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IMAGES OF WOMEN LAWYERS: OVER-REPRESENTATION OF THEIR FEMININITY IN MEDIA

VICTORIA ALEXEEVA*

I. INTRODUCTION

A changing trend in the treatment of women in the legal profession is evident. The number of female applicants to law schools has risen to 50.1% in 2000.¹ Achieving slight majority in the number of applicants, women constitute a larger percentage of the employment pool in the legal field. More women will become partners, judges, and politicians. As one scholar points out, “the movement of women into the legal profession is one of the great under-noticed revolutions of our time.”² I have always wanted to become a successful lawyer and believed that a good lawyer is marked by her or his level of professionalism, education, ethics, hard work, and dedication. My attention is drawn to all influences impacting the legal profession. It is not surprising, then, that I began watching the television show, *Ally McBeal*.³ After all, it is a program depicting the experiences of lawyers.

II. PURPOSE

This essay will evaluate the character of Ally McBeal as it reflects an image of real life women attorneys. First, this essay will provide a historical overview of the struggles faced by women lawyers to gain admission to the bar. This essay suggests that but for these women pioneers, contemporary women would not have had the opportunity to become lawyers. Then, this essay address the problems faced by women attorneys of the twenty-first

* J.D. Candidate, Golden Gate University School of Law (2003); B.S., Political Science, French, Francophone Studies, Santa Clara University (1999). I dedicate this essay to my Mom. I also would like to thank Maria Grahn-Farley, my professor, for this wonderful opportunity. I also thank the editors of the *Cardozo Women's Law Journal*.

¹ See Cynthia Fuchs Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceiling and Open Doors*, 49 KAN. L. REV. 733, 736 (2001).

² *Id.* at 733.

³ I do not intend to criticize the producer's artistic expression. Rather, this essay provides an analysis of the Ally McBeal character as portrayed in the program. *Ally McBeal* (Fox television broadcast, 1997-2002) [hereinafter *Ally McBeal* 1997-2002 Broadcast].

century. Furthermore, it will be argued that the representation of Ally McBeal does not truly reflect the reality of women attorneys. Rather, this paper contends that the show portrays women lawyers through a male standard for females, not through a gender-neutral standard. Moreover, this essay asserts that male standards for females in media reinforce traditional stereotypes and hinder the advancement of equality in the legal profession.

III. BACKGROUND

As I watch *Ally McBeal*, questions arise regarding the disparities in the images of women lawyers on television and those in real life. Even the most intelligent, Ivy-League educated women attorneys who advance to the top of their profession are put down by the media.⁴ *Ally McBeal* constantly over-stresses the femininity of women lawyers on the show.⁵ That it, femininity as being understood as defining women as emotional and nurturing wives and mothers who belong at home and not in the workplace.⁶ The show's success suggests that the media has managed to negotiate with its viewers an image of a woman lawyer that a majority of people are comfortable with and accept as accurate.⁷ Unfortunately, the viewers are exposed to a biased image of the female attorney, one that does not reflect the reality.⁸

IV. INTRODUCING ALLY McBEAL

Calista Flockhart was recently honored with a Golden Globe Award for her role as the title-character, Ally McBeal, on a Fox Network program of the same name.⁹ The show depicts the life of a young, single, female lawyer living in Boston.¹⁰ At first glance, Ally seems to be a very successful and

⁴ *Ally McBeal* (Fox television broadcast, Nov. 3. 1997). This episode begins with Ally trying to get Renee (the best friend of Ally who is a prosecutor for the city of Boston), to introduce her to the District Attorney. *Id.* Renee sees the D.A. approaching and tells Ally to block the elevator doors. *Id.* Ally ends up getting thrown back and forth between the doors before landing on her behind. The D.A. helps her up, and Renee introduces them. *Id.*

⁵ See generally *Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

⁶ See generally Frances E. Olsen, *The Family and the Market: a Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983).

⁷ *Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

⁸ *Ally McBeal* (Fox television broadcast, Nov. 23. 1998). Ling Lui sues an employee for having sexual thoughts about her, this is treated as a comedic element of the show. *Id.* Ally herself is walking off to Court with her fingers stuck in a bowling ball. *Id.*

⁹ Calista Flockhart has been awarded several prestigious awards for her portrayal of Ally McBeal: Emmy Nominated for outstanding leading actress in a Comedy (2001); Emmy Nominated for outstanding leading actress in a Comedy (1999); Emmy Nominated for outstanding leading actress in a Comedy (1998); Golden Globe winner for best performance by an actress in a television series -comedy-musical. (1998). See *Calista Flockhart, Career Highlights*, at <http://people.aol.com/people/profiles/careerhighlights/0,10036,104962,00.html> (last visited March 3, 2003).

¹⁰ See *Ally McBeal* (Fox television broadcast, the Pilot, Sept. 8. 1997).

powerful lawyer.¹¹ Ally's law degree from Harvard Law School reflects her intelligence and potential for becoming a top lawyer.¹² Since Ally works in a prestigious Boston law firm, her credentials must have been impeccable as only top students are hired by prestigious firms.¹³ Further, Ally has recently been made partner, suggesting she is valued by her colleagues as a professional and competent attorney.¹⁴

When looking closely at the character of Ally McBeal, however, her success is likely not due to her intelligence, power or professionalism.¹⁵ Ally's intelligence is compromised by the way she handles her cases.¹⁶ The viewers almost rarely see Ally winning based on legal arguments.¹⁷ Instead, she makes her point in court based on common sense and moral concepts.¹⁸ Ally is primarily assigned to conduct cross-examinations and interview clients with whom she always sympathizes and wants to help.¹⁹ Ally is rarely afforded the opportunity to make the closing statements in a trial, an event, which is often the essence of a victory.²⁰ In almost all trials, it is not Ally, but her male colleagues, who are relied upon to close with winning words.²¹ By promoting the male lawyers as most capable of arguing law and making closing statements in court, the show suggests that women do not possess the same skills.²²

On the rare occasions when Ally is called upon to make a closing statement, she is depicted as incapable of advancing logic or strength in her argument.²³ She is, instead, portrayed as relying only on her intuition.²⁴ Thus, the show advances the notion that even though women lawyers have the credentials to compete in the legal arena, their intellect is not up to par

¹¹ *Id.*

¹² *See id.* The pilot episode explains that Ally went to Harvard Law, because her boyfriend Billy, who is also working at the same firm as Ally in the show, went to Harvard Law. *Id.* Billy transfers from Harvard to Michigan because he thought he would not be able to make Law Review at Harvard but would be able to do so at Michigan. *Id.* Ally stays at Harvard.

¹³ *See id.*

¹⁴ *Ally McBeal* (Fox television broadcast, Feb. 11, 2002).

¹⁵ *See generally, Ally McBeal* (Fox television broadcast, 1997-2002).

¹⁶ *See, e.g., Ally McBeal* (Fox television broadcast, Oct. 20, 1997). Ally is arrested for tripping a woman in a shopping mall. *Id.* Because of this she also faced a bar association hearing on her emotional competence to practice law. *Id.*

¹⁷ *Id.*

¹⁸ *See Ally McBeal* (Fox television broadcast, Nov. 3, 1997).

¹⁹ *See Ally McBeal* (Fox television broadcast, Oct. 27, 1997). Ally helps an obit young man with whom she sympathizes. *Id.*

²⁰ Mary Joe Frug argued that reasoning or text itself can be gendered when it "is focused on a single goal, . . . and because of its clearly decisive, on or off . . . implications" of the concept that "victory can be seen as "stereotypical male virtues." Mary Joe Frug, *A Postmodern Feminist Analysis of Contract Law*, in POSTMODERN LEGAL FEMINISM 111, 116 (1992).

²¹ *See generally Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

²² *See generally id.*

²³ *Id.*

²⁴ *See Ally McBeal* (Fox television broadcast, Feb. 2, 1998).

with that of their male counterparts.²⁵ The show further suggests that women lawyers are insecure, emotional and needy of help.²⁶ By over-stressing Ally's femininity, the show gives credence to its message that women attorneys are the weaker sex.²⁷

The show often portrays Ally as emotionally unstable.²⁸ In fact, the show emphasizes her craziness and instability, and minimizes her intelligence and professionalism.²⁹ The viewers are encouraged to first think of Ally as a funny, confused woman, and second as a lawyer.³⁰ Ally often hears music in her head.³¹ She imagines having interactions with men she desires.³² Ally imagines a baby walking and dancing on the floor.³³ Even Ally's psychiatrist tells her that she is crazy.³⁴ By focusing on Ally's mental state, the show discourages the viewers from considering her a successful, intelligent lawyer.³⁵ Instead, she is seen mainly as a funny, confused and emotionally unstable woman.³⁶

Ally's femininity is again over-stressed as the viewers are reminded she belongs first to the home, and second to the law firm.³⁷ Ally's craziness makes her amusing and adorable and even calls for compassion.³⁸ Ally is insecure with her single status,³⁹ and the suggestion that marriage makes a woman complete prevails from episode to episode.⁴⁰ Ally often hallucinates that her ex boyfriend is back in her life.⁴¹ She is unhappy being single.⁴² Ally

²⁵ See generally *Ally McBeal* (Fox television broadcast, 1997-2002).

²⁶ *Id.*

²⁷ See *Ally McBeal* (Fox television broadcast, May 10, 1999). Ally hires an escort to make her former boyfriend Billy jealous. *Id.*

²⁸ *Ally McBeal* (Fox television broadcast, Nov. 8, 1999). Ally is advised to start taking Prozac by her therapist, the therapist also tells her that happiness will come through that pill and not through a man or love. *Id.*

²⁹ *Id.*

³⁰ See generally *Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

³¹ There are several sound tracks based upon the music in the show in general as well as the music that only Ally can hear. See, e.g., HEART AND SOUL: NEW SONGS FROM ALLY MCBEAL FEATURING VONDA SHEPARD (Nov. 9, 1999, Sony); ALLY MCBEAL: FOR ONCE IN MY LIFE (Apr. 24, 2001 Sony).

³² *Ally McBeal* (Fox television broadcast, May, 24, 1998).

³³ *Ally McBeal* (Fox television broadcast, Jan. 5, 1998).

³⁴ *Ally McBeal* (Fox television broadcast, Nov. 8, 1999).

³⁵ See generally *Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

³⁶ *Id.*

³⁷ See *Ally McBeal* (Fox television broadcast, Oct. 19, 1998). Ally is held in contempt of Court for wearing short skirts. *Id.*

³⁸ See generally *Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

³⁹ *Ally McBeal* (Fox television broadcast, May 10, 1999).

⁴⁰ See generally *Ally McBeal* 1997-2002 Broadcast, *supra* note 3. In the final episode of the television series, Ling Woo marries Richard Fish. *Ally McBeal* (Fox television broadcast, May, 20, 2002).

⁴¹ See generally *Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

⁴² *Ally McBeal* (Fox television broadcast, Jan. 10, 2000).

is not complete without a man in her life.⁴³ Through this depiction, the viewers are again presented with an image of a weak woman.⁴⁴ In contrast, Ally's unmarried male colleagues are not worried about their bachelor status.⁴⁵ All the male lawyers on the show are secure with their bachelorhood, despite being in their mid-thirties.⁴⁶

The show portrays Ally as an emotionally unstable individual whose main concern is her personal adventures rather than her profession.⁴⁷ The image is no longer of a successful lawyer with high potential – the way Ally was viewed at first glance. The show suggests that subconsciously Ally is always thinking about motherhood.⁴⁸ Throughout the series, Ally sees an image of a baby.⁴⁹ She sees this image in her office and the courtroom.⁵⁰ This image often disrupts her work.⁵¹ An image of a baby dancing on the floor pops up at the most important moments.⁵² These hallucinations serve to confuse Ally. Her subconscious desire for motherhood prevents her from concentrating on work.⁵³ Through this portrayal, the show once again over-represents Ally's femininity.⁵⁴

Despite her limitations, Ally becomes a partner in the firm.⁵⁵ Her new position suggests that she has achieved a high level of success and professionalism. Becoming a partner in a law firm is a powerful position bestowed mostly on top attorneys.⁵⁶ At the time of Ally's promotion, she is also presented with a ten-year-old daughter.⁵⁷ The show's focus is no longer on her role as a partner in the law firm.⁵⁸ She is as surprised with her daughter's appearance as the viewers are.⁵⁹ Looking at Ally's behavior, it

⁴³ See generally *Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See *id.*

⁴⁷ See *id.*

⁴⁸ *Ally McBeal* (Fox television broadcast, Jan. 5, 1998). The "dancing baby" first appears in this episode and is supposed to symbolize Ally's biological clock ticking. *Id.*

⁴⁹ See generally, *Ally McBeal* (Fox television broadcast, 1998-2002).

⁵⁰ *Ally McBeal*, *supra* note 48. See also generally, *Ally McBeal* (Fox television broadcast, 1998-2002).

⁵¹ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See *Ally McBeal* (Fox television broadcast, Feb. 11, 2002). Ally is promoted to partner only after Cage has made it clear that he wants to leave the firm. *Id.* Richard after learning about that Cage does not want to be a partner, turns to Ally and makes her a partner. *Id.*

⁵⁶ Promotion to partner in a law firm indicates that one has achieved professional success..

⁵⁷ *Ally McBeal* (Fox television broadcast, Feb. 4, 2002). Ally had donated her eggs in college. Twelve years later, Ally discovers that she has a daughter who is in a foster care. Ally decides to legally adopt her.

⁵⁸ See generally *Ally McBeal* (Fox television broadcast, 2002).

⁵⁹ *Ally McBeal* (Fox television broadcast, Feb. 4, 2002).

appears that she does not know how to balance the roles of motherhood and professional career woman.⁶⁰ Ally is no longer shown preparing cases, instructing others on legal strategies or arguing in court. Now, Ally spends most of her time at home struggling with parenting issues, often without success.⁶¹ Portraying Ally as a mother diminishes her role as partner in a prestigious law firm. In fact, Ally's newfound motherhood lessens her impact as a lawyer.

Making Ally a partner with a daughter is equivalent to demoting her to associate who imagines a baby at every turn.⁶² Ally's difficulties raising her new daughter are understandable.⁶³ After all, she did not give birth to the child, nurture her or raise her.⁶⁴ In fact, she did not expect to ever confront her decision to donate her eggs to a fertility clinic again, much less give a reasoned forethought to adopting a child at this stage in her life.⁶⁵ Instead, she went to law school and became a lawyer.⁶⁶ The show suggests that Ally is incapable of being a good mother because motherhood and career are incompatible with each other.⁶⁷ Notions such as these bring us back to the traditional patriarchal stereotypes.

V. WOMEN LAWYERS STRUGGLE TO BE ADMITTED TO THE BAR

Historically, women have been virtually excluded from the legal profession.⁶⁸ The rationale being that law books were too heavy for women to carry and that women did not have the ability or spirit to reason and work as lawyers.⁶⁹ Nevertheless, history presents many women who were able to fight these stereotypical views.⁷⁰ This section will highlight brief narratives about the struggles several women lawyers faced to gain admission to the bar. Each of these women pioneers has a unique story that is worthy of mentioning.⁷¹

⁶⁰ *Id.*

⁶¹ See generally *Ally McBeal* (Fox television broadcast, 2002).

⁶² *Id.*

⁶³ See *Ally McBeal* (Fox television broadcast, Feb. 4, 2002). Ally even questions whether the girl is her daughter. *Ally McBeal* (Fox television broadcast, Feb. 25, 2002). Ally takes a DNA test to make sure that it really is her biological daughter. *Id.*

⁶⁴ See *Ally McBeal* (Fox television broadcast, Feb. 4, 2002).

⁶⁵ *Id.*

⁶⁶ *Ally McBeal* (Fox television broadcast, Sept. 8, 1997).

⁶⁷ See generally, *Ally McBeal* (Fox television broadcast, 2002).

⁶⁸ Epstein, *supra* note 1.

⁶⁹ *Id.*

⁷⁰ See KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA 1638 TO THE PRESENT* 3-38 (Random House New York 1986).

⁷¹ This essay provides only a brief analysis of the four first female attorneys in America. The author chose to write about Margaret Brent, Belle Babb Mansfield, Myra Bradwell, and Belva A. Lockwood because their stories were the most interesting and unusual. Of particular interest, Margaret Brent was addressed as "Gentleman Margaret Brent" by the colonists. For further historical discussion on other prominent female attorneys, see also KAREN BERGER MORELLO,

A. Margaret Brent

Margaret Brent was the first woman lawyer in pre-revolutionary America.⁷² Brent, an English aristocrat, arrived in St. Mary's Parish, Maryland in 1638.⁷³ Soon after, she became a master negotiator, an excellent litigator and later a respected leader.⁷⁴ Because Brent was not a traditional woman of her time, the colonists did not know how to introduce such a "formidable woman."⁷⁵ So they addressed her, in person and in court records, as "Gentleman Margaret Brent."⁷⁶ Court records mention Brent in one hundred and twenty-four court cases from 1642 to 1650, all which she handled with a high level of professionalism.⁷⁷ At the age of fifty-six, Brent decided to retire and move to Virginia.⁷⁸ She died in 1671.⁷⁹ There were no other women lawyers until 1869.⁸⁰

B. Belle Babb Mansfield

In June of 1869, Belle Babb Mansfield, a twenty-three-year-old woman from Mt. Pleasant, Iowa, passed the Iowa State bar and, thus, was formally recognized as the first woman lawyer of the United States.⁸¹ After graduating from Iowa Wesleyan College, she joined her brother's law firm Ambers & Babb.⁸²

In 1869, Mansfield applied for the Iowa bar examination.⁸³ She attempted to overcome the Iowa Code of 1851, section 1610 which provided that "any white male, twenty-one years of age, who is an inhabitant of this state" and who convinces the court that "he possesses the requisite learning" may be admitted to the bar.⁸⁴ Mansfield was permitted to take the examination.⁸⁵ The attorney who examined her concluded that Mansfield had the necessary qualifications and intellect to practice law.⁸⁶ When the matter came before Justice Springer, he agreed with the examining attorney,

THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA 1638 TO THE PRESENT 3-38 (Random House New York 1986).

⁷² See *id.*

⁷³ See Nikolaus Benke, *Women in The Courts: An Old Thorn in Men's Sides*, 3 MICH. J. GENDER & L. 195, 210 (1995).

⁷⁴ See MORELLO, *supra* note 70, at 3.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See Benke, *supra* note 73.

⁷⁸ See MORELLO, *supra* note 70, at 7.

⁷⁹ *Id.*

⁸⁰ *Id.* at 8.

⁸¹ See Benke, *supra* note 73, at 211.

⁸² See MORELLO, *supra* note 70, at 11.

⁸³ *Id.* at 12.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

reasoning that the relevant provision did not exclude women.⁸⁷ Mansfield's story is an inspiration for many other women aspiring to become lawyers.

C. Myra Bradwell

The next woman to fight for her right to be a lawyer was Myra Bradwell, a wife of Cook County Court Judge James B. Bradwell.⁸⁸ Planning to work with her husband, Bradwell prepared for and passed the Illinois bar examination.⁸⁹ In the summer of 1869, Bradwell applied for admission to the Illinois bar.⁹⁰ Relying on Section 28, Chapter 90 of the Revised Statute of Illinois, Bradwell asserted that the legislature has shown that "when any party or person is described or referred to by the words importing the masculine gender, females and males should be included."⁹¹

In October, the Illinois court denied Bradwell's application, first on the ground that she was married woman, and later simply because she was a woman.⁹² Unwilling to give up, Bradwell filed a writ of error with the United States Supreme Court.⁹³ Bradwell's legal representative, Senator Matt H. Carpenter of Wisconsin, argued that under the Fourteenth Amendment and Article IV of the United States Constitution, Bradwell was entitled to the same privileges and immunities as citizens of all other states.⁹⁴ Thus, the state of Illinois could not limit admission to the bar to the United States citizens because of their sex or race.⁹⁵ In its seven to one decision, the Court ruled against Bradwell.⁹⁶ The majority concluded that the right to practice law in the state courts was neither a privilege nor an immunity belonging to citizens of the United States.⁹⁷ Justice Bradley wrote one of the most famous concurrences asserting, "[t]he paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother."⁹⁸ Although in 1872, Illinois allowed women to be admitted to the bar, Bradwell did not reapply.⁹⁹ Instead, she continued to be the founder and editor of the

⁸⁷ See Benke, *supra* note 73, at 211.

⁸⁸ See MORELLO, *supra* note 70, at 14.

⁸⁹ See Carol Sanger, *Curriculum Vitae (Feminae): Biography and Early American Women Lawyers*, 46 STAN. L. REV. 1245, 1259 (1994).

⁹⁰ See MORELLO, *supra* note 70, at 15.

⁹¹ *Id.* at 16.

⁹² See Sanger, *supra* note 89.

⁹³ See MORELLO, *supra* note 70, at 18.

⁹⁴ See *id.* at 19.

⁹⁵ See *id.*

⁹⁶ See *id.*

⁹⁷ Martha Minow, "Forming Underneath Everything That Grows:" *Toward A History of Family Law*, 1985 WIS. L. REV. 819, 838 (1985).

⁹⁸ *Bradwell v. Illinois*, 83 U.S. 130, 141 (1873); see also Richard L. Aynes, *Bradwell v. Illinois: Chief Justice Chase's Dissent and the "Sphere of Women's Work,"* 59 LA. L. REV. 521, 526 (1999).

⁹⁹ See Sanger, *supra* note 89, at 1260.

Chicago Legal News.¹⁰⁰ Bradwell died in 1893.¹⁰¹

D. Belva A. Lockwood

The first woman who attempted to gain admission to the bar in federal courts was Belva A. Lockwood.¹⁰² In 1873, she graduated from the National University Law School in Washington, D.C., and soon thereafter opened up a law firm in the Capitol area.¹⁰³ Lockwood filed a motion with the United States Court of Claims for an admission to the state bar when one of her clients wanted to bring a lawsuit against the government for a patent infringement.¹⁰⁴ In the decision of the court, Judge Charles Nott stated “[t]he position which this court assumes is that under the laws and Constitution of the United States a court is without power to grant such an application and that a woman is without legal capacity to take the office of attorney. The request is denied.”¹⁰⁵ Unable to represent her client in the court, Lockwood found another solution. She wrote the legal briefs for the case, and trained her client to read them at the hearing in the court.¹⁰⁶

This solution, however, was only temporary. Lockwood’s other cases required going all the way to the United States Supreme Court.¹⁰⁷ In October 1876, Lockwood hired an attorney, Albert G. Riddle, to motion for her admission to the Supreme Court.¹⁰⁸ Her motion was based on the federal statute for admission to the United States Supreme Court, which held that “any attorney in good standing before the highest court of any State or Territory for the space of three years shall be admitted to this court when presented by a member of this bar.”¹⁰⁹ Chief Justice Morrison R. Waite delivered the opinion of the Court, “[a]s this court knows no English precedent for the admission of women to the bar, it declines to admit, unless there shall be a more extended public opinion or special legislation.”¹¹⁰

The next step that Lockwood undertook was turn to the United States Congress.¹¹¹ She drafted a bill providing for the admission of women to the federal courts.¹¹² In April 1878, the House passed Bill No. 1077 – “An Act to

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See MORELLO, *supra* note 70, at 30.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 31.

¹⁰⁵ *Id.* at 32.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See MORELLO, *supra* note 70, at 33.

¹⁰⁹ *Id.* at 32.

¹¹⁰ *Id.* at 33.

¹¹¹ See Barbara Allen Babcock, *Feminist Lawyers*, 50 STAN. L. REV. 1689, 1692 (1998).

¹¹² MORELLO, *supra* note 70, at 34.

Relive Certain Legal Disabilities of Women.”¹¹³ The act gave women attorneys a right to practice law in federal courts.¹¹⁴ To ensure the Senate's approval Lockwood urged women to “get up and fight all along the line.”¹¹⁵ Finally, on February 7, 1879, the Senate approved the “Lockwood” bill, which was shortly thereafter signed into law by President Rutherford B. Hayes.¹¹⁶ Having opened the federal courts to women, Lockwood became the first woman at the Supreme Court Bar.¹¹⁷

VI. THE “GLASS CEILINGS”

Notwithstanding these incredible achievements, women have entered the legal profession in large numbers only within the last twenty years.¹¹⁸ Even in 1971, women comprised only 3% of all lawyers in the United States.¹¹⁹ These numbers rose to 8% in 1980 and to nearly 25% in 1995.¹²⁰ This increase is attributed to the passage of Title VII of the Civil Rights Act of 1964.¹²¹ Today, women constitute 41.2% of associates entering large firms and 15.2% of partners in firms with over 250 lawyers.¹²²

Women lawyers still face multiple problems in their profession. A study, *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, showed that while women had achieved advancements in all firms studied, their progress fell short when compared with men.¹²³ Women lawyers faced obstacles in mentorship, networking, and client and partner prejudice.¹²⁴ The study concluded that women “had less access to the recourses to build their human capital and their social capital necessary to position them on track of partnership.”¹²⁵ Also women lawyers were often excluded from partnership because their family responsibilities prevented them from putting in as many hours as men.¹²⁶ Many reports show that women lawyers still experience various forms of discrimination by both male judges and lawyers in the form of sexist remarks, practices and messages that women are still not welcomed to the legal profession.¹²⁷ These forms of

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ See BABCOCK, *supra* note 111, at 1692.

¹¹⁸ See MARY BECKER et. al., CASES AND MATERIALS ON FEMINIST JURISPRUDENCE TAKING WOMEN SERIOUSLY, 981 (2d. ed. 2001).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*; see also 42 U.S.C. § 2000 (2002).

¹²² See Epstein, *supra* note 1, at 738.

¹²³ *Id.*

¹²⁴ *Id.* at 740.

¹²⁵ *Id.*

¹²⁶ See BECKER, *supra* note 118, at 999.

¹²⁷ *Id.* at 999.

discrimination and bias are reinforced by the show *Ally McBeal*.¹²⁸

VII. THE REAL V. THE IMAGE

The woman lawyer portrayed by *Ally McBeal* proffers a limited view. In actuality, there are significantly more married women attorneys than portrayed on television.¹²⁹ Also, maternity rates and family sizes are inaccurately reflected.¹³⁰ Women attorneys do, in fact, argue law and make closing statements in courts. Female lawyers are good mothers, good wives and intelligent professionals. Women attorneys occupy positions of judges, partners and politicians. Women lawyers have positively impacted the legal profession through these means.

A. *Bringing The Family Into The Market*

Ally McBeal's inaccurate portrayal of women attorneys can be explained by referring to feminist theorist Frances Olsen.¹³¹ Olsen's theory identifies a dichotomy between home and market spheres.¹³² Traditionally, while women have been associated with the home, men have been associated with the market environment.¹³³ While the home domain has been regarded as something passive and moral, the market environment has been regarded as something aggressive and immoral.¹³⁴ Because of these differences, society artificially created a division between what is called the home and what is called the market.¹³⁵ Now, we often try to liberalize the market by bringing into it more of what is considered to be family.¹³⁶ By bringing in family features, Olsen introduces altruistic feminine values like care and nurture.¹³⁷ Since these feminine features are not considered to be something of value, they are often looked down upon.¹³⁸ Olsen concludes that continuing to look down upon these feminine features reproduces the same dichotomy between the market and family.¹³⁹

¹²⁸ *Ally McBeal* (Fox television broadcast, Sept. 8, 1997). The whole show builds on the fact that Ally had to leave her old law firm because she was sexually harassed and that her old firm preferred to continue to employ her harasser than her. The actions of Ally's old firm is not treated as problematic in the show and is instead treated as a expected condition of employment.

¹²⁹ See Diane Klein, *Ally McBeal and Her Sisters: A Quantitative and Qualitative Analysis of Representation of Women Lawyers on Prime-Time Television*, 18 LOY. L.A. ENT. L.J. 259, 260 (1998).

¹³⁰ See *id.*

¹³¹ See generally Olsen, *supra* note 6.

¹³² Olsen uses the words "family" and "home" interchangeably. See *id.* at 1498-520.

¹³³ *Id.*

¹³⁴ *Id.* at 1498-520.

¹³⁵ *Id.* at 1520-27.

¹³⁶ *Id.*

¹³⁷ Olsen, *supra* note 6, at 1520-27.

¹³⁸ *Id.*

¹³⁹ *Id.* at 1520-27.

1. Home As A Woman's Place

In applying Olsen's theory to *Ally McBeal*, it appears the show promotes the separation of home from market, making home a woman's place and the law firm a man's domain.¹⁴⁰ Ally is purported to be more suitable for the home, rather than the courtroom, due to her emotional instability and perpetually confused state of mind.¹⁴¹ The show stresses Ally's incompetence as a professional, and deems her more suitable for the home environment, one that is more safe, passive and supervised.¹⁴²

2. The Market As A Man's Place

Compared to Ally McBeal, her male colleagues, who are focused and confident, seem to belong to the market domain. Ally's male colleagues make eloquent closing statements in court, bringing success to the firm.¹⁴³ John Cage, a partner in the firm, always has the right words and tactics to win his cases.¹⁴⁴ Cage always comes back with a victory either by simply winning a case or successfully negotiating with his opponents, as do Richard Fish and other male lawyers on the show.¹⁴⁵

Also, the bachelor lawyers on the show do not worry about their single status, despite that they are over the age of thirty.¹⁴⁶ Ally's male colleagues' main concern seems to be their career.¹⁴⁷ Thus, the show's depiction of the male lawyers, suggests that they rightly belong to the law firm environment, which is dangerous and active.¹⁴⁸

3. Interdependence Of Family And Market

Olsen argues that these images should not be separated from each other because both home and market domains do not differ that much.¹⁴⁹ In fact, they are dependent upon each other.¹⁵⁰ Olsen further asserts that because society continues to treat home and market as separate images, women are still being subordinated and do not have equality.¹⁵¹ Since

¹⁴⁰ See generally *Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

¹⁴¹ See *id.*

¹⁴² See *id.*

¹⁴³ *Id.*

¹⁴⁴ See, e.g., *Ally McBeal* (Fox television broadcast, Apr. 19, 1999). This episode is one example of how John Cage is the skilled closer of the cross-examination, and Ally feels empathy for their client, who is accused of murdering his wife. *Id.* The jury, thanks to Cages skillful cross-examination, finds their client not-guilty. *Id.*

¹⁴⁵ See *id.*

¹⁴⁶ See generally *Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

¹⁴⁷ See generally *id.*

¹⁴⁸ See generally *id.*

¹⁴⁹ See Olsen, *supra*, note 6, at 1528.

¹⁵⁰ See *id.*

¹⁵¹ *Id.* at 1520-27.

women traditionally have been associated with the home and men with the market, acknowledging such separation compels women to be emotional, nurturing and to remain at home.¹⁵² When an attempt to liberalize the market is made by introducing family features into it, an identical hierarchy is re-created because everything that is feminine is considered of low value.¹⁵³ Olsen suggests that through recognizing the interdependence of the family and market, the equality of women can be actualized.¹⁵⁴

B. The Dichotomy Of Being A Woman And A Lawyer

An alternative way of explaining the image of Ally McBeal is to apply a theory advanced by another leading feminist Catharine Mackinnon. Mackinnon argues that women lawyers are not allowed to be women on their own terms.¹⁵⁵ The definition of women in law is not from a woman's perspective.¹⁵⁶ She introduces two standards used for women attorneys. Under these standards, female lawyers are seen either through the male standard for males or the male standard for females.¹⁵⁷ Women lawyers either have to be aggressive and self-secured or confused and needy of protection.¹⁵⁸ Unfortunately, both standards open up the doors for bias and discrimination.

1. The Male Standard For Male-Like Females

The first of Mackinnon's standards views women as if they were men. This so-called equality rule measures women's similarity with men to see if they can be men's equals.¹⁵⁹ Mackinnon explains that this standard substantially embraces masculinity, the male standard for men and applies it to women.¹⁶⁰

An application of Mackinnon's theory to Ally's honorable qualities, including being a Harvard Law graduate and employed by a prestigious law firm, suggests that the show considers her success through a standard that views women as if they were men.¹⁶¹ These qualities are those of a successful, aggressive and confident male lawyer.¹⁶² Interestingly, all Ally's positives

¹⁵² *See id.*

¹⁵³ *See id.*

¹⁵⁴ *See id.*

¹⁵⁵ *See* CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED DISCOURSES ON LIFE AND LAW*, 71 (Harvard University Press 1987).

¹⁵⁶ *See id.*

¹⁵⁷ *See id.*

¹⁵⁸ *See id.*

¹⁵⁹ *See id.* at 71-72.

¹⁶⁰ *See id.*

¹⁶¹ *See generally* *Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

¹⁶² *See generally* Olsen, *supra* note 6 (discussing the concept of the work place as male and the home as female)

images are male characteristics, suggesting that for a woman to be a successful lawyer she has to be like a man – hard line, tough, and ruthless.¹⁶³

2. The Male Standard For Women

The second of Mackinnon's standards views women lawyers as men view women.¹⁶⁴ It is also an objective natural law rule that views women primarily as wives, mothers, widows in need of help.¹⁶⁵ This typifies a male standard for women.¹⁶⁶ Applying Mackinnon's theory to the show reveals that the majority of Ally's questionable qualities, including the inability to make closing arguments, mental instability and hallucinations, are considered through a different standard. These qualities are classified as traditionally female and in opposition to her successful and desirable characteristics. Since a significant portion of the show focuses on Ally's traditional female characteristics, the show can be thought to portray Ally through a male standard for women.¹⁶⁷ Ally's craziness, confusion, and insecurity cause her to be in need of protection and help.¹⁶⁸ The show's over-representation of Ally's femininity is because women lawyers are seen through a male standard for females.¹⁶⁹ Ally's over-represented feminine qualities serve as negative images deeming her unfit for the legal profession.¹⁷⁰

VIII. THE GENDER-NEUTRAL STANDARD

Whether it is coincidental or intentional, *Ally McBeal* portrays an image of women as being unfit for legal profession.¹⁷¹ The media should assume responsibility for the way it portrays women lawyers. The media has a tremendous impact in shaping the public's view and understanding of women in law. Since Ally is a potential role model for many young women aspiring to be attorneys, Ally's image should be presented through a gender-neutral standard.

A. Successful Lawyer

I posit that a gender-neutral standard would encompass the general characteristics of successful lawyering equally applicable to both women and men. A lawyer who is a role model should be intelligent, well-educated,

¹⁶³ See *id.*

¹⁶⁴ See MACKINNON, *supra* note 1551, at 71-73.

¹⁶⁵ See *id.*

¹⁶⁶ See *id.*

¹⁶⁷ See generally *Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ See *Ally McBeal* (Fox television broadcast, Oct. 20, 1997). In this episode, Ally faces the possibility of being disbarred. *Id.*

ethical, hard working and devoted to the legal profession. Such characteristics can apply equally to men and women. One's intelligence, education, integrity and dedication should not be contingent on one's gender.

B. To Value Differences

Acknowledging differences between men and women would permit each sex uniqueness in her or his approach and concern for the law. The gender-neutral standard would also allow women lawyers to be competent professionals without sacrificing their femininity. The gender-neutral standard would view women's and men's differences as something of a value. Most importantly, the gender-neutral standard would view women's and men's differences equally.

There are many ways in which women lawyers have distinct gender-related impacts on the policy-making process. Women lawyers have had a profound effect on the law when it comes to the issues of pregnancy discrimination, sexual harassment, discrimination law, violence against women and rape laws.¹⁷² Studies show that women politicians, most of whom have law degrees, also give greater priority to policies affecting children and families, education and health care.¹⁷³ These women politicians are "changing the way business is conducted in politics by . . . making it more public and accessible to larger numbers of people."¹⁷⁴ Overall, women lawyers, judges and politicians bring new and diverse viewpoints into the law that male lawyers do not. Thus, gender-neutral standard would allow women to practice law on their terms and treat the gender differences as an asset to the legal field.

IX. CONCLUSION

Women lawyers, beginning with Margaret Brent and including contemporary figures, have made tremendous strides. Their achievements are evidenced by the increase in female judges, partners, associates, and politicians in our society. Some studies even show that by 2020, female lawyers will constitute forty percent of all lawyers in the United States.¹⁷⁵ That number will advance to fifty percent by 2050.¹⁷⁶ Women lawyers, however, are still faced with overwhelming obstacles. This suggests that they

¹⁷² See MONA HERRINGTON, *WOMEN LAWYERS REWRITING THE RULES*, 176-203 (Alfred A. Knopf New York 1994).

¹⁷³ See Susan J. Carroll, *Gender Symposium: The Politics of Difference: Women Public Officials as Agents of Change*, 5 STAN. L. & POL'Y REV. 11, 13 (1994).

¹⁷⁴ See *id.* at 12.

¹⁷⁵ See Epstein, *supra* note 1, at 734.

¹⁷⁶ See *id.*

are not completely embraced by the legal profession. The legal profession's reluctance to accept women lawyers is demonstrated in the media's portrayal of them. The television show *Ally McBeal* constantly over-stresses women lawyers' femininity.¹⁷⁷ The show portrays women lawyers through a male standard for women.¹⁷⁸ Not only is such a depiction biased, it hinders the advancement of women in the legal profession. The show presents incompetent role models for women aspiring to be lawyers.

Rather than perpetuating such stereotypes, the media should present images of women lawyers through a gender-neutral standard. Such standard would acknowledge qualities of a successful lawyer that are equally applicable to both women and men—intelligence, education, ethics, hard work and dedication. At the same time, the gender-neutral standard would recognize that women might have unique concerns and approaches to law that differ from those of men. The gender-neutral standard would classify women lawyers' diverse viewpoints as having value. Finally, the gender-neutral standard would allow women lawyers to practice law on their own terms, allowing women lawyers to be successful professionals, as well as good mothers and wives. The plight of women lawyers will benefit by applying the gender-neutral standard.

¹⁷⁷ *Ally McBeal* 1997-2002 Broadcast, *supra* note 3.

¹⁷⁸ *See id.*

PART IV: WOMEN AT WORK

