2.3% of women lawyers so employed.¹⁴⁴ Private criminal defense includes 9.6% (10.7%) of the women of the television bar.¹⁴⁵ This figure is a slight underestimate as some programs categorized as a "small firm" (such as the firm in *The Practice*) do a fraction of criminal defense work.¹⁴⁶ Together, female public defenders and private criminal defense attorneys represent 22.2% (20%) of the television bar, an estimate far in excess of the actual numbers.¹⁴⁷

136. See discussion *supra* Part II.

137. See Nelson, *supra* note 100, at 400 (representing 1988 figures).

138. See discussion *supra* notes 79–82.

139. See discussion *supra* Part II.

140. See Nelson, *supra* note 100, at 402 (representing 1988 figures).

141. See *id.*

142. See *id.* David Caruso's new show, *Michael Hayes* (CBS television broadcast, 1997–Present), which features two female assistant U.S. Attorneys, preserves this figure.

143. See Kornhauser & Revesz, *supra* note 95, at 850.

144. Nelson, *supra* note 100, at 400.

145. See *id.*

146. See *The Practice* (ABC television broadcast, 1997–Present).

147. The Report of the Special Committee on Race and Ethnicity to the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias, 64 GEO. WASH. L. REV 189 (1996), stated that 14% of

Thus, television suggests that many more women attorneys are part of the criminal prosecution and defense system than are actually employed in those categories.¹⁴⁸ On television, a majority of women lawyers are involved in the criminal rather than in the civil justice system. However, in real life, civil lawyers outnumber criminal lawyers by more than two to one.¹⁴⁹

3. Case Study: Claire Kincaid, *Law & Order*, 1990–96

Law & Order is an hour-long night-time crime drama set in New York City.¹⁵⁰ The show has successfully weathered several important cast changes, but during the relevant period, the “police” portion of the show featured two White male detectives and their Black female police chief.¹⁵¹ The “courtroom” portion featured two assistant district attorneys, “Ben Stone” (Michael Moriarty), a middle-aged White man (later “Jack McCoy” (Sam Waterston)), and Claire Kincaid, a young White woman, and the sixty-something White male District Attorney “Adam Schiff” (Steven Hill).¹⁵²

The show does not reveal Claire’s previous legal experience.¹⁵³ She clearly appears, however, to be about fifteen years younger than either “Ben Stone” or “Jack McCoy,” and when she first appeared was under

African American lawyers practice in the area of criminal defense, while 7–8% of White, Asian, and Hispanic lawyers practice in this area. *Id.* at 225. It is agreed that “[t]he criminal defense bar represents a very small percentage of the total number of lawyers in America.” David Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799, 865 (1992). Eighty-three percent of criminal defense attorneys belonged to firms with 10 or fewer attorneys, or were also solo practitioners, according to a survey by the National Association of Criminal Defense Lawyers, which, with 3950 members, claims to be the “single largest membership organization of criminal defense lawyers in the United States. Alan Jacobs, *Indirect Deprivation of the Effective Assistance of Counsel: The Prospective Prosecution of Criminal Defense Attorneys for ‘Money Laundering,’* 34 N.Y.U. SCH. L. REV. 303, 348 (1989).

148. See *supra* text accompanying notes 95–98 (reporting that between 60% and 72% of women lawyers were in private practice from 1980 to 1990).

149. See discussion *supra* Part II.

150. MCNEIL, *supra* note 5, at 471. The show has a unique structure. The first half involves a police procedural melodrama, where a crime is committed or discovered and the police investigate, leading to an arrest. The second half is a courtroom drama, centering on the suspect’s, now defendant’s, trial. *Id.* From 1963 to 1964, ABC’s *Arrest and Trial* employed a similar format (45 minutes of police drama, and 45 minutes of courtroom drama), although the leading lawyer character was a public defender, rather than a prosecutor. *Id.* at 57, 471.

151. *Id.*

152. *Id.* Notably, the 1990 pilot for the show featured no significant recurring female characters. Assistant District Attorney Ben Stone’s junior colleague was a young Black man, and the police lieutenant (now a Black woman) was a middle-aged White man. *Id.*

153. See *Law & Order* (NBC television broadcast, 1990–Present).

thirty years old.¹⁵⁴ While the men she worked with were ordinary-looking, Claire was strikingly beautiful. Like her male colleagues, she usually wore sober navy blue or gray suits, hers with skirts.¹⁵⁵

In the 1993 episode entitled *Profile*, Claire assists in the prosecution of a white supremacist serial killer, "Arthur Tunney."¹⁵⁶ Claire is first seen at the bedside of an elderly Black survivor of Tunney's gunshot, silent and unidentified.¹⁵⁷ Her first legal activity involves the arraignment of the suspect (presided over by a female judge), where she requests that the defendant be held without bail.¹⁵⁸ Over defense counsel's objection, she succeeds.¹⁵⁹

Several themes characterize Claire Kincaid's presence: she is subordinate, tentative or interrogatory, and relatively naïve. Claire Kincaid is clearly Ben Stone's subordinate, not his equal.¹⁶⁰ The defense counsel speaks almost exclusively to Stone.¹⁶¹ When the assistant district attorneys are paged, it is Kincaid who must leave to respond.¹⁶² In a meeting with Stone and Schiff, Stone dominates the conversation and instructs Kincaid to perform the footwork.¹⁶³ At the trial, she sits second chair to Stone and does not speak.¹⁶⁴ When a plea is to be offered, Stone makes the call.¹⁶⁵ After Stone loses his temper with a judge who released the suspect, Kincaid calms him down, and offers to get a warrant from a sympathetic judge she "used to work for," a sign of her experience and connections.¹⁶⁶ At the same time, she apologizes for perhaps having acted "inappropriately" by interrupting Stone before the judge.¹⁶⁷ Stone accepts the idea of getting a warrant, but says he will do it himself and that she should find Tunney.¹⁶⁸

Kincaid speaks in an interrogatory or tentative way.¹⁶⁹ After the district attorney relates a tasteless racist joke he heard at a dinner party,

154. *See id.*

155. *See id.*

156. *See Law & Order: Profile* (NBC television broadcast, 1993).

157. *See id.*

158. *See id.*

159. *See id.*

160. *See id.*

161. *See id.*

162. *See Law & Order: Profile* (NBC television broadcast, 1993).

163. *See id.*

164. *See id.*

165. *See id.*

166. *See id.*

167. *See id.*

168. *See Law & Order: Profile* (NBC television broadcast, 1993).

169. *See id.*

Kincaid questions "how could anybody think" such a joke was funny, before opining that "people make scapegoats out of minorities."¹⁷⁰ When she delivers a defense witness list to Stone, he informs her that the defense intends to use a prosecution expert against them.¹⁷¹ "What?" Kincaid asks, inviting Stone to explain how.¹⁷² When Stone and Schiff hash out a plea agreement, she asks, "Will [the defendant's attorney] take it?"¹⁷³ When Tunney's brother-in-law leads the police and Kincaid to a storage locker that contains decisive incriminating evidence, she says, "You didn't know, Mr. Bradley?"¹⁷⁴

When she displays verbal confidence, an older man typically corrects her, suggesting she is naïve.¹⁷⁵ For example, when Kincaid resists a plea bargain because she thinks she can get a conviction, the district attorney remarks, "The goal, Miss Kincaid, is to keep Tunney off the street."¹⁷⁶ When she belittles defense arguments as "only words," he reminds her, "[W]ords is what we do around here, Miss Kincaid."¹⁷⁷ She is also depicted as a less effective prosecutor than Stone.¹⁷⁸ She fails to talk Tunney's sister into testifying about racist remarks he made before the murders, despite Kincaid's assurances that Tunney can be kept safe in prison, which is the sister's concern.¹⁷⁹ Stone, rather than Kincaid, correctly perceives that the brother-in-law is the weak link and convinces him to talk.¹⁸⁰

To the show's credit, Kincaid is serious, smart, and makes important contributions. She is not treated as a sex object, nor is there any suggestion that anyone regards a female assistant district attorney as unsuitable. Kincaid is noticeably younger in age and experience than the male lawyers, which "naturalizes" any gender-related subordination.¹⁸¹ She acts as a stand-in for the audience members who need more explanation to the legal process. Thus, Kincaid's continuing capacity to be surprised facilitates our identification with her, yet at the same time disempowers her.

170. *See id.*

171. *See id.*

172. *See id.*

173. *See id.*

174. *See Law & Order: Profile* (NBC television broadcast, 1993).

175. *See id.*

176. *See id.*

177. *See id.*

178. *See id.*

179. *See id.*

180. *See Law & Order: Profile* (NBC television broadcast, 1993).

181. *See id.*

By the 1994 episode *White Rabbit*, Claire's character has changed considerably.¹⁸² The episode's overarching theme is the ambivalent legacy of the '60s. On several occasions, the lawyers remark to Kincaid that she is incapable of understanding the '60s because she did not "experience" the '60s.¹⁸³

Kincaid takes a much more substantial role in the preparation of the case against the defendant, "Susan Forrest."¹⁸⁴ She meets alone with the defendant and obtains a confession.¹⁸⁵ Her role in the actual trial, however, is still secondary. Assistant District Attorney Jack McCoy is first chair and examines all of the witnesses.¹⁸⁶ When Kincaid's failure to discover that Forrest was represented by counsel years before results in the exclusion of her confession, McCoy is harsh, "You didn't pull the police records from 1971?"¹⁸⁷ It is Kincaid, however, who solves the case, by recognizing incriminating evidence against the defendant on an FBI wiretap.¹⁸⁸ Although a jury conviction seems promising, the decision to offer a lesser plea is left solely to McCoy.¹⁸⁹ The deal is made for "Man[slaughter] 1, 8 1/3 to twenty-five [years]."¹⁹⁰ The final line of the episode is McCoy's: "She'll be in jail until 2003. I think the sixties should be over by then."¹⁹¹

Kincaid's tentativeness has been replaced with much greater self-assurance.¹⁹² After obtaining Forrest's confession, Kincaid expresses surprise at McCoy's sympathy for Forrest, reminding him, "She killed a policeman" and "I've never heard you make excuses for a criminal before."¹⁹³ She only seemed unsure regarding the connection between the

182. See *Law & Order: White Rabbit* (NBC television broadcast, 1994). The plot begins as an investigation of a vault company burglary. See *id.* The stolen property is returned; however, a gym bag containing a gun and a great deal of money is not claimed. See *id.* The weapon and proceeds are soon linked to a 1971 armored car robbery of "Newcon Technologies," a defense contractor, carried out by radical anti-Vietnam War protesters. See *id.* The robbery resulted in the death of a policeman, and one of the protesters, Susan Forrest, remains a fugitive. See *id.* Forrest is found, arrested, and tried for murder. See *id.*

183. See *id.*

184. See *id.*

185. See *id.*

186. See *id.*

187. See *id.*

188. See *Law & Order: White Rabbit* (NBC television broadcast, 1994).

189. See *id.*

190. See *id.*

191. See *id.*

192. In her first scene, a meeting with the vault burglar, his lawyer, and the two policeman, she makes the deal. When the policemen are critical ("He does 2 years?" asks one of the officers), she is authoritative: "This is what the vault company wants," she replies. See *id.*

193. See *id.*

evidence and Forrest's involvement in the killing.¹⁹⁴ She asks McCoy, "How do you prove what she really did?"¹⁹⁵

Kincaid's toughness, compared to a sympathetic McCoy, must be placed within the episode's thematic context, in which McCoy regards her as "not getting it" about the '60s war protesters.¹⁹⁶ Kincaid's insistence on prosecuting Forrest for the first degree murder of a policeman appears politically reactionary, simplistic, and naïve in comparison to the more liberal voices of experience. Even Schiff reminisces about the time when he and Forrest's attorney (William Kunstler, as himself) were on the same side, defending protesters.¹⁹⁷ Nevertheless, Kincaid does not accept her superiors' ideology. She defies it. She says incredulously to McCoy and Schiff, "I can't prosecute Susan Forrest because I wasn't at Woodstock?"¹⁹⁸ When McCoy expresses sympathy with Forrest's aims, Kincaid replies, "How many cops did you kill?"¹⁹⁹

At one point, Kincaid does find herself "out-lawyered" by an older White man, but in this case it's William Kunstler.²⁰⁰ Kunstler wins a motion to suppress Forrest's confession on the grounds that he was not present and that he's been her lawyer ever since he appeared for her when she was questioned 23 years before.²⁰¹ Kincaid tries to salvage the situation by reminding Forrest that "You told me you wanted to make amends . . ." but Kunstler has whisked his client out of the room.²⁰² The paradigm has shifted under Kincaid's feet: after being encouraged by her superiors to be sensitive to the moral motives of the defendant, to see that she is not like other criminals, Forrest suddenly turns "strategic," taking advantage of a "technicality" to her legal advantage. Kincaid's sense that the '60s are over, at least as far as this defendant is concerned, turns out to be quite correct.

Claire Kincaid, a popular character among male and female audiences, skillfully combined traits often regarded as contradictory. As Professor Deborah L. Rhode explains,

[E]xperiential and clinical evidence indicates that profiles of successful professionals conflict with profiles of normal or ideal women. The aggressiveness, competitiveness, dedication, and

194. See *Law & Order: White Rabbit* (NBC television broadcast, 1994).

195. See *id.*

196. See *id.*

197. See *id.*

198. See *id.*

199. See *id.*

200. See *Law & Order: White Rabbit* (NBC television broadcast, 1994).

201. See *id.*

202. See *id.*

emotional detachment traditionally presumed necessary for advancement in the most prestigious and well-paid occupations are incompatible with traits commonly viewed as attractive in women: cooperativeness, deference, sensitivity, and self-sacrifice. Despite substantial progress toward gender equality over the last several decades, these gender stereotypes remain remarkably resilient. Females aspiring to nontraditional or high-status positions remain subject to a familiar double bind. Those conforming to traditional characteristics of femininity are often thought lacking in the requisite assertiveness and initiative, yet those conforming to a masculine model of success may be ostracized in work settings as bitchy, aggressive, and uncooperative. As long as aspiring women are found wanting either as professionals or as women, they face substantial disincentives to aspire.²⁰³

Claire Kincaid seemed to offer an escape from this double bind. As a prosecutor, she displayed aggression against criminals, competitiveness against defense attorneys, dedication to her job, and at least some degree of emotional detachment. As the character matured, she became more assertive about her position and took further initiative. At the same time, she was cooperative with her fellow district attorneys and the police, deferential when necessary to Stone, McCoy, and Schiff, sensitive to witnesses and co-workers, and self-sacrificing in her willingness to prosecute a case other than the way she would prefer.

B. Race

1. Empirical Data

In 1970, attorneys of color represented only 1.3% of the profession, whereas in 1980, that figure rose to almost 5%.²⁰⁴ Carl Tobias reported that "the total number of African-American, Latino and Asian-American lawyers increased from 23,000 in 1980 to 51,000 in 1989."²⁰⁵ According to the American Bar Association, there were 7300 minority women

203. Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163, 1182-83 (1988).

204. Kornhauser & Revesz, *supra* note 95, at 860.

205. Carl Tobias, *President Clinton's Covenant and the Federal Courts*, 71 DENV. U. L. REV. 253, 254 (1993). Blacks and Hispanics comprised approximately 12% and 9% of the U.S. population, respectively. WORLD ALMANAC AND BOOK OF FACTS 1992 72 (Mark S. Hoffman ed., 1991).

attorneys in 1980.²⁰⁶ By 1990, that number had grown to 23,000.²⁰⁷ During the academic year 1990–91, over 5000 Hispanic and 4300 Asian law students were enrolled in ABA-approved law schools, just slightly over 7% of total law school enrollment.²⁰⁸

Unfortunately, an Asian or Hispanic female lawyer has never been a regular character on prime-time network television. As a result, the following discussion will be confined to Black female attorneys.

It is extremely difficult to compile accurate statistics about Black women lawyers because most race and gender studies categorize lawyers as either Black or women, rather than Black women.²⁰⁹ Whether Black women's experience more closely parallels that of *all Blacks* or *all women* remains unknown.²¹⁰ Judge Patricia M. Wald of the United States Court of Appeals for the District of Columbia Circuit explained the practical impact of the "invisibility" of women lawyers of color:

Women . . . reported disproportionate experiences of not being recognized in the courthouse as lawyers. Of the lawyers who participated in the survey, a significantly higher percentage of black women lawyers (thirty-three percent) than lawyers in any other category (one to ten percent) reported nonrecognition by federal judges; but over fifty percent of all responding women lawyers had not been recognized as such by nonjudicial courthouse personnel. . . . [O]n a gut level, women, and particularly women of color, still do not look like lawyers and judges even to courthouse employees and some judges.²¹¹

Estimates of the proportion of Black lawyers in the American bar today range from 2–4%.²¹² In 1983, of the 651,000 lawyers and judges in

206. Kaae, *supra* note 4, at 35.

207. *Id.*

208. See Nelson, *supra* note 100, at 404.

209. One exception is the report by Allison Accurso, *Breaking the Partnership Barrier in Large Law Firms*, 171-Sep. N.J. LAW. 29 (1995), who, in a discussion of statistics about women lawyers in the twenty largest New Jersey law firms, notes, "Moreover, the 'women' of these statistics are almost exclusively white women." *Id.* at 30. Accurso notes, critically, that "[t]he Law Journal survey, like most, does not break out the number of women of color within the numbers for either women attorneys generally or minorities generally," and also states that "[t]here is only one African-American woman partner [out of approximately 100 women partners] in New Jersey's 20 largest firms." *Id.*

210. Note, however, that some data suggest that race is the more salient factor. See discussion *supra* note 209.

211. Patricia M. Wald, *Glass Ceilings and Open Doors: A Reaction*, 64 FORDHAM L. REV. 603, 613–14 (1996).

212. Tobias, *supra* note 205, at 254.

America, 17,577, or 2.7%, were Black.²¹³ Ten years later, of the 815,000 lawyers and judges in America, 22,820, or 2.8%, were Black.²¹⁴ In 1988, Blacks represented approximately 4% of all law school graduates.²¹⁵ The most recent *National Directory of Legal Employers* reports that in 1990, 3% of U.S. lawyers were Black, and 2.3% of all male lawyers were Black.²¹⁶ In a survey by the *National Law Journal* in 1989, 1097 of 62,895 lawyers polled, or less than 2%, described themselves as Black.²¹⁷ In 1992, a study optimistically suggested that Black lawyers represented about 3.5% of the legal profession.²¹⁸

Relying on an analysis by the *National Bar Association Magazine* of the status of African-American lawyers, a report noted that 80% of all Black lawyers practiced in only ten states, a practice profile that is "at marked variance with the distribution of majority lawyers."²¹⁹ Professor David Wilkins and G. Mitu Gulati's study of Black Harvard Law School graduates found that of those who had graduated in the past ten years, 32% worked in corporate practice.²²⁰ In the early 1990s, only 3-4% of associates and less than 2% of partners in elite law firms were Black.²²¹

213. For historical perspective, "[a]ccording to the 1930 census there were 1230 Negro lawyers in the United States in 1930 as against 159,735 White lawyers." Charles H. Houston, *The Need for Negro Lawyers*, 4 J. NEGRO EDUC. 49 (1935).

214. Anne R. Carey & Suzy Parker, *Blacks in the Legal Profession*, USA TODAY, Feb. 20, 1995, at A1.

215. See generally MINORITY DATABOOK: MINORITY PARTICIPATION IN LEGAL EDUCATION AND THE PROFESSION 69-70 (Law School Admission Services ed., 1990).

216. See NATIONAL DIRECTORY OF LEGAL EMPLOYERS (National Ass'n for Law Placement ed., 1996).

217. Rita Henley Jensen, *Minorities Didn't Share in Firm Growth*, NAT'L L.J., Feb. 19, 1990, at 28.

218. Alex M. Johnson, Jr., *Defending the Use of Quotas in Affirmative Action: Attacking Racism in the Nineties*, 1992 U. ILL. L. REV. 1043, 1044. Tobias maintains that there were nearly 30,000 Black attorneys by that date, which would be approximately four percent. Tobias, *supra* note 205, at 254.

219. Burnele V. Powell, *Somewhere Farther Down the Line: MacCrate on Multiculturalism and the Information Age*, 69 WASH. L. REV. 637, 647 (1994).

220. David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 575 (1996).

221. See Elizabeth Chambliss, *Organization Determinants of Law Firm Integration*, 46 AM. U. L. REV. 669, 695-99 (1997) (reporting 2.3% Black associates and 0.8% Black partners in a 1990 nationwide study); Kornhauser & Revesz, *supra* note 95, at 852, 862 (reporting 4.3% Black associates and 1.7% Black partners in 1991); see generally Wilkins & Gulati, *supra* note 220, at 496. Comparable figures for women range around 36-41% of associates and 9-11% of partners. See Chambliss, *supra*, at 696 (reporting 36.2% of associates and 10.3% of partners in elite law firms were women in 1990); Kornhauser & Revesz, *supra* note 95, at 852, 862 (reporting 41.2% of associates and 11.1% of partners in 1991); Accurso, *supra* note 209, at 30 (reporting the results of a survey of the 20 largest firms in New Jersey stating that 41% of associates and 9.6% of partners were women in a 1990, and that 12% of the partners were women in 1995).

The *National Law Journal* reported that as of 1995, Blacks were 2.4% of all lawyers in corporate firms and just over 1% of their partners.²²²

Seventeen percent of all lawyers employed by federal, state, and local government agencies in the Chicago area are minorities, and minorities serve in 19.5% of all supervisory positions.²²³ Among Black Harvard Law School graduates, 37% worked for the government at some point in their careers.²²⁴ Statistics for Harvard Law School's class of 1991 reveal that 44% of Blacks were employed by law firms, while 40% were employed in either government or clerkship positions.²²⁵ Public interest jobs attracted 5.5% of these new graduates.²²⁶ Historically, Black women were concentrated in legal aid positions, as these were the only jobs they could obtain. As late as 1955, Chicago Legal Aid was 50% female,²²⁷ and 14% Black females,²²⁸ although the Chicago bar was only 3% female, with 0.1% Black females.²²⁹ While Legal Aid employed 0.1% of all lawyers in Chicago, it employed 33% of all female Black lawyers.²³⁰ Between 1965 and 1973 the proportion of women in Legal Aid dropped from 50% to 12%.²³¹

2. Television Data

The most glaring form of under-representation in the racial makeup of women lawyers on television is the complete absence of Asians and Hispanics. In more than twenty years of prime-time representations of female lawyers, not one program has featured an Asian or Hispanic female lawyer as a regular character. Thousands of female Asian and Hispanic law students have attended law school and entered the profession without the benefit of a single television attorney as a role model. Although women lawyers come in all colors, television still broadcasts in black and white.²³²

222. Wilkins & Gulati, *supra* note 220, at 502.

223. *Id.* at 503.

224. *Id.* at 581.

225. Nelson, *supra* note 100, at 378. The latter figure is 25% for all graduates. *Id.*

226. *Id.*

227. See Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 UCLA L. REV. 474, 510 (1985).

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. Although this subject was not researched thoroughly, there are only a handful of male Hispanic lawyer characters on television, of whom Victor Sifuentes (Jimmy Smits) on *L.A. Law* is the most well-known. See *L.A. Law* (NBC television broadcast, 1986-94). No Asian male

As the empirical data above demonstrates, Black women represent a small percentage of the female bar. Their representation on television, however, is impressive. Surprisingly, 13.3% (13.3%) of the women lawyers on television are Black.²³³ Apparently, Clair Huxtable not only made the Black female attorney acceptable, she almost made her *de rigueur*. The anomalous result is that women of color in "token" positions on television are always Black, while other women of color are wholly unrepresented. Some have suggested that the aggressiveness and combativeness of the woman lawyer may conform more closely to stereotypes of Black women, making them a more natural choice.²³⁴

Despite the popularity of government over corporate employment for Black attorneys in real life, television overwhelmingly portrays Black female attorneys in private practice: 94.3% (77.8%) of women lawyers on television are in private practice, compared to only 2.8% (10%) in government work.²³⁵ No Black female attorney was employed by the government on television until 1997, and almost every Black female lawyer was a private practitioner, although a few were involved in public interest work.²³⁶

3. Case Studies: Black Women Lawyers

Each Black woman lawyer on television is briefly described below in the order of appearance:

a. Clair Huxtable, *The Cosby Show*, 1984–92

Clair Huxtable was the wife of Dr. Cliff Huxtable and the mother of five children, ranging in age from a student at Princeton to a preschooler.²³⁷ The Huxtables lived in a beautiful brownstone in New York City. Clair was lovely, perfectly coifed, and never missed a meal with her family. Although she was never portrayed at work, class cues suggest she was an attorney in private practice.

b. Roz Dupree, *Sara*, 1985

Roz Dupree was the wise-cracking best friend of Sara McKenna, her

lawyer characters appear on any program with which the author is familiar.

233. See discussion *supra* Part II.

234. Discussion with members of Professor Kimberle Crenshaw's *Race and Gender Intersectionalities* seminar, UCLA Law School (Mar. 18, 1997), especially Dawn Collins.

235. See discussion *supra* Part II.

236. See discussion *supra* Part II.

237. MCNEIL, *supra* note 5, at 180–82.

colleague at Bay Area Law Offices, a public interest firm in San Francisco.²³⁸

c. Maxine Shaw, *Living Single*, 1993–Present

Maxine Shaw is one of four single friends in their twenties living in New York.²³⁹ She is an outspoken feminist divorce attorney, who becomes involved with stockbroker Kyle Barker.²⁴⁰

d. “Carrie Grace Battle” (Cicely Tyson), *Sweet Justice*, 1994–95

Carrie Grace Battle was the founder and matriarch of a small civil rights firm in a southern town. She was a smart, dignified, and somewhat mysterious older woman lawyer.²⁴¹

e. Reese Dawkins, *Sweet Justice*, 1994–95

Reese Dawkins was one of Battle’s two junior associates and the single mother of an infant.²⁴²

f. Veronica Gilbert, *Courthouse*, 1995

Veronica Gilbert was an outspoken public defender.²⁴³

g. Gina Wilkes, *Chicago Hope*, 1994–97²⁴⁴

Gina Wilkes was the wife of “Dr. Keith Wilkes” (Rocky Carroll), a trauma physician at Chicago Hope Hospital.²⁴⁵ She was an associate in a large Chicago firm, and the couple had one preschool-age son. She miscarried a second (unplanned) pregnancy.²⁴⁶

238. *Id.* at 724.

239. *Id.* at 487.

240. *Id.*

241. *Id.* at 808.

242. *Id.*

243. MCNEIL, *supra* note 5, at 183.

244. Although the program is still on, this character has not appeared during the 1997–98 season.

245. *See Chicago Hope* (CBS television broadcast, 1994–Present).

246. *See id.*

h. Wilma Cuthbert, *Sparks*, 1996–Present

Wilma Cuthbert is a Stanford Law School graduate who goes to work in a storefront legal clinic run by Alonzo Sparks and his two sons, who vie for her attention.²⁴⁷

i. Sandra Broome, *Feds*, 1997

Sandra Broome was an assistant U.S. attorney in Manhattan,²⁴⁸ a civil rights prosecutor.²⁴⁹ A picture of a child sits on her desk; however, the child's relationship to her was not revealed. She was involved with a French diplomat.²⁵⁰

j. Vivian Atwood, *Arsenio*, 1997

Vivian Atwood was a Yale Law School graduate and the newlywed wife of an Atlanta sportscaster.²⁵¹ She was passed over for partner at her firm.²⁵²

k. Renee Raddick, *Ally McBeal*, 1997–Present

Renee Raddick is a deputy district attorney in Boston. She is down-to-earth and level-headed, the roommate and friend of flighty Ally McBeal.²⁵³ The two were classmates at Harvard Law School.²⁵⁴ In the one case the two roommates tried against each other, however, Ally prevailed.

4. Analysis

The representation of Black women lawyers on television is promising. Although they are a distinct minority, television shows a substantially greater percentage than their actual presence in the profession. As a group, they are competent and successful. The leading images of Black women lawyers have also followed a desirable trajectory. For example, Clair Huxtable, the "Superwoman" of the '80s, an ideal

247. See *Sparks* (UPN television broadcast, 1996–Present).

248. See *Feds* (CBS television broadcast, 1997–Present).

249. See *id.*

250. See *id.*

251. See *Arsenio* (ABC television broadcast, 1997).

252. See *id.*

253. See *Ally McBeal* (Fox television broadcast, 1997–Present).

254. See *id.*

mother and a successful, high-earning professional, always had time for family and her home (with no sign of domestic help).²⁵⁵ Huxtable has given way to the more realistic professional working mother Gina Wilkes. Wilkes is saving for a house in an upscale suburb and is ambivalent about an unplanned second pregnancy, despite her devotion to her husband and young son.²⁵⁶ In the second decade of Black women lawyers, government attorneys in both criminal prosecution and defense have been represented by Sandra Broome, Veronica Gilbert, and Renee Raddick.

Even apart from *The Cosby Show*, programs with Black women attorneys have enjoyed modest success. In its first season, Fox's *Living Single*²⁵⁷ consistently scored better ratings than its lead-in, *Martin*,²⁵⁸ and in 1993, the show was "the fourth most popular show on Fox behind 'The Simpsons,' 'Beverly Hills,' '90210' and 'Married . . . With Children.'"²⁵⁹ In 1998, *Ally McBeal* won a Golden Globe for Best Comedy.²⁶⁰

The 1990s portrayed the first Black female-led firm, *Sweet Justice*.²⁶¹ As Cicely Tyson, the show's lead actress noted, "Attorneys abound on TV, but few females on series have actually headed a law firm."²⁶² She correctly stated, "I believe I'm the first Black woman to do so on a weekly drama."²⁶³ Moreover, the program offered a very rare positive portrayal of a Black single mother.²⁶⁴

These positive developments are quite recent, and it is uncertain whether they will take hold. Eight of the ten Black women lawyer characters analyzed (nine of eleven including Renee Raddick) have appeared in the past five years, four of them in the 1996-97 season, including two mid-season replacements that did not return in the fall.²⁶⁵

The roles played by these Black women are subordinate, whether they are "leads" or not. When three mid-season replacement legal shows debuted in March, 1997, two featured Black women lawyers (*Feds* and

255. See *The Cosby Show* (NBC television broadcast, 1984-92).

256. See *Chicago Hope* (CBS television broadcast, 1994-Present).

257. See *Living Single* (Fox television broadcast, 1993-Present).

258. *Martin* (Fox television broadcast, 1992-Present).

259. Greg Braxton, 'Living Single' Is Living Large on Fox; Despite Criticism Over Male-Bashing and Sexual References, the Show Has Found an Audience, L.A. TIMES, Dec. 9, 1993, at F1.

260. *Golden Globe Awards: Golden Globe Winners*, L.A. TIMES, Jan. 19, 1998, at F1.

261. MCNEIL, *supra* note 5, at 808.

262. Jennifer Mangan, *Actresses Elevate TV's Perception of Women*, CHI. TRIB., Feb. 26, 1995, (TV Wk.), at 5.

263. Miki Turner, *Tyson's Passion for Justice Shows in her Latest Part*, ORANGE COUNTY REG., Dec. 3, 1994, at F4.

264. MCNEIL, *supra* note 5, at 808. Unfortunately, the program only lasted a season.

265. See discussion *supra* Part II.

Arsenio). Two newspaper television magazines, however, featured the male lawyer characters from *The Practice* on their covers. One magazine pictured *The Practice*'s White male star Dylan McDermott,²⁶⁶ the other pictured McDermott and his Black male co-star, Steven Harris.²⁶⁷

An unfortunate tendency to impose a "quota" on Black women lawyers persists: one is enough, and sometimes too many. One commentator writes,

Since Phylicia Rashad retired from the airwaves as super-achiever Clair Huxtable on *The Cosby Show* in 1992, TV seems to have room for only one African-American female lawyer at a time. [The fall of 1997 saw] Robin Givens on CBS's *Courthouse*, replacing Cicely Tyson's [sic] on NBC's short-lived *Sweet Justice*.²⁶⁸

While there may be more than one Black woman lawyer on the air, there is rarely more than one on a program. When Robin Givens was cast in *Courthouse*, her character "Susanne Graham," was a public defender.²⁶⁹ By airtime, she had become the prosecutor's passionate and hard-working investigator (and lover).²⁷⁰ Apparently the Black public defender played by Nia Peeples was enough.

Similarly, *The Practice*'s character "Rebecca Washington" (Lisa Gay Hamilton) is a bright, hard-working Black paralegal employed in a firm with one Black male lawyer and four White lawyers (two men and two women).²⁷¹ Renee Raddick is Ally McBeal's friend and roommate, yet there appear to be no Black lawyers at Ally's law firm (male or female).²⁷² The firm's founders are two White men.²⁷³ As Erika Alexander (Maxine Shaw on *Living Single*) puts it, "Black women have not yet arrived (on TV). We're always movin' on up. I'd like to see more done with us in the workplace. It's where we need to evolve. [The networks] are comfortable with keeping us on the couch."²⁷⁴

266. Caryn James, *Lawyers You Can Trust? Almost*, N.Y. TIMES, Mar. 4, 1997, at C18.

267. Manuel Mendoza, *Practice Makes for Perfect T.V.*, DALLAS MORNING NEWS, Mar. 1, 1997, at C1.

268. Schwarzbaum, *supra* note 69, at 33. Note that Robin Givens' character was downgraded to investigator when Nia Peeples was cast as public defender Veronica Gilbert. *See Courthouse* (CBS television broadcast, 1995). Maxine Shaw has been on the air since Clair Huxtable (and *The Cosby Show*) "retired." *See* MCNEIL, *supra* note 5, at 180-82, 487.

269. *See Courthouse* (CBS television broadcast, 1995).

270. *See id.*

271. *See The Practice* (ABC television broadcast, 1997-Present).

272. *See Ally McBeal* (Fox television broadcast, 1997-Present).

273. *See id.*

274. Jubera, *supra* note 68, at 8L.

Alexander is correct to notice that issues of race and gender in the workplace remain taboo.²⁷⁵ Because Clair Huxtable was never seen in a work setting,²⁷⁶ it is unknown whether she encountered obstacles because of her race and gender. A decade later, this subject remains untouched. When Vivian Atwood bemoans being passed over for partner on the premiere of *Arsenio*, she never mentions that race might have been an issue.²⁷⁷ She quips, "I work hard, . . . I got good grades, . . . I was on Law Review," and, alluding to gender, "I wear uncomfortable clothes—and I look good" in comparison to the "bald," "fat" partners who do not appreciate her merits.²⁷⁸ Not only does the show not take her not making partner very seriously, this issue is really used merely as a set-up for an entirely different context.²⁷⁹

On the other hand, in the second episode a reasonably complicated legal ethical issue is handled pretty deftly.²⁸⁰ Atwood's sportscaster-husband Michael has heard rumors about a big sports deal, and he knows that breaking the story could help him establish himself as a serious sports journalist rather than just a retired athlete.²⁸¹ As it happens, Vivian finds out about the deal at work, but of course cannot divulge what she has learned.²⁸² He begs, she refuses, but he respects her refusal and discovers the facts himself.²⁸³ When he proudly calls her at work to tell her what he has learned, she reminds him that if he reports the story, her colleagues will believe she told him, even though she didn't.²⁸⁴ Nevertheless, she tells him she can handle the professional consequences, but he gallantly passes on the story.²⁸⁵ In the final scene, she thanks him for his protectiveness, while reminding him that she doesn't need it.²⁸⁶ While Vivian's professional concerns have definitely progressed further onto the screen than Clair Huxtable's, they are still mostly preamble to the psychological aspects (moods, miscommunication) that are the staple of domestic comedy.

275. *Id.*

276. *See The Cosby Show* (NBC television broadcast, 1984–92).

277. *See Arsenio* (ABC television broadcast, Mar. 1997).

278. *See id.*

279. The show's storyline then concentrates on a misunderstanding between Vivian and her husband. *See id.*

280. *See Arsenio* (ABC television broadcast, 1997).

281. *See id.*

282. *See id.*

283. *See id.*

284. *See id.*

285. *See id.*

286. *See Arsenio* (ABC television broadcast, 1997).

Television history is almost devoid of Black, Hispanic, and Asian female lawyers. *L.A. Law*'s prestigious law firm McKenzie, Brackman, Cheney & Kuzak somehow never hired any woman of color among its large and somewhat volatile legal staff, nor were any minorities represented among the regular or occasional government lawyer characters.²⁸⁷ The show featured a woman partner, a woman associate, and a woman prosecutor from the very beginning.²⁸⁸ Non-White male lawyers followed. In particular, the show featured the brilliant, brash, Black Harvard Law graduate Jonathan Rollins and the principled Hispanic, former Public Defender Victor Sifuentes.²⁸⁹ Furthermore, the show seemed to pride itself on "untraditional" female characters such as bisexual C.J. Lamb, entertainment lawyer and victim of weight discrimination Susan Bloom, and the virginal Christian fundamentalist Jane Halliday.²⁹⁰ Yet no women of color appeared.²⁹¹ This generally liberal show displayed the particular blindness that theorists of "intersectionality" in race and gender studies often describe: an ability to see that even if there are Black and Latino men and White women, there may still be discrimination. The invisibility or marginalization of Black women and other women of color thus went unaddressed and unremedied.²⁹²

The current intersectional dilemma concerns the problematized presence (rather than absence) of the Black woman lawyer. For her alone, her racial identity is assumed to be at odds with her professional identity—even in the comedic setting. Actress Erika Alexander of *Living Single* remarks, "People always ask me, 'Are you still a lawyer?' It's disappointing that they have to ask."²⁹³

A subtler expression of the same tension occurred on the premiere episode of *Feds: The War Against Crime*.²⁹⁴ Although comedies have offered more lead roles for Black women lawyers, one advantage of dramas is the greater racial integration of their casts.²⁹⁵ Viewers see more professionals of different races interacting in dramas, and *Feds* was such a

287. See *L.A. Law* (NBC television broadcast, 1986–94).

288. See *id.*

289. See *id.*

290. See *id.*

291. See *id.*

292. Because *L.A. Law* had so many women lawyers in its eight seasons and 173 episodes, excuses are more difficult to provide for this intersectional inequity.

293. Juber, *supra* note 68, at 8L.

294. See *Feds: The War Against Crime* (CBS television broadcast, 1997–Present). This series was created by Dick Wolf, the creator of *Law & Order*.

295. See Greg Braxton, *Segregated Sitcoms: Separate but Equal Trend Troubles Some Critics*, *NEWSDAY*, Feb. 17, 1997, at B25.

show. Almost every review of the show mentioned the plotline in which Broome prosecuted a Black policeman for beating a White skinhead who called him the "N-word."²⁹⁶ However, just one newspaper review of the premiere mentioned the following exchange in which White U.S. Attorney Erica Stanton asked Broome, "Are you a Black woman who's a United States Attorney, or a United States Attorney who happens to Black?"²⁹⁷ Broome responded with silence.²⁹⁸

No such question is asked of any other character. Jessica Graham, a young White assistant U.S. attorney and successful crime novelist, aspires to head the "General Crimes" division.²⁹⁹ Stanton believes she is not ready, but delves no deeper into Graham's ambitions and certainly does not suggest such ambitions are "unfeminine."³⁰⁰ Another assistant U.S. attorney, Mike Mancini, has been building a case against an organized crime figure who he believes ordered a fatal attack on Mancini's family.³⁰¹ No one suggests a possible conflict in Mancini prosecuting his co-ethnic, or possibly holding Italian-Americans to a higher moral standard.³⁰² Stanton does not ask him, "Are you an Italian-American who's a United States Attorney, or a United States Attorney who happens to be Italian-American?"³⁰³ Broome's silence, although it offers no resolution, can be taken as a form of resistance to the question itself, an expression of admirable reluctance to embrace either simplistic "neutrality" or crude racial solidarity.³⁰⁴ When Broome discusses the case with Stanton, she alludes to a "rage" that, if unleashed, will destroy the modest civil rights gains that have been won, and her own commitment to protecting those gains.³⁰⁵

Nevertheless, all the characters assume that Broome would be ambivalent or deeply troubled by this prosecution.³⁰⁶ Twice, Stanton

296. See, e.g., Lon Grahne, *A Lean, Mean 'Feds,'* CHI. SUN-TIMES, Mar. 5, 1997, at 49; Howard Rosenberg, *Law, the Hard Way; Compelling Characters Make for a Strong 'Feds,'* L.A. TIMES, Mar. 5, 1997, at F1.

297. Tom Walter, *'Feds' Has Makings of a Hit, But It's Flat,* COM. APPEAL (Memphis, Tenn.), Mar. 5, 1997, at C4.

298. See *Feds: The War Against Crime* (CBS television broadcast, Mar. 5, 1997).

299. See *id.*

300. See *id.*

301. See *id.*

302. See *id.*

303. See *id.*

304. The one newspaper that did mention the exchange called it "embarrassingly facile." See Walter, *supra* note 297, at C4.

305. See *id.*

306. See *Feds: The War Against Crime* (CBS television broadcast, Mar. 5, 1997).

offers, unasked, to reassign her.³⁰⁷ The policeman's attorney, also a Black woman, suggests Broome should not be prosecuting this case, and that in fact her client "deserves a medal."³⁰⁸ The clear implication is that Broome should feel the same way. When Broome, to the contrary, insists that policemen must be held to the highest standards, Stanton suggests to Broome that what Broome actually means is that Black policemen should be held to the highest standards.³⁰⁹ Clearly, this is exactly what Broome does not mean. At the same time, the program presented the unusual spectacle of two Black female attorneys, on opposite sides of a case, each in charge, and both skillful and effective. In this manner, the show resists essentializing the Black woman lawyer's point of view. At a slightly higher level of generality, however, it does typecast these lawyers in the civil rights area. No other lawyers of color appear on the program, and no White lawyers are involved in civil rights cases.³¹⁰

C. *Marital Status and Partner's Occupation*

1. Empirical Data

The Census Bureau reports that in 1995, 59% of all women eighteen years old and older were married,³¹¹ and the estimated median age of first

307. *See id.*

308. *See id.*

309. *See id.*

310. Matters of gender are subtler here, which may reflect, among other things, the preeminence of race (when not White) over gender in American thinking. As I read the subtext of the policeman's lawyer's position, she is chastising Broome for prosecuting a Black man who was acting in a traditional masculine way—he is a policeman, and he was acting in a "protective" capacity, trying to rid the neighborhood of the threatening skinhead. It is then a Black woman, Broome, who will use the dominant (White) culture's tool—the legal system—once again to put down the Black man. At the same time, the legal situation itself is one in which two Black women have power over this Black man; this is part of the reversal of empowerment in the Black community which is itself regarded by some as "pathological." Thus, for defenders of patriarchal gender relations within the Black community, this may look like a no-win situation: Black men are rendered dependent upon Black women, whatever the outcome. For those who regard the breakdown of traditional gender relations within the Black community as a symptom of, or a contributor to, that community's continuing subordination and marginalization culturally and otherwise, this scene and storyline confirm that "pathology." In addition, for the sake of offering a "twist" on anti-Black racism in law enforcement, this *Feds* storyline participated in myths of Black male violence, lawlessness, and inarticulateness (the policeman said almost nothing; the conversations took place between lawyers), that is, the "animalistic" Black man. *See id.*

311. 1995 Census Bureau Report, tbl. A, available in U.S. Census Bureau: *The Official Statistics* (visited Apr. 23, 1998) <<http://www.census.gov/population/socdemo/ms-la/95sum1.txt>> (on file with the *Loyola of Los Angeles Entertainment Law Journal*).

marriages peaked for women in 1994 at 24.5 years old.³¹² In 1995, 15% of women lived alone, while 2% shared a home with non-relatives.³¹³ The figures for women lawyers are similar. A study of 800 practicing attorneys in the State of Washington, 24% of whom were women,³¹⁴ 97% of whom were under age fifty,³¹⁵ 58% of the women lawyers were married. Forty-one percent of the women were either never married (29.4%), separated (0.5%), or divorced (10.7%).³¹⁶

A study of University of Michigan Law School graduates revealed that among the three-quarters of women who had married or moved in with someone within five years of graduation, 45% had married lawyers.³¹⁷ Women also overwhelmingly (80%) married men who earned as much money as or more than themselves.³¹⁸

2. Television Data

The data for television characters' personal lives is incomplete (26% of cases are missing). To avoid artificially depressing the percentages of women in each of the particular categories—marital status, partner's occupation, and motherhood—weighted valid percentages will be followed by unweighted valid percentages, which are the proportion of characters with available data who belong to a particular category.

With that in mind, 57.6% (60%) of all women lawyers on television are single women who have never been married; 27.2% (20%) are married; 12.9% (16.4%) are divorced; 0.4% (1.8%) are widowed; and 1.8% (1.8%) are separated.³¹⁹ The higher weighted percentage of married television lawyers illustrates that a character who appears for a longer time is more likely to be married.³²⁰ Of those who have a spouse, former spouse, or boyfriend, 66.2% (57.6%) were paired with professionals, 42.2% (36.4%)

312. 1994 Census Bureau Report, tbl. 2, available in *U.S. Census Bureau: The Official Statistics* (visited Apr. 23, 1998) <<http://www.census.gov/population/socdemo/ms-la/tabms-2.txt>> (on file with the *Loyola of Los Angeles Entertainment Law Journal*).

313. See 1995 Census Bureau Report, tbl. 20 (visited Apr. 23, 1998) <<http://www.census.gov/prod/2/pop/p20/p20-491.pdf>> (on file with the *Loyola of Los Angeles Entertainment Law Journal*).

314. Connie J. A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 *J.L. & HEALTH* 1, 21 (1995-96).

315. *Id.*

316. *Id.* For men, the statistics are 81% under age 50, 76% married, 13.6% never married, 2% separated, and 7.6% divorced. *Id.*

317. Chambers, *supra* note 101, at 263.

318. *Id.*

319. See discussion *supra* Part II.

320. See discussion *supra* Part II.

were paired with another lawyer and 15.6% (12.1%) with a doctor.³²¹ Almost a quarter of television women lawyers, 24% (27.3%), were coupled with a policeman or detective.³²² A substantial minority, 8.4% (12.1%), were involved with athletic coaches or sportscasters.³²³

While marriage rates of real-life women lawyers track the national average, television lawyers marry at a much lower rate, although their divorce and separation rates are more empirically accurate.³²⁴ Altogether, this provides the “unattached” television lawyer a statistical predominance of 72.8% (80%) that does not correspond with real life.³²⁵ One explanation may be the desire to keep female characters available for the romantic entanglements vital to the plots of many shows.

The percentage of television women lawyers involved with other lawyers, however, is almost empirically accurate.³²⁶ Moreover, women lawyers who choose to marry other lawyers are following a hallowed tradition. Virginia Drachman’s study of late nineteenth century women lawyers, and in particular the sixteen female members of the “Equity Club,” a group of lawyers and law students at the University of Michigan Law School, revealed that of the thirteen married working women, ten had married other lawyers and were in practice with their husbands.³²⁷ While the single woman was typically confronted with sexual discrimination and difficulty finding employment, married women lawyers’ careers were enhanced, as their husbands shielded them from public disapproval and provided them with secure employment.³²⁸

Today’s female lawyer may not need her lawyer-husband to provide a job or protect her from public disapproval, yet the belief that another lawyer is most likely to be supportive and understanding of her legal career has a long historical pedigree. Married colleagues Anne Kelsey and Stuart Markowitz of *L.A. Law*,³²⁹ and now Billy and Georgia Thomas of *Ally McBeal*,³³⁰ have many forebears.

321. See discussion *supra* Part II. The remaining category of “other professionals” includes businessmen.

322. See discussion *supra* Part II.

323. See discussion *supra* Part II.

324. See *supra* text accompanying notes 311–13.

325. See *supra* text accompanying notes 311–13.

326. See discussion *supra* Part II.

327. Virginia Drachman, *Women Lawyers and the Quest for Professional Identity in Late Nineteenth-Century America*, 88 MICH. L. REV. 2414, 2434 (1990).

328. See *id.*

329. See *L.A. Law* (NBC television broadcast, 1986–94).

330. See *Ally McBeal* (Fox television broadcast, 1997–Present).

Television women lawyers diverge sharply, however, from actual women lawyers in one respect: while many of the television women lawyers (66.2%) are involved with high-powered, high-status professionals, a substantial minority of television women lawyers employed in government work (including public defenders) are not. This distinction does not reflect an empirical difference. More than one third, 34.3% (35.7%) are paired with policemen or detectives, and over one-half with non-professionals. The following case studies are drawn from this group.

3. Case Studies:

Joyce Davenport and Frank Furillo, *Hill Street Blues*, 1981–87

Sylvia Costas and Andy Sipowicz, *NYPD Blue*, 1993–Present

Joyce Davenport and Frank Furillo of *Hill Street Blues* and Sylvia Costas and Andy Sipowicz of *NYPD Blue* exemplify the maturing trope of the attorney-policeman couple, a descendent of the crime-fighting-detective-with-lawyer-girlfriend coupling, the point of entry for women lawyers on television. On *Hill Street Blues*, divorced father Frank Furillo was involved with and ultimately married glamorous, never-married Joyce Davenport.³³¹ She was a public defender, and he was the captain of the precinct.³³² While she was highly educated and enjoyed professional status, he was “the boss” in his workplace.³³³ Thus, this match was a pairing of equals.

Her equality and independence were demonstrated by the preservation of her professional and social status, despite coupling “downward.” Their structural opposition—he commanded the men and women who arrested suspects, she defended the alleged criminals—was used to create dramatic tension in the relationship. As a public defender, she was the “liberal,” “bleeding heart” protector of the constitutional rights of criminals, feminine in her sympathy yet displaying a fierce protectiveness, and often critical of police behavior. As a police captain, Frank Furillo represented the law, defended his officers, and punished the guilty, with sympathy for crime victims not perpetrators. Both were intelligent and ambivalent, even to the point of being tortured by their consciences. Yet their status as a couple stood for the possible harmony of

331. See MCNEIL, *supra* note 5, at 379–80 (1996); *Hill Street Blues* (NBC television broadcast, 1981–87).

332. *See id.*

333. *See id.*

the criminal justice system as a whole, an emotionally satisfying unification of opposites.

On *NYPD Blue* a decade later, the theme is elaborated differently, both personally and politically.³³⁴ Sylvia Costas is an assistant district attorney of working class Greek heritage.³³⁵ Andy Sipowicz is a divorced father, a detective of Polish extraction whose alcoholic history makes any promotion permanently impossible.³³⁶ She “plays by the rules” as a prosecutor, while he is rougher around the edges - yet they are on the same side. Their workplace conflicts are structured around whether they have sufficient evidence to build a case, and whether the evidence itself is admissible. By the 1990s, the distance between law enforcement and defendants’ rights has perhaps grown too great to be bridged by a single couple; the viewpoints appear irreconcilable.

On both programs, the women bring beauty, intelligence, and some measure of glamour to the relationship—both are women of more education and refinement than the men’s first wives, and thus represent upward mobility for the men. But Andy is a much more complex hero/anti-hero than Frank: he is not handsome, he is not stylish, he doesn’t “twinkle,” he is sometimes crude and violent, he is not the boss, and he never will be. Sylvia and Andy also have a child, showing us further sides of their characters: Andy’s insecurity about his ability to be a father, Sylvia’s ambivalence about returning to work full-time. *Hill Street Blues* divided the beautiful, independent working woman, Joyce, from the whiny, clinging, and less attractive mother, Faye Furillo.

In the 1980s, perhaps somewhat unrealistically, Italian Catholic Francis X. Furillo had divorced his wife and “lived in sin” with WASP-y Joyce without a cultural backward glance. Andy and Sylvia, although thoroughly “modern” characters, also wrestle with the more traditional values of their White ethnic backgrounds: Sylvia’s desire to be a homemaker and to stay home with her baby, Andy’s sense that he should be able to support his family without his wife working. All four of these characters are complicated and nuanced, and all four of these actors superb; what seems to have changed is the need for such stark oppositions to drive the drama.

334. See *NYPD Blue* (ABC television broadcast, 1993–Present).

335. See *id.*

336. See *id.*

D. Motherhood

1. Empirical Data

In 1994, the Census Bureau reported that 58% of women ages fifteen to forty-four were mothers of one or more children.³³⁷ Nevertheless, "The typical corporate woman is married and childless: roughly 65% of managerial women have no children by the age of forty. Women lawyers are much more likely to be childless than male lawyers."³³⁸ One commentator noted that "[w]omen lawyers are twice as likely [as men] to be single and three times as likely to be childless."³³⁹ Professor Rhode reported that

Studies of lawyers and business executives during the 1980s revealed that close to a third of the women, but only 6–8 percent of the men, had never married. Over nine out of ten males in upper-level corporate positions have children and a nonworking spouse. Most female executives have neither.³⁴⁰

Statistics on the relative absence of women at the top of the profession led one commentator to note the "frightening possibility" that law firms will evolve into institutions "top-heavy with men and childless women, supported by a pink-collar ghetto of mommy-lawyers," often with permanent associate status.³⁴¹ In one study, five years after graduation from law school (when median age was thirty-one), 37% of the women had children.³⁴² Only 11% had two or more children, "a far lower number than is found among women in general in the American population."³⁴³ Five years later, another 15% had their first child.³⁴⁴ Women with children were just as likely to work in private practice as childless women.³⁴⁵

337. 1994 Census Bureau Report, tbl. A, (visited Apr. 23, 1998) <<http://www.census.gov/population/socdemo/fertility/fert94/ptab2.txt>> (on file with the *Loyola of Los Angeles Entertainment Law Journal*).

338. Joan Williams, *Gender Wars: Selfless Women in the Republic of Choice*, 66 N.Y.U. L. REV. 1559, 1597 (1991).

339. Hunter, *supra* note 79, at 125.

340. Rhode, *supra* note 203, at 1187.

341. Mary C. Hickey, *The Dilemma of Having it All*, WASH. LAW., May-June, 1986, at 59.

342. Chambers, *supra* note 101, at 263.

343. *Id.*

344. *Id.* at 264, 264 n.59.

345. *Id.* at 270.

2. Television Data

There are twenty-five missing cases with respect to data regarding parenthood and number of children (as in the marital status data). Thus, valid percentages will be weighted by season, followed by unweighted valid percentages in parentheses.

Of all women television lawyers, 34% (28%) are mothers.³⁴⁶ The percentage is actually higher among television's women lawyers in private practice, 50% (32.1%).³⁴⁷ Among Black women lawyers, the percentage is still higher, 62% (50%), although if Clair Huxtable is omitted, the rate drops below that for all women, to 25% (40%).³⁴⁸ For comedies, 42.4% (26.7%) of the women lawyers are mothers; for dramas, just 30.1% (28.6%) have children.³⁴⁹ An even greater difference exists between legal and non-legal-themed shows.³⁵⁰ For legal shows, 23% (21%) of the women lawyers have children, while on non-legal shows this number increases to 63% (71%).³⁵¹ Approximately 13% (8%) of all television mothers have more than one child.³⁵² Almost a third of the television lawyer mothers are single parents, 30.5% (42.8%), including divorcees.³⁵³

3. Analysis

Maternity rates and family sizes for lawyers in general are considerably below that of the average American woman, and for television women lawyers, lower still.³⁵⁴ Both of the women lawyer characters with large families (*The Cosby Show's* Clair Huxtable with five children, *Evening Shade's* Ava Evans Newton with four) are on non-legal comedies, which presumably don't offer real-life women lawyers much useful information about how to manage a career and a large family. Mostly these "she happens to be a lawyer" characters on non-legal shows walk onto sets of homes carrying briefcases, like sitcom fathers of the 1970s. As DeeDee Halleck, a University of California at San Diego communications scholar, comments regarding Clair Huxtable: "A child

346. See discussion *supra* Part II.

347. See discussion *supra* Part II.

348. See discussion *supra* Part II.

349. See discussion *supra* Part II. Note that the difference between weighted and unweighted percentages means a character is likelier to have children if the show runs longer.

350. See discussion *supra* Part II.

351. See discussion *supra* Part II.

352. See discussion *supra* Part II.

353. See discussion *supra* Part II.

354. See *supra* text accompanying notes 337-40.

[viewer] would never have a clue that this is a working mom with a heavy-duty job in the real world. . . .³⁵⁵

Combining work and home is a challenge for all women, and television writers and producers haven't managed to solve this problem for their characters either. The early to mid-'80s characters chose between career and family, in fact if not in theory. Joyce Davenport had an intimate personal life with Frank Furillo, but had nothing to do with his son (who lived with his mother) and had no plans for children of her own.³⁵⁶ Clair Huxtable, theoretically a lawyer, was for all practical purposes a traditional stay-at-home sitcom mom.³⁵⁷ The later characters who are involved in dramatic legal-themed shows are generally not mothers.

Women lawyers on television rarely seem to confront some of the most common problems real female attorneys face: when to have a baby, and whether to adjust one's career goals after the baby is born. On *L.A. Law*, for example, Ann Kelsey remains single and childless until after she makes partner, whereas Abby Perkins's son was born while she was still in law school.³⁵⁸ Similarly, the opening cartoon sequence of *Life's Work* suggests Lisa Hunter went back to law school when her daughter was in preschool.³⁵⁹ *NYPD Blue's* Sylvia Costas appears headed for the old-fashioned solution of quitting work completely, at least for a while, to be at home with her newborn son, despite the likelihood that as an assistant district attorney she out-earns police detective husband Andy.³⁶⁰ Single Ally McBeal fantasizes about a baby, but her colleague Georgia, married to Ally's ex-boyfriend, was just as relieved as Ally when Georgia's positive home pregnancy test turned out to be mistaken.³⁶¹

While Sylvia's solution may not be "politically correct," at least the characters notice that someone needs to take care of a child. A more pointed critique can be made about the child care arrangements of television's working moms (including lawyer-moms), or more precisely, their apparent lack of child care arrangements. *The Cosby Show's* youngest Huxtable was a pre-schooler, and the next-youngest was in

355. Gregory Nelson Joseph, *Media Image of Women Still Needs Fine-Tuning*, SAN DIEGO UNION TRIB., Jan. 27, 1987, at D1.

356. See *Hill Street Blues* (NBC television broadcast, 1981-87).

357. See *The Cosby Show* (NBC television broadcast, 1984-92).

358. See *L.A. Law* (NBC television broadcast, 1986-94).

359. Lon Grahnke, *This 'Work' a Pleasure: Mother Tackles Legal Career in Witty Sitcom*, CHI. SUN-TIMES, Sept. 17, 1996, at 35.

360. See *NYPD Blue* (ABC television broadcast, 1993-Present).

361. See *Ally McBeal* (Fox television broadcast, May 4, 1998). In fairness, Georgia was also disappointed, suggesting the issue of pregnancy may recur next season.

elementary school, yet there was no evidence of a baby-sitter.³⁶² The child care arrangements of only a handful of the lawyer-mothers are portrayed: Ann Kelsey and Stuart Markowitz of *L.A. Law* hired a male nanny with whom Ann nearly had an affair, and Abby Perkins's toddler son is on one occasion "kidnapped" from preschool by his unstable non-custodial father.³⁶³ Reese Dawkins often brought her baby into her home-like offices on *Sweet Justice*.³⁶⁴ Lisa Hunter and her husband on *Life's Work* struggle to work out a successful arrangement for their seven-year-old girl and toddler son, given the demands of her new job and his travel and recruiting schedule as a college basketball coach.³⁶⁵ When *ER's* Jennifer Greene accepts a federal clerkship, even before her marital troubles with Dr. Mark Greene begin, it is assumed that then preschool-aged Rachel will go with her mother, who presumably will make whatever arrangements are necessary for her relocation.³⁶⁶

VI. CONCLUSION

In conclusion, the data presented in this Article indicate substantial biases in the representation of women lawyers on television. With respect to their practice areas, government lawyers, especially those involved in criminal justice, are substantially over-represented; while those in private and corporate practice are quite under-represented. The racial composition of the television bar exaggerates the proportion of Black female attorneys, while erasing Hispanic and Asian female lawyers entirely. More women television lawyers than actual women lawyers are single. Television women lawyers, especially those in government work, seem to find non-professional men more attractive than real women lawyers. Television women lawyers also have inaccurately low maternity rates and family sizes, although they continue to occupy traditional roles with respect to responsibility for child care.

Creating a composite portrait from this data, we find someone like Ally McBeal: a young, single, female lawyer who is delaying marriage and childbearing until she has reached a position of some authority and experience in her legal career. Emotionally and administratively, she does not allow personal responsibilities to overwhelm her professional development. As for her two female colleagues, one matches Ally's

362. See *The Cosby Show* (NBC television broadcast, 1984–94).

363. See *L.A. Law* (NBC television broadcast, 1986–94).

364. See *Sweet Justice* (NBC television broadcast, 1994–95).

365. Grahnke, *supra* note 359, at 35.

366. See *ER* (NBC television broadcast, 1994–Present).

demographic profile almost exactly, except that she's married (to Ally's ex-boyfriend). The other is the now nearly obligatory Black woman, a government lawyer, also single. If David Kelley, the show's executive producer, had not created the character Ally McBeal, media statisticians—or perhaps Madison Avenue—could have invented her.

Unfortunately, although television has provided women a range of role models for their legal careers, it counsels nothing but delay on the pressing real questions of the balance of work and home—"equality feminism" on the small screen, with all its shortcomings. Nevertheless, the situation is not hopeless. The continuing popularity of women lawyer characters can only presage more challenging and realistic representations in seasons to come.

