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# Women Defenders on Television: Representing Suspects and the Racial Politics of Retribution

Joan W. Howarth\*

## I. INTRODUCTION

This Essay is about Ellenor Frutt, Annie Dornell, Joyce Davenport, and other women criminal defense attorneys of prime time television. It examines how high-stakes network television presents sympathetic stories about women working as criminal defense attorneys while simultaneously supporting the popular thirst for the harshest criminal penalties. Real women who choose to represent criminal defendants are fundamentally out of step with angry and unforgiving attitudes toward crime and criminals. Indeed, women defenders<sup>1</sup> have chosen work that puts them in direct opposition to the widespread public willingness to incarcerate record numbers of Americans, often young African-American and Latino men, for longer and longer sentences.<sup>2</sup> Their prime time counterparts, however, are creatures of popular taste and conventional ideology, and therefore, perhaps inevitably, readily reinforce rather than resist the popular punitive and racialized incarceration policies. Even the most heroic of the television women defenders support and ratify the dominant public perception of a frightening and irredeemable criminal class—mainly young African-American and Latino men—that requires the harshest and most vengeful sanctions.

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\* Professor of Law, Golden Gate University. I thank the organizers of and participants in this Symposium, and the editors of *The Journal of Gender, Race & Justice*, especially Amy Weismann. I am very grateful to the various women defenders, friends and strangers, who agreed to tell me about their work. I am especially appreciative of the help I received from Terry Diggs, Kendall Goh, Elizabeth Grossman, Isabelle Gunning, Susan Rutberg, Susan Ten Kwan, Robin Kalman, and Ruth Spear. Jenn Crittendon (UC Hastings, Class of 2001) and Ayana Cuevas (UC Davis, Class of 2000) provided excellent research assistance.

1. In using the phrase “women defenders” for women criminal defense attorneys, I am borrowing from, and honoring, the organization Women Defenders, a vibrant and important association of California women in criminal defense work.

2. Between 1990 and 1998, the nation’s prison population grew at an annual rate of 6.7%, with a total of 1,302,019 prisoners under the jurisdiction of federal or state adult correctional facilities by December 31, 1998. Allen J. Beck & Christopher J. Mumola, *U.S. Department of Justice Report: Prisoners in 1998* (visited Nov. 15, 1999) <<http://www.ojp.usdoj.gov/bjs/abstract/p98.htm>>. Another 592,462 persons were incarcerated in jails, local facilities which typically hold people awaiting trial or sentenced to less than one year. *Id.* “In 1997 the rate among black males in their late twenties reached 8,630 prisoners per 100,000 residents compared to 2,703 among Hispanic males and 868 among white males.” *Id.* “A major source of prison growth is increasing time served.” *Id.*

This Essay is intended to be a form of a spectator's civil disobedience to the retributivist work of prime time women defenders.<sup>3</sup> Part II discusses the power in our engagement with television. To set the standards to which the television characters can be compared, Part III describes the work of actual women defenders. Part IV turns to the world of television criminal defense attorneys, describing the defense attorneys' role on police and prosecutor shows, as well as the contrasting television tradition of heroic criminal defense attorneys. Finally, in Part V, this Essay focuses on the most sympathetic women defenders on television—i.e., the ones who are true protagonists, such as Annie Dornell on *To Have & To Hold*,<sup>4</sup> Veronica Gilbert on *Courthouse*,<sup>5</sup> and Ellenor Frutt and Rebecca Washington on *The Practice*.<sup>6</sup> Close analysis of those characters reveals the patterns by which those potentially subversive women defenders are tamed. Political purposes for choosing criminal defense work are erased in prime time.<sup>7</sup> When sympathetic, the clients are often middle-class and white.<sup>8</sup> Sometimes the real woman defender's solidarity with criminal defendants is replaced on television by contempt.<sup>9</sup> Often the worthy client is exceptionalized, distinguished from the unseen but truly frightening and racialized criminal element.<sup>10</sup> With this reshaping of their role, even the strongest, most passionate television defense attorneys do little to dislodge the dominant cultural portrayal of a throw-away criminal class composed primarily of young men of color.

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3. See Margaret M. Russell, *Rewriting History with Lightning: Race, Myth, and Hollywood*, in *LEGAL REELISM: MOVIES AS LEGAL TEXTS* 172, 180 (John Denvir ed., 1996) (referring to BELL HOOKS, *The Oppositional Gaze*, in *BLACK LOOKS: RACE AND REPRESENTATION* 115, 117 (1992)).

4. *To Have & To Hold* was a prime time drama broadcast on CBS from September through December 1998, featuring a sexy marriage between a Boston police officer and a "loud, feminist public defender." TIM BROOKS & EARLE MARSH, *THE COMPLETE DIRECTORY TO PRIME TIME NETWORK AND CABLE TV SHOWS: 1946-PRESENT* 1031 (7th ed. 1999). The public defender character is described by her father-in-law as "a woman you want to ravish one moment and strangle the next." *Id.*

5. *Courthouse* was a prime time legal drama broadcast on CBS between September and November 1995, featuring Nia Peeples as public defender Veronica Gilbert. BROOKS & MARSH, *supra* note 4, at 213-14.

6. *The Practice* is an award-winning prime time legal drama set in a criminal defense firm and broadcast on ABC since March 1997. *Id.* at 818. Camryn Manheim plays Ellenor Frutt, described in one television directory as a "heavy set, rather pushy attorney," *id.*, and Lisa Gay Hamilton plays Rebecca Washington, the law firm's former office manager who recently took the bar and joined the law firm. *Id.*

7. See *infra* text accompanying notes 109-13.

8. See *infra* text accompanying notes 134-51.

9. See *infra* text accompanying notes 124-32.

10. See *infra* text accompanying notes 136-53.

## II. TELEVISION MATTERS

Why use television characters to address a public crisis as serious as current incarceration policies? Television, too, is serious. I love to watch television<sup>11</sup> and I am not alone. One study suggests that Americans spend two-thirds of their waking time watching television.<sup>12</sup> Another finds that the “average” American spends more than seven years watching television.<sup>13</sup> As cultural studies scholar John Storey explains, “[t]elevision is *the* popular cultural form of the late twentieth century. It is without doubt the world’s most popular leisure activity.”<sup>14</sup>

Television is important because culture is important. We understand ourselves and our world through the images and concepts available to us through our culture. As cultural studies and television scholar John Fiske puts it, “[c]ulture is a struggle for meaning as society is a struggle for power.”<sup>15</sup> Culture is a site where unequal social divisions along race, gender, class, and age lines, for example, are established and contested.<sup>16</sup>

We learn through culture, including television, what it means to be a man or a woman, what it means to be white or Black or Asian American, what criminals look like, or what counts as beauty. We learn what emergency room doctors or criminal defense attorneys do. We learn how to dress, and what we consider to be attractive. We know what it is to be rich or poor or to be happy

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11. In confessing to enjoying television, I take solace from Dutch feminist cultural critic Ien Ang, who writes about the pleasures of television for feminists. Ang sees pleasure “as the key concept in a transformed feminist cultural politics” and argues that representations “can still be condemned for being reactionary in an ongoing cultural politics. But to experience pleasure from them is a completely different issue: ‘it need not imply that we are also bound to take up these positions . . . .’” JOHN STOREY, *CULTURAL STUDIES AND THE STUDY OF POPULAR CULTURE: THEORIES AND METHODS* 24, 25 (1996) (describing and quoting from IEN ANG, *WATCHING DALLAS* 135 (1985)).

12. *Id.* at 9 (citing Robert C. Allen, *Introduction to the Second Edition: More Talk About TV*, in *CHANNELS OF DISCOURSE, REASSEMBLED* 1, 12-13 (Robert C. Allen ed., 1992)).

13. *Id.* (citing ROBERT KUBEY & MIHALY CSIKSZENTIMHALYI, *TELEVISION AND THE QUALITY OF LIFE* xi (1990)).

14. *Id.* (emphasis in original). Engagement with television also has pedagogical justifications. In this essay, I am taking up Stanley Aronowitz’s challenge:

If writing is to become part of the critical process, deconstruction of mass audience culture is the first priority. . . . [T]he job of the teacher is to legitimate mass audience culture in order to criticize and transcend it—or to discover whether genuine expressive forms are repressed within it. For those teachers who claim their personal indifference to these forms and refuse to validate this type of investigation, one can only reply that such a stance may be tantamount to abandoning their students and the critical project as well.

Stanley Aronowitz, *Mass Culture and the Eclipse of Reason: The Implications for Pedagogy*, in *AMERICAN MEDIA AND MASS CULTURE: LEFT PERSPECTIVES* 465, 469 (Donald Lazere ed., 1987).

15. JOHN FISKE, *TELEVISION CULTURE* 20 (1987).

16. STOREY, *supra* note 11, at 4.

or afraid in relation to popular culture, including television.<sup>17</sup> Television helps us to create ourselves and make meaning out of our world. As John Storey explains, "culture's importance derives from the fact that it helps constitute the [social] structure and shape the history. . . . Cultural texts . . . should, therefore, be studied for the (ideological) work that they do, rather than for the (ideological) work (always happening elsewhere) that they reflect."<sup>18</sup>

Although much of what we know about the world we know from our engagement with television,<sup>19</sup> we often use television to gain knowledge that is dangerously wrong.<sup>20</sup> For example, we might learn from television that white people are most at risk from crime,<sup>21</sup> or that police brutality is part of effective law enforcement.<sup>22</sup> Prime time television generally reflects and generates conventional and dominant messages about such basic understandings. Todd Gitlin explains, "[t]he genius of the cultural industry . . . lies in its ability to take account of popular aspirations, fears, and conflicts, and to address them in ways that assimilate popular values into terms compatible with the hegemonic ideology."<sup>23</sup> Ideology is an "image a society gives of itself in order to perpetuate itself."<sup>24</sup>

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17. See, e.g., JULIE D'ACCI, *DEFINING WOMEN: TELEVISION AND THE CASE OF CAGNEY AND LACEY* 3 (1994) (stating "television (one of our culture's most productive technologies for generating images and meanings of masculinity and femininity) is a major participant in shaping the gender of its audiences").

18. STOREY, *supra* note 11, at 3.

19. As Hal Himmelstein argues, "[t]elevision, through its use of a powerful language comprising images, words, gestures, clothing, settings, music, and sounds, has become one of our society's principal repositories of ideologies/ideology." HAL HIMMELSTEIN, *TELEVISION MYTH AND THE AMERICAN MIND* 5 (2d ed. 1994).

20. See Russell, *supra* note 3, at 178-93 (discussing racial misrepresentations and stereotypes in film). But see HOOKS, *supra* note 3, at 117 (describing Black awareness of and opposition to mass media "systems of knowledge and power reproducing and maintaining white supremacy").

21. See David A. Harris, *The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System*, 35 ARIZ. L. REV. 785, 814-15 (1993) (linking prevalence of white crime victims on television with the exaggerated fears of white suburbanites about crime).

22. As Susan Bandes and Jack Beermann point out in their study of *NYPD Blue*, the suspects on police shows are clearly either innocent and sympathetic or guilty and unsympathetic, and "as to the latter, the end justifies the means." Susan Bandes & Jack Beermann, *Lawyering Up*, 2 GREEN BAG 2D 5, 13 (1998).

23. Todd Gitlin, *Television's Screens: Hegemony in Transition*, in *AMERICAN MEDIA AND MASS CULTURE: LEFT PERSPECTIVES*, *supra* note 14, at 240, 243; see also *id.* at 241 (discussing television's role in the "engineering of mass consent to the established order").

24. BILL NICHOLS, *IDEOLOGY AND THE IMAGE* 1 (1981)). Himmelstein similarly argues that "[d]ominant ideology is normative—it succeeds . . . in persuading us that the way things are now is the way they should remain. . . . And the way things are is a product of the actions of the dominant class . . . ." HIMMELSTEIN, *supra* note 19, at 5.

Watching television is enormously influential in forming our understanding and indeed our knowledge of the world, but it would be an over-simplification to imagine that television simply acts upon us. Watching television is not a passive endeavor, but a creative one. We engage with television as viewers, creating meaning out of what we see and hear from the screen.<sup>25</sup> John Fiske makes a helpful distinction between television *programs*, which are “stable, fixed entities, produced and sold as commodities,” and television *texts*, which are “the product of their readers.”<sup>26</sup> In other words, the television program *The Practice* is a commodity, but the meaning of the television text *The Practice* is constructed by its viewers, including you and me. Our viewing of television (or “reading” of television “texts,” in the language of cultural studies) creates new meanings for the television viewer. “Television and its programs do not have an ‘effect’ on people. Viewers and television interact.”<sup>27</sup>

In fact, John Fiske argues that television is so popular precisely because it allows so many different meanings, and thus engages us in active creation of the culture.<sup>28</sup> Fiske asserts that television is pleasurable in large part because the “characteristics of its texts and of its modes of reception enable an active participation in that sense-making process which we call ‘culture.’”<sup>29</sup> The dominant ideology of the program is not necessarily the ideology of the text; indeed the variety and multiplicity of potential meanings of the television text are part of its pleasure. Fiske explains, “[t]elevision does not ‘cause’ identifiable effects in individuals; however, it does work ideologically to promote and prefer certain meanings of the world, to circulate some meanings rather than others, and to serve some social interests better than others.”<sup>30</sup> My

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25. I am not suggesting that we simply learn or receive messages or knowledge from television. The process is much more interactive. As John Storey explains,

[c]ultural texts and practices . . . can be articulated with different “accents” by different people in different contexts for different politics. Meaning is therefore a social production; the world has to be made to mean. A text or practice or event is not the issuing source of meaning, but a site where the articulation of meaning—variable meaning(s)—can take place. . . . Thus the field of culture is for cultural studies a major site of ideological struggle; a terrain of “incorporation” and “resistance”; one of the sites where hegemony is to be won or lost.

STOREY, *supra* note 11, at 4.

26. FISKE, *supra* note 15, at 14.

27. *Id.* at 19.

28. John Fiske understands that “the dominant ideology is structured into popular texts by the discourses and conventions that inform the practices of production and that are a part of their reception.” *Id.* at 14. However, he continues, a “text is the site of struggles for meaning that reproduce the conflicts of interest between the producers and consumers of the cultural commodity.” *Id.*

29. *Id.* at 19.

30. *Id.* at 20.

project here is to identify and contest the meanings preferred in television dramas portraying women who represent criminal defendants.

At its best, our television viewing is a kind of engaged criticism, simultaneously a source of pleasure and a site of confrontation. Intrinsic in our experience of television viewing is critique and challenge, what bell hooks has identified in the context of Black viewers as the "interrogating gaze," where "black viewers of movies and television experienced visual pleasure in a context where looking was also about contestation and confrontation."<sup>31</sup> Margaret Russell describes bell hook's stance as "a spectator's form of civil disobedience."<sup>32</sup> As John Fiske acknowledges, "[t]he dominant ideology, working through the form of the text, can be resisted, evaded, or negotiated with, in varying degrees by differently socially situated readers."<sup>33</sup>

### III. WOMEN DEFENDERS

My first form of disobedience is to preface the discussion of television with descriptions of real-life women defenders. My starting place for understanding women criminal defenders is my own experience, including my early practice as a full-time criminal defense attorney, and, more recently, my continuing representation of capital defendants during my years as an ACLU attorney and since becoming a law professor in 1989.<sup>34</sup> My criminal defense work has been shaped by collaboration with a community of friends and colleagues with whom I have been lucky enough to work, most of whom, as it happens, are women. I have been engaged in conversation with other feminists about the meaning of our criminal defense practices since I started doing this work in 1981. Because of my ongoing fascination with feminist criminal defense, and because of the paucity of public knowledge about this brand of feminist practice, recently I began a project of formal interviews of women criminal defenders about their work. Although that project is still in its early stages, this Essay uses the first of those formal interviews.<sup>35</sup>

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31. HOOKS, *supra* note 3, at 117.

32. Russell, *supra* note 3, at 180.

33. FISKE, *supra* note 15, at 41.

34. I have been a full-time law professor for over 10 years, and a criminal defense attorney for almost 20 years. See Joan W. Howarth, *Review Essay: Feminism, Lawyering, and Death Row*, 2 S. CAL. REV. L. & WOMEN'S STUD. 401, 421-25 (1992) (describing experiences with capital defense work); Joan W. Howarth, *Representing Black Male Innocence*, 1 J. GENDER RACE & JUST. 97, 102-14 (1997) (describing the representation of a capital client) [hereinafter Howarth, *Representing Black Male Innocence*].

35. These interviews were conducted between September and November 1998, and generally lasted between 60 and 100 minutes. I loosely followed a standard script of open-ended questions about the attorney's criminal defense experience, her professional frustrations, her professional satisfactions, and the impact of her gender and racial identities in her representation of clients. Italicized quotations

The entire profession is not well-represented by my current circle of informants, including the defenders I interviewed formally. Women lawyers represent criminal defendants in court systems throughout this country, from the grittiest urban trial courts to the most rarified appellate practices. My sample is white, Asian American, and African-American. Its members range in age from mid-thirties to mid-fifties. They are public defenders and in private practice and are generally well-established or even old-timers in this work. Most practice criminal law in the San Francisco Bay Area, and all identify in some way as feminists.

Ours is an interesting site of feminist practice<sup>36</sup> often focused, after all, on the needs of male criminals. *All of my clients have been men. Women are still fairly rare, although they've opened more women's prisons.* Although public perceptions undoubtedly exaggerate linkages between crime and color,<sup>37</sup> except for practices narrowly limited within white-collar crime, choosing to defend criminal suspects is to a certain extent choosing to defend people of color.<sup>38</sup> *Most of my clients are Black, and occasionally Latino. . . . My clients have been African-American, Caucasian, Latino, and one Asian American, all men. . . . I've mainly had Black and white clients, and more and more Latino.* Having chosen to defend people of color is especially true for women who choose criminal defense, few of whom have practices representing corporate or other high-rolling criminals.<sup>39</sup> *Compared to my private cases, most of my court-appointed cases involve more serious crimes; of course, there are people who pay for homicide defense, but they don't hire me.*

Several themes emerged from my formal interviews, each consistent with my own experience and my impression of my colleagues' experiences. Most strikingly, the women defenders I am interviewing are self-consciously political

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in the text are taken from those interviews. Notes and recordings of the interviews are on file with the author.

36. See also Anthony Paul Farley, Stormy Weather, Presentation at *The Journal of Gender, Race & Justice Symposium, Critical Race Feminism: Preparing Legal Thought for the 21st Century* (Nov. 6-7, 1998) (describing his interest in class-based, anti-racist feminist practice of New Left women).

37. See, e.g., Howarth, *Representing Black Male Innocence*, *supra* note 34, at 102-14 (discussing widespread associations of Black men with criminal behavior); see generally RANDALL KENNEDY, *RACE, CRIME, AND THE LAW* (1997) (criticizing generalized suspicions linking Black men to crime); KATHERYN K. RUSSELL, *THE COLOR OF CRIME: RACIAL HOAXES, WHITE FEAR, BLACK PROTECTIONISM, POLICE HARASSMENT, AND OTHER MICROAGGRESSIONS* (1998) (criticizing widespread associations of Blacks with lawbreaking).

38. See, e.g., Beck & Mumola, *supra* note 2 (stating that there are more Black males (548,900) in state or federal prisons at year end 1997 than white males (541,700)); *id.* (stating that 213,100 Hispanic inmates, who can be of any race under federal reporting methods, is up 64% at year end 1997 from 1990); MARC MAUER, *THE CRISIS OF THE YOUNG AFRICAN-AMERICAN MALE AND THE CRIMINAL JUSTICE SYSTEM 2* (1999) (stating that 49% of prison inmates nationally are African-American).

39. BARBARA A. CURRAN, *AMERICAN BAR ASS'N, WOMEN IN THE LAW: A LOOK AT THE NUMBERS 18* (1995) (reporting a higher percentage of women in legal aid and public defender offices than in private practice).



in their choice of work. *Having been in college in the seventies, I considered myself on the other side of the police lines. Many have consciously chosen to work on behalf of poor people. I never considered being a prosecutor, because I knew who the defendants were. . . . I applied for any kind of job where I'd be able to work with poor people.* Several entered criminal defense because of some prior interest in prison reform or prisoners' rights. *I first got interested from a prison project I was involved with in high school.*

I asked each about the personal frustrations and rewards of their work. Virtually all report that their greatest frustrations come from how little good they can do for their clients, how hard it is to find any victories, the length of the prison sentences imposed, and how relentless and pervasive the dominant theme of retribution has become within the criminal justice system. *Frustrations? There aren't enough people to do the work, there aren't enough resources to do the work. The system puts such limitations on us, on what we can do. These days, the high stakes make everyone more desperate.* Women defenders are sometimes beaten down by the overwhelming machinery of criminal processing. *One of the reasons I left [the county public defender's office] was feeling that I was becoming a cog in the wheel that was moving over clients. I had a caseload of 800, including thirty felonies, when I left.* Women defenders are also troubled by the relentlessly consistent profile of criminal suspects, who so often are young Blacks and Latinos. *Increasingly, my clients are young Black and Latino men facing perhaps an entire life in prison, with very little that I can do.*

Every woman defender I know understands her work as having important racial dimensions. *Race is an issue that's been talked about with every client, half raised by me, half by them.* For women of color, racial identity played a part in the choice of work, as well as in continuing satisfaction and frustrations. *I've always felt outside whatever the majority circle is, and that, I think, is where most of our clients stand.* Several women of color reported a special connection to clients who are not white, and a particular kinship with clients of their own race. *With my minority clients I have this bonus, this extra layer that I don't have to go through. With my Asian clients, definitely!* White women defenders presented a political goal of solidarity with people of color, sometimes, like me, understanding their white identities as a potential impediment to effective understanding of the experiences of many clients or witnesses, or to effective communication. Middle-class experience was similarly identified as a potential obstacle. *I don't know if it's color or class, but I often feel that I live in such a different world from my clients that it's really hard to understand them, and I wonder if that doesn't go the other way as well. . . . I had one client who had the idea that he could train me to cruise around South Central L.A. like I belonged, like if I could learn the talk I would fit. And he was convinced he had trained my blonde co-counsel so she could do that. But the African-American attorneys have the same problem. One of my partners now is a Yale-educated Black woman, and there's no way she could*

*dress in whatever and belong in South Central. It's a different culture. We have to take into account our racial identities, but it's not necessarily an obstacle. Once you get in the door, it's not about that, it's about one-to-one communication, and listening, so they'll trust you.*

The woman defender's stance of solidarity with clients was a dominant theme in my interviews, as in my own experience and informal conversations. Real women defenders act out of a critique of enforced poverty and racism, using our professional skills to align ourselves with criminal suspects, overwhelmingly men of color. In this anti-racist stance, cross-racial solidarity, and class consciousness, this group of women defenders challenges dominant ideologies of American society and culture.

In some other ways, though, women defenders report aspects of their work that might offer less opposition to mainstream values and perceptions. For example, most of the women defenders I have interviewed believe that their representation of clients includes relating to clients differently than do many of their male colleagues. *They say, "You're doing too much for them!"* Several women defenders report that, compared with many male colleagues, they pay more attention to the clients as people, are more willing and able to listen to clients, more willing to become involved with clients' families, and more aware of and concerned about problems and pressures beyond the most immediate criminal charges. *The men visit the client, they talk about sports, they talk about the weather, they talk about the case, and they leave.* Although none (so far) has been familiar with Carol Gilligan's work,<sup>40</sup> or relational feminism,<sup>41</sup> almost every woman defender has described her representation in ways that can be understood to be relational, contextual, and caring, as if their methods, values,

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40. Carol Gilligan is a Harvard social psychologist whose book, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982), identified an under-valued approach to solving ethical problems, the ethic of care, which Gilligan contrasted to a dominant ethic of rights. *Id.* at 174. Gilligan associates the ethic of care with women, and the ethic of rights with men. *Id.* at 159-74; see also Carol Gilligan, *Moral Orientation and Moral Development*, in *WOMEN AND MORAL THEORY* 19, 19-33 (Eva Feder Kittay & Diana T. Meyers eds., 1987) (developing and defending the concept of an ethic of care in the service of justice). A significant body of legal scholarship builds on Gilligan's work. See, e.g., Leslie Bender, *From Gender Difference to Feminist Solidarity: Using Carol Gilligan and an Ethic of Care in Law*, 15 VT. L. REV. 1 (1990); Kenneth Karst, *Woman's Constitution*, 1984 DUKE L. J. 447; Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39 (1985); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988).

41. Relational feminism values women's capacities for caring and connecting with others. See West, *supra* note 40, at 28 (noting "[w]omen's concept of value revolves . . . around the axis of intimacy, nurturance, community, responsibility and care"). Much of relational feminism is based in some way on the work of Carol Gilligan or psychologist Nancy Chodorow. See generally NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER* (1978). Commentary adopting the label "relational feminism" includes Karen Offen, *Defining Feminism: A Comparative Historical Approach*, 14 SIGNS: J. WOMEN CULTURE & SOC'Y 119, 134-35 (1988) (exploring and comparing relational and individual modes of argument in feminist discourse), and Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 802-13 (1989) (criticizing relational feminism).

and approaches had been modeled on a primer of relational feminist lawyering.<sup>42</sup> *I feel horrible for this person, for what's happened to his life. It's essentially feeling responsible for somebody, not just for the case but how they're feeling and how they're doing, and if they're not getting fed, and if they're not getting to see the doctor, then all those things are within our responsibility. I would try to solve a problem that was important to the client but didn't have anything to do with the case. But I haven't known many men attorneys who feel that way. They're concerned in a different way, like if the client is depressed, is it enough to affect the appeal?*

The tendency of women defenders to describe their work in relational terms might not challenge dominant gender role expectations, but their evaluations of their relational lawyering as a significant professional strength do dislodge traditional understandings of good lawyering. *Women are better at this work. I have a client who just lost twenty pounds because there isn't enough food. I take that seriously, and write, and talk with other lawyers, and figure out what to do. My co-counsel wouldn't let it bother him, but would maybe say in passing, "yeah, he looked thinner to me, too."*

Women defenders are proud of being able to relate to the whole person and proud of being personal in their commitments to their clients. *Women are better listeners and better nurturers, and a lot of times that's the most effective way of interacting with our clients. You have to be trustworthy, and I think women are better listeners and it's easier for the clients and witnesses to trust us. Many women defenders are proud of seeing their clients in context, as human beings, with families and friends and futures. If I was not having contact with the clients, or with their family, it would be very difficult to do this job. . . . A lot of times, we are trying to fix their lives, to get them into drug programs, to find whatever is the appropriate thing to improve their situation. Most identify their relationships with clients as providing the greatest satisfaction in their work. When I see a client, I think, "I just love this work."*

Interestingly, the women defenders not only described relational lawyering styles; many also recognize some mothering in their role as criminal defense attorneys. *I'm not a mother, but I have maternal feelings for my clients, for all of them, even for the ones who aren't mine. They recognize protectiveness, caring, and authority in their roles, in a way that feels to some to be maternal. I want to feed them, I want to make sure they're warm, I want to make sure they have stamps. The mothering role was described by white women defenders, and by women of color, and was described as being present both with clients of the same race and with clients of different races. One of my former clients sends me a Mother's Day card every year. I love getting it. Although women who are not mothers recognized mothering in their work too,*

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42. For such a primer, see generally Menkel-Meadow, *supra* note 40 (using Gilligan's work to speculate that women attorneys might approach their work with methods that emphasize caring and connections to other people).

the women defenders who do have children spoke of a variety of ways in which being a mother influenced their work, from identifying clients with their children or their children's friends to recognizing feelings of protectiveness and caring. *I don't know if male attorneys have 'paternal' feelings.* This maternal sense is a kind of strong mothering—protective and powerful. *When I had my first child and then went back to work, I found myself coming home from juvenile court and hugging my little baby, and saying "this is never going to happen to you."*

Although feminist women defenders derive great satisfaction from their work, especially from the relationships with clients, serious frustrations proliferate. The looming frustrations come from the systems in which the attorneys and clients are caught. *The system puts such limitations on us, on what we can do. You can try the case, or you can deal the case, and most of the time, dealing is what we have to do.* These women defenders expressed an abiding concern about their ability to adequately represent their clients within the constraints of the criminal justice system's laws and practices. Women criminal defense attorneys worry about perpetuating the lengthy incarceration rates and resultant dehumanizing of their clients. In practical terms, women defenders have seen sentences become longer, with young men routinely facing life without possibility of parole.<sup>43</sup> *The stakes are often terribly high, with no good options.* Judges are less able or willing to respond to individual circumstances, and many clients are increasingly desperate.<sup>44</sup>

Whether working in negotiations, trials, or appeals, women defenders know that the stakes have become monumental and their clients' odds are getting worse. At a more theoretical level, the problem includes the woman defender—perhaps by her very presence, her honor and her competence—in some sense justifying the conviction and sentence she is trying to avoid. *I don't do death penalty work because I don't want to be a part of putting people to death.* In other words, the ultimate results are justified as fair and just in large part because of the participation of the dedicated and skillful woman defender,

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43. See generally Joan W. Howarth, *Life Without Possibility* (Mar. 15, 2000) (unpublished manuscript, on file with *The Journal of Gender, Race & Justice*) (discussing the increasing rate and length of incarceration experienced by young men of color).

44. For discussions of current trends toward less judicial discretion and longer sentences, see LOIS G. FORER, *A RAGE TO PUNISH: THE UNINTENDED CONSEQUENCES OF MANDATORY SENTENCING* (1994) (providing a historical analysis of incarceration policymaking in the United States); PHILIP G. ZIMBARDO, CENTER ON JUVENILE AND CRIMINAL JUSTICE, *TRANSFORMING CALIFORNIA'S PRISONS INTO EXPENSIVE OLD AGE HOMES FOR FELONS* (1994) (discussing the skyrocketing costs associated with long-term incarceration and care of an elderly prison population); Sanford H. Kadish, *Fifty Years of Criminal Law: An Opinionated Review*, 87 CAL. L. REV. 943, 981 (1999) (noting that "determinate or guideline sentencing" produced "greater uniformity and less discretion . . . at the cost of vastly longer terms of imprisonment, a proliferation of mandatory and repeat offender sentences (the infamous 'three strikes' laws, for example) and an unprecedented explosion of the prison population . . ."); Anthony J. Kline, *The Politicalization of Crime*, 46 HASTINGS L.J. 1087, 1088-94 (1995) (describing the serious impact on the judicial system of political pressure for increased and broadly applied criminal penalties).

whether or not her dedication and skill have much impact on the criminal justice machinery. *More and more, I'm beginning to feel like I'm a cog in the wheel of putting Black men in prison, and that is really dragging me down, and I'm actually thinking about retiring.*

The complexities and varieties of experiences of real women defenders are not matched on television. None of the defenders I interviewed recognize themselves in any television portrayal, and, unlike me, some watch virtually no television. But all would agree that the pressure cooker of today's criminal justice system is fueled in large part by widespread popular willingness to replace compassion with vengeance, to be tough on crime by being tough on criminals. The actual women defenders, then, work in a world controlled in some way by popular mood.<sup>45</sup> Television characters also live in a world where popular taste and dominant ideologies control their destinies and identities. Indeed, television characters put flesh and blood on ideology, making it readable and accessible, and thus desirable. In a real sense, the ideological work of the television defenders helps to create the pressures and frustrations in the world of the actual women defenders.

#### IV. CRIME AND JUSTICE ON TELEVISION

##### A. "Americans Like Crime"<sup>46</sup>

Television land is a dangerous place. Shows about crime abound on television and have since the beginning of the medium.<sup>47</sup> Our knowledge of law,<sup>48</sup> crime,<sup>49</sup> criminals,<sup>50</sup> and criminal defense attorneys comes largely from

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45. For a thoughtful discussion of the moral panic that currently justifies harsh criminal penalties, see Michael Tonry, *Rethinking Unthinkable Punishment Policies in America*, 46 UCLA L. REV. 1751 (1999).

46. Judith Grant, *Prime Time Crime: Television Portrayals of Law Enforcement*, 15 J. AM. CULTURE 57, 57 (1992) (describing Americans' television preferences, especially preferences for crime shows).

47. See, e.g., Harris, *supra* note 21, at 807-10 (presenting the history and current breadth of crime shows on television).

48. See generally, e.g., Bandes & Beermann, *supra* note 22 (discussing what *NYPD Blue* teaches about *Miranda* rights); see also Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579, 1579-606 (1989) (arguing that "legal and popular culture, as images of each other, help explicate and illuminate their respective contents"); see generally Harris, *supra* note 21 (discussing television's enormous impact on popular understanding of criminal law); PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE (Robert M. Jarvis & Paul R. Joseph eds., 1998) (analyzing the law as represented on episodic television).

49. Harris, *supra* note 21, at 813-14 (summarizing data showing that television presents the world as much more dangerous than it actually is); Richard Clark Sterne, *NYPD Blue*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE, *supra* note 48, at 87, 91 (arguing that crime shows on television highlight street crime and ignore corporate crime); see, e.g., Grant, *supra* note 46, at 58 (arguing that police dramas "decontextualize crime," and that such portrayals "pretend that crime's

television.<sup>51</sup> Even those of us who experience crime, whether as victims, perpetrators, or workers in criminal law, understand ourselves and our experiences in part in relation to what we have learned from television.<sup>52</sup> Crime is much more rampant on television than anywhere else. George Gerbner, a leading researcher of television violence, has shown that: "The state in the world of prime time acts mostly to fend off threats to law and order in a mean and dangerous world."<sup>53</sup> Gerbner estimates that crime is at least ten times more prevalent on prime time than in the real world crime statistics.<sup>54</sup> The pleasure viewers derive from crime as entertainment carries with it increased fears about the worlds in which we actually live. Gerbner's studies confirm that watching television "tends to heighten perceptions of danger and risk and maintain an exaggerated sense of mistrust, vulnerability, and insecurity."<sup>55</sup> Television's exaggerated dangers are certainly intertwined with our society's passionate embrace of retributive criminal justice policies.<sup>56</sup> The relationship, of course,

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causes and definitions are self-evident, that criminals are easily recognizable and the punishments we should give to them obvious").

50. See, e.g., Dawn Keetley, *Law & Order*, in *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE*, *supra* note 48, at 33, 35 (criticizing the presumption of *Law & Order* that "individuals commit crimes as free, rational, and purposeful actors" because such a presumption "obscure[s] the impersonal and institutional causes of harm") (emphasis in original); Sterne, *supra* note 49, at 93 (criticizing *NYPD Blue*'s emphasis on "pursuit and arrest of homicide suspects, frequently African-American or Hispanic").

51. Steven Stark cites data showing that Americans receive 95% of their knowledge about crime from mass media. Steven D. Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. MIAMI L. REV. 229, 231 & n.7 (1987) (citing from *EVALUATING ALTERNATIVE LAW-ENFORCEMENT POLICIES* 188 (Ralph Baker & Fred Meyer, Jr. eds., 1979)).

52. When I was mugged several years ago, the experience felt familiar, although nothing like it had happened to me before. I believe that I recognized the experience from television muggings, and that I used my television knowledge to frame the experience and to understand what was happening. Similarly, even after visiting San Quentin for almost 20 years, I still feel a bit as though I am in a movie at the point that I enter the prison.

53. George Gerbner et al., *Charting the Mainstream: Television's Contributions to Political Orientations*, in *AMERICAN MEDIA AND MASS CULTURE: LEFT PERSPECTIVES*, *supra* note 14, at 441, 445. Gerbner continues,

[e]nforcing the law of that world takes nearly three times as many characters as the number of all blue-collar and service worker characters. The typical viewer of an average week's prime-time programs sees realistic and often intimate (but usually not true-to-life) representations of the life and work of thirty police officers, seven lawyers, and three judges, but only one engineer or scientist and very few blue-collar workers.

*Id.*

54. *Id.*

55. *Id.*

56. See, e.g., *id.* at 446 ("Television's mean and dangerous world can thus be expected to contribute to receptivity to repressive measures and to apparently simply [sic], tough, hard-line posturings and 'solutions.'"); see also Sterne, *supra* note 49, at 89-91 (connecting television brutality

goes both ways. We choose to watch crime shows in part because of "our obsessive fear of criminal victimization,"<sup>57</sup> but that obsession becomes deeper and more powerful as it is reflected and reinforced on television.<sup>58</sup>

### B. Prime Time Defenders as the Enemy

Much of the crime on television is presented in the context of police or prosecutor shows.<sup>59</sup> Prosecutors on television have been valorized as champions of the people at least since *Mr. District Attorney* aired on ABC in 1951.<sup>60</sup> Today, shows featuring police officers and prosecutors are ubiquitous. Some of the most prominent and critically acclaimed are *Law & Order*,<sup>61</sup> *Homicide: Life on the Street*,<sup>62</sup> and *NYPD Blue*.<sup>63</sup> Naturally, the viewer

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by sympathetic police detectives to evidence of widespread actual police brutality, especially against African-Americans and Latinos) (citing AMNESTY INT'L, UNITED STATES OF AMERICA: POLICE BRUTALITY AND EXCESSIVE FORCE IN THE NEW YORK CITY POLICE DEPARTMENT 1 (1996)).

57. Grant, *supra* note 46, at 57.

58. Gerbner et al., *supra* note 53, at 445.

59. For a discussion of the relative rarity of film prosecutors, see Jay Brandon, *District Attorneys—The Image*, in THE LAWYER AND POPULAR CULTURE: PROCEEDINGS OF A CONFERENCE 121, 121-22 (David L. Gunn ed., 1993) (pointing out that District Attorneys are not traditionally heroic figures in popular fiction because they often assume the role of amoral "faceless bureaucrats" rather than moral "gunslingers"—the popular mode of defense attorneys). Patricia Kane drew from the same point that "readers locate the enemy less in individual criminals than in government, that freeing the innocent is more interesting than convicting the guilty." Patricia Kane, *Perry Mason: Modern Culture Hero*, in HEROES OF POPULAR CULTURE 125, 132 (Ray B. Browne et al. eds., 1972). Kane wrote this almost three decades ago, and the current prevalence of prosecutor and police shows suggests a significant change in popular identification and assessment.

60. David Ray Papke, *The Defenders*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE, *supra* note 48, at 3, 7 (noting that viewers could recite the opening lines: "Mr. District Attorney! Champion of the people! Guardian of our fundamental rights to life, liberty, and the pursuit of happiness!").

61. *Law & Order* is a critically-acclaimed crime and legal drama broadcast on prime time by NBC since September 1990. BROOKS & MARSH, *supra* note 4, at 566-67. Each show first portrays the police investigation of a crime and then follows the prosecutors who take the case into court. The actors and actresses playing the featured police officers and prosecutors have changed over the years of the show's run. See generally KEVIN COURRIER & SUSAN GREEN, LAW & ORDER: THE UNOFFICIAL COMPANION (1998) (providing detailed information about the cast, production history, and all episodes of *Law & Order* through the 1999 season).

62. *Homicide: Life on the Street* was a prime time police drama broadcast on NBC between January 1993 and August 1999. BROOKS & MARSH, *supra* note 4, at 462-63.

63. *NYPD Blue* is a prime time police drama broadcast on ABC since September 1993, currently starring Dennis Franz as "crusty, mistrustful" Detective Andy Sipowicz and Rick Schroeder as Sipowicz's new young partner, Detective Danny Sorenson. *Id.* at 710; see, e.g., Bandes & Beermann, *supra* note 22, at 13 (stating that in *NYPD Blue*, "the viewer is given all the information she needs to empathize with the detectives").

watching these shows easily empathizes with the police and prosecutors.<sup>64</sup> In general, these shows portray a criminal justice system that functions for the benefit of the defendant.<sup>65</sup> Indeed, these programs invent a legal system that tilts toward the defense in large part because of the defense attorney's frustratingly scrupulous attention to constitutional niceties and technicalities.<sup>66</sup> The prosecutors are moral heroes, struggling to achieve justice within an often immoral, rule-bound legal system.<sup>67</sup> As Judith Grant suggests, "[w]hat we learn from TV dramas—in particular, police dramas—is that legal rules are a hindrance to justice."<sup>68</sup> In the cop and prosecutor shows, the defense lawyers often have the law on their side, but the prosecutors represent justice.<sup>69</sup>

Criminal defense attorneys appear regularly on *Law & Order*, *Homicide: Life on the Street*, *NYPD Blue*, and other police shows, wielding the legal rules that get in the way of the police and prosecutors' quest for justice.<sup>70</sup> Whether male or female, defense attorneys on these shows are the problem, aligned with

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64. See Harris, *supra* note 21, at 814-15 (warning that conventional television presents the Constitution and criminal justice system as "a series of petty rules" aligned with the criminal in opposition to the police and viewer).

65. *Id.* at 814-15, 827.

66. *Id.*

67. In her study of *Law & Order*, Dawn Keetley presents the prosecutors as driving the legal system with a "prior moral vision" that "rehabilitates the law as an efficacious and just system" in part by "insisting that the amoral technicalities of the legal system do not always triumph over common sense ideas of fairness." Keetley, *supra* note 50, at 34.

68. Grant, *supra* note 46, at 57.

69. Todd Gitlin has assessed earlier eras of police shows:

Police shows also display a metamorphosis that matches the decomposition of the dominant view of crime and punishment. In Jack Webb's "Dragnet" beginning in 1952, the police are in harmony with society's values; they detect according to the book; they are pure technicians ("Just the facts, ma'am"), representing the coincidence of technical and political capacities in the state . . . Crime never pays . . . But by the late 1960s, the social consensus about the decency and the effectiveness of the state has unraveled, and the next generation of police shows displays uncertainty about the legitimacy and consequence of the law, and of the police within it, and about the organization of authority within the police. Into the 1980s, one continuing message is the practical futility of liberalism, a sense imported from the larger political culture.

Gitlin, *supra* note 23, at 253. Gitlin expands upon this idea, stating "[i]n cop and detective shows, there are a variety of hybrid mixtures of authority and outlawry, elaborating, in turn, a range of popular ambivalences toward bureaucracy, law, and the state." *Id.* Thus, constitutional violations and physical violence are understood to be justified police techniques. See, e.g., Bandes & Beermann, *supra* note 22, at 8-14 (describing *Miranda* abuse in *NYPD Blue*); Sterne, *supra* note 49, at 88-89 (describing how *NYPD Blue* portrays police violence in sympathetic terms).

70. See Gitlin, *supra* note 23, at 253 (describing the development of the police show in ideological terms and establishing that they function to suture the viewer to the state and cast suspicion upon legal rules).



the criminals to delay and obstruct justice.<sup>71</sup> In order to be worthy opponents, and to maintain dramatic tension, these defense attorneys are usually quite competent, hard-working, and effective, very often winning motions (especially suppression motions leading to case dismissals) before sympathetic judges.<sup>72</sup>

Although often frustratingly good at their jobs, these criminal defense attorneys are frequently portrayed as avaricious and somewhat sleazy.<sup>73</sup> Many are seen as fundamentally immoral and opportunistic sharks, engaged in morally reprehensible work for the money. Women criminal defense attorneys are portrayed with whiffs of the dominant male themes of opportunistic competency and sleaze. Often the woman defense attorney is also something of a bitch, meaning that she is a woman who is hardened, too clever and sharp, in addition to being in it for the money. One reason for the prevalence of the cynical theme of avaricious defense attorneys is that on these shows any political or social motivation for undertaking criminal defense is generally absent. On police or prosecutor shows, the only prevalent exception to the general erasure of a political or social motivation for criminal defense is the recurring trope of the highly politicized African-American defense attorney, perhaps dressed in African garb, who articulates a racial component to a defense. For example, African-American actress Lorraine Toussaint had a recurring role on *Law & Order* as criminal defense attorney Shambala Green. In one episode Shambala Green represented a young African-American man accused of a killing motivated by a mistaken belief that the victim was Jewish.<sup>74</sup> In the context of the police and prosecutor shows, these attorneys are "playing the race card," complicating what should be a simple case with diversionary and irresponsible race-baiting tactics. These lawyers, too, are shown as primarily motivated by self-interest, albeit political. With political motivations

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71. Cf. Bandes & Beermann, *supra* note 22, at 13 (reasoning that on *NYPD Blue* "the detective acts as our representative, united with us against the forces of criminality").

72. For example, Dawn Keetley describes the defense attorneys on *Law & Order*:

Defense attorneys are almost always presented as devotees of the letter of the law, practitioners who justify defending clearly guilty offenders on the grounds that the law entitles everyone to a defense. "Law & Order" routinely parades a string of defenders who irresponsibly fabricate exculpatory narratives that misrepresent truth and defy morality, all in the name of doing their job—that is, the law's job.

Keetley, *supra* note 50, at 44.

73. The "sleazy mouthpiece" vision of criminal defense attorneys has a well-established film pedigree from such movies as *The Mouthpiece*, a 1932 film remade in 1995 as *Illegal*, in which a mob attorney is described as one who "never pulls a job but he peddles legal loopholes." Rennard Strickland, *The Hollywood Mouthpiece: An Illustrated Journey Through the Courtrooms and Back-Alleys of Screen Justice*, in *THE LAWYER AND POPULAR CULTURE: PROCEEDINGS OF A CONFERENCE*, *supra* note 59, at 49, 52.

74. *Law & Order: Sanctuary* (NBC television broadcast, Apr. 13, 1994). See COURRIER & GREEN, *supra* note 61, at 221-22 (detailing the scenario and the characters involved in the episode).

thus marginalized, the dominant motivation for criminal defense work is financial.

Some criminal defense attorneys, especially women, are shown as genuinely caring about their clients.<sup>75</sup> In the context of police and prosecutor shows, of course, such caring for the client is utterly misplaced, constituting compassion, equaling weakness, bordering on the corrupt. Caring for the criminal who the heroes are attempting to catch, convict, imprison, or execute, reveals the criminal defense attorney as some sort of misguided sap, at best. In this way, the relational lawyering that is perceived by real women defenders as a professional strength is transformed on television into traditional, stereotypical female weaknesses—the bleeding heart, the undisciplined tendency toward subjectivity rather than objectivity.

This negative portrayal of criminal defense attorneys is hardly surprising on police and prosecutor shows. The police and prosecutors represent the people, meaning, in the simplistic dualities of the genre, the defense attorneys are aligned against the people. No one would be surprised at the many connections between the proliferation of police and prosecution dramas and the public willingness to expend huge budgets and exact uncountable human costs in astonishingly high incarceration rates across this country.<sup>76</sup> The more interesting connection is between the run-away incarceration rates and the few but powerful portrayals of sympathetic, even heroic, criminal defense attorneys on television. On television, even the most sympathetic and heroic women defenders help to construct and maintain public “knowledge” that towering incarceration rates are necessary and just.

### C. Heroic Prime Time Defenders

Television has a well-established tradition of the heroic criminal defense attorney, from Perry Mason,<sup>77</sup> once one of the most respected lawyers in

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75. See *infra* text accompanying notes 105-07.

76. See generally JEROME G. MILLER, *SEARCH AND DESTROY: AFRICAN-AMERICAN MALES IN THE CRIMINAL JUSTICE SYSTEM* (1996) (discussing the social and monetary costs of disproportionate sentencing, especially their impact on the African-American community); see also generally MICHAEL TONRY, *MALIGN NEGLECT: RACE, CRIME, AND PUNISHMENT IN AMERICA* (1995) (discussing the racial dimensions of current incarceration rates).

77. See, e.g., Kane, *supra* note 59, at 125-33 (examining the construction of Perry Mason as a heroic figure); Norman Rosenberg, *Perry Mason*, in *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE*, *supra* note 48, at 115, 117 (discussing the dual goals of Perry Mason's creators—to provide entertainment while depicting the “real” state of defense practice). Rosenberg notes that Raymond Burr's Perry Mason had a “strange, stolid solemnity” and that the lawyers of *The Practice* “might keep Perry Mason around to be ‘of counsel,’ but they would not likely assign him an important case.” *Id.* at 116.

America,<sup>78</sup> to *The Defenders*,<sup>79</sup> to Ben Matlock.<sup>80</sup> The mantle is worn today by Bobby Donnell, the star lawyer in *The Practice*. Even the classic film version of Atticus Finch in *To Kill a Mockingbird*, a Southern, white, classy, gentle, fair-minded, loving father and lawyer,<sup>81</sup> was recreated for television by Sam Waterston in *I'll Fly Away*.<sup>82</sup> In each case, the heroic defense attorney offers a white male identity composed of, or even equated with, great legal skills, a looming courtroom presence, and a commitment to justice. The heroic criminal defense attorney battles against the system, often winning against long odds.

The heroic criminal defense attorney role thus initially took hold as a white<sup>83</sup> man<sup>84</sup> whose clients were not only white, but also innocent.<sup>85</sup> Even the

78. Randall Samborn, *Who's Most Admired Lawyer?*, NAT'L L.J., Aug. 9, 1993, at 24, 24.

79. *The Defenders* were father Lawrence Preston (E.G. Marshall) and son Kenneth Preston (Robert Reed). BROOKS & MARSH, *supra* note 4, at 248. They portrayed defense attorneys in a critically acclaimed show that aired from 1961 to 1965. See Horace Newcomb, *The Lawyer in the History of American Television—An Overview*, in THE LAWYER AND POPULAR CULTURE: PROCEEDINGS OF A CONFERENCE, *supra* note 59, at 39, 42-43 (describing *The Defenders* in an historical context).

80. Criminal defense attorney Ben Matlock, played by Andy Griffith, was the lead character in *Matlock*, a legal drama that aired on NBC from 1986 to 1992 and ABC from 1993 to 1995. BROOKS & MARSH, *supra* note 4, at 640.

81. Rennard Strickland describes Gregory Peck's Atticus Finch as "the most idealized and probably the most idolized" of film lawyers. Strickland, *supra* note 73, at 51. "When the leader of the black community says to [Atticus' daughter] Scout, 'Stand up, your father is passing,' surely we all stand taller." *Id.* John Denvir has described Atticus Finch as "by nature an aristocrat," in contrast to the English barrister Rumpole of *Rumpole of the Bailey*, who is characterized as an "outsider." John Denvir, *Rumpole of the Bailey*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE, *supra* note 48, at 145, 148.

82. See Newcomb, *supra* note 79, at 39, 46 (discussing *I'll Fly Away* in association with *To Kill a Mockingbird*).

83. White criminal defense attorneys include Perry Mason, the Preston father and son team on *The Defenders*, Ben Matlock, and Rumpole from *Rumpole of the Bailey*. The leading non-white prime time criminal defense attorney is probably Eugene Young, an African-American attorney on *The Practice* played by Steve Harris. BROOKS & MARSH, *supra* note 4, at 818. Based upon my observations, Eugene is known for courtroom brilliance and passion, and for his cynical success with closing arguments based on broad patriotic generalities ("This is America") having little connection to the facts suggesting his client's guilt.

84. Gerald J. Clark refers to Perry Mason as a "father figure" in Gerald J. Clark, *The Lawyer as Hero?*, in THE LAWYER AND POPULAR CULTURE: PROCEEDINGS OF A CONFERENCE, *supra* note 59, at 179, 182.

85. See, e.g., Gail Levin Richmond, *Matlock*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE, *supra* note 48, at 55, 63 ("In common with Perry Mason, Ben Matlock freed his clients without upsetting the law-and-order contingent. Because he unmasked the real miscreants, Matlock's clients received 'not guilty' verdicts that really meant 'innocent.'"); Rosenberg, *supra* note 77, at 123 (stating that Perry Mason's clients are always demonstrably innocent). In acknowledging Rumpole's sympathetic clientele, John Denvir has noted that "[d]efending innocent people is the narrative form of shooting fish in a barrel." Denvir, *supra* note 81, at 152. Denvir continues, "I share my profession's belief that even crack dealers deserve a zealous defense, but I must admit to some ambivalence when their lawyers are called 'heroes.'" *Id.*

almost burlesque defense attorney Douglas Wambaugh on *Picket Fences*<sup>86</sup> had an innocent client in his biggest case.<sup>87</sup> The honor of criminal defense in popular culture is deeply associated with a notion of innocence structured within race, gender, and class privilege.

## V. THE PRIME TIME WORK OF HEROIC WOMEN DEFENDERS

The first wave of notable women television criminal defense attorneys included public defenders Joyce Davenport on *Hill Street Blues*,<sup>88</sup> Rosie O'Neill, who left a prestigious civil practice to become a public defender after her divorce in *The Trials of Rosie O'Neill*,<sup>89</sup> and Veronica Gilbert on *Courthouse*. They have been joined recently by public defender Annie Dornell on *To Have & To Hold*, and private defense attorneys Ellenor Frutt, Lindsay Dole, and Rebecca Washington on *The Practice*. Occasionally even Ally McBeal dabbles in the world of criminal defense.<sup>90</sup>

As much as the presence of women has changed the face and shape of criminal defense practice,<sup>91</sup> women defenders on television challenge the cultural construct of television's criminal defense hero.<sup>92</sup> Women defense

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86. *Picket Fences* was a quirky prime time drama broadcast on CBS from 1992 to 1996 that starred Kathy Baker and Tom Skerritt. BROOKS & MARSH, *supra* note 4, at 807. Fyvush Finkel played Douglas Wambaugh, the "outlandish, bombastic defense attorney . . ." *Id.*

87. See Douglas E. Abrams, *Picket Fences*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE, *supra* note 48, at 129, 139-41 (describing Wambaugh's Supreme Court case on behalf of a client who surprisingly turns out to be innocent).

88. *Hill Street Blues* was a highly acclaimed police drama broadcast on NBC from 1981 to 1987. BROOKS & MARSH, *supra* note 4, at 450-51. Veronica Hamel played Joyce Davenport, the police captain's love interest, described by one television directory as a "contentious public defender." *Id.* at 450; Susan Beth Farmer, *Hill Street Blues*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE, *supra* note 48, at 17, 18.

89. *The Trials of Rosie O'Neill* was a prime time legal drama that aired on CBS from 1990 to 1992 starring Sharon Gless in the eponymous role. BROOKS & MARSH, *supra* note 4, at 1051-52; Newcomb, *supra* note 79, at 43 (stating the central question raised by *The Trials of Rosie O'Neill* was "whether or not justice can be fairly meted . . . despite financial status, gender, ethnicity, or acceptance of dominant ideologies"); Christine Alice Corcos, *Women Lawyers*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE, *supra* note 48, at 219, 230 (noting the long-term success of *The Trials of Rosie O'Neill* which "emphasizes the main character's neuroses and inability to function as a whole human being").

90. Ally McBeal, played by Calista Flockhart, is the main character in this hit legal comedy and drama that has been broadcast on FOX since September 1997. BROOKS & MARSH, *supra* note 4, at 31-32. I note from my viewing of the series that Ally is a successful attorney with many neuroses and a personal life in shambles.

91. See *supra* Part III.

92. Julie D'Acci undertook her analysis of *Cagney & Lacey* in part based on her argument that "the conventional meanings produced by the police program could not continue to be generated with two feminist women in the roles of police-protagonists. The genre, quite simply, could not hold." D'ACCI, *supra* note 17, at 107.

attorneys alter the traditional meaning of attorney,<sup>93</sup> and of the law.<sup>94</sup> Can the criminal defense attorney still claim high moral ground when she is a woman? Interestingly, women defenders have joined the ranks of the criminal defense attorney hero after that role lost the crucial moral prop of innocent clients and began to operate in a world beyond a white, middle-class bubble.<sup>95</sup> Can the defense attorney remain heroic when her clients are not white, or when they have, in fact, committed crimes?<sup>96</sup> How do such women remain attractive<sup>97</sup> to television viewers? How can television portray a white woman criminal defense attorney aligned with a Black or Latino client without presenting some sort of cross-racial solidarity? More specifically, how can television promote a sympathetic woman defender without providing sympathy to Black and Latino criminals?<sup>98</sup> How can television present sympathetic women defenders, whether of color or white, without undermining the dominant message of criminals as

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93. As traditionally portrayed on television "the attorney" was identifiably and necessarily masculine. For example, Michael Epstein has argued convincingly that the Preston father-son team played by E.G. Marshall and Robert Reed reinforced patriarchal hierarchies and indeed, "[f]or young Preston, being a good lawyer is all about learning to be a man like his father." Michael M. Epstein, *Young Lawyers*, in *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE*, *supra* note 48, at 249, 253.

94. Cf. D'ACCI, *supra* note 17, at 115. In her study of *Cagney & Lacey*, Julie D'Acci argues that the classic TV police genre . . . actually produced meanings not only about the protection of the public by the police, but also about male power, primarily white male power. The notion of the Law, although mostly implicit in the police show, may be used to articulate the connection between the police hero, general social order, and masculine supremacy . . . The cop hero and his moral code become the stand-ins for the Law as male power. This force, exchanged between men and exclusive of women, then becomes the basis of social order . . .

*Id.* at 115-66. D'Acci asserts that

[t]he bonding between [Cagney & Lacey] was seen as a harbinger of "deviance" and disruption, rather than as a sign of professional dedication to the Law (as it is with the male teams). The substitution of female for male bodies both laid bare and threatened the very equation of the Law with male power that the genre had worked so hard to produce.

*Id.* at 120.

95. Patricia Kane points out that "[Perry] Mason's clients are respectable persons of at least middle-class station." Kane, *supra* note 59, at 131.

96. Patricia Kane describes the appeal of Perry Mason as in part "an unreal world in which the innocent are never punished because truth always wins. The world of Perry Mason is a world in which all the facts are available so that a reasoned conclusion is possible." *Id.* at 126. "Mason's clients are not just acquitted; the true story is known. No other innocent person will be charged with that crime." *Id.* at 128.

97. John Fiske reminds us that "attractiveness is always ideological, never merely physical or natural." FISKE, *supra* note 15, at 12.

98. John Brigham argues that *U.S. News and World Report* was presumably worried about the reaction of the white viewing audience in wondering how successful *The Practice* would be in creating identification with criminal defense attorneys in light of the Simpson verdict. John Brigham, *L.A. Law*, in *THE LAWYER AND POPULAR CULTURE: PROCEEDINGS OF A CONFERENCE*, *supra* note 59, at 21, 29.

frightening, inhuman, men of color who deserve whatever can be thrown at them?<sup>99</sup>

Recurring themes in the roles of several sympathetic television women defenders provide the answers in what amounts to a simple recipe. Erase the political choices inherent in the work and portray the women defenders as constantly troubled by their defense of criminals, effectively undermining any solidarity with the criminals.<sup>100</sup> Use the women's maternal side to suggest that she is too caring and too easily embroiled in the client's problems.<sup>101</sup> Exceptionalize the sympathetic client, making him white and middle-class.<sup>102</sup> When any client veers dangerously close to this population of dark criminals, replace the attorney's solidarity with the client with contempt. Reinforce the difference between any individual client and the hordes of undifferentiated young men of color who are dangerous and barely human by presenting him as the potential victim of the "real criminals."<sup>103</sup> Use women defenders of all races to maintain racial hierarchies, policing and correcting the clients of color.<sup>104</sup> These steps have been consistently followed in the creation of women defenders on television, from the most principled and effective (Joyce Davenport on *Hill Street Blues*, Veronica Gilbert in *Courthouse*, and Ellenor Frutt on *The Practice*) to the most denigratingly implausible (Annie Dornell on *To Have & To Hold*).

#### A. The Softer, Gentler Hero

Featured women criminal defense attorneys still carry the previously male theme of the criminal defense hero struggling against the system, but the woman represents a softer, more human hero.<sup>105</sup> Compared to their male counterparts, women criminal defense attorneys are portrayed more often in relationships with their clients. To an extent, this is consistent with reports from real women defenders, many of whom pride themselves on creating and maintaining human relationships with their clients.<sup>106</sup> The women defenders on

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99. See *infra* text accompanying notes 124-32.

100. See *infra* text accompanying notes 124-32.

101. See *supra* text accompanying notes 75-76.

102. See *infra* text accompanying notes 136-53.

103. See *infra* text accompanying notes 136-53.

104. See *infra* text accompanying notes 156-88.

105. Ironically, perhaps Gregory Peck's role as Atticus Finch in *To Kill a Mockingbird* supplied the original version of this gentler, kinder, more feminine attorney hero.

106. Many of the women I interviewed about their work as defense attorneys expressed great satisfaction from aspects of their work which addressed their clients needs as whole people and pleasure in forming bonds with their clients as human beings. See *supra* Part III.

television care about their clients, and demonstrate that caring in frequent conversations and gestures of support. Even the steely public defender on *Hill Street Blues*, Joyce Davenport, defended her clients with compassion.

Indeed, the prevalence of women criminal defense attorneys on television might be explained in part by the caring approach they bring to their work. To the extent that women criminal defense attorneys on television operate from relational, nurturing professionalism, they can represent a contrast between the hard, masculine force of police work and the soft, weak rule of law even better than male criminal defense attorneys.<sup>107</sup> Additionally, for many of these television women, the potential weaknesses inherent in caring for criminals are mitigated in part by personal affiliations with the other side, law enforcement. For example, public defenders Annie Dornell in *To Have & To Hold* and Joyce Davenport in *Hill Street Blues* were married to police officers, and Veronica Gilbert in *Courthouse* was engaged to a prosecutor.<sup>108</sup>

Although women defenders on television are like their real-world counterparts in their relational styles, in most other aspects there are enormous differences. For example, in contrast to their real-life counterparts, women defense attorneys on television rarely bring any politics to their work. Real women defenders choose their work in part because their political analyses link criminal behavior to poverty and other social ills. Yet, television crime is generally solved with arrests, not political change.<sup>109</sup> This comports with Hal Himmelstein's identification of a recurring myth of television, "*the deflection of questions of social structure into the 'personal.'*"<sup>110</sup>

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107. See generally Grant, *supra* note 46, at 59 (referring to "our preoccupation with masculine forcefulness as a way to resolve conflicts").

108. Similarly, criminal defense attorney Bobby Donnell on *The Practice* has been romantically involved with Helen Gamble, a prosecutor. See, e.g., *The Practice: Line of Duty* (ABC television broadcast, Jan. 5, 1998) (highlighting Helen and Bobby's sexual relationship and the complications it causes for their respective careers); *The Practice: Ties That Bind* (ABC television broadcast, Feb. 2, 1998) (featuring Bobby sucking Helen's elbows in a sub-plot); *The Practice: The Trial* (ABC television broadcast, Feb. 9, 1998) (emphasizing Helen and Bobby's romantic strife when they must face each other in court). Gamble is also best friend and roommate of Donnell's girlfriend, Lindsay Dole, another defense attorney in Donnell's firm. See *The Practice: Reasons to Believe* (ABC television broadcast, Oct. 4, 1998). Similarly, Ally McBeal's occasional ventures into the world of criminal defense are overshadowed by her abiding allegiance to her roommate, also a prosecutor. See, e.g., BROOKS & MARSH, *supra* note 4, at 31 (discussing Ally McBeal's emotional trials and the counsel of her roommate).

109. See Gitlin, *supra* note 23, at 260 (pondering that on television "[h]owever deeply the problem may be located within society, it will be solved among a few persons: the heroes must attain a solution that leaves the rest of society untouched. Crime is solved by arrests; citizens never organize against it").

110. HIMMELSTEIN, *supra* note 19, at 11 (emphasis in original). Himmelstein explains that on television

[p]rejudice is portrayed as individual ignorance circumscribed by familial upbringing, existing outside the domain of "official" prejudice that pervades the broader culture. Conversely, resistance to oppressive social structures is most often presented as an act of the

At best, television may transform the political consciousness of real-world women defenders into a de-politicized but worthy desire to help people. This desire motivates the strongest of the women defenders on television. Perhaps because they must be sympathetic, featured criminal defense attorneys cannot do criminal defense simply for the money. Veronica Gilbert on *Courthouse* told a judge, "No public defender takes the job to get rich."<sup>111</sup> Rosie O'Neill left a lucrative Beverly Hills practice to become a public defender and to presumably serve a very different, undervalued population of clients.<sup>112</sup> Public defenders Joyce Davenport and Veronica Gilbert and the women of *The Practice* periodically present criminal defense as rewarding, important work.<sup>113</sup> Ellenor Frutt on *The Practice* is especially passionate about protecting "the little guy" against the sometimes overreaching state. Otherwise, larger political or structural issues are generally absent.

*Courthouse* was exceptional in regularly presenting stories about the politics of criminal defense and criminal justice. One *Courthouse* story line critiqued the politics of crime control and the indefensibility of harsh sentencing, in part by revealing a prior brush with the law of a handsome white male judge, Wyatt Earp Jackson, played by Brad Johnson.<sup>114</sup> This was coupled in the same narrative with a mandatory three strikes case against a sympathetic white husband and father, whose third strike gun possession offense was portrayed as a reasonable response to crime on his delivery route.<sup>115</sup> A sympathetic presiding judge resigned in protest of the harsh three strikes sentencing law.<sup>116</sup>

One of the most interesting political story lines on *Courthouse* concerned a semi-successful work action organized by the public defenders who protested

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enlightened individual will rather than as the embodiment of organized group social action.

*Id.*

111. See *Courthouse: One Strike and You're Out* (CBS television broadcast, Nov. 1, 1995).

112. See BROOKS & MARSH, *supra* note 4, at 1051-52 (stating that Rosie left her Beverly Hills practice to become a public defender).

113. See *Hill Street Blues: The Best Defense* (NBC television broadcast, Oct. 16, 1986) (examining Joyce Davenport's struggles to defend her clients despite labor strife in her office); *Courthouse: Injustice for All* (CBS television broadcast, Nov. 15, 1995) (highlighting Veronica Gilbert's redemptive experience with an elderly, white client whom she must defend against a murder charge following the woman's mercy killing of her husband); *The Practice: Another Day* (ABC television broadcast, Mar. 9, 1998) (featuring Ellenor Frutt's triumph in federal court on behalf of a client). Yet even these moments are undercut by the apoliticization of the characters' actions. See *supra* text accompanying notes 109-13.

114. See *Courthouse: Injustice for All* (CBS television broadcast, Nov. 15, 1995); see also BROOKS & MARSH, *supra* note 4, at 1051-52.

115. See *Courthouse: Injustice for All*, *supra* note 114.

116. The top-billed star of *Courthouse*, Patricia Wettig, played this character, Judge Justine Parker. BROOKS & MARSH, *supra* note 4, at 213-14.



a proposed budget cut that threatened to eliminate two attorney positions.<sup>117</sup> The viewers learned that the public defenders' office was grossly understaffed, especially in contrast to the resources poured into the prosecutor's office. The chief public defender, Cynthia Maurimo, played by Roma Maffia, instructed her deputies: "Instead of a picket line, all we have to do is file every possible motion, insist on every possible hearing, and go to trial on every case. This courthouse shuts down."<sup>118</sup> The militant group of public defenders was pictured as mainly women, of many races.<sup>119</sup> After much chaos, the public defenders won when the judges voted to deny themselves a scheduled pay increase to prevent having to cut two public defender slots.<sup>120</sup>

One episode of *Hill Street Blues* embroiled public defender Joyce Davenport in a threatened strike by public defenders,<sup>121</sup> but this strike was represented less sympathetically than the work action of public defenders on *Courthouse*. One commentator suggests that the Davenport character was "caught in the middle of a no-win situation, trying to defend her clients while dealing with her colleagues on the labor issue."<sup>122</sup> Aside from the *Courthouse* storylines, the chief politicized woman criminal defense attorney image is the sometimes trivialized Black woman ideologue, dressed in African garb, of police and prosecutor shows.<sup>123</sup>

Presenting sympathetic heroines in genuinely caring relationships with poor clients accused of and sometimes guilty of crimes could undermine dominant ideologies about criminals. How can television portray such a woman defender without helping criminals? How can television portray a white woman criminal defense attorney without presenting some sort of cross-racial

117. *Courthouse: One Strike and You're Out*, *supra* note 111.

118. *Id.*

119. In spite of a cast that featured Patricia Wettig, Annabeth Gish, Robin Givens, and Michael Lerner, *Courthouse*, which also featured Jenifer Lewis as an African-American lesbian judge with an actual romantic life, lasted on CBS for only nine episodes between September and November 1995. See BROOKS & MARSH, *supra* note 4, at 213-14.

120. See *Courthouse: One Strike and You're Out*, *supra* note 111.

121. *Hill Street Blues: The Best Defense*, *supra* note 113.

122. Farmer, *supra* note 88, at 19.

123. For example, the *Law & Order* regular, Shambala Green, an African-American defense attorney character, was dismissed by one of the starring white characters as the "Queen of Specious Motions." *Law & Order: Sanctuary* (NBC television broadcast, Apr. 13, 1994). Actress Lorraine Toussaint who portrays Shambala Green on the show has described the producers' vision of her character as being like Angela Davis. See Kitteridge, *The Apocrypha Interview: Lorraine Toussaint* (visited Nov. 1999) <<http://members.tripod.com/~Korillian/apocspring98/toussaint.html>>. CBS aired Steven Bochco's police drama *Brooklyn South* from September 1997 through April 1998. BROOKS & MARSH, *supra* note 4, at 134-35. As a viewer I observed that *Brooklyn South* portrayed militant African-American activists working in opposition to the featured police officers.

solidarity?<sup>124</sup> One solution used in television is to undercut the caring and solidarity with a strong measure of contempt or even disgust.<sup>125</sup> For example, on *Courthouse* and *The Practice* the woman defender's satisfaction in her work is tempered by her constant agonizing over having to work with criminals. The dominant frustration of women criminal defense attorneys on these shows is that they must assist despicable people. For example, as her prosecutor fiancé lay in the hospital with a life-threatening bullet wound, public defender Veronica Gilbert in *Courthouse* recalled through flashbacks the feeble excuses of her clients, and quit her job,<sup>126</sup> stating, "I can't . . . represent these people anymore . . . I don't want to fight for them anymore."<sup>127</sup> The women lawyers in *The Practice* routinely agonize over this moral dilemma.<sup>128</sup> In one episode, Lindsay Dole refused to ever again represent a drug dealer after representing an immoral Latino.<sup>129</sup> In contrast, although real women defenders do not like all of their clients, none I interviewed expressed this concern. To the contrary, their relationships with clients are often the most rewarding aspect of the work.<sup>130</sup> On television, however, women defenders agonize constantly about associating with and assisting criminals.<sup>131</sup> Even Joyce Davenport, the strong

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124. See Gitlin, *supra* note 23, at 241 (discussing television's role in manufacturing consent to dominant ideology); see generally HIMMELSTEIN, *supra* note 19 (discussing ideologies of television).

125. See, e.g., text accompanying *infra* notes 165 (discussing *The Practice* scene in which Ellenor Frutt expresses contempt for her client); see also *To Have & To Hold: The Kids Are All Right?* (CBS television broadcast, Dec. 9, 1998) (portraying the disgust of public defender Annie Dornell with a former client, an African-American woman, as the client is returned to jail on a new prostitution arrest).

126. *Courthouse: Injustice for All*, *supra* note 113.

127. *Id.*

128. One television directory describes the firm as "a low rent Boston law firm specializing in criminal cases . . . more often than not forced to defend the dregs of society in order to pay the bills. Trouble was, the dregs were often guilty, leading to much agonizing." BROOKS & MARSH, *supra* note 4, at 818. In a series of *The Practice* episodes, "Ellenor struggles over her sense of ethics" and "becomes disillusioned with the law when she comes to the realization that underhanded behavior has become second nature to her." *The Practice (An Episodes Guide)* (visited Dec. 20, 1999) <<http://epguides.com/Practice/guide.shtml>>. Similarly, on *The Practice* attorney Eugene Young "wrestles with his conscience over the morality of his profession," and even risks losing access to his son because of the ethical weaknesses perceived to be part of his work as a defense attorney. *Id.*

129. See *The Practice: Save the Mule* (ABC television broadcast, Nov. 15, 1997). Lindsay, however, continues in criminal defense work. More recently she passionately represented her (white, male, wealthy) former law school professor who shot an intruder. See *The Practice: Reasons to Believe*, *supra* note 108.

130. See *supra* Part III.

131. The agonizing of both male and female defense attorneys is evident from one internet episode guide of *The Practice*, which describes episode 33 as "Ellenor struggles over her sense of ethics," episode 34 as "Eugene wrestles with his conscience over the morality of his profession," and episode 35 as "Ellenor becomes disillusioned with the law when she comes to the realization that underhanded behavior has become second nature to her." *The Practice (An Episodes Guide)*, *supra* note

public defender in *Hill Street Blues*, quit her job in the public defenders' office and became a prosecutor for several episodes.<sup>132</sup>

The ethical dilemma experienced by women defenders I have interviewed is not how they can stand representing their clients. They agonize, instead, about being a part of a brutal and dehumanizing criminal justice system that is focused more and more on retribution and less and less on the rights of the accused and the possibility of rehabilitation.<sup>133</sup> *I don't usually find that having a difficult client is particularly hard on me, but having a difficult case is.* The processes and penalties of the criminal justice system seem increasingly oblivious to the humanity of the clients. *Even probation today simply means violating people, not assisting them in any way. The money is going to prisons.* Real-life women defenders want to defend and protect their clients, but often feel powerless to achieve these goals.

I cannot know the extent to which able women defenders enable, permit, and excuse extreme retributive penalties for their (our) clients because of the constraints of the role. However, having examined some popular representations of women defense attorneys, I am convinced that the popular cultural narrative of women defenders is doing exactly that. In other words, women defenders on television function to reinforce the powerful construct of criminal suspects as undifferentiated, dangerous, out of control, inhuman, Black or sometimes Latino men.

Real women defenders, white or of color, choose to represent men of color charged with crimes in part based on a racial consciousness. The choice of work is a consciously political one related to demonstrating solidarity across class (and usually gender) lines, and either across or within categories of racial identity. However, on television, white women criminal defense attorneys are not shown as such race traitors. Television defense attorneys, whether private or public defenders, often have sympathetic white clients.<sup>134</sup> At the same time, women criminal defense attorneys, whether white or of color, are portrayed in even the most pro-defense television shows as disciplining and policing men of color who are criminal suspects (and their clients). In these ways, even the

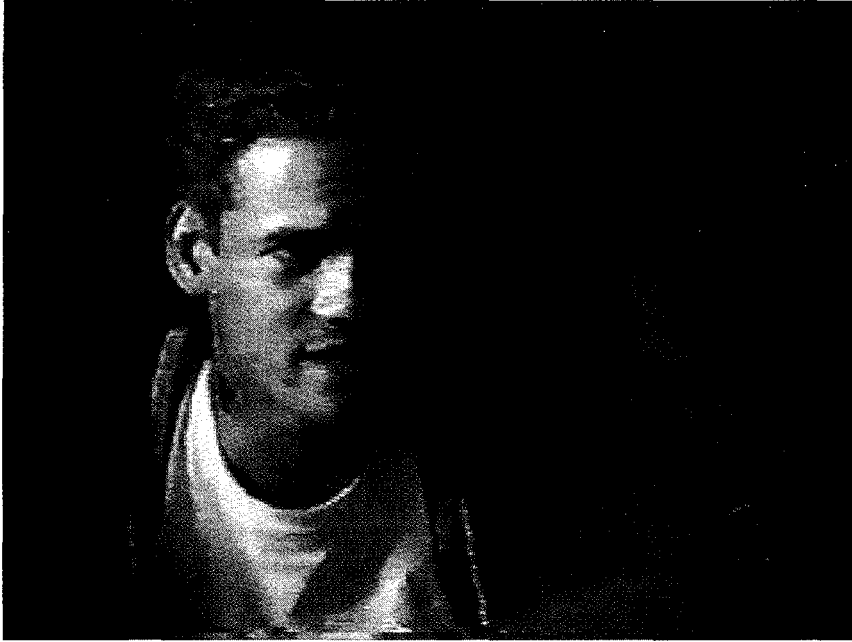
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128.

132. See Farmer, *supra* note 88, at 19 (describing *Hill Street Blues: Dr. Hoof and Mouth* (NBC television broadcast, Jan. 24, 1985) and *Hill Street Blues: Davenport in a Storm* (NBC television broadcast, Jan. 31, 1985)).

133. See, e.g., FORER, *supra* note 44, at 47-67 (discussing the "counter-reformation" in criminal justice policymaking over the last 40 years, designed to mandate long periods of incarceration and to obfuscate prisoners' humanity and the causes of crime); Kadish, *supra* note 44, at 982 (stating the past 50 years of developments in criminal law have brought "a wholesale rejection of rehabilitation" and displaced it with "punishment that is not simply retributive but also staggeringly severe and inflexible").

134. Bandes and Beermann explain that on *NYPD Blue* the viewer "is selectively given the information she needs to empathize with particular suspects—the wrongly accused, the truly provoked, the battered or otherwise victimized, the very young." Bandes & Beermann, *supra* note 22, at 13.



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Annie Dornell reassures her client, and empathizes with his fear of “other criminals” while in jail.



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Ellenor Frutt demonstrates her maternal concern and physical dominance while disciplining Warren Cruikshank.

most pro-criminal defense television shows, such as *The Practice* or *Courthouse*, reinforce the constructed knowledge of the criminal element as Black and Latino, savage, and inhuman.<sup>135</sup> Television portrayals of women of color who are contemptuous of their non-white clients present this message even more powerfully.

A short scene in which *To Have & To Hold*'s public defender Annie Dornell meets with a jailed client exemplifies many of these themes.<sup>136</sup> *To Have & To Hold* was a CBS romantic drama that premiered in the fall of 1998, featuring Moira Kelly as Annie Dornell.<sup>137</sup> CBS breathlessly promoted Annie Dornell as "a beautiful Irish public defender" married to a cop.<sup>138</sup> They are both Irish, living in Boston. The show is mainly about their extended Irish family (her sister is married to her husband's fireman brother) and home life "where they sparred verbally," but "made up the old fashioned way, with great sex."<sup>139</sup> The "beautiful Irish public defender" seems to have only one client in each episode. In this episode, Annie represented a handsome young man from the (Irish) neighborhood.<sup>140</sup> He was introduced in a scene where Annie met him in the attorney visiting room in jail.<sup>141</sup> He was handsome, with dark blonde hair, but he had some bruises and a black eye.<sup>142</sup> He looked scared.<sup>143</sup>

Client (shown in camera shot through the metal mesh of the visiting room door): I can't believe my father won't bail me out.

Annie: They're going to take you back downstairs to holding.

Client: I don't believe it. With all the criminals?

Annie (close up on her concerned face): I'm afraid so.

Client (close up on his scared face): Look, it was my birthday. I got a little drunk. (Camera on Annie, looking very concerned.) Things got out of hand, but it was just a joy ride.

Annie: I'm going to get you out of here. But, until I do, just, be careful.

Client: It's only for one night, right?

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135. See also text accompanying *infra* notes 150-52.

136. See generally *To Have & To Hold* (A Titles and Air Dates Guide) (visited Mar. 20, 2000) <<http://epguides.com/ToHaveandToHold/>> (outlining the episodes in the series).

137. BROOKS & MARSH, *supra* note 4, at 1031.

138. CBS aired this promotional advertisement throughout the run of *The Hold & To Hold* on the CBS website. CBS, *Homepage* (visited Nov. 14, 1998) <<http://www.CBS.com>>.

139. BROOKS & MARSH, *supra* note 4, at 1031.

140. *To Have & Hold: Tangled Up in You* (CBS television broadcast, Oct. 14, 1998).

141. *Id.*

142. *Id.*

143. *Id.*

Annie: I'm going to do my best.

The guard enters, and starts to take the client away.

Client (looking backwards, as he is taken away): Tell'em, tell my parents I'm sorry.

Annie: I will.

Client: Okay. I'll see you tomorrow, right?

Annie (with rueful, sympathetic smile): Bright and early.

Client: Bye. (The jail door slams, while the camera shoots Annie through the metal mesh door, looking sad and concerned. The music swells.)<sup>144</sup>

This short scene reveals the gorgeous public defender's sincere concern about the welfare of her client, and it shows her relating to him in a personal, caring way.<sup>145</sup> He was a sympathetic client. Indeed, he was a handsome, middle-class white kid, well-spoken in spite of his fear and anxiety.<sup>146</sup> Although he had broken the law, he was not really presented as a criminal. This exemplifies what Judith Grant has described as "the fact that on television, a criminal is a person who should be punished as a opposed to someone who commits a crime."<sup>147</sup>

Annie's white, middle-class client was not a criminal, and neither are we, the viewers.<sup>148</sup> As Judith Grant analyzes, "[t]elevision offers two gratifying thoughts: Someone (the police) knows who is guilty, and we are not the guilty."<sup>149</sup> However, we do need to be protected from the frightening real criminals, as does the sympathetic client. Although never shown, the

144. *Id.*

145. *Id.*

146. *To Have & To Hold: Tangled Up in You*, *supra* note 140.

147. Grant, *supra* note 46, at 68.

148. John Fiske explains, in his analysis of the program *Hart to Hart*, that

[t]he [television] text produces a socially located position that it invites the viewer to occupy in order to understand it easily and unproblematically. Thus the *Hart to Hart* segment invites the viewer to "be" white American, male, and middle-class. Realism achieves this positioning of the reading subject through its form.

FISKE, *supra* note 15, at 25. Fiske continues:

[t]he *Hart to Hart* segment attempts to position us as white, male, middle-class Americans, and by adopting this comfortable and ideologically rewarded position we are not just making easy sense of the text, we are reproducing the dominant ideology in our reading practice and are thus maintaining and validating it.

*Id.*

149. Grant, *supra* note 46, at 68. She explains, "[w]hen we like the repressive state, it is because we do not believe it will oppress us. It will only be repressive to some 'other.' Television police dramas promise us that this is true." *Id.*

brutalizing criminals were a fierce, dominating presence in Annie's interview with her client.

The theme of the sympathetic client needing protection from the brutality of the unseen criminal recurs in many shows featuring women criminal defense attorneys. In *The Practice*, Ellenor Frutt warned one client that "if you go to prison, your bunkmates, they're going to find you really cute."<sup>150</sup> Veronica Gilbert in *Courthouse* had a sympathetic white client, arrested after a bar brawl, who was repeatedly raped by other prisoners during lengthy delays while awaiting trial.<sup>151</sup> These exceptionalized, sympathetic clients were, like the audience, afraid of the unseen criminals. Viewers understand and probably experience a generalized fear of violent criminals, and the sympathetic clients, thrown in with the violent criminals, are even more vulnerable than the rest of us. These clients need to be cared for, in large part because they actually are victims of the same force victimizing the rest of us. The clients' fear of victimization by the unseen brutal criminals easily interacts with the viewers' fear of the unseen brutal criminals.

The true criminals are the *other* people in jail and prison. These people are not seen, but their threatening presence is a crucial element of these stories. Who are the really frightening criminals? That they are not shown does not mean that viewers do not recognize them. We live in a culture in which crime is deeply associated with race, in which young African-American and Latino men are widely viewed with suspicion and fear.<sup>152</sup> The unseen hordes of real criminals, presumably not Irish, not middle-class, are threatening the client in the same way that they remain essentially threatening to the viewing audience. Annie is aligned with her middle-class white client against the specter of frighteningly real criminals, presumably not white, hidden from the viewer's gaze. By giving the heroine an exceptional client, not really a criminal at all, the program offers a criminal defense attorney whose caring representation does nothing to disrupt or even soften viewers' angry, vengeful stance toward criminals.

The rest of the story line consisted of Annie and her police officer husband intervening with the client's family to bail out and welcome home their son.<sup>153</sup> Virtually everyone shown was white, but their neighborhood identity and sense

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150. *The Practice: Another Day*, *supra* note 113.

151. *Courthouse: One Strike and You're Out*, *supra* note 111.

152. See, e.g., Howarth, *Representing Black Male Innocence*, *supra* note 34, at 102-04 (discussing widespread associations of Black men with criminal behavior); KENNEDY, *supra* note 37, 6-17, 144-48 (criticizing generalized suspicions linking Black men to crime); RUSSELL, *supra* note 37, at 2-3 (criticizing widespread associations of Blacks with lawbreaking).

153. *To Have & To Hold: Tangled Up in You*, *supra* note 140. Gender stereotypes remain intact, as the caring mother bails out the son, an act to which the stern father is finally reconciled. *Id.* The client is last seen in front of his well-kept, middle-class house being hugged by his father after his mother brings him home from jail. *Id.*



of community was bolstered by the menacing presence of the unseen criminals, the ones who belonged in jail, the ones who were not white and middle-class. And Annie, although a public defender in title, was firmly aligned with the good, middle-class people of this Irish neighborhood.

Perhaps the strongest woman defender on television is Ellenor Frutt of *The Practice*, played by Camryn Manheim.<sup>154</sup> *The Practice* is a courtroom melodrama<sup>155</sup> about criminal law that is more in the heroic model of *The Defenders* than any other current show. A major theme is the criminal defense attorney as hero, successfully defending individuals against the unfair abuse of power by the state.

In one powerful story line, Ellenor Frutt was very much the hero, going up against the state on behalf of her client, Warren Cruikshank, a recidivist purse snatcher.<sup>156</sup> One scene introduced Warren as he was escorted into a courtroom, hands cuffed behind his back.<sup>157</sup> He was a young, unshaven Black man with short braids wearing a black leather jacket, looking down.<sup>158</sup> Ellenor was a large, thirtyish white woman, wearing a suit.<sup>159</sup> The judge was a motherly Black woman, up on the bench, in robes.<sup>160</sup>

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154. Actress Camryn Manheim has won both an Emmy and a Golden Globe for her excellent portrayal of Ellenor Frutt. See *The 1998 Emmy Winners*, N.Y. TIMES, Sept. 15, 1998, at E7; James Sterngold, *Emmys Go to the "Practice" and "Frasier" as Top Series*, N.Y. TIMES, Sept. 14, 1998, at B12; Jane Fritsch, *Not Model-Thin, But a Role Model on TV: After an Actress's Long Struggle, Awards and Self-Confidence*, N.Y. TIMES, Feb. 1, 1999, at E1.

155. According to Himmelstein,

melodrama finds the hero's acts constantly reinforcing the dominant ideology. The melodramatic hero is a normative character representing incorporation into society. Critic Northrop Frye described a central theme in melodrama as "the triumph of moral virtue over villainy, and the consequent idealizing of the moral views assumed to be held by the audience." Since melodrama, according to Frye, exists squarely within a mass-cultural framework, it could easily become "advance propaganda for the police state" if it were taken seriously. Frye sidesteps this fear by positing that the audience does not take such work seriously.

HIMMELSTEIN, *supra* note 19, at 197 (quoting NORTHROP FRYE, *ANATOMY OF CRITICISM: FOUR ESSAYS* 47 (1957) (footnotes omitted)). Himmelstein concludes that "[m]elodrama is thus powerfully conservative. Like the ceremonial ritual that bound tribesmen together, melodrama today, repositioned in politics and economics, draws us into the prescriptions of the dominant culture." *Id.* at 198.

156. *The Practice: In Deep* (ABC television broadcast, Mar. 2, 1998); *The Practice: Another Day*, *supra* note 113. Warren Cruikshank is played by Shawn Michael Howard. *The Practice* (An *Episodes Guide*), *supra* note 128. He also appeared in that role in the series pilot episode. *Id.*

157. See *The Practice: In Deep*, *supra* note 156.

158. *Id.*

159. *Id.*

160. *Id.*

Ellenor: I'd like to plead guilty, waive the rest of the reading. I'd like to see if we can handle this right here.

Judge (sternly): This is the fourth time.

Ellenor: My understanding is that it was only \$7.00.

Judge: I suspect he was hoping it would be more when he grabbed the purse.

Ellenor (with resignation): Plead guilty, restitution, three months suspended, a hundred hours community service.

Prosecutor (white man): Fine by me, with a curfew.

Ellenor: Nine o'clock

Judge: Eight. Mr. Cruikshank, you understand this?

Warren: Yes, your honor.

Judge: You're pleading guilty. You're getting a three month sentence, which is suspended. The probation officer will assign you to a youth center, where you will perform one hundred hours of community service. And, you are to be home, in your house, every night by eight o'clock.

Warren: Yes, your honor.

Judge (looking down at him, sternly): So ordered. This is your last chance, young man. (Pounds gavel.)

Warren looks down and walks out. Ellenor watches him, shaking her head in disapproval, bordering on contempt.<sup>161</sup>

The immediately following scene was in the hallway outside the courtroom. Ellenor approached Warren, but he gestured her to wait as he picked up the receiver of a pay phone.<sup>162</sup> Ellenor grabbed him by the back of his jacket, pulled him away from the phone, and swung him against the wall, facing her.<sup>163</sup> She held him against the wall by keeping her hand on his chest and confronted him angrily.<sup>164</sup>

Ellenor: You are as stupid as you are lucky. If that would have been any other judge besides Fulton you'd be in jail right now.

Warren: Well, it's not like I even snatched this one, Ellenor. She put her purse down on the bench right next to me. Now I, I can't prove it, but it's like she wanted me to take it.

Ellenor (derisively): She wanted you to have her purse . . .

Warren: Yeah, and I think—(Ellenor interrupts him by hitting him repeatedly with her papers.)

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161. *Id.*

162. *Id.*

163. *The Practice: In Deep*, *supra* note 156.

164. *Id.*

Ellenor (angrily): What's the matter with you, Warren?<sup>165</sup>

At this point in the scene, Warren and Ellenor were interrupted by two tall white federal marshalls, one of whom arrested Warren, leading him off in handcuffs.<sup>166</sup> Ellenor was indignant, but ineffective in stopping the arrest.<sup>167</sup>

The next scene showed Ellenor back at her office, researching the Hobbs Act, the federal anti-racketeering statute under which Warren had been arrested.<sup>168</sup> The federal government's theory in the episode was that Warren was interfering with interstate commerce by targeting tourists.<sup>169</sup> Ellenor then undertook an aggressive and successful defense of Warren in federal court.<sup>170</sup> The main theme of this narrative was Ellenor as the heroic criminal defense attorney, willing to risk incarceration on a contempt citation if necessary to adequately represent her client against unfair charges. Ellenor's vigorous complaints that the Hobbs Act charges constituted double jeopardy, that the Hobbs Act was never intended to reach petty purse snatchers like Warren, and that the federal government was unfairly singling out Warren in a political prosecution were soundly rejected by the federal judge.<sup>171</sup> Ellenor repeatedly challenged the judge, who repeatedly found her in contempt and threw her in jail.<sup>172</sup> In this, she was the very picture of the heroic criminal defense attorney.

In some ways, Ellenor's aggressive battles against the stern, dry, pinched, older white male federal judge show the importance of fighting the repressive state, and the need to protect "the little guy," especially here the victimized Black man, from that repressive and overreaching state. The viewer certainly was intended to identify with Ellenor, as she returned to jail with her toothbrush after once again talking back to the repressive judge.<sup>173</sup> This dominant theme allowed the viewer to congratulate himself or herself for taking on the repressive state.

Yet, theories of cultural inoculation suggest that Ellenor's personalized opposition to the repressive white male law and order authority figure provided just enough conflict to keep the dominant ideology intact: Having survived confrontation, a hegemonic order is strengthened in its ability to identify and

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165. *Id.* Notice Ellenor's implicit suggestion that the Black woman judge may have been lenient toward Warren because of bias caused by their shared racial identity, and perhaps because she is female.

166. *Id.*

167. *Id.*

168. *Id.*

169. *The Practice: In Deep*, *supra* note 156.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

co-opt challenges.<sup>174</sup> Ellenor challenged the judge's authority, but she represents conventional equations about white control and lawless criminals of color just as powerfully as does the judge.

Enmeshed in the narrative of Ellenor fighting the repressive judge is the story of Ellenor's relationship with Warren. Having been forced to go to trial in federal court, Ellenor put Warren on the stand in his own defense.

Warren (wearing a jacket and tie, testifying): I don't affect commerce.

Ellenor: How many handbags do you think you've snatched, Warren?

Warren (slyly): How many times [have] I been arrested?

Ellenor (registering disapproval): Four.

Warren (smugly): Four. Five counting one I gave back. (Warren smiles at jury and pats himself on the shoulder. The jurors, white men and an Asian American woman, look unimpressed.)

Ellenor: All right, Warren, let's not lie to the jury. You swipe handbags.

Warren: But, never, ever, ever to affect commerce. (Warren is smiling at the jury. The judge looks disapprovingly. The jurors appear skeptical, and Ellenor looks aghast.) You see, there's two things I love. (Warren smiles disingenuously at the jurors.) My country and handbags.<sup>175</sup>

In the next scene, Ellenor pulled Warren by the collar into the attorney conference room, and forcefully shoved him down into a chair.<sup>176</sup> She leaned down over him, angrily.<sup>177</sup>

Ellenor: You think you're cute, huh? You think you can steal from people and get away with it with a wink and a smile?

Warren (cowering below her): My personality's my best strength.

Ellenor (looming over him): Well try to let this sink in. We have a judge who is trying to set an example for repeat offenders. At every turn he is steering that jury to find you guilty. If you go to prison—look at me (angrily pulling his face up to look her in the eyes)—if you go to prison, your bunkmates, they're going to find you really cute. (Sad music starts, Ellenor steps back and Warren looks chastened.)

Ellenor (over background music, looking kindly at Warren): You're a good kid, Warren. I don't want your life to be over. But if we lose

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174. See FISKE, *supra* note 15, at 38-39 (discussing the function of culture as both a locus of meaning and as a reproductive agent of social order).

175. *The Practice: Another Day*, *supra* note 113.

176. *Id.*

177. *Id.*

here . . . . It is time to play grown-up. (Last shot is Warren looking up, seriously.)<sup>178</sup>

The main theme of this interaction is the defense attorney as hero, fighting injustices caused by the federal government. The sub-theme is Ellenor as a white person holding the line against the encroaching, ill-mannered Black underclass. The racial and gender identities of Ellenor and Warren's characters interact as these two themes simultaneously play themselves out. Warren was portrayed as a relatively benign version of a smart-ass African-American street menace. He had a string of prior convictions and an attitude. Ellenor's job as his lawyer was to get the charges dropped in spite of his multiple prior offenses, which she did, and her racial policing role required that she change his attitude, which she also accomplished. To that end, Ellenor was contemptuous of her client, in court and in private. She was overly familiar with him, hitting and shoving him. Systemic problems of poverty, lack of education and unemployment were not addressed. Warren's problem was that he was a smart-ass, and Ellenor provided the necessary discipline to change this. She disciplined him like an angry mother, perhaps providing the missing mother's touch in Warren's life.

In the end, Ellenor saved Warren. She won an acquittal in federal court.<sup>179</sup> For the viewer, the acquittal represents fairness and the protection of the individual from the state. More importantly, she also taught him to have a good attitude. The last scene of the story had a grateful, humbled Warren coming to Ellenor's office to thank her, with a nicely wrapped gift (a purse, of course).<sup>180</sup> This is a scenario with which white audiences<sup>181</sup> are familiar<sup>182</sup> and comfortable.<sup>183</sup> Ellenor had the role of a worldly missionary, who civilized Warren.<sup>184</sup> The white woman defender had found an exceptional Black client,

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178. *Id.*

179. *Id.*

180. *Id.*

181. Television viewing habits continue to be racially distinct. A recent study showed that "[o]nly three regular television series were rated in the top ten for both groups [blacks and whites] while the two top-rated shows in black households, *Steve Harvey* and *The Jamie Foxx Show*, ranked 127 and 120, respectively, in white households." Rachel X. Weissman, *Different Strokes*, AMERICAN DEMOGRAPHICS, May 1999, at 16.

182. Cf. Russell, *supra* note 3, at 172 (describing the racialized tropes from films that help to shape law).

183. "[I]f television is untrue to the reality of society, it is true to a dream; it pays tribute to popular fantasy." Gitlin, *supra* note 23, at 258.

184. Hal Himmelstein has analyzed some of the racial politics of *Hill Street Blues*:

In *Hill Street Blues* the correspondences to the myth of the frontier, Western style, are evident. The cowboy-Indian confrontation translates into the white-black/Hispanic confrontation. Indians were nature-oriented and had the advantage when the game was

a good kid. She separated him from the horde of frightening criminals he would have encountered in prison and protected him from them. She was a white woman who literally shook the bad attitude out of the smart-ass Black kid. Indeed, the system works. The racial hierarchy of white dominating Black is utterly intact. Through her big heart, her physical discipline, and her lawyering skills, she has saved him.

Ellenor Frutt's portrayal of a criminal defense attorney in the previously described scene was not all bad—my point is that this is one of the best. Yet, even here, the white woman defender was not allowed to be fully aligned with the African-American client in a respectful way. She won not by telling his story, but by changing his story, and changing him.

The image of the woman defender physically disciplining an African-American client with a bad attitude was repeated in *The Practice* by another attorney, Rebecca Washington. In her first case after passing the bar exam, Rebecca, who is African-American, represented a Black youth accused of stealing a bicycle.<sup>185</sup> Although Rebecca staunchly defended him, insisting on going to trial and ultimately winning the case, she also used physical pressure, including hitting and shaking, to attempt to impress upon her client the seriousness of the charges.<sup>186</sup> The bad attitude was again pushed out of the young Black client, this time by an overly aggressive Black attorney. In this case, the Black defender won by effectively disciplining the boy, successfully competing with the Black mother.<sup>187</sup> The fiercely maternal aspect of the physical discipline was highlighted by the young client's mother's angry objection that Rebecca was not the young man's mother, but was trying to take over the mother's role in relation to the young boy.<sup>188</sup> The dominant message of the scene is that the attorney has indeed become the good mother.

Once again the woman attorney was policing the young Black man with the bad attitude, moving beyond the conventional boundaries of representation with

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played on their field. Blacks and Hispanics (and in *Hill Street*, Irish as well) are streetwise and, like Native Americans, have the home-court advantage. Whites (cowboys-cavalry and police) invade their territory to bring civilization, setting up forts/police precinct houses and attempting to control the neighborhood and its social transactions. Whites—the products of enlightenment rationality—use law-enforcement tactics and strategies, and eventually the power of education, to civilize the more body-oriented primitive ghetto residents.

HIMMELSTEIN, *supra* note 19, at 228. Himmelstein goes on to point out that *Hill Street Blues* astutely incorporates the parable of Vietnam—that is of guerillas hanging on in a war of attrition: "*Hill Street*'s weakness lies in its failure to transcend personalness to reveal the ideological underpinnings of a system of social, political, and economic dominance and subordination." *Id.* at 229.

185. *The Practice: Reasons to Believe*, *supra* note 108.

186. *Id.*

187. *Id.* The mother, Mrs. Baylor, is played by Tempestt Bledsoe. *The Practice (An Episodes Guide)*, *supra* note 128.

188. *The Practice: Reasons to Believe*, *supra* note 108.

apparently much-deserved and effective physical punishment. Rebecca Washington's discipline of her African-American client called up powerful images of physical punishment of Black people wielded by Black hands. When Rebecca Washington slaps and Ellenor Frutt shoves their Black clients, even compassionate defense attorneys are agreeing that out-of-control young men of color need to be treated harshly.

## VI. CONCLUSION

I do not know how to evaluate the success of women defenders, including myself, in our attempts to keep real people out of prison, or at least to deliver shorter rather than longer prison sentences, or perhaps to keep our clients alive. However, I can evaluate women defenders on television. The popular portrayal of women criminal defense attorneys in fact reinforces and helps to maintain the apparent normalcy of huge incarceration rates of people of color as a necessary and appropriate response to a racialized construction of an inhuman criminal element, or criminal class.<sup>189</sup> Police and prosecutors reinforce the relentless retribution against the racialized criminal "other" on television, but they are not the exclusive agents of this retribution. The female criminal defense attorney is doing her part as well. Real women defenders worry that they are simply greasing the wheels for today's epidemic of incarceration. Television's women defenders do not share the same concern, but they should.

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189. See Sterne, *supra* note 49, at 98-99 (criticizing the racism in *NYPD Blue*'s portrayal of "the brutal African-American male and feckless black woman").