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## Power of Attorney

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## POWER OF ATTORNEY

Christine A. Corcos\*

### I. Opening Statements

No doubt exists that the drama/farce<sup>1</sup> Ally McBeal, which ran on the Fox Television Network from 1997 to 2002<sup>2</sup>, was a phenomenal success, at least during its middle years (1998-1999).<sup>3</sup> It sparked numerous fan websites in several countries<sup>4</sup> including one devoted to “fan fiction”<sup>5</sup> (a genre in which devotees of a television series or film try their hands at writing scripts), various product spinoffs,<sup>6</sup> a series spinoff (Ally, a thirty minute version that

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<sup>1</sup> Commentators often refer to Ally McBeal as a “dramedy”. For a definition of the dramedy see <http://www.museum.tv/archives/etv/D/htmlID/dramedy/dramedy.htm> (visited September 12, 2005).

<sup>2</sup>The official website is available at <http://www.allymcbeal.com/> (Visited July 9, 2002). A DVD set of Ally episodes is currently available and McFarland Publishers is planning to release a volume of essays on the Ally phenomenon (Searching the Soul of Ally McBeal (McFarland, 2006).

<sup>3</sup>Greg Braxton, *How “Ally” Complicates Flockhart’s Life*, L. A. Times, Sept. 9, 1998, at F9.

<sup>4</sup>See for example the search engine at [http://www.saifai.co.uk/allysearch/Ally\\_McBeal/General\\_Sites/](http://www.saifai.co.uk/allysearch/Ally_McBeal/General_Sites/) (visited August 29, 2006).

<sup>5</sup>See <http://dekland.tripod.com/allymcbeal/> (Visited August 29, 2006) and <http://www.saifai.co.uk/afanfic.shtml> (visited August 29, 2006).

<sup>6</sup> Singer Vonda Shepard (who appeared in many of the episodes) also recorded several CDs. In addition, she recorded at least one album with several of the stars: Ally McBeal: A Very Ally Christmas.

featured only vignettes, no legal drama)<sup>7</sup> and even a Time magazine article that seriously considered whether Ally represents “the end of feminism.”<sup>8</sup> Years after the show went off the air, its influence continues. The popular prime time medical show “Grey’s Anatomy” has spawned a spin-off which is already drawing fire for its emphasis on protagonists who are “lovelorn, sex-starved and prone to public displays of disaffection.”<sup>9</sup> The reason, says writer Alessandra Stanley, is traceable directly to Ally McBeal, a show which emphasized a heroine who “marked a turning point in the devolution of women’s roles in television comedy—the moment when competent-but flaky hardened into basket case.”<sup>10</sup>

What made this thin, goofy, self-absorbed character so popular<sup>11</sup>, at least before rumors and scandal about anorexia<sup>12</sup> and drug use<sup>13</sup> made the show more famous for off-screen shenanigans than on-screen accomplishment? Why was she so powerful a figure that a major U.S. news magazine devoted an important story to discussing her impact? I suggest that one of

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<sup>7</sup>(Fox, 1999-2000). This series lasted one season on Fox. It used previously aired footage and unaired scenes to string together stories about Ally’s personal life, leaving out all the courtroom drama. Since Ally lacked the dramatic interest that the courtroom stories supplied, and since the character was already losing popularity, it failed very quickly.

<sup>8</sup>Gina Bellafante, *Is Feminism Dead?* Time, June 29, 1998 at 54.

<sup>9</sup> Alessandra Stanley, *The New Modern Woman, Ambitious and Feeble*, N. Y. Times, May 5, 2007, at <http://www.nytimes.com/2007/05/05/arts/television/05grey.html?ex=1180670400&en=599ffbd2117a8c0f&ei=5070> (last visited May 30, 2007)(hereinafter Stanley, *The New Modern Woman*).

<sup>10</sup> Stanley, *The New Modern Woman*, supra fn. 9.

<sup>11</sup>One web site invites surfers to indicate “who they would kill” on Ally McBeal (see <http://www.whowouldyoukill.com/ally.html> visited July 17, 2002).

<sup>12</sup>Flockhart repeatedly denied rumors about an eating disorder during the show’s run but now admits the problem. See Cameron Robertson, *Calista: I Did Have an Eating Problem...But I’m All Right Now; Exclusive*, The Mirror, April 7, 2006, at 3.

<sup>13</sup>Robert Downey, Jr., brought in as a permanent love interest for Ally in the beginning of the fourth season, was cut from the cast after a repeat arrest for cocaine use. See Toby Moore, *Star Loses Ally McBeal Role: Downey Is Ditched Over Drugs Arrest*, The Express, April 26, 2001, at 34.

the major factors in Ally's rise was the fact that writer/producer David E. Kelley cast her as an attorney, the professional that everyone loves to hate, but also a woman who is, to be honest, fairly bad at her job, at least in the first three years, and arguably during her entire (fictional) career. As a woman attorney, Ally fits within the tradition of female lawyers who are either good at their jobs, or good at their relationships, *but not both*, and in Ally's case, neither.<sup>14</sup> Further, Ally's impact is such that commentators both in the popular media and in legal academia continue to refer to her.<sup>15</sup> She, and her series, have become "memes"—a character whose mention immediately sparks all sorts of associations.<sup>16</sup> Kelley's willingness to test the boundaries of the law through storylines also ensures that the episodes of all the shows with which he is involved (not just Ally McBeal) retain their freshness.<sup>17</sup>

Because of the media and popular attention heaped upon the show, Ally represents an

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<sup>14</sup>See generally Christine A. Corcos, *Women Lawyers*, in Prime Time Law (Bob Jarvis and Paul Joseph eds.; Durham, NC: Carolina Academic Press, 1998), at 219-239 and Christine Alice Corcos, "We Don't WANT Advantages": *The Woman Lawyer Hero and Her Quest for Power in Popular Culture*, 53 Syr. L. Rev. 1225 (2003) at 1227-1228 (*hereinafter* Corcos, *We Don't WANT Advantages*).

<sup>15</sup>See for example Katrina C. Rose, *When Is an Attempted Rape Not an Attempted Rape? When the Victim is a Transsexual*, 9 Am. U.J Gender Soc. Pol'y & L. 505 (2001)(discussing the famous unisex bathroom at Cage, Fish). Sarah A. Moore notes that a company president installed a unisex bathroom at his workplace after he saw it on the show. *Note: Facility Hostility? Sex Discrimination and Women's Restrooms in the Workplace*, 36 Ga. L. Rev. 599 (2002) at 601. See also Melissa L. Nelken, *The Myth of the Gladiator and Law Students' Negotiation Styles*, 7 Cardozo J. Conflict Resol. 1 (2005)(discussing McBeal's influence on current generation of law students). A search of LEXIS' law review database since 2001 turned up cites to more than 90 articles mentioning "Ally McBeal", many having nothing to do with law and popular culture, illustrating her continuing influence on attorneys and non-attorneys alike.

<sup>16</sup>On memes, see generally Susan J. Blackmore, The Meme Machine (NY: Oxford University Press, 1999); Richard Brodie, Virus of the Mind: The New Science of the Meme (Seattle, WA: Integral Press, 1996); and Aaron Lynch, Thought Contagion: How Belief Spreads Through Society (NY: Basic Books, 1996).

<sup>17</sup>Consider the episode in which a client claims the defense of sex addiction. See Lennard J. Davis, *Bending Over Backwards: Disability, Narcissism, and the Law*, 21 Berkeley J. Emp. & Lab. L. 193 (2000), at 199.

interesting case study, a woman who has a lot of problems with everyone in her life, from her parents, to her lovers, to her roommate, to her boss, to her clients. When the world is too much for her, she retreats, Walter Mitty-like<sup>18</sup>, into a universe in which she can control the outcome of her actions. As she tells a colleague, “It’s *all* about me.”<sup>19</sup> Ally’s honesty can be disarming; each of us wants to think it’s *all* about us, at least when we’re young. What is dangerous about Ally’s self-absorption is that she has chosen a profession in which she must put others’ concerns ahead of her own. She is a lawyer, a counselor, someone who is paid to assist those who come to her for help. She has a lot of trouble with that role, which is ironic. If not for the law, Ally and women like her might be condemned to the limited roles that many men have defined for them and that history and fiction have dramatized: wife, mother, spinster aunt, midwife, teacher, helpmeet—not to mention those occupations which allowed them less freedom, or less dignity. What continues to be disturbing about the McBeal phenomenon is that even though the series

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<sup>18</sup> Walter Mitty is the character famous for a rich fantasy life in which he casts himself as the hero of a number of adventures. See James Thurber, *The Secret Life of Walter Mitty*, in My World and Welcome To It (1942)(need paging). Some psychologists later identified Mitty’s fantasizing as a clinical condition. It took shape on the big screen in The Secret Life of Walter Mitty (RKO Pictures, 1947) in which Danny Kaye plays Walter Mitty and Boris Karloff plays the psychiatrist Dr. Hugo Hollingshead. A remake starring Owen Wilson is announced for 2006.

<sup>19</sup>Consider the episode Only the Lonely (original air date May 3, 1999), in which John Cage does permanent damage to his relationship with Nelle and goes to Ally for comfort. Instead of listening to his plight she proceeds to discuss her own failed relationship with yet another intelligent, kind man, physician Greg Butters.

went off the air in 2002, characters like Ally continue to populate television and the movies. The incompetent, but pretty, attorney seems to be forever with us.

## **II. Ally as Attorney**

### A. Why Law?



Why is Ally a lawyer? The obvious answer is that law is what David E. Kelley knows.<sup>20</sup> Other television series with which he has been involved or which he has created include L. A. Law,<sup>21</sup> Picket Fences<sup>22</sup>, The Practice<sup>23</sup>, and The Law Firm,<sup>24</sup> two of which (L. A. Law and The Practice) directly dramatize the law, the third of which often features legal themes, and the last of which is a “reality show” which pits young lawyers against each other for a \$250,000 prize. But Ally could have been a man, or her series could have included but not centered on legal issues, like Doogie Howser,<sup>25</sup> and Boston Public,<sup>26</sup> also Kelley creations. If the desire was to treat legal and societal issues through the conceit of a female professional engaged in a career dominated by men, Ally could have been a doctor (like Jill Brock on Picket Fences or Doogie Howser on Doogie Howser), both of whom had their quirks but were capable physicians (Doogie was a genius, having graduated from Princeton at the age of 10)<sup>27</sup> and in Jill Brock’s case, a caring

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<sup>20</sup>He received his law degree from Boston University Law School in 1983 and practiced law in Boston for three years before beginning a career as an L. A. Law scriptwriter. He is only one of many law graduates who have turned to writing, including John Grisham, Scott Turow, Elmer Rice, Lisa Scottoline, Lia Matera, and Linda Fairstein.

<sup>21</sup>L. A. Law ran on NBC from 1986 to 1994.

<sup>22</sup>Picket Fences ran on CBS from 1992 to 1996.

<sup>23</sup>The Practice ran on the Fox Network from 1997 to 2004.

<sup>24</sup> [http://www.nbc.com/The\\_Law\\_Firm/](http://www.nbc.com/The_Law_Firm/). It premiered on July 28, 2005 . NBC cancelled it after two episodes, and scheduled the remained episodes on its companion network Bravo (see [http://www.bravotv.com/The\\_Law\\_Firm/](http://www.bravotv.com/The_Law_Firm/) (visited September 7, 2005)).

<sup>25</sup>Doogie Howser ran on the Fox Network from 1989 to 1993.

<sup>26</sup>Boston Public debuted on the Fox Network in 2000.

<sup>27</sup>Ally isn’t a genius, but we are supposed to consider her highly intelligent. After all, she made the Harvard Law Review. Given Calista Flockhart’s lack of pulchritude, Ally seems more teenage girl than grown woman. Similarly Doogie Howser is more boy than man, but the actor Neil Patrick Harris was a teenager at the time.



health professional who was also a success as a wife and mother.<sup>28</sup> If Kelley wanted to discuss legal and social issues through the vehicle of a female main character who was in a *less*-male dominated profession, he could have made Ally a teacher<sup>29</sup> or a nurse.<sup>30</sup> But Ally is an attorney, who graduated from what may be the most instantly recognizable law school in the nation, and at the top of her class (she made law review, an honor generally reserved for the top few percent of a law school class).<sup>31</sup> Even though women number at least half and in some cases more than half the students currently enrolled in U. S. law schools,<sup>32</sup> men still greatly outnumber women in the practicing ranks. Fewer than 35 percent of U. S. law faculty are women. According to an ABA

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<sup>28</sup>One could also argue that, in combination with her husband, Sheriff Jimmy Brock, and the D.A. John Littleton, Jill almost always represents the voice of reason on the show. Viewers may be invited to consider Douglas Wambaugh, the lawyer on Picket Fences, an object of ridicule (“Douglas Wambaugh for the crazy lady, Your Honor!”), but they never see Jill in that position. Wambaugh’s clients are usually as goofy as those on Ally McBeal. He does not, however, consider them a meal ticket. Thus, he is actually more a lawyer in the mold of Atticus Finch (To Kill a Mockingbird) than is Richard Fish (Ally McBeal), but only rarely does the show invite viewers to consider him in that light (“Squatters’ Rights”; “Rebels With Causes”; “Dem Bones”). For a listing and summary of Picket Fences episodes, see <http://members.aol.com/nitesurf/>. Other themes from Picket Fences recur in Ally McBeal, including discrimination against minorities (“Mr. Dreeb Comes to Town”, and Zelda Rubinstein’s casting as Ginny Weedon). Analysis of such recurring themes in David E. Kelley’s work might be quite interesting.

<sup>29</sup>*Male Teachers Leaving Classroom, Union Says*, The Plain Dealer, November 4, 1994, at 4A (citing a National Education Association report that 26.9 percent of public school teachers in 1993/1994 were male).

<sup>30</sup>*Nurse Recruitment Efforts Target Men*, Capital Times (Madison, Wisconsin), March 20, 2002, at 8A (indicating that women make up 94 percent of the nursing profession in the U.S.).

<sup>31</sup>Harvard Law School’s website indicates that “[f]ourteen editors (two from each 1L section) are selected based on a combination of their first year grades and their competition scores. The remaining editors are selected solely on their competition scores. The remaining editors are selected on a discretionary basis. Some of these...may be used to implement the Review’s affirmative action policy.” The competition referred to is a “write on”, in which candidates prepare a submission based on an assigned topic. Unless Ally represents the class of neurotic self-absorbed law students, she was quite likely to have been selected on the basis of her grades during her first year of school.

<sup>32</sup>The Unfinished Agenda, *infra* fn. 33 at 27.

report published in 2001, “[w]omen in the legal profession remain underrepresented in positions of greatest status, influence, and economic reward. They account for only about 15 percent of federal judges and law firm partners, 10 percent of law school deans and general counsels, and five percent of managing partners of large firms. On average, female lawyers earn about \$20,000 less than male lawyers, and significant disparities persist even between those with similar qualifications, experience, and position. Studies involving lawyers find that men are at least twice as likely as similarly qualified women to obtain partnerships. The under-representation of women of color is still greater. They account for only 3 percent of the profession...what data are available find significant inequalities in pay and promotion for lawyers of color, as well as for lesbian and disabled attorneys.”<sup>33</sup> Making Ally a well-paid attorney, and eventually a partner, removes her further from the real world, making her life and activities perhaps no less entertaining but somewhat less instructive, because less relevant to the average female lawyer.

One commentator argues forcefully that Ally McBeal is clearly a legal show, in spite of its “nontraditional” aspects.<sup>34</sup>

It seems that Ally McBeal is a legal show although one with unusual aspects. It is not simply a drama, and it includes surreal aspects. While some legal shows such as Law & Order focus only on legal issues, Ally McBeal often focuses on Ally's search for love and on all of the characters' search for happiness and meaningful connection with others. It could be argued that the law is often used to develop a more general concept about relationships and the search for a happy and fulfilled life than it is to resolve the particular legal issue. Ally McBeal is a very nontraditional legal show. It is possible that viewers discount the most bizarre aspects of the show; but when Ally McBeal is presenting a legal issue, the arguments sound legal, although often abbreviated, and the setting is legal.<sup>35</sup>

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<sup>33</sup>The Unfinished Agenda: Women and the Legal Profession (Deborah L. Rhode, ed.; Chicago: ABA, 2001), at 5.

<sup>34</sup> Paul Joseph, *Saying Goodbye to Ally McBeal*, 25 U. Ark. L. Rev. 459 (2003) at 466 (*hereinafter Joseph, Saying Goodbye*).

Further, argues this author, Ally McBeal's first episode

introduces the audience to many of the themes of the series.... Many of the central themes of the show are introduced in the pilot, and it is obvious that there is enough here to make both feminists and lawyers recoil. The show tends to focus on issues of disability, discrimination, sexual harassment, and the search for true love in the modern world. In the process, laws that are intended to protect the powerless from discrimination and harassment will be mocked, often because of strange and improbable ways in which the laws might be used. The idea that the groping senior partner will claim a disability and sue when he, himself, is fired is just such an example. Perhaps the message is, as Ally says in the pilot episode, that "love and law are the same. Romantic in concept but the actual practice can give you a yeast infection." Perhaps part of the message is the impossibility of making either love or law harmless or wellbehaved and that when law tries to regulate love the results are likely to appear absurd.<sup>36</sup>

Why create yet another lawyer television series,<sup>37</sup> and why cast as its protagonist yet another pretty but relatively incapable female lawyer, in spite of the Harvard Law degree? Note that in popular culture, if one wishes to telegraph a lawyer's impeccable credentials one graduates her from Harvard.<sup>38</sup> Interestingly, popular culture often portrays female lawyers as *either* Harvard Law School alumna, which apparently conveys their superiority, or graduates of a

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<sup>35</sup> Joseph, *Saying Goodbye*, *supra* fn. 34 at 466.

<sup>36</sup> Joseph, *Saying Goodbye*, *supra* fn. 34 at 467-468. (footnotes omitted).

<sup>37</sup>The 2002/2003 television season promised us at least three more series featuring women attorneys, David E. Kelley's bargirls (*sic*), which changed its name to girls' club (see <http://www.courier-journal.com/features/2002/05/20020517fox.html>) Lifetime Television's For the People, starring Lea Thompson as a Los Angeles district attorney and Debbi Morgan as her newly elected boss and The WTV (formerly the Women's Television Network) premiered Just Cause on September 15, 2002, in a two hour pilot that introduced viewers to ex-con Alexandra DelMonaco (who was framed by her husband, a crooked insurance lawyer), and who earned her law degree through "an Internet law school." On girls' club see [http://www.usfca.edu/pj/girlsclub\\_corcos.htm](http://www.usfca.edu/pj/girlsclub_corcos.htm) (visited March 31, 2006); For the People see ; on Just Cause see [http://www.usfca.edu/pj/justcause\\_corcos.htm](http://www.usfca.edu/pj/justcause_corcos.htm) (visited March 31, 2006).

<sup>38</sup> In the film Just Cause (1995, based on the novel of the same name by John Katzenbach), the hero lawyer (and patsy) is a professor at Harvard Law School. John Grisham's Mitch McDeere (The Firm) graduates from Harvard Law. Elle Woods goes to Harvard Law (although only because her ex-boyfriend goes there). On images of law school and law teaching in film generally see Stacy Caplow and Spencer Weber Waller, *Book Review, Images of Law School and Law Teaching in An Imperfect Spy*, 8 Yale J.L. & Human. 263 (1996) and David Ray Papke, *Law in Film/Film in Law: Crusading Hero, Devoted Teacher, and Sympathetic Failure: The Self-Image of the Law Professor in Hollywood Cinema and In Real Life, Too*, 28 Vt. L. Rev. 957 (2004).

4<sup>th</sup> or 5<sup>th</sup> tier school, sometimes a night school program, or as in the case of the short-lived television show Just Cause, an Internet Law School.<sup>39</sup> The pop culture lawyers headed for ethical mishaps or career struggles graduate from less immediately recognizable schools like Florida State.<sup>40</sup> If one is looking for verisimilitude, the latter is likely to be more the case, just as the women lawyers who are cast as assistant district attorneys or downtrodden public defenders are actually and disproportionately represented in the real ranks of city, state and federal DA and public defender offices.<sup>41</sup> In Legally Blonde, a 2001 comedy about a Valley Girl dumped by her ambitious and equally shallow boyfriend headed for Harvard Law, the heroine decides to take the Law School Admissions Test (LSAT) and follow him there. When her college counselor asks her what backup schools she has thought about, she says winsomely, “No backups—I’m going to Harvard.”<sup>42</sup> The legal profession is first of all, an easy target. Through their very behavior, lawyers often seem conceited and arrogant.<sup>43</sup> Law is a career that we are invited to hate, or to

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<sup>39</sup> (Pax Television, 2001-2003). Actual Internet law schools are few. The only one I have been able to verify as in existence are Concord Law School (see <http://www.concordlawschool.edu/> (visited August 29, 2006) and Northwestern California University School of Law (<http://www.nwculaw.edu/index.shtml>) (visited May 18, 2006).

<sup>40</sup> The hapless Ned Racine of Body Heat (1981) is an FSU Law grad. His victim (Richard Crenna) tells him in their first conversation that he graduated from Columbia Law.

<sup>41</sup> See The Unfinished Agenda, *supra* fn. 33 at 23 (citing to data showing that one percent of men are legal aid or public defense lawyers, but two percent of women hold that position. Joan Howarth contributes an interesting overview and analysis of women public defenders and criminal defense lawyers in “Women Defenders on Television: Representing Suspects and the Racial Politics of Retribution,” 3:475-[] Journal of Gender, Race, & Justice (Spring 2000)(arguing that television portrayals of their clients serve to reinforce the idea that criminal defendants are likely to be uneducated, black or Hispanic, male, violent and guilty).

<sup>42</sup> ABC ordered a television pilot from MGM based on the film in 2001. It may become a mid-season replacement. See Film Notes, BPI Entertainment News Wire, September 10, 2002. For more about Elle Woods and the Legally Blonde law student syndrome see Corcos, We Don’t WANT Advantages, *supra* fn. 14 and accompanying text.

<sup>43</sup> So do neurosurgeons, but medicine has a better press. And doctors are in the business of saving lives. Lawyers seem engaged in simply “getting people off”, or disengaging them from awkward legal situations.

misunderstand.<sup>44</sup> Lawyer jokes proliferate. The one about scientists' decision to substitute lawyers for rats as test subjects for two reasons--lab technicians become attached to the rats and there are some things that rats won't do<sup>45</sup>--has inspired both a comic verse by the satiric group The Capitol Steps<sup>46</sup> and an amusing English film, What Rats Won't Do.<sup>47</sup> At the same time, lawyer shows have been popular since the beginning of network television.<sup>48</sup>

Second, precisely because lawyers already seem vain, Ally's preoccupation with herself and her concerns strikes us as natural. Lawyers control so much of our lives and make decisions that seem random to the uninitiated. Elle Woods, the protagonist of Legally Blonde, seems to reinforce this image on the big screen.<sup>49</sup> We can hardly blame her: what did we expect?

Third, the legal setting for the comedy-drama allows the scriptwriters to comment liberally on what they seem as the excesses, perversions, and unfairness of contemporary society. Indeed, law firms and courtrooms are good venues for this kind of critique. Often, the cases

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<sup>44</sup>See generally <http://www.lawyer-jokes.us/> (visited April 10, 2006); Mark Galanter, Lowering the Bar: Lawyer Jokes and Legal Culture (Madison: University of Wisconsin Press, 2005).

<sup>45</sup>The entire joke runs as follows: Why are laboratory scientists switching from rats to lawyers for their experiments? 1. Lawyers are more plentiful than rats; 2. The lab technicians don't get as attached to the lawyers, and 3. There are some things a rat just won't do. Its corollary is: What's the only disadvantage to using lawyers instead of rats in laboratory experiments? It's harder to extrapolate the test results to human beings.

<sup>46</sup>The song is Atsa Lawyer, on the recording Lord of the Fries (<http://www.capsteps.com/albums/>) (visited September 17, 2002).

<sup>47</sup>(1998). It starred Natasha McElhone as Kate Beckenham, who takes on the case of dispossessed heirs believing their stepmother has cheated them out of their deceased father's fortune through undue influence and James Frain as Jack Sullivan, the go-getting charmer who represents the widow.

<sup>48</sup>Among them are the iconic Perry Mason (aired on CBS from September 21, 1957 to May 22, 1966). One of the most complete and elegant websites on Perry Mason is <http://members.ozemail.com.au/~jsimko/> (Visited July 9, 2002).

<sup>49</sup>Elle is clearly a very close relative of Cher Horowitz, played to perfection by Alicia Silverstone in Clueless (1995). However, as I argue in *We Don't WANT Advantages*, infra fn. 59, Elle Woods is actually quite a successful law student once she realizes that she can compete with

Cage, Fish, takes on end unfortunately for the client (as do those on The Practice, Kelley's other late 90s legal drama).<sup>50</sup> Many of the legal theories advanced are bizarre, but real life cases are bizarre as well. Kelley can "push the envelope" and introduce what viewers may see as excesses of the legal system, but what lawyers often characterize as one of its major virtues, the consideration of minority points of view.

Kelley thus has the opportunity to point out what he perceives as misguided about the legal system, and in a larger sense, what he sees as fundamentally wrong with 21<sup>st</sup> century America. Because of this approach, Ally McBeal does have some important things to say about life, law and love, not necessarily in that order, even if its speakers' characters are sometimes objectionable.

But the show could make all of these points if the main character were male. Why is Ally female? What additional or alternative commentary does Ally's gender allow Kelley to introduce? I suggest that first of all, both Ally's incompetence and obsession with self, combined with the eccentric nature of the cases she handles, encourage the viewer not to take her seriously as a lawyer. Second, the persona Kelley gives her allows us, if we wish, to dismiss her as a "real" lawyer, or alternatively to associate her with a common negative stereotype of female attorneys, that they are incapable if presented as attractive, shrewish and vindictive if presented as unattractive, or if their perceived attractiveness does not get them what they want. According to one woman attorney, "As an attorney, Ally McBeal's character embodies virtually every stereotype of female attorneys which my friends and I have attempted to overcome

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the men (and the other women) in her class on her own terms.

<sup>50</sup> The only obvious Kelley "stamp" on The Law Firm is the choice of case. The weird cases that the associates litigate or arbitrate are truly the types of cases one would see on Ally McBeal or The Practice, or on Boston Legal, Kelley's current tv drama.

professionally since we began practicing law. Each week, Ally McBeal is portrayed as the stereotypical hysterical woman confronted with a situation which leaves her on the verge of a nervous breakdown. Inevitably, in each episode, she seems to approach all legal issue(sic) with virtually no legal analysis. Instead, when handling a legal matter, which is a rarity, Ally McBeal's personal life seems to take precedence as she becomes consumed in a frenzy as to how the legal issue relates to her own personal life, rather than focusing on her client and her client's needs."<sup>51</sup> She continues, "As attorneys, my friends and I seek respect for our skills...how are we to gain the confidence of our clients if they believe that we are innately unable to focus on their legal problems?"<sup>52</sup> This "woman on the verge" image simply allows us to dismiss Ally as a serious attorney whenever we like and focus on her weird, if endearing, personality.

The series' star Calista Flockhart has pointed out that in the world of popular culture unfortunately Ally represents women lawyers to a much larger extent than Richard Fish or John Cage represent men. "'That's just surreal. ... I mean, Susan B. Anthony would roll over in her grave... For me, the interesting question is: Why are we grabbing onto this character? We don't do this to men. There are a lot of men protagonists who are leads on television series, and [experts] don't tell us, 'Oh, so this is how men behave.' But Ally behaves this way and suddenly it's 'All women behave this way.' That's just not true."<sup>53</sup> Flockhart is correct, but the fact remains that viewers who watch Ally will see the reinforcement of ugly stereotypes about women, men, and lawyers. Compare Ally's performance as an attorney with Will Truman's performance on Will & Grace. While Will is gay, he is not a "gay" lawyer. The show generally portrays him as

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<sup>51</sup>Lisa Friedman, "Don't call me "Ally", Picturing Justice at <http://www.usfca.edu/pj/ally-friedman.htm> (visited August 29, 2006).

<sup>52</sup>Friedman, *id.*

<sup>53</sup>Phil Rosenthal, *Reality Catches Up With "Ally"*, Chi. Sun-Times, April 19, 2002, at 47.

competent, even though he does on occasion take questionable cases.<sup>54</sup>

Thus, the show's presentation of a woman lawyer, and more specifically, *this* woman lawyer, allows it to contrast the role that the law allows, even encourages women to play, with the role that Ally *does* play in the series. Ally can be self-indulgent and spoiled because the law makes her right to compete for an equal share of the profession secure. Richard Fish makes this point repeatedly in comments such as this one. "Women are victims. They need special help. Look at the evolution of these sexual harassment laws. What we are really saying is women really should qualify under the Federal Disability Act. They are less able. They cannot cope with romance in the office. They cannot contend with having to do a job and have a man smile at them. It is too much." Fish thinks the law provides a safety net for women: they will not fail on their own. They will fail because men intervene and force their failure, either through action or inaction.<sup>55</sup>

Some critiques of "women lawyers in popular culture" complain that most examinations of the female attorney in pop culture phenomenon consist of assertions that such portrayals are unflattering, without much consideration of 1) why such portraits are unsavory and 2) whether it

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<sup>54</sup>See [http://www.nbc.com/Will\\_&\\_Grace/index.html](http://www.nbc.com/Will_&_Grace/index.html) (visited September 8, 2005). He facilitates a fraudulent marriage between Karen Walker's maid Rosario and Jack McFarland in order to get Rosario a green card. See "Object of My Rejection," first aired May 13, 1999. He seems to redeem himself in subsequent episodes, but note that in the 2005/2006 episode he again abets Grace's marriage to his current flame James (Taye Diggs) in order to prevent James' deportation to Canada. This "lawyers in love" lapse of ethics suggests that Will, like other film attorneys, fits an uncomfortable stereotype.

<sup>55</sup>The argument over whether women are equal to or superior to men in various professions and whether they fail because of their own inabilities or because men betray them is an old one. For a discussion of this argument with regard to women lawyers see Christine A. Corcos, *Lawyers for Marianne: An Essay on the Nature of Discourse on the Entry of Frenchwomen into the Legal Profession*, 12 Georgia State University Law Review 435 (1996) and Christine A. Corcos, *Portia Goes to Parliament: Women and Their Admission to the English*



makes any difference.<sup>56</sup> Some commentators suggest that, to the contrary, pop culture portrayals of women lawyers are in fact accurate, or at least more accurate than not.<sup>57</sup> No one has yet considered *why women lawyers as characters* are so common, and whether this fact says anything important about how we think about lawyers in general and female lawyers in particular. I would suggest that making a female character a lawyer sends an important message about how we view women as members of arguably the most influential profession in the United States today, and that the fact that Ally McBeal came to symbolize the late 1990s female pop culture lawyer tells us a great deal about whether we are yet willing to accept women in any of the traditional guises of the lawyer—the corporate barracuda, the criminal defense pit bull lawyer, the aggressive (often blonde) prosecutor.<sup>58</sup> Certainly we may have legitimate doubts about

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*Legal Profession*, 75 *Denver University Law Review* 307 (1998).

<sup>56</sup>See for example <http://myweb.wvnet.edu/%7Ejelkins/film04/women.html> (visited August 29, 2006).

<sup>57</sup>See Joan Gershen Marek, *The Practice and Ally McBeal: A New Image For Women Lawyers on Television?* 22 *J. American Culture* 77-84 (Spring 1999). Note that Marek seems to misunderstand at least one of the points I make in my article *Women Lawyers*, in *Prime Time Law* in her piece. Marek says that I consider the character of Ellenor on “The Practice” a frump, but “perhaps her appearance sends a positive message. Maybe it says that a woman does not have to be beautiful to be a successful professional, or to be a star on a television show. If so, that is a wonderful thing for women, men, girls, and boys to observe. If television both reflects and shapes public opinion, it is a positive sign that a prime time show has finally reflected reality, and told the public that women do not have to be physically exquisite to be admired.” My point is exactly that *the characters in the show do not get that message*. My opinion of her is quite different. Ellenor has every right to aspire to the same kind of romantic relationship as other, more conventionally attractive women in the story do. But the other women in the story, who are busy judging her by her appearance, do not agree. Nor did I dress the actress in the show for her part as Ellenor. That was the work of the crew, and presumably, the director.

<sup>58</sup>The history of women in the legal profession is one of repetition. See Christine A. Corcos, *Lawyers for Marianne* and Christine A. Corcos, *Portia Goes to Parliament*, *infra*, fn. 55. On the image of women lawyers in popular culture generally see Christine A. Corcos, *Portia and Her Partners in Popular Culture*, 22 *Legal Studies Forum* 269 (1998) which lists materials through 1998. For more recent analyses see for example Stacy Caplow, *Still in the Dark*:

whether Ally's boss, Richard Fish, and many of her clients, would accept her if she were tough, unattractive and more competent than her male colleagues. Kelley's recurring portrayal of her as insecure does not invalidate her clients' lack of trust. Instead, it validates it, especially given her frequent abysmal performances in the courtroom. We understand why she questions her own abilities. Everyone around her questions them also, and reinforces the behavior that betrays them. Further, to the extent that Ally represents the kind of non-threatening colleague that males may like to fantasize about, her success at Cage, Fish is to be expected. She fulfills the norm of the pretty, non-threatening interloper into a previously male domain. She is no danger to male domination. She is interesting to look at. Within the working environment defined by the show's male lawyers, she is a success. In the real world, of course, she would not be around for more than a few weeks.<sup>59</sup> *If Ally were male, Cage, Fish would fire her (him).*

The suggestion that Ally McBeal is a radically different kind of lawyer comedy-drama (or "dramedy") from lawyer shows that have aired in the past seems to me somewhat exaggerated if one is looking not at the "gimmickry" or dramatic conventions with which Kelley plays, but at the actual content and message of the show. Favorable reviews highlighted the "fantasy sequences" which made Ally's daydreams tangible<sup>60</sup>, applauded the liberal use of music throughout the episodes, and heralded a show in which the heroine actively demands to "have it all." Unfavorable ones objected to, among other things, the large number of guest stars,<sup>61</sup> bizarre

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*Disappointing Images of Women Lawyers in the Movies*, 20(2/3):55 Women's Rights Law Reporter (Spring/Summer 1999).

<sup>59</sup> One kind of female attorney who *would* be around is the kind who can internalize male norms while keeping her femininity. I discuss this kind of female attorney in "We Don't WANT Advantages!" 53 Syr. L. Rev. 1225 (2003).

<sup>60</sup> See <http://www.cnn.com/SHOWBIZ/9709/12/ally.mcbeal/> (Visited August 14, 2002).

<sup>61</sup> Karen Lurie, *Ally McBeal's last show*, Flak Magazine, at

plot lines, and sex scenes that seemed suspiciously necessary to prop up flagging Nielsen ratings. The writers for Civil Wars tried this strategy when they had Mariel Hemingway do a nude scene; the series was cancelled shortly afterward.<sup>62</sup>

Ally's poor litigation skills are only exceeded by her inability to form close personal friendships. When she serendipitously acquires a child, she promptly goes overboard.<sup>63</sup> Ally's inability to enter into a permanent relationship with a man seems to track the lack of success that other female television lawyers have, and also seems true to life. As Cynthia Fuchs Epstein points out, males can date women of the same and lower social and professional rank, and can pick and choose. Women professionals, including women lawyers, have a much smaller pool of potential mates.<sup>64</sup> Ally attracts a lot of good looking, interesting men, from the physician Greg Butters to the handyman played by Jon Bon Jovi, as well as longing glances from colleagues like John Cage. Yet she can't keep any of them for any length of time. One might ascribe her romantic failures to a male distaste for professional women, but conveniently, that doesn't seem to be the case. Ally is so neurotic that we excuse any nice man who dumps her. Her emotional impairment serves as the show's reason for her personal failures but that hardly seems fair. The show has really stacked the deck against her by infusing her personality with truly unlikeable characteristics, ensuring that she is not only questionable as a legal practitioner but wildly unsuitable as a marriage partner.

Her friendships, except for that with Renée, are equally odd. She comes to a kind of truce

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<http://www.flakmag.com/tv/ally.html> (Visited July 17, 2002).

<sup>62</sup>On the history of the series *see* Christine A. Corcos, *Women Lawyers*, in Prime Time Law (Paul Joseph and Bob Jarvis ed.; Carolina Academic Press, 1998) at 219.

<sup>63</sup>The New Day (original air date February 11, 2002).

<sup>64</sup>Cynthia Fuchs Epstein, Women in Law (2d ed.; Anchor Books, 1993), at 334-340.

with Georgia Thomas, but actively dislikes Ling Woo and Nelle Porter, barely tolerates the secretary, Elaine Vassel, for the first couple of seasons, and seems to have no non-lawyer female friends of any consequence.

The show doesn't really have to try so hard to make its points. With the possible exception of Amanda Bonner in Adam's Rib and Clair Huxtable in the television series The Cosby Show,<sup>65</sup> pop culture women lawyers are either bitchy and successful, or kind and unsuccessful. They either have no luck with personal relationships, or no ability to make a living.<sup>66</sup> The focus in films and shows about female attorneys is on their inability to "have it all". Fictional male attorneys can concentrate on their careers, and still expect that women will find them attractive. Thus, movies about male lawyers looking for love are comparatively rare.<sup>67</sup>

### **B. Ally's Foremothers**

As I mention above, Ally McBeal is not, as some critics would have it, an anomaly in the world of fictional women attorneys. For one thing, popular culture has always overrepresented female lawyers. Further, it has almost always uniformly portrayed them as either frail or

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<sup>65</sup> Carsey-Werner (1984-1992).

<sup>66</sup> Cynthia Lucia, whose book Framing Female Lawyers (University of Texas Press, 2005) is an extended discussion of the image of women lawyers during the period when women were beginning to enter the profession in larger numbers (that is from 1950 onward) seems unaware of the work done by scholars outside the area of cinema studies and literature.

<sup>67</sup> One example is the solitary figure of Frank Galvin in The Verdict (1982); another is Shannon in the short-lived Shannon's Deal. Sam Waterston in I'll Fly Away had a satisfying relationship with his children; he was reminiscent of Atticus Finch in To Kill a Mockingbird (1962). But male lawyers' family relationships, or stories involving male lawyer redemption, are rarely the focus of the story (cf The Devil's Advocate). Male lawyers usually expect that the partners in their lives will wait for them—for example see the clash between the male lawyer and his girlfriend in the film Death Benefit (1994). Convinced that he is obsessing over a pro bono case she gives him an ultimatum. The film paints her as unreasonable, because as it turns out he is quite right in pursuing the case. Regarding Henry (1991) is a notable exception in which the focus is on rehabilitation of an injured attorney, but note that before the protagonist (played by Harrison Ford) was injured, he was an aggressive attorney, a fairly common stereotype.

incompetent in their professional lives, or incapable of sustaining a satisfying intimate relationship with another person. *They must choose*—they may have either a happy home life, or a satisfying career, but not both.

Female lawyers have been a staple of both film and television in the U.S. since the 1930s.<sup>68</sup> Leah Baird played a lawyer in The People vs. John Doe (1916).<sup>69</sup> Constance Bennett starred as a lawyer trying to clear her ex-husband of a murder charge in Smart Woman (1948): the tagline was “Smart about everything, except men!” Adam’s Rib (1949) was the first generally successful film that featured a female lawyer (Katharine Hepburn), here battling her husband Adam, a city prosecutor (Spencer Tracy) in defense of a woman charged with the attempted murder of her cheating husband. Because the film was a comedy, Hepburn won and in the process tried to vindicate her right to pursue a career as an attorney. Whether she was successful is questionable.<sup>70</sup> Television series featuring women lawyers are fairly common, and usually feature female assistant district attorneys, female defense attorneys specializing in family law or criminal law, or female judges.<sup>71</sup> Apart from Ally McBeal, television series during the 2001/2002 season featuring women lawyers included The Practice,<sup>72</sup> Family Law,<sup>73</sup> Judging

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<sup>68</sup> For a listing of women lawyers on film and in television see Sisters in Law: Popular Culture Featuring Women Attorneys at <http://faculty.law.lsu.edu/ccorcoc/lawhum/womenlawyersinfilms.htm>.

<sup>69</sup> For a basic history of women lawyers in film see Ric Sheffield, *On Film: A Social History of Women Lawyers in Popular Culture, 1930-1990*, 14 Loy. L.A. Ent’l L.J. 73-114 (1993).

<sup>70</sup> See Corcos, “We Don’t WANT Advantages,” supra fn. 14 at 1253-1263. I do argue in this article that we have some exceptions to the general rule that women attorneys cannot have both, but I point out that in order to have both women attorneys must modify their approach—that is, they must at least seem to conform—they must retain something of the feminine. If they try to compete with men on male turf, popular culture demands that they must lose.

<sup>71</sup> For a partial list see Christine A. Corcos, *Portia and Her Partners in Popular Culture: A Bibliography*, 22 Legal Studies Forum 269 (January 1998).

<sup>72</sup> Began airing on ABC March 4, 1997. The official website is available at

Amy,<sup>74</sup> Any Day Now,<sup>75</sup> Philly,<sup>76</sup> The Court,<sup>77</sup> First Monday,<sup>78</sup> Law and Order,<sup>79</sup> J.A.G.,<sup>80</sup> 100 Centre Street<sup>81</sup> and Imagine That.<sup>82</sup> In addition, a number of lawyer shows are currently in re-runs on various cable channels, including Night Court,<sup>83</sup> L. A. Law,<sup>84</sup> Matlock,<sup>85</sup> and Law and Order. Scheduled for the fall 2002 season were girls' club (originally named bargirls), another David E. Kelley franchise, and For the People<sup>86</sup> (which actually debuted July 27, 2002 on Lifetime). In addition, several "reality courtroom shows", including Judge Judy, Judge Hatchett, and Sex Court featured female magistrates.

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<http://abc.abcnews.go.com/primetime/thepractice/index.html> (Visited July 10, 2002).

<sup>73</sup>Aired on CBS Television 1999-2002. For a titles and episodes guide see <http://epguides.com/FamilyLaw/> (visited August 30, 2006).

<sup>74</sup>[http://www.cbs.com/primetime/judging\\_amy/](http://www.cbs.com/primetime/judging_amy/) (visited July 10, 2002).

<sup>75</sup>Lifetime Television 1998-2002. See <http://www.lifetimetv.com/shows/anyday/> (Visited July 10, 2002) for episode guides and cast lists.

<sup>76</sup>Aired on ABC from September 25, 2001 to May 28, 2002. The official website is available at <http://abc.abcnews.go.com/primetime/philly/index.html> (visited July 10, 2002).

<sup>77</sup><http://abc.abcnews.go.com/primetime/thecourt/index.html> (visited July 10, 2002). Aired on ABC from March 2002 to April 2002 (six episodes aired, three unaired).

<sup>78</sup>Aired on CBS from January 2002. The official website is available at [http://www.cbs.com/primetime/family\\_law/](http://www.cbs.com/primetime/family_law/) (Visited July 10, 2002).

<sup>79</sup>Airs on NBC.

<sup>80</sup><http://www.cbs.com/primetime/jag/> (visited July 10, 2002).

<sup>81</sup>Aired on A&E Television from January 2001 to March 2002. See

<http://www.epguides.com/100CentreStreet/> for an episode guide (visited July 10, 2002).

<sup>82</sup>Premiered January 8, 2002 on NBC and sank like a stone, cancelled after two weeks. It starred Hank Azaria as a comedy writer and Jayne Brook as his district attorney wife. See Bridget Bryne, *That's That for Imagine That!* January 18, 2002

(<http://www.eonline.com/News/Items/0,1,9403,00.html>)

<sup>83</sup>Aired January 1984 to May 1992 on NBC.

<sup>84</sup>Aired on NBC from September 1986 to May 1994. <http://www.epguides.com/LALaw/> (Visited July 10, 2002) provides air dates and episode titles.

<sup>85</sup>The Official Unofficial Matlock Site is available at <http://www.angelfire.com/biz2/benmatlock/main> (Visited August 30, 2006).

In films of the past couple of decades female lawyers and judges routinely enter in questionable personal or sexual relationships with other lawyers and judges (Naked Lie<sup>87</sup>, A Case for Murder<sup>88</sup>, Primal Fear<sup>89</sup>), with jury members (Suspect<sup>90</sup>), with clients (Jagged Edge<sup>91</sup>, Portraits of a Killer<sup>92</sup>), with suspects (The Big Easy<sup>93</sup>, Judicial Consent<sup>94</sup>) and with murder victims (Defenseless<sup>95</sup>). Against the advice of other members of their firms, or their friends, they agree to represent clients who are likely to derail their careers or with whom they already have personal relationships (Defenseless<sup>96</sup>, Double Jeopardy<sup>97</sup>, Guilty as Sin<sup>98</sup>, Jagged Edge<sup>99</sup>, Music Box<sup>100</sup>, Class Action<sup>101</sup>.) Less often they are murder suspects (When Justice Fails<sup>102</sup>). They engage in unprofessional behavior (Suspect,<sup>103</sup> The Verdict<sup>104</sup>). Sometimes they are the sirens that embroil male colleagues in disaster (The Verdict<sup>105</sup>, Presumed Innocent<sup>106</sup>). The kind of self-destructive behavior we see in such films is mimicked in (often farcical) television shows such as

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<sup>86</sup> Aired 2002-2003 on Lifetime Television. See [www.imdb.com](http://www.imdb.com).

<sup>87</sup> (1989).

<sup>88</sup> (1993).

<sup>89</sup> (1996).

<sup>90</sup> (1987).

<sup>91</sup> (1985).

<sup>92</sup> (1996).

<sup>93</sup> (1987). The show later had a short run as a television series (1996-1997) on the USA network.

<sup>94</sup> (1994).

<sup>95</sup> (1991).

<sup>96</sup> (1995).

<sup>97</sup> (1992).

<sup>98</sup> (1993).

<sup>99</sup> (1985).

<sup>100</sup> (1989).

<sup>101</sup> (1991).

<sup>102</sup> (1998).

<sup>103</sup> (1987).

<sup>104</sup> (1982).

<sup>105</sup> (1982).

<sup>106</sup> (1990).

Common Law<sup>107</sup> and Life's Work<sup>108</sup>, which shows the female ADA as incompetent, L. A. Law, in which the female partner is a harridan (Rosalind Shays) or a wimpette<sup>109</sup> (Abby), and Judging Amy<sup>110</sup>, Family Law<sup>111</sup>, and Any Day Now<sup>112</sup> in which they are good-hearted but often misguided, usually when a man enters the story. None of these women lawyers is particularly memorable; none has the power of a Perry Mason or a Matlock, or even an Arnie Becker, the aggressive attorney in L. A. Law. These kinds of representations are not new. In The Law in Her Hands<sup>113</sup> two young female lawyers begin a law practice and become involved with organized crime. In The Bachelor and the Bobby Soxer<sup>114</sup> Myrna Loy is the judge who sentences Cary Grant to dating her teenaged sister. Although the film tells us Loy is a capable judge, she loses all credibility when she makes this decision. Eyes of Texas<sup>115</sup> features a woman lawyer intent on despoiling an estate.

Popular culture has and continues to overrepresent women attorneys, particularly among the ranks of incompetent, venal, or distracted counselors. They also overstaff the offices of assistant district attorneys and public defenders—note shows such as Close to Home<sup>116</sup> and Conviction,<sup>117</sup> and such made for television movies as Mind Over Murder, in which Tori

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<sup>107</sup> (ABC, 1996).

<sup>108</sup> (ABC, 1996).

<sup>109</sup> Susan Isaacs coins this term for her book Brave Dames and Wimpettes (1998). See Isaacs, Brave Dames and Wimpettes, *infra at fn. 145*.

<sup>110</sup> CBS, 1999-2005.

<sup>111</sup> CBS, 2005.

<sup>112</sup> Lifetime Television, 1998.

<sup>113</sup> (1936).

<sup>114</sup> (1947).

<sup>115</sup> (1948).

<sup>116</sup> CBS, 2005--.

<sup>117</sup> NBC, 2006. This Dick Wolf series lasted only a few episodes.



Spelling plays an ADA who acquires the ability to hear other people's thoughts.<sup>118</sup>

### C. "Girls, Interrupted": Ally and Other Female Attorneys as Role Models

Ally McBeal is not the only woman attorney on the show. She has a number of colleagues, all of whom demonstrate to some extent the same habits of work and mind as she. Her roommate,<sup>119</sup> Renée Radick (Lisa Nicole Carson), is a feisty assistant district attorney, and their relationship leads to several interesting ethical confrontations. Renée's position as an ADA puts her in the position of prosecuting Ally on at least one occasion (for shoplifting).<sup>120</sup> On other occasions she prosecutes cases for which Ally is one of the defense counsel.<sup>121</sup> Through such close associations, the show strengthens the idea that law is a game, and that those who are skilled in the game (judges and lawyers) are secretly complicit in obtaining pre-arranged outcomes, even though on the surface they seem to be adversaries. Viewers who are either consciously or subconsciously aware of these hints further absorb the idea that clients are mere fools ripe to be "taken in" by attorneys on both sides and judges who all know the unspoken

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<sup>118</sup> (MOM Black Productions, 2006). Although set in Cincinnati, the movie was filmed in Ottawa. Notice that she must lose this ability if she is to continue her career and live "happily ever after", so she does, with a knock on the head at the end of the film.

<sup>119</sup> According to NALP, the national organization that monitors legal employment, the median salary for first year associates in 2001 was \$95,000 a year. Since Ally very likely makes more than that, we don't understand why she needs a roommate, except for the companionship. Perhaps she's doing Renée a favor, since the average salary for ADAs in Boston is substantially less than her own. Similarly, *The Practice*'s Lindsay Dole (Kelli Williams), an up and coming associate and eventual partner at Donnell and Associates, shares an apartment with *her* old friend and roommate ADA Helen Gamble (Lara Flynn Boyle). (For lawyer salaries see the NALP website at <http://www.nalp.org/> (visited August 30, 2006).

<sup>120</sup> *One Hundred Tears*, original air date October 20, 1997.

<sup>121</sup> *The Promise*, original air date October 27, 1997.

rules.<sup>122</sup>

Apart from Renée, Ally also comes into contact with female lawyers at her firm, Cage, Fish, including Nelle Porter (Portia de Rossi, who was in law school when the acting bug bit).<sup>123</sup> Nelle's beauty, professionalism<sup>124</sup>, and calm demeanor (her nickname in legal circles is "Sub-

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<sup>122</sup> For more on the notion that "law is a game" see H. L. A. Hart, The Concept of Law (1961) at 48 *passim*, and various law review articles, for example, Maureen Archer and Ronnie Cohen, *Sidelined on the Judicial Bench: Sports Metaphors in Judicial Opinions*, 35 Am. Bus. L.J. 225 (1998)(discussing the popularity of such metaphors with judges and lawyers) and Chad M. Oldfather, *The Hidden Ball: A Substantive Critique of Baseball Metaphors in Judicial Opinions*, 27 Conn. L. Rev. 17 (1994). The game of baseball in particular has a grip on the law. See Roger I. Abrams, Legal Bases: Baseball and the Law (Philadelphia: Temple University Press, 1998); Spencer Waller and Neil Cohen, Baseball and the American Legal Mind (NY: Garland Publishing, 1995) and Ettie Ward, ed., Courting the Yankees: Legal Essays on the Bronx Bombers (Durham, NC: Carolina Academic Press, 2003). Archer and Cohen note that the "law is a game" "metaphors in judicial opinions presents some potentially serious dangers. To the litigants, a judicial opinion speaks to a genuine crisis, possibly the loss of liberty, but it is presented to the reader as a game in which the main participants are the attorneys who are involved in a contest of out-manuevering and out-bluffing each other: "The referees, umpires and line judges of football become judges and juries in the law courts, where prosecuting and defense attorneys vie to win cases, substituting linguistic maneuvering for the muscle and violence of football." Thus, the case itself is portrayed as a strategy problem, a competition between game plans, rather than a human problem, or a problem of justice. Judges who write appellate opinions, therefore, should be aware of the sports metaphors they use and of the effects these terms may have on their audience. There may be confusion as to meaning by some readers, a sense of exclusion by others, such as women and non-native speaking attorneys, students and litigants. Moreover, the use of sports metaphors may contribute to a perpetuation of male dominance in the highest levels of the judicial system through the use of language. " Archer and Cohen, *Sidelined on the Judicial Bench*, supra at 240-241.

<sup>123</sup> See Claire Bickley, *Legal Eagle One Tough Cookie*, Toronto Sun, July 16, 2000, at TV3.

<sup>124</sup> The show calls Nelle's professionalism into question in Angels and Blimps (original air date February 8, 1999) when she appears in heavy eye makeup stating that she "just felt like it." Women's use of makeup immediately separates them from men. Indeed, employers may, and do, legally use makeup in the course of grooming policies to differentiate between the sexes. See *Jespersion v. Harrah's Operating Company*, 444 F. 3d 1104 (U.S.C.A. 9<sup>th</sup> Cir., 2006)(holding that district court correctly granted summary judgment for employer because plaintiff failed to demonstrate prima facie case of sex-based differential in grooming policies that violated Title VII). On the Jesperson case see William M. Miller, *Lost in the Balance: A Critique of the Ninth*

Zero Nelle”) bring out the cattiness in several of the other women in the firm including Ally and her secretary Elaine.<sup>125</sup> John Cage, the partner initially interested in hiring Nelle,<sup>126</sup> makes no secret of her attractiveness to him, a situation parallel to Ally’s in the premiere episode of the series.<sup>127</sup> Georgia Thomas (Courtney Thorne-Smith), the associate married to Ally’s former fiancé Billy, also a Cage, Fish associate, is the most well-balanced and likeable female attorney on the show.<sup>128</sup> Circumstances eventually force her into leaving the firm and her marriage; the series explores this situation in an episode in which she sues the firm for promoting a “sexually charged arena” in which back biting and adultery are encouraged.<sup>129</sup> Georgia’s marginalization is thus complete. Ling Woo (Lucy Liu), who begins as a highly unlikeable client,<sup>130</sup> reveals her legal background (Cornell Law School, Cornell Law Review)<sup>131</sup> and eventually joins the firm after offering John Cage sexual favors.<sup>132</sup> Jennifer “Whipper” Cone, a sitting judge, has a long-standing affair with Richard Fish.<sup>133</sup> Eventually, Cone and Radick open up a law practice

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*Circuit's Unequal Burdens Approach to Evaluating Sex-Differentiated Grooming Standards Under Title VII*, 84 N.C. L. Rev. 1357 (2006).

<sup>125</sup>They Eat Horse, Don't They? (Original air date September 21, 1998).

<sup>126</sup>The Real World, original air date September 14, 1998.

<sup>127</sup>Ally explains the problem to Richard Fish in Compromising Positions (original air date September 15, 1997).

<sup>128</sup>She does succumb to a desire for a new image, partially because she believes her marriage is in trouble, in The Green Monster (original air date May 10, 1999).

<sup>129</sup>Over the Rainbow (original air date February 7, 2000). According to The Unfinished Agenda, approximately seventy-five percent of women lawyers believe sexual harassment is “a problem in their workplace.” The Unfinished Agenda, *supra* fn. at 19.

<sup>130</sup>Fool's Night Out (original air date September 28, 1998).

<sup>131</sup>Angels and Blimps (original air date February 8, 1999).

<sup>132</sup>Pyramids on the Nile (original air date February 15, 1999).

<sup>133</sup>Compromising Positions (original air date September 15, 1997).

together,<sup>134</sup> and “interview” male associates by asking them to strip. Ally hires them to defend her against an emotional distress claim in Heat Wave.<sup>135</sup> Again, the highly unprofessional conduct they exhibit indicates that attorneys, whether male or female, will do anything to satisfy their libidos. But the double standard that society applies to professional women means that we will have diminished respect for women lawyers (and in Cone’s case) former women judges. A number of other women attorneys dot the landscape in various episodes.<sup>136</sup> None of these is an edifying role model for female law students, as the characters often demonstrate slyness, duplicity and dishonesty.

Both Ally and John Cage have frequent hallucinations, ranging from imagining that they are interacting with real people (Ally’s dates, John’s hero Barry White) to non-existent creatures (Ally’s unicorn). We might assume that the hallucinations represent a healthy fantasy life—a working out of resentments that the characters would otherwise visit on their enemies, but the problem is that they don’t avoid such problems by indulging in these hallucinations. The fantasies seem to exacerbate their difficulties in dealing with real life, thus making their jobs as attorneys that much more complicated. Similarly, some of their clients have such problems, including Max, the octogenarian who imagines that he sees pygmies and dragons.<sup>137</sup>

But when Billy, the supremely competent, supremely rational member of the firm, starts

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<sup>134</sup>Car Wash (original air date October 25, 1999).

<sup>135</sup>Original air date November 15, 1999.

<sup>136</sup> *See for example* “Yvette Rose” in The Story of Love, original air date October 26, 1998; or the ambitious “Hope Mercy” in Hope and Glory, original air date May 15, 2000.

<sup>137</sup>In Search of Pygmies (original air date February 14, 2000).

seeing things however, and engaging in uncharacteristic behavior<sup>138</sup> his friends and wife believe that he is mentally ill. Eventually he discovers that he suffers from an inoperable brain tumor. At that point, his colleagues and we reassess our opinions of Billy. He is no longer insane, or self-absorbed. He is physically ill. Within a few weeks (episodes), he is dead.

Billy's demise sends the audience a mixed message. Now that we know that Billy's hallucinations have an organic cause, are Ally's odd visions and John Cage's hallucinations the result of mental illness, unstable personalities, self-indulgence or something else? And regardless of the cause, would clients hire them if they knew of these problems? Is the message that hallucinations are actually a good thing—they keep us sane in an increasingly bizarre world? In addition, is the show asking us to confront prejudices about mental illness? Is a "real" illness, like Billy's, more acceptable than a mental illness, even if the outward signs are similar? Certainly the stigma of mental illness continues in our society in a way that prejudice against physical illness does not.<sup>139</sup>

The extreme, narcissistic behavior Ally demonstrates is characteristic of most of the women on the show. Even when they behave as men would in similar circumstances, the

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<sup>138</sup> Prime Suspect (original air date March 20, 2000).

<sup>139</sup> "According to Charles G. Curie, Deputy Secretary for DPW's Office of Mental Health and Substance Abuse Services, "The video points out destructive myths and stereotypes associated with mental illness, and puts a human face on the pain that is caused by society's prejudice against those who face it. "Our hope is that anyone who views the video will walk away with a greater understanding and sensitivity to mental illness -- an understanding that breaks the negative stigma attached to it." In 1999, U.S. Surgeon General Dr. David Satcher released a report on the status of mental health in the United States. In his report, Satcher said it is not a massive monetary investment that will alleviate stigma. Instead, he asserts that what will help is "the willingness of each of us to educate ourselves and others about mental health and mental illness, and thus to confront the attitudes, fear and misunderstanding that remain as barriers before us."" See *Pennsylvania Gov. Ridge Administration Launches Statewide Campaign to Fight Stigma Against Mental Illness*, PR Newswire, May 23, 2001.

standards are quite different. When the series applies the male norm to women, it always finds women inadequate. Nelle, angry that John and Richard refuse to make her a partner in spite of her merit (and in spite of the fact that the erratic Ally is a partner), decides to defect from Cage, Fish, taking some important clients and their files with her, with the encouragement of Hope Mercy, one of Richard's many former lovers.<sup>140</sup> Richard and John discover her plans and blame each other, Richard considering that John's now ended affair with Nelle has complicated the situation. Hope rekindles the affair with Richard in an attempt to distract him, in a farcical move reminiscent of Charlotte Rampling's maneuver in The Verdict. Nelle's defection quickly becomes the subject of a lawsuit, improbably tried and settled before an arbitrator during the course of the episode. This kind of rapid legal decompression gives the viewer the impression that justice is swift when lawyers' own pockets are concerned. What has Nelle done? If she had a prior existing relationship with the clients she spirited away, she has arguably committed no ethical foul under Rule 5.6.<sup>141</sup> Has Nelle truly committed an ethical breach, and if so against whom? Note that the firm originally hired her to bring clients with her from her old firm. (She did deceive Elaine into allowing her access to the passwords for client files—for that the arbitrator fined her \$300,000). This area of the law is murky, but the episode seems to paint Nelle as thoroughly without justification. Her clients may indeed have agreed to her continued

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<sup>140</sup>Hope and Glory (original air date May 15, 2000).

<sup>141</sup> A lawyer shall not participate in offering or making: (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy. (Rule prior to 2002).

representation, even at a new firm, which she has decided to found.<sup>142</sup> In the next episode she expresses a desire to return to Cage, Fish, having decided that associates for whom she has no respect are better than no associates at all.<sup>143</sup>

That women may treat other women badly socially is a cliché that has worked its way into literature and popular fiction, even though the women's movement has attempted to counter it by creating the image of a "sisterhood". Consider Richard Fish's comment: "On sex and sexual harassment, women don't see straight. Women as a rule hate other pretty women. Women as a rule also sympathize with other women victims because they are women. Women want other women to be destroyed, but as women they don't want to be the destroyer themselves." He suggests that women want to use men as tools, both of revenge and of advancement. If he is correct, he speaks an ugly truth about women. If not, he propogates an ugly lie about men.

That some women can treat other women badly in the workplace has been until recently a dirty little secret that is rapidly expressing itself. Phyllis Chesler's book Woman's Inhumanity to Woman<sup>144</sup> documents the literature that suggests that in fact women treat others of their sex badly in a continuing attempt to compete for male attention. In her recent essay Brave Dames and Wimpettes: What Women Are Really Doing on Screen and Page,<sup>145</sup> Susan Isaacs tells us that Ally McBeal is a wimpette: a woman who hides behind men, refuses to take responsibility for her actions, and whines about her inability to obtain the respect of her peers. (In case we do not get it, Kelley provides us with fantasy sequences in which we see Ally seated, like Lily Tomlin's

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<sup>142</sup> Hope and Glory (original air date May 15, 2000).

<sup>143</sup> The Musical, Almost (original air date May 22, 2000).

<sup>144</sup>(NY: Avalon Publishing, 2001).

<sup>145</sup>(NY: Random House, 1998)(*hereinafter* Isaacs, Brave Dames and Wimpettes).

Edith Ann , in an oversized chair, imagining herself in a dumpster, or acting out her desire to sleep with the current heartthrob of the moment). To the extent that Ally McBeal promotes the image that a woman’s success is directly dependent on her attractiveness to men, it reinforces the tendency among women and men alike to value and reward the “little girl” in the workplace, suggesting that to be successful a woman must never grow up. She must cultivate cuteness, neurosis, and the wish to be rescued. For a woman directly engaged in a profession in which rescuing is the primary focus, this reinforcement is dangerous. If it is an accurate reflection of 21<sup>st</sup> century American society, it is also profoundly disturbing.<sup>146</sup>

Commentators and viewers have always had mixed opinions of Ally as a role model, but those opinions seem to track along gender lines, with many male lawyers willing to see the humor and discount the parody in the show, and many female attorneys objecting to Ally’s selfishness and apparent laziness and inability to focus on anyone’s needs but her own. Paul Joseph contends that

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<sup>146</sup> Kelley is not the first male to advance this theory in current pop culture, of course. Warren Farrell complains about female use of male power to advance in this way; he calls it “Flashdancing”, after the 1983 Adrian Lyne film in which a female welder yearns for a dance career. Her wealthy boyfriend conveniently smooths her way. See Warren Farrell, Why Men Are the Way They Are (1986). Note that Jennifer Beals, the actress who plays the lead, cannot really dance either; the director used body and dance doubles for her dances, most notably for the eleven second leap in the audition scene in which the director uses three different athletes, Marine Jahan for the dancing, a gymnast and a “street dancer”. See Mick LaSalle, “Flashdance” *Still Looks Good*, San Francisco Chron., April 14, 1993, at C05. In 2006, the real dancer who was the subject of the film lost a suit against both Sony and Jennifer Lopez; the 9<sup>th</sup> Circuit held that Sony’s initial payment of \$2300 for the rights to her story was adequate compensation even though the film had grossed millions. See Marder v. Lopez, 04-55615 (9<sup>th</sup> Circuit, June 12, 2006)). The case suggests an Ally McBeal outcome. Body doubles are common in film; see P. K. Lerner, *Double Duty; A Small Group of Hollywood Extras Use Parts of Their Anatomies in Movies and TV rules—Although You’d Never Know It From the Screen Credits*, L. A. Times, June 2, 1991 (LEXIS, NEWS file).



[i]n a sense what might be the most objectionable thing about Ally is that it presents an image of a workplace world that is more egalitarian than is much of the real world. In Ally's world women are not professionally discounted for being as sexy as they choose to be; women are respected professionally whether or not they are emotional basket cases (so long as they can do the work); and the desire to find love is never in conflict with professional advancement. Yet, much that one can object to in Ally can also be seen as positive. If Ally tells women that professional success is unlikely to make up for a lack of love and that juggling love and career are difficult, these are things that many women (and increasingly men) already know. What Ally does is to get that conflict out in the open. Also, Ally shows viewers that one need not be wholly together in order to succeed in one's career. Ally is a successful lawyer although her personal life is a mess. Also important is that Ally is not a mess because of her career--thank goodness. It is obvious that her emotional fragility predated her career. But what is seen is that she can succeed in her career even though she is not cool, calm, or totally in control. So few people are in control that this takes a great weight of expectations off the viewers.<sup>147</sup>

Says Elisabeth Friedman, "...[I]t's a comedy, so why don't we laugh at it, instead of trying to pull it apart? It obviously doesn't take itself too seriously, so why do it the favor? But a while ago someone asked me if I, as an academic who specializes in gender and politics, could comment on how feminist I found the show. And that's where the sitcom seems not so funny anymore...[N]ot all the issues that surface are all that funny....The problem is that when you start exploring issues such as sexual harassment, rape, and discrimination, you come upon things that are no laughing matter. But time after time, Ally & Co. dance around the more fundamental societal problems underpinning such issues: the entrenched and unequal relationships of power between men and women, as well as among people of different races."<sup>148</sup>

To the extent that Friedman's view is accurate, I would suggest however that the negative images presented actually do represent reality. Sexual harassment and discrimination still does exist, and continues not to be recognized or, if recognized, taken seriously. Instead it is laughed off in many workplaces, and those who object to it are told to "suck it up" (if they are men) or

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<sup>147</sup> Paul Joseph, *Saying Goodbye*, *supra*, fn. 34 at 469-470.

<sup>148</sup> Elisabeth J. Friedman, "Is Ally our ally?" [www.usfca.edu/pj/ally-no-ally.htm](http://www.usfca.edu/pj/ally-no-ally.htm) (From the Picturing Justice website, visited July 18, 2002).

that “boys will be boys” (if they are women). The whistleblower and the person exercising her rights are still suspect and still more likely than the harasser or discriminator to lose a job, be labeled a troublemaker, and suffer permanent financial and professional damage. Should lawyers themselves engage in sexual harassment and discrimination? Of course not. Do they? Certainly some of them seem to do so.<sup>149</sup> Friedman suggests that “[i]n Ally’s world, we don’t have to worry about the male hierarchy in the firm, or whether the women will be taken seriously because of their clothing, or whether there are sanctions or fallout from intimate relationships between co-workers (or partners and associates). Why not? Because instead we get to follow the adventures of the kooky lawyer, the fire-breathing dragon lady, and the comforting girlfriend. As long as we’re only dealing with individual characters, and not the social relations and structures they live in and form part of, we can laugh at their foibles and flirtations and not grapple with the tough stuff...”<sup>150</sup>

Actually, we don’t have to wonder whether “fallout” on any of these issues will arise on the show because we already know the answer. The norms and the evaluation methods are Richard Fish’s (male). The purpose of the firm is to bring in clients and make money (not necessarily to win cases). Do Ally’s short skirts, Nelle’s beauty, bring in clients? Then use those factors and run to the bank. That his desire for income is determinative is obvious from Fish’s decision to hire two new associates who were previously romantically involved, when he

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<sup>149</sup> See for example *Kojak v. Jenkins*, 1999 U. S. D.C. 5977 (1999)(former attorney sued former partner; this particular case includes some truly awful fiction provided by the defendant in the form of a letter to the plaintiff); *Simpson v. Martin, Ryan, Andrada, & Lifter*, 1997 U. S. Dist. LEXIS 23342 (1997)(legal secretary sued partner in law firm for racial and sexual harassment; case allowed to proceed under section 1981).

<sup>150</sup>Friedman, *op. cit.*

discovers that Ally's choice, whom he had at least wanted to fire, is handling a 72,000 plaintiff class action lawsuit.<sup>151</sup> Is Fish's choice the "wrong" choice? That question, as we can see, is not a meaningful one in the *Ally* universe.

Ally McBeal, like Felicity (also cancelled in 2002) appealed to many younger women and girls, who saw in the title characters people undergoing the same doubts about life and love as themselves, even though Ally is supposed to be in her mid to late 20s when the series debuted (Felicity actually was a teenager, a young woman who followed her boyfriend to the college that accepted him even though she had been accepted at Stanford). These girls, says one commentator, allow younger women and teens to justify their own view that they are the center of their universe, if no one else's. "Call them girls, interrupted. And "girls," the feminist implications of the word notwithstanding, is really the operative term here. Both Felicity and Ally were and always have been girls--girls who fretted endlessly (either via elaborate fantasies or taped voice-over self-reflection) about girl things, girls who worried excessively about committing faux pas around cute guys, girls whose world was seldom invaded by any serious real-world concerns that reached beyond their personal sphere. Young women and teenage girls flocked to the series, whose engaging characters--coupled with their telegenic stars--propelled the shows onto magazine covers and spurred heated debate about everything from the length of Ally's skirts to Felicity's hair."<sup>152</sup> Consider the message that both Ally and Felicity (and Elle Woods, in Legally Blonde) send to young girls: choosing to follow one's boyfriend could be a rational choice, even if, as in the case of Ally and Elle's boyfriends, he has shown that he is

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<sup>151</sup>Friends and Lovers (original air date October 29, 2001).

<sup>152</sup>Brian Lowry, *Bring on the next girl: "Ally McBeal" and "Felicity" became hits with young women by cleverly camouflaging juvenile subjects. But the fans have new waifs to*

otherwise attracted.<sup>153</sup> In Hollywood fantasies such as Legally Blonde and Ally McBeal things eventually work out for the best, because the heroines have brains and beauty, and they will eventually find their way to success. In the real world, however,

Even in Great Britain, Ally has apparently had some influence (though not as much as Elle Woods). “The mystery of the 11-year-old girls who want to become lawyers deepens. I suggested last week that Ally McBeal might be responsible for their enthusiasm (a small underfed person who gets to snog, dance and wear revolting clothes ). I've now received a letter from a parent of an 11-year-old girl telling me that she and her friends owe their legal ambitions to the recent film Legally Blonde, in which Reese Witherspoon plays an appearance-obsessed airhead high-school student (sic) dumped by her boyfriend because she's not serious or clever enough. She gets her revenge by being miraculously accepted into Harvard Law School and proving herself smarter than her dumper. OK, it's marginally better to be influenced by Reese Witherspoon than by McBeal, but there must be something else attracting all those 11-year-old girls to the law.”<sup>154</sup>

One of the best newspaper articles to discuss Ally's many moods and influences is Carla Hall's *This Woman Is...*<sup>155</sup> Some commentators, like Elaine Showalter, the English professor

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worship, L. A. Times, May 19, 2002, Sunday Calendar, Part 6, p. 7

<sup>153</sup> That the choice works out well for both Ally and Elle, who end up at Harvard Law, is not the point. Young women should go to school, or follow careers, with their eyes open, not because a man has made their choices for them.

<sup>154</sup> Marcel Berlins, “Ally McBeal and L.A. Law,” The Guardian, May 21, 2002 at <http://education.guardian.co.uk/higher/socialsciences/story/0,9846,719489,00.html> (visited July 1, 2002). Note that the National Association of Women Lawyers and other professional groups are actively promoting a new “women lawyers” show on Lifetime TV, For the People. See <http://www.ncwba.org/index.html> ( which features a picture of stars Debbi Morgan and Lea Thompson).

<sup>155</sup> Carla Hall, *This Woman is: 1) a '90's heroine 2) a retro ditz: choose one (if you can)*, L. A. Times, March 8, 1998, at 3.

and cultural critic, find Ally's inability to function annoying. "To me, she seems like an anorexic, self-indulgent little munchkin...I had a big fight with some male friends who absolutely adored her. She is the little shiksa baby dream goddess."<sup>156</sup> But others like Ally's combination of spunk and insecurity. "It's nice to see a woman portrayed as bright, been to law school, passed the bar, and see her being insecure...That's reassuring to someone like me who didn't finish high school and went to beauty school," says one fan of the show, a hairdresser. What this woman fails to notice is that Ally has every reason to feel insecure. She really is incompetent. Women outside the traditional male-dominated professions seem to see Ally as a female who successfully bucked the system. Similarly, Elle Woods' best friend in Boston in Legally Blonde is Paulette Bonafonté, a manicurist Elle meets on her first day of school. Paulette's heroine worship of Elle is obvious from the beginning and is only enhanced when Elle misrepresents herself as an attorney in order to bluff Paulette's ex-boyfriend into giving her back her beloved dog Rufus. Perhaps Elle will be a better attorney than Ally—the film's ending certainly suggests this outcome.<sup>157</sup> Elle certainly has the potential. She applies herself once the initial shock wears off, and we see her succeed at the law student game without ever succumbing to the male norms that the legal profession normally imposes.<sup>158</sup> Might Elle go farther in her profession if she were less overtly adorable but equally intelligent? Possibly—that is a question that few of us are eager to pose, and we should ask ourselves why, in the 21<sup>st</sup> century popular culture is still sending, and we are still eagerly receiving, a message that women need to be more than pleasant-looking to be

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<sup>156</sup>Hall, *id.*

<sup>157</sup> I argue this point in "*We Don't WANT Advantages*": *The Woman Lawyer and Her Quest for Power in Popular Culture*, 53 *Syracuse L. Rev.* 1225-1271 (2003).

<sup>158</sup> See Corcos, "*We Don't WANT Advantages*", *supra* fn. 157 at 1269-1270.

successful.<sup>159</sup>

Series like Ally McBeal, which repeat their messages every week, telegraph both to young women and young men that “cute” is not only viable but recommended, and that women can and should exercise their charms to win battles that their brains would otherwise take in a heartbeat. Of course, men use charm to win battles, too—but unless they are politicians, it is not usually their first line of attack.<sup>160</sup> Telling young women that a Harvard law degree is good, but an attractive face and a slender body are better does not validate either the law degree or the woman.

### III. “Oops, I did it again”: Ally and Ethics

Ally: I’m trying to desensitize myself to murder so I can be a better lawyer.  
Billy: Why don’t you just watch the news?

A common complaint about lawyers is that they are amoral. True to form, Ally McBeal reflects this perception. Ethical issues seem of secondary importance in the show when they do not involve Ally’s personal behavior. The presentation of lawyers involved with each other willingly taking on representation of clients whose interests are directly opposed serves to re-affirm the viewer’s belief that the legal system is rotten to the core, allowing David E. Kelley to explore another favorite theme, the extremism and corruption of the legal system, which delivers law instead of justice. The romantic dalliances that flourish on Ally McBeal follow in the

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<sup>159</sup> See Kathleen Bergin, *Sex for Sale: Sexualized Advocacy: The Ascendant Backlash Against Female Lawyers*, 18 Yale J. L. & Feminism 191 (2006).

<sup>160</sup> Consider President George W. Bush’s words to the 2001 graduates of Yale University: “Most important, congratulations to the class of 2001. To those of you who received honors, awards, and distinctions, I say, well done. And to the C students—I say, you, too, can be President of the United States. A Yale degree is worth a lot, as I often remind Dick Cheney—who studied here, but left a little early. So now we know—if you graduate from Yale, you become President. If you drop out, you get to be Vice President.” See at <http://www.yale.edu/lt/archives/v8n1/v8n1georgewbush.htm> (visited April 29, 2005).

tradition of legal dramas and comedies in which opposing counsel are married to each other or involved with each other romantically or otherwise, such as Adam's Rib<sup>161</sup>, which later became a short-lived television series<sup>162</sup>. Other examples which play on the dramatic tension that follows from romantic involvement include A Case for Murder,<sup>163</sup> Class Action<sup>164</sup> (daughter and father are opposing counsel in a products liability lawsuit), Primal Fear,<sup>165</sup> (the defense attorney and prosecutor are former lovers), David E. Kelley's own The Practice, in which Bobby Donnell is involved first with district attorney Helen Gamble and then with his law partner (and former associate) Lindsay Dole. Variations on this theme include those in which the lawyer (usually female) is involved with a police officer who routinely arrests her clients. Examples include Criminal Behavior<sup>166</sup>, Hill Street Blues<sup>167</sup>, and the short-lived tv series To Have and To Hold<sup>168</sup>. Sometimes the plot demands that the lawyer be romantically involved with the judge. Examples include Richard Fish and Jennifer "Whipper" Cone in Ally McBeal, Naked Lie<sup>169</sup>, in which Victoria Principal is an attorney involved with a judge who turns out to be a murderer, and The

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<sup>161</sup>(MGM, 1949).

<sup>162</sup>(MGM Television for ABC, 1973). As the Bonners it features Ken Howard as Adam and Blythe Danner as Amanda.

<sup>163</sup>Bodega Bay Productions, made for TVmovie, 1993).

<sup>164</sup>(20<sup>th</sup> Century Fox 1991).

<sup>165</sup>(Gregory Hobbit dir., Paramount Pictures, 1996).

<sup>166</sup>Television movie 1992.

<sup>167</sup>MTM Enterprises for 20<sup>th</sup> Century Fox 1981-1987.

<sup>168</sup>CBS Television series, 1998.

<sup>169</sup>Shadowplay Films, 1989.

Bachelor and the Bobby-Soxer<sup>170</sup> in which the judge sentences the male defendant to date her younger sister in order to “cure” her of a crush on him. Other popular “conflict of interest” scenarios include the lawyer romantically involved with his or her client (Jagged Edge<sup>171</sup>), or taking on the representation of a family member (Music Box<sup>172</sup>). One of the most recent films in which a lawyer gives up the man she loves is Batman Begins;<sup>173</sup> one cannot, after all, have a superhero saddled with a wife and children—such a situation would turn the film from drama into comedy.<sup>174</sup>

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<sup>170</sup>RKO Pictures, 1947. Admittedly, The Bachelor and the Bobby-Soxer is a comedy, and stars two extremely attractive stars—Cary Grant and Myrna Loy. But the underlying message is still disturbing, suggesting as it does that a judge can and should meddle romantically in such a way. Nor is it unheard of, even today. In 1998 a judge told a man accused of assaulting his live-in girlfriend to marry her or go to jail. See Mark Bixler, *Judge Tells Man to Wed or Be Jailed*, Austin-Am., Jan. 10, 1998, at A20.

<sup>171</sup>Columbia Pictures, 1985. Guilty as Sin (Buena Vista Pictures, 1993) turns this plot line on its head by casting Don Johnson as a man who blackmails his attorney, Rebecca de Mornay, into continuing to defend him by implying that they are having an affair, even though she believes he is guilty. Note that the ABA Model Rules would prohibit her from withdrawing as his counsel, except in the most extreme circumstances, yet another example of Hollywood’s exaggeration of the likelihood that lawyer ethics will scuttle the legal system. Indeed, movie makers seem to want it both ways: either conflict of interest rules impede the proper working of the legal system or they don’t.

<sup>172</sup>Carolco Pictures, 1989.

<sup>173</sup>(Warner Brothers, 2005). Interestingly, however, Bruce Wayne’s love interest is a district attorney—a woman who understands his motivation—the desire to pursue justice—as well as someone who disapproves of it. She cannot, as an officer of the court, countenance the manner in which he goes about it—as a vigilante. Either in “real life”, as his ordinary, unheroic, unambitious self, or as his heroic, vengeful self, Bruce Wayne/Batman will not be able to attract and keep Rachel Dawes. Thus, their relationship is doomed to failure and Batman will go his way alone (and remain available for future romantic adventures). His lack of a romantic partner makes him more rather than less attractive.

<sup>174</sup>The protagonist (Jack Lemmon) of How to Murder Your Wife (1965) realized his problem when he turned the adventurous bachelor hero of his cartoon strip into a meek suburban husband. He knew he had to dispose of the wife; the consequent fictional preparations and disappearance of the cartoon spouse result in a murder charge lodged against the cartoonist and one of the funniest (if least politically correct) courtroom scenes ever committed to film.



Certainly this kind of dramatic tension allows for interesting stories. But it also reinforces the viewer's belief that the legal system is a game, and that the advocacy system is simply a sham. Filmmakers and television producers seem never to consider seriously, if at all, that the ABA Model Rules of Professional Conduct, as well the ethical rules adopted by many of the fifty states,<sup>175</sup> prohibit or strongly caution against this kind of conflict of interest. Since Ally practices law in Boston, some of the relevant ethical rules would be 1.7(b) and 1.8(i).

Rule 1.7(b) reads: A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person , or by the lawyer's own interests, unless:(1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.” This rule obviously covers a multitude of sins and is usually invoked to prevent the possibility of multiple representation of clients whose interests are adverse, but the “lawyer’s responsibilities to...a third person” language could conceivably include marital or personal responsibilities to an intimate. In addition, Rule 1.8(i) directs that lawyers disclose intimate or personal relationships with other lawyers who are representing adverse interests. “A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.”<sup>176</sup> In the episode Civil Wars<sup>177</sup> the firm represents both

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<sup>175</sup>For variations and comments on the Model Rules see the Legal Information Institute website page: <http://www.law.cornell.edu/ethics/> (Visited July 19, 2002).

<sup>176</sup>American Bar Association, Model Rules of Professional Conduct (2002). Of course certain words are subject to interpretation, for example “directly adverse”, “knows” and

sides in a civil “date rape” trial.

Ally’s relationship with Larry is also predicated on a possible ethical violation. Larry (played by Robert Downey, Jr.) allows Ally to believe he is a therapist,<sup>178</sup> suggesting that lawyers will do or say anything to get a date. The episode in which Larry and Ally are opposing counsel falls into the 1.7(b) category as well.<sup>179</sup> Since Ally and Larry are intimately involved, should they be representing opposing sides? We see such situations often in films and in television episodes, notably in comedies such as Adam’s Rib<sup>180</sup> and Laws of Attraction<sup>181</sup>. In Adam’s Rib, the attorneys’ marriage is a central part of the story. It deteriorates during the course of the trial.<sup>182</sup> In Laws of Attraction, the female attorney notes that they will have to notify the court that they are married; the male attorney thinks they can finesse the problem. When the film or tv episode plays the situation for laughs, the audience believes not only that the issue is not important, but that it is, or can be, normal, and that lawyers simply indulge in this kind of behavior, possibly to the detriment of their clients’ interests. After all, law is a game. If the film or tv episode is a drama, such a relationship is then much more serious, and the stakes that much higher.

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“consent.”

<sup>177</sup>Original air date April 5, 1999.

<sup>178</sup>Sex, Lies and Second Thoughts (original air date October 23, 2000).

<sup>179</sup>The Last Virgin (original air date November 20, 2000).

<sup>180</sup> (MGM, 1949), in which Spencer Tracy and Katharine Hepburn play married attorneys on opposing sides of a criminal case.

<sup>181</sup> (Deep River Productions/New Line Cinema, 2004), in which Pierce Brosnan and Julianne Moore play divorce attorneys representing opposing parties.

<sup>182</sup> See Corcos, *We Don’t WANT Advantages*, supra fn. 14 at 1259-1263.

In the episode Out in the Cold<sup>183</sup>, we learn that Ling runs an escort service when one of her employees is charged with prostitution. Ling’s steady march toward undeserved power continues as she becomes a small claims court judge after admiring twin babies who turn out to be the children of the governor.<sup>184</sup> The show “gets it right” with this plot twist at least: the Governor of Massachusetts does have the right, with the advice and consent of her Governor’s Council, to appoint state judges at all levels.<sup>185</sup> The capriciousness of the appointment tends to suggest that judges obtain their appointments through friendship or political leverage, continuing the extremely poor image of judges<sup>186</sup> throughout Ally McBeal’s five years, beginning with Judge “Happy” Boyle who interrupts court proceedings to examine litigants’ teeth to “Whipper” Cone who carries on love affairs with various members of the bar, to Ally’s rejected judge lover in Pursuit of Loneliness, who orders her to serve in his coffee bar after he finds her in contempt of court. Ling’s behavior continues to stretch the bounds of credibility and bring judges in disrepute when she stars on her own courtroom tv show<sup>187</sup> and poses nude for a magazine.<sup>188</sup>

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<sup>183</sup>Original air date January 10, 2000.

<sup>184</sup>Judge Ling (original air date November 5, 2001).

<sup>185</sup>Massachusetts Constitution. Article 9, section 1.

<sup>186</sup> On the image of judges in popular culture, *see for example* David Ray Papke, *From Flat to Round: Changing Portrayals of the Judge in American Popular Culture*, Marquette Law School Legal Studies Paper, 06-24 (May 2006)(suggesting that portrayals have been moving steadily from “flat” one-dimensional portrayals in the early part of the twentieth century to much more “rounded” and varied portrayals today) and Susan Bandes, *We Lost It at the Movies: The Rule of Law Moves From Washington to Hollywood and Back Again*, 40 Loy. L.A. L. Rev. – (2007).

<sup>187</sup>I Want Love (original air date November 26, 2001).

<sup>188</sup>Lost and Found (original air date December 3, 2001). See The Canons of Judicial Conduct. Canon 2: A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.

Ally's dating partners frequently lead her into ethical dilemmas. In one case, as noted above, a man she believes is a *barista* (a coffeehouse waiter) asks her for a date and she refuses, partly because she does not perceive him as a potential marriage partner.<sup>189</sup> She later discovers he owns the coffeehouse, and a string of other establishments as well. Finally, she finds that he is a sitting judge hearing one of her cases. Note that in this particular instance, he should probably recuse himself, and does not. When she antagonizes him, he sentences her to serve in his coffee bar. Here he is obviously violating the Canons of Judicial Conduct.<sup>190</sup>

Her tendency toward incautious behavior also leads Ally into trouble when she engages in cybersex with a partner who turns out to be sixteen years old.<sup>191</sup> His mother asks the DA to charge Ally with statutory rape, possible because Massachusetts law sets the age of consent at 16 only with parental consent.<sup>192</sup> Most cybersex rape charges arise out of circumstances in which the alleged perpetrator "entices" or "lures" the underage victim, knowing the victim is under age.<sup>193</sup> The writers seem equally interested in showing Ally's desperation in finding a sexual partner anywhere and in exploring a new area of the law, and in questioning whether virtual statutory rape is anything like actual statutory rape. In the course of the episode, Renée reminds

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<sup>189</sup>Pursuit of Loneliness (original air date February 21, 2000).

<sup>190</sup> See Canon 2B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

<sup>191</sup>Do You Wanna Dance? (original air date May 8, 2000).

<sup>192</sup>Massachusetts General Laws Chapter 265, Section 23: Rape and Abuse of a Child. Chapter 272, Section 4.

<sup>193</sup><http://www.lawyersweekly.com/resources/pressrelease/pressrelease0814mo.htm>

Ally that she “can’t walk down the aisle with an iMac.” The number of episodes in which Ally finds herself involved with fathers and sons, or with men who are dating or married to her friends<sup>194</sup> also suggest a kind of incest, suggesting that Ally’s desperation for love is so great that she has lost all sense of decorum and discrimination.<sup>195</sup> This particular episode reminds us that in the past few years, the number of older women involved with younger men has increased, forcing us to reexamine what constitutes a “permissible” relationship. When the law forbids such a relationship, we are consequently shocked, but are we more shocked when the older partner is female, or when the older partner is male?<sup>196</sup> Consider also the number of episodes in which Cage, Fish hires partners or associates who are or have been romantically involved with each other, or encourages or allows romantic relationships among co-workers or supervisors and supervised employees. We might view these kinds of relationships as a sort of “emotional” incest, even if the Model Rules or Title VII do not forbid them. For example, that Ally and John Cage never begin an intimate relationship is due more to the fact that Ally does not find John romantically attractive than that the firm frowns on such a relationship. Apart from the situations detailed elsewhere in this essay, note that the last season begins with a recapitulation of the Ally-Billy situation when Ally “hires” another attorney whose ex-boyfriend is Richard’s latest hire.<sup>197</sup>

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(visited July 10, 2002).

<sup>194</sup>Fear of Flirting (original air date November 19, 2002); Two’s a Crowd (original air date November 6, 2000).

<sup>195</sup>Nine One One (original air date December 10, 2001). Note the number of father-daughter estrangements: Ally and her father, Nelle and her father, Melanie and her father.

<sup>196</sup> Such relationships seem to have emerged with alarming frequency. See Mindelle Jacobs, *Is Johnny Sleeping With His Teacher?* Edmonton Sun, Feb. 2, 2006, at 11.

<sup>197</sup>Friends and Lovers (original air date October 29, 2001).

Ally also routinely finds herself attracted to her clients, no matter what their age, beginning with the first season of the series. She veers from a nineteen-year-old in one episode to an older man with dizzying rapidity.<sup>198</sup>

One might object once again that after all, Ally McBeal is a fantasy, and such criticism is taking the show too seriously. But, if so, what is the point of making Ally, Larry, Ling, and Richard lawyers? Of placing them in romantic relationships? Of creating the series at all? Is it simply to entertain? I would suggest not—it is also to acknowledge that society expects the law to control behavior, and that those of us who know the rules intimately—do sometimes seem to veer out of control.

In Girls' Night Out<sup>199</sup>, a client tells Richard Fish she is really a transsexual awaiting the completion of sex change surgery. When associate Mark finds himself attracted to her, Fish is “ethically bound” not to tell Mark about the client’s true gender<sup>200</sup> in spite of the fact that the

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<sup>198</sup> See Cro-Magnon (first broadcast January 5, 1998) and Theme of Life (first broadcast March 9, 1998).

<sup>199</sup>Original air date October 30, 2000.

<sup>200</sup> See Rule 1.6. Confidentiality of information: a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b). (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm; (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services; (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services; (4) to secure legal advice about the lawyer's compliance with these Rules; (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or

relationship now creates a tremendous problem for the associate and for the client. Could Richard Fish have complied with Mark's demand that he reveal the client's sexual orientation and forthcoming surgery? Probably not if it was revealed during Richard's representation of the client. Why then does Mark want to know this secret? And what does his demand tell us about his desire for inside knowledge to which the general public is not privy? Does it suggest that some lawyers are more likely than others to try to use the law to their advantage when they can (in this case to pressure a colleague to reveal a client's secret)? What is the public's protection against such attorneys? Is it only the faithfulness of other attorneys to their oaths?

Other ethical situations arise when the lawyers at Cage, Fish disregard the wishes of their clients. In Neutral Corners,<sup>201</sup> newly hired associate Jenny rejects a settlement, seemingly on her own initiative. According to the Massachusetts Rules of Conduct<sup>202</sup> a lawyer *must* present all offers of settlement to her client.

We often presume as well that lawyers, who after all, are pledged to uphold the law, would be the group least likely to engage in any kind of illegal behavior. Certainly, the legal profession prides itself on upholding its role as counselor, advisor and leader of other professions and of the general public. Yet Ally McBeal gives us many examples in which lawyers "push the envelope" of the law in order to obtain desired results, either for their clients or for themselves.

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civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or (6) to comply with other law or a court order.

<sup>201</sup> Original air date November 12, 2001.

<sup>202</sup> See Rule 3:07 of the Massachusetts Rules of Professional Conduct.

Indeed, some behavior at Cage, Fish is downright immoral. Founding partner Richard Fish constantly engages in sexual discrimination and sexual harassment of every sort, making gratuitous and unsavory comments about colleagues, adversaries and clients. Typical comments from Fish include the following: "My cause of action is simple. Women are victims. They need special help. Look at the evolution of these sexual harassment laws. What we are really saying is women really should qualify under the Federal Disability Act. They are less able. They cannot cope with romance in the office. They cannot contend with having to do a job and have a man smile at them. It is too much. Look where we used to be, first quid pro quo, then hostile environment, and now Seinfeld episodes. Women can't take it. They bruise too easily. The laws are here to protect the weak and most vulnerable in society. She is woman, protect her!"<sup>203</sup>

Fish's "suggestion" that everyone at the firm secretly finish renovating Ally's house borders on blackmail.<sup>204</sup> Ally herself indulges in this kind of extortion when, as the newly named partner at Cage, Fish, she tells the infinitely more competent Nelle that in order to keep her job Nelle must become a "team player". Her definition of being a "team player" includes Nelle's participation after work singing at the local bar.<sup>205</sup>

One of the suggestions we can take from this kind of exaggerated behavior, which is extreme but does exist in the legal community, is that lawyers may be even more able than others to engage in behavior that touches but does not cross the line. Fish's willingness to admit his own view of the usefulness of law disarms us to some extent. "If somebody's dead, there's

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<sup>203</sup> Richard Fish, The Playing Field (original air date, March 16, 1998).

<sup>204</sup> Blowin' in the Wind (original air date January 14, 2002).

<sup>205</sup> Woman (original air date February 18, 2002).



money," "We extort, that's what we do," "I want a signed commitment that all future backstabbing, lying, stealing, whatever, you'll be doing it for us," "You ever want to be partner, Mark, ever want to have what it takes to run your own firm? You need to learn to lie. Now do it," "What do you expect us to do, sit around, have a séance, who do we bill for that?" and "It's not just winning, it's winning ugly that counts," are cynical but reflect much of the traditional condemnation of the legal profession by those who feel victimized by it. But Fish's comments on male-female relationships and the role of the law in regulating them are even more disturbing. "Women need to feel dominated even when they say they don't," "A person would never even buy a car if he were told he'd have to drive it for life - it's silly," "You're a man, you're breathing, under Title Seven, you're liable," "...men love any woman they want to sleep with. It's the ticket to admission," "Frankly, I'm tired of this equality thing," "...sex for men...when it's right, it's right, when it's wrong, it's still right," "She licked my finger. I'm human. Asset. Firm. Bygones," (said to explain his hiring of Ling Woo as a firm lawyer), "If you want a guy, you gotta go out and grab him, just grab him--that's why God gave man the handle, for women to latch onto." Fish tends to express those thoughts that some have but have been told are unacceptable to voice in today's culturally relativist, multicultural, tolerant and litigious society. While defending a client accused of illegally firing an employee, Fish has the following exchange with the presiding judge. "We just love to live in a politically correct world, that is so evolved. Where did we pass a law against common sense? This is a French bistro. When people go there, they go not just to eat but to dine. The ambiance of culture they want to feel elite and sophisticated. A good gay waiter can do that. They have that snobbish little entitlement thing going. People like that." Judge: "Gays are elitist snobs?" Richard: "The waiter kind are. First they are smarter. They grow

up reading more books, probably trying to figure out the answer as to why they are homosexual. Plus, they're terrible at sports which gives them more time to study. They are smart, they want to work in the arts. They end up as waiters, way over qualified, bitter, snobby. People have come to expect this when ordering a fruity wine."<sup>206</sup> Fish's client fired a waiter who claims that he was dismissed because he is *not* gay. While the fact pattern is extreme, the underlying question is not: at what point is sexual orientation a BFOQ? What defines job necessity? How do we balance a tolerant society with the personal freedom of association, the right to contract and privacy?

Both in Ally McBeal and in his other shows, Kelley presents us with legal, political, and social situations that force us to confront the need for balance and decide how much is too much. In some cases the characters do that balancing in a principled manner. In others, they base it on prejudice or the notion that to make any other decision is to upset society far more than it is ready to be upset (take for example the episode in which Cage, Fish represents a couple that wants to marry another woman).<sup>207</sup> In such episodes, Kelley presents us with the limits of law and forces us into questioning why we establish such limits, and what purposes such limits serve. In some ways, these legal dramas present the kinds of problems and the kind of thinking that characterizes the best intellectual science fiction.<sup>208</sup> Thus, the extreme situations in Ally McBeal

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<sup>206</sup>The Inmates (original air date April 27, 1998).

<sup>207</sup> Silver Bells (first broadcast December 15, 1997).

<sup>208</sup> See for example Philip K. Dick's work, notably Do Androids Dream of Electric Sheep? which was the basis for the cult film Blade Runner and The Minority Report, the short story on which director Steven Spielberg based the Tom Cruise vehicle Minority Report (2002). On the extent to which language represents law in such work see Christine A. Corcos, "*I Am Not a Number! I Am a Free Man!*" *Physical and Psychological Imprisonment in Science Fiction*, 25 *Legal Stud. F.* 471 (2001).

are not meant to be taken at face value, but as parables of the chaotic nature of society today. For lawyers to criticize legal errors and misrepresentations in the series without taking the critique further to examine legitimate dramatic reasons for those errors and misrepresentations suggests that attorneys as a group cannot get past the minutiae to examine the truth of Kelley's observations. We should of course think seriously about the legitimacy of Kelley's satiric critique, and he makes many good points in Ally McBeal, as I have discussed. But the fact is that viewers believe much of what they see on television, including the representations of law. So much of what they see seems to accord with what they think they know about the legal system. When Ally reinforces those stereotypes, even for sophisticated dramatic effect, it validates them as well. Thus, we should take Ally at face value for some purposes, not the least of which is its representation of women lawyers.

That the American public dislikes and distrusts lawyers in general is obvious from any number of polls over the years.<sup>209</sup> A November 27, 2000 Gallup poll revealed that lawyers rank 5<sup>th</sup> on the list of least trusted professions, after car salespeople, advertising professionals, insurance salespeople, and real estate agents.<sup>210</sup> A November 17-20, 2005 Gallup poll, suggested

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<sup>209</sup> However, people may like and trust their own lawyers, just as they may like and trust their own Congresspersons.

<sup>210</sup> Interestingly, the most trusted professions are nursing, pharmacy, veterinary science, medicine, and teaching, See <http://www.csmonitor.com/durable/2000/11/28/fp1s3-csm.shtml> (visited July 16, 2002). Physicians still rank high, even though so many films and television series suggest that doctors are greedy or conceited. Consider the television shows Scrubs and Becker, a far cry from Marcus Welby, M.D.. Several scholars have studied the image of physicians on television and in popular culture. See for example M. Joana Godinho, The Portrayal of Health Behavior on Television Series (Master's thesis, University of North Carolina, Chapel Hill, 1984); Douglas J. Hing, The Impact of Television on the Doctor-Patient

that their image had not changed appreciably. They ranked ahead—just barely—of labor union leaders, business executives, stockbrokers and Senators, four points ahead of Congresspersons, seven points ahead of people in advertising, ten points ahead of car salespeople, and eleven points ahead of telemarketers.<sup>211</sup>

The amount of sexual harassment that goes on at *Cage, Fish* is phenomenal, although it doesn't rise to the level of that engaged in by the attorney who spanked his client in an effort to make her "tell the truth" in court.<sup>212</sup> Elaine Vassal, the ambitious, clever secretary with the appropriate name, makes much less than the lawyers who depend on her for assistance, and sometimes to save their bacon from the fire.

What is the point of scholarly excoriation of the Ally McBeal phenomenon? Yes, of course, Ally McBeal is "just a television show" (and Legally Blonde is "just a movie"). Perhaps

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Relationship in Britain, c. 1948-1958 (Bachelor's thesis, University of London, 2004); Jason Jacobs, Body Trauma TV: The New Hospital Dramas (London: The British Film Institute, 2003); Maria Kurzeja, Dr. Markus Welby und seine Kollegen: eine empirische Untersuchung zur Arztserie im Fernsehen der Bundesrepublik Deutschland (Frankfurt am Main: Peter Lang, 1984); Julia M. Roberts, Sickness and Injury on Prime Time Television (Master's thesis, San Jose State University, 1986); Constanze Rossmann, Die heile Welt des Fernsehens: eine Studie zur Kultivierung durch Krankenhausserien (Munich: Reinhard Fischer; 2002); Joseph Turow, Playing Doctor (Oxford: OUP, 1989); Rebecca Chory-Assad and Ron Tamborini, *Television Doctors: An Analysis of Physicians in Fictional and Non-Fictional Television Programs*, J. Broadcasting & Elec. Media, June 22, 2001. HMOs and insurance companies by contrast do not get good press, as a National Public Radio story noted. See Bob Edwards and Madeleine Brand, *HMOs Become Favorite Targets on Television Shows and in Movies*, Morning Edition, July 16, 2002. Note also the recent film John Q., in which Denzel Washington plays a desperate father trying to obtain a life-saving operation for his son after the HMO refuses to pay for it.

<sup>211</sup> Real estate agents have pulled ahead by two points. See Pollingreport.com at <http://www.pollingreport.com/values.htm> (visited March 31, 2006).

<sup>212</sup> Scott Brede, *Spanking Client Not Legitimate Trial Prep Tactic; Client Loses Suit Against Attorney's Malpractice Insurer*, Connecticut Law Tribune, July 15, 2002, at 1.

Ally is not even about law.<sup>213</sup> One commentator suggests that

...law is no more central to *Ally McBeal* than local television news was to *The Mary Tyler Moore Show*... Law plays a small role in *Ally McBeal*. It is clearly not a "law" show (like *Law and Order*), but a "relationship" show in the *Friends* vein. Most of the plots appear to revolve around Ally's quest for an appropriate mate. This, I guess, should not surprise us since it is conventional wisdom that women are "relation-oriented." However, in focussing (sic) on the "personal" rather than the "professional", the show's producers are knowingly perpetuating a gender stereotype and trivializing Ally's status as serious professional.<sup>214</sup>

One could go further and suggest that, like Seinfeld, Ally McBeal is ultimately "about nothing." But law is a crucial component of our society. It both frames and reflects the rules we choose to live by. Lawyers interpret those rules for us. Thus, attorney shows like Ally McBeal, like Perry Mason, like Law and Order, and like L. A. Law tell us something important about ourselves and our willingness to follow those rules and those who embody them. If we believe that the rules are a game, or an elaborate sham, our popular culture will reflect that belief. If we believe that in order to succeed women must "dumb down" and behave erratically in order to reassure their male colleagues, then popular culture images of professional women will continue to resemble Ally McBeal more than Hillary Clinton or Elizabeth Dole. Such representations give us significant clues to what we consider important and enduring in our culture. They may be more true than we realize. In the 1989 Price, Waterhouse case, the Supreme Court considered whether an accounting firm could legally refuse to promote a candidate to partnership in the firm based primarily on the other (male) partners' opinions that, in effect, she was not sufficiently womanly. The Court held that, to avoid liability, the firm must show by a preponderance of the

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<sup>214</sup> John Denvir, *Girl Lawyers and Boy Lawyers*, <http://www.usfca.edu/pj/articles/mcbealnhayes.htm> (visited April 10, 2006).

evidence that “it would have made [the] same decision even if it had not taken [the] plaintiff’s gender into account.”<sup>215</sup> Nearly twenty years later, we seem to continue to be sending the message that pretty is power, and that cute is qualification.

#### **IV. Closing Statements**

Ultimately we may remember Ally McBeal for its successful presentation of what its heroine *doesn’t* get: she doesn’t “get it all” and she doesn’t “get it” at all. She makes partner at one of the most bizarre firms ever to practice law on television, even though she shows very little ability in the courtroom or the conference room. Indeed, her greatest asset is her ability to function in this predominately male world by being *dysfunctional*. She becomes a mother in the last few episodes, not through a committed relationship, but by accident, as she achieves everything else in her life. We shudder at the thought that Ally has reproduced, even accidentally,<sup>216</sup> although obviously the writers’ purpose in introducing Maddie as a character is to force Ally, finally, to grow up. We cringe at the specter of Ally’s lack of parenting skills. Her shallowness and self-absorption should have predicted to us, if not to her, that she would never “have it all” either, if “it” includes a devoted, loving husband and that little house with the picket fence that she claims she wants.

As for Ally McBeal’s audience, by the end of the fifth season, most viewers had had enough, at least of Ally and the self-indulgent career woman she represents. Some critics attributed audience disenchantment to what they perceived as the show’s increasing lack of focus

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<sup>215</sup>See Price, Waterhouse v. Hopkins, 490 U. S. 228 (1989).

<sup>216</sup>A Kick in the Head (air date February 4, 2002).

on the main characters.<sup>217</sup> Others discerned a post 9-11 distaste for Ally's narcissism.<sup>218</sup> The final episode drew much higher ratings than the rest of the last season, undoubtedly only because it *was* the final episode.<sup>219</sup> David E. Kelley returned, albeit briefly, with a series, girls club, in 2002, which lasted only two episodes on Fox.<sup>220</sup>

By 2004, the struggling network UPN offered us the short-lived series Kevin Hill<sup>221</sup> in which female lawyers run a firm in which women predominate, and a woman makes the hiring decisions, but offers "kinder, gentler" advice about making tough choices to the title character, a younger male associate (played by Taye Diggs) who struggles with parenting concerns while still trying to maintain an active social life. The message? He tries to have it all—she has already learned that she can't. The role reversal content of this series made it particularly interesting; in spite of good scripts and excellent acting it lasted only one season.

In 2005-2006 the major networks tried out several new legal dramas including InJustice<sup>222</sup>, which featured a white male lawyer running a multi-ethnic "National Justice Project", obviously modeled on Barry Scheck's Innocence Project.<sup>223</sup> It lasted thirteen

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<sup>217</sup> David Bianculli, *By Reason of Inanity: Why "Ally" Is Exiting*, Daily News (New York), April 19, 2002 at 142.

<sup>218</sup> Katty Kay, *Fat Lady Sings for Ally McBeal as Ratings Fall*, The Times (London), April 19, 2002 (LEXIS/NEXIS, NEWS file).

<sup>219</sup> Cynthia Littleton, *Viewers' Love for 'Raymond' Overshadows 'Ally' Finale*, The Hollywood Rep., May 22, 2002 (LEXIS/NEXIS, NEWS File).

<sup>220</sup> See <http://www.tvtome.com/tvtome/servlet/ShowMainServlet/showid-9281/> (visited December 14, 2004). See also [http://www.usfca.edu/pj/girlsclub\\_corcos.htm](http://www.usfca.edu/pj/girlsclub_corcos.htm) (visited April 7, 2006).

<sup>221</sup> See Christine A. Corcos, *Single with Children: Kevin Hill* at [http://www.usfca.edu/pj/kevinhill\\_corcos.htm](http://www.usfca.edu/pj/kevinhill_corcos.htm).

<sup>222</sup> <http://abc.go.com/primetime/injustice/index.html> (visited April 10, 2006).

<sup>223</sup> <http://www.innocenceproject.org/> (visited March 31, 2006).

episodes.<sup>224</sup> Of the series featuring women lawyers, many feature female characters who, like Ally, have light-colored tresses, which suggests that blonde is still the hair color of choice for television female legal careerists. Close to Home<sup>225</sup> boasts a Caucasian blonde female district attorney (Jennifer Finnegan) and a black female district attorney (Kimberly Elise). The blonde technically reports to her colleague; both report to a white man.<sup>226</sup> Boston Legal<sup>227</sup>, a David E. Kelley series, has a Caucasian blonde female attorney partner (Candice Bergen). Conviction<sup>228</sup>, a Dick Wolf series, featured a Caucasian blonde female DA (Stephanie March) in charge. Finally, Courting Alex<sup>229</sup> also featured a Caucasian blonde female attorney (Jenna Elfman). Of these, all but Courting Alex are dramas. Close to Home focuses on the attempt to balance family and career; like Kevin Hill it suggests that only the very talented and the very lucky have any chance of doing so successfully. At the end of Close to Home's first season, Annabeth's husband Jack dies in a car accident.<sup>230</sup> Why have the writers chosen to do away with Annabeth's extremely supportive spouse? It allows for dramatic tension, it certainly gives them more storylines to explore--a working single mother is more interesting and has more to contend with than a working married mother who has fewer child care responsibilities and two incomes with which to meet life's adversities. If she has only her income on which to depend, she is presumably more at the mercy of political forces that might want her or her supervisor to drop a high-profile case,

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<sup>224</sup> See [http://www.tv.com/in-justice/show/33452/episode\\_guide.html](http://www.tv.com/in-justice/show/33452/episode_guide.html) (visited July 5, 2006).

<sup>225</sup> [http://www.cbs.com/primetime/close\\_to\\_home/](http://www.cbs.com/primetime/close_to_home/) (visited April 10, 2006).

<sup>226</sup> The pilot established this hierarchy (aired October 4, 2005).

<sup>227</sup> <http://abc.go.com/primetime/bostonlegal/index.html> (visited April 10, 2006).

<sup>228</sup> <http://www.tv.com/conviction/show/30090/summary.html> (visited August 30, 2006).

<sup>229</sup> [http://www.cbs.com/primetime/courting\\_alex/](http://www.cbs.com/primetime/courting_alex/) (visited April 10, 2006).

<sup>230</sup> "Hot Grrrl", broadcast May 19, 2006 (<http://www.tv.com/close-to-home/hot->



for example.<sup>231</sup> Once again, we see that a young female attorney can have a career, but not a successful marriage.

The punningly named 2005 season thirty minute series Courting Alex, starring Jenna Elfman, centers on a corporate lawyer, but is not primarily about a lawyer and her career.<sup>232</sup> Again, it is about a thirty-something woman's search for a stable romance. Alex, as Elfman campily plays her, is an only slightly more stable Ally. She has a successful lawyer father, she has a competent secretary, and in the first episode she finds a steady boyfriend. In spite of her law degree Alex is not really a lawyer and Courting Alex is not really "about law".<sup>233</sup> Once again, the creators of this show have simply chosen a career that sounds "professional" for the main character, cast their star in the title role, and written their scripts around her rather than around the character. The law is simply a vehicle for the guiding premise, which is that women cannot have it all, and should not aspire to do so. Ten years after Ally McBeal, her younger "sister in law" Alex hasn't made much progress at all for women popular culture lawyers. But at

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[grrrl/episode/730548/summary.html](http://grrrl/episode/730548/summary.html)(visited July 5, 2006).

<sup>231</sup> The couple faced this problem in the episode "Land of Opportunity," first broadcast March 31, 2006 (<http://www.tv.com/close-to-home/land-of-opportunity/episode/616457/summary.html>)(visited July 5, 2006). The actor involved may have had other opportunities offered him, but the role could have been recast. Killing the character off allows the writers to give Annabeth some romance at the office even though this situation is not necessarily a good idea; David James Elliott will join the cast in the second season as a new A.D.A. See <http://www.zap2it.com/tv/news/zap-davidjameselliott-closetohome,0,970989.story> (visited July 5, 2006).

<sup>232</sup> As of April 10, 2006, this series seems to have been cancelled. See [http://www.cbs.com/primetime/courting\\_alex/](http://www.cbs.com/primetime/courting_alex/) (visited April 10, 2006) which indicates that the show "will return at a later date", almost certainly indicating that it is gone for good. See also <http://www.digitalspy.co.uk/article/ds33138.html> (indicating that the series is cancelled)(visited July 5, 2006).

<sup>233</sup> See Christine A. Corcos, *A Blonde Leading the Blondes*, Picturing Justice at [http://www.usfca.edu/pj/courtingalex\\_corcos.htm](http://www.usfca.edu/pj/courtingalex_corcos.htm) (visited April 7, 2006).

least her show lasted for a much shorter time,<sup>234</sup> suggesting that even if the writers haven't understood much about female attorneys, we might dare hope that the audience has.

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<sup>234</sup> As of this writing, CBS seems to have cancelled Courting Alex after about a two-month run. Although the website is coy on the subject, saying only “‘Courting Alex’ will return to the schedule at a later date”, it does not indicate what that date might be.