

An *L.A. Lawyer* Replies

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There are only two points in Professor Gillers' excellent article about *L.A. Law* with which I would gently quarrel, both attitudinal in nature. First, Professor Gillers views the show as being *about* lawyers, while I regard it as being about drama. Second, I sense that Professor Gillers sees the show as revolutionary for the public's perception of the profession, while I regard it as evolutionary.

As a law professor writing for lawyers, Professor Gillers seems to assume that *L.A. Law* is a show about law and lawyers, consciously written as a commentary on the legal system. Certainly there is some of that. From my perspective as an "insider," however, the show is less a conscious attempt by the writers to influence how people feel about the law or lawyers than it is an effort to create interesting drama, with law as its stage. The writers see *L.A. Law* primarily as a drama about interesting people, some of whom happen to be lawyers. This does not mean, of course, that the writers feel no responsibility to portray law and lawyers as accurately as drama will permit. They do, but it is not their guiding star.

Professor Gillers also assumes that the show has a strong influence on how the public views law and lawyers. While not denying that that influence exists, Professor Gillers and others may exaggerate the show's impact on the public. In my view, *L.A. Law* continues a long tradition of portraying lawyers as dramatic figures, thus adding to and refining the public's image of lawyers, but by no means defining it.

I

There is no doubt that lawyers have, throughout the centuries, attracted a large amount of attention from dramatic writers, at least when compared to shoemakers, bakers, and accountants. That has been so for at least two reasons.

First, a part of what lawyers do just happens to mesh nicely with the perceived structural needs of drama. Aristotle, in the *Poetics*, said that

† Partner, Rosenberg & Chittum; legal adviser to *L. A. Law*. I would like to thank the current and former writers and producers of *L.A. Law*, particularly Steven Bochco, Robert Breech, Jacob Epstein, Terry Louise Fisher, Bill Finkelstein and David Kelley for sharing their thoughts on their craft with me during the last three years—a process that has made this article possible. Any errors in this article are my own, and the conclusions do not necessarily represent the views of any other individual.

drama requires conflict and resolution. Lawyers are frequently engaged in conflict, and verdicts provide a neat form of resolution. Even better, the conflicts in which lawyers engage are often direct, personal, and confined to the intimate space of a courtroom. The fact that this confrontational part of law is only a small part of what lawyers do is of little concern to the dramatist. A lawyer's boring afternoons reading deposition transcripts and scribing closing documents is largely discarded as the dramatically uninteresting chaff of a lawyer's existence. Were it otherwise, the books would close, the TV sets would snap off, and the theaters would empty.

Second, lawyers are the subject of drama because our society has a deep fascination with them, albeit a rather schizophrenic one. On the one hand, lawyers are supposedly detested and are the regular butt of popular jokes. On the other hand, lawyers are often depicted as heroic saviors of the poor, the halt, and the lame. Television drama has usually tapped one or the other of these societal views, painting its lawyer characters as either heroes or villains. *L.A. Law* may owe part of its success to its ability, like longer works of printed fiction, to depict its characters as more nuanced—as both good and bad at the same time. In one show, Anne Kelsey can be a hero in trying to save the environment from her own evil client,¹ while in another, she can be a grabbing wife, anxious for her husband to inherit \$35 million that should really go to someone else.² Similarly, Arnie Becker can be a villain, turning an otherwise peaceful divorce into a grudge match,³ while later demonstrating great caring as he comforts Benny Stulwicz concerning a false charge of sexual assault.⁴

Character is, of course, the key to audience interest in episodic fiction, since most of us remember characters (such as Superman) long after the details of the myriad plots in which they were involved have fled our minds. Steven Bochco, the co-creator of both *L.A. Law* and *Hill Street Blues*, has told me that in his view, the task of a television writer is to create characters who are interesting enough that viewers want to continue to spend time with them.

Character creation is accordingly one of the key goals of *L.A. Law*'s writers. As an example, Arnie Becker was, early-on in the show, painted in rather bold strokes as a jerk. This effort was so successful that he almost immediately entered into the language as an archetype—people began to refer to a lawyer as being a real "Arnie Becker." But the writers never believed that pure jerkiness would sustain viewer interest in the long run. Rather, they realized that they needed to show Arnie's softer side and some of his vulnerabilities. The legal problems in which Arnie is involved are often consciously picked to enable these themes to be ex-

1. See Gillers, *Taking L.A. Law More Seriously*, 98 YALE L.J. 1607, 1615 (1989).

2. *L.A. Law* (NBC television broadcast, Show No. 13, Second Season).

3. See Gillers, *supra* note 1, at 1612-14.

4. *L.A. Law* (NBC television broadcast, Show No. 10, Second Season).

plored. Thus, in the season just concluded, when Arnie faced a conflict because he was the business partner of Roxanne's husband but nevertheless wanted to represent her in her divorce, the writers were not really fascinated by the legal issues involved in conflicts of interest. They were interested in the universal emotional issues of loyalty and betrayal reflected in the plot, and how those reveal Arnie's character. The legal "conflict of interest" was a byproduct.

II

Professor Gillers addresses the question of *L.A. Law's* influence on the public, saying ". . . *L.A. Law*, broadcast to millions, may be seen as the single most important influence on the popular conception of lawyers' work and ethics."⁵ I indeed, *L.A. Law* has been accused of single-handedly causing an increase in law school applications.

The effect of the show on the public perception of lawyers is probably exaggerated. Viewers do not automatically believe what they see on television; most are able to distinguish fact from fiction. Indeed, it is part of our culture to learn from an early age what is story and what is not. If you doubt this, ask any five year old if there are really thousand foot beanstalks and giants. Or ask any juror if everything sworn to in a courtroom is true.

Of course, *L.A. Law* no doubt has some effect on the perception of law and lawyers, but more like that of a river on hard soil, wearing here and there, only gradually modifying a cultural perception that has been building for almost a thousand years. Having said that, the question remains as to what part of the cultural riverbank *L.A. Law* is wearing down or building up. I can think of at least four areas where *L.A. Law* is no doubt having some impact: the way in which both lawyers and non-lawyers think about trials, the way in which the public thinks about law firms as institutions, the way in which both lawyers and non-lawyers may come to think about legal ethics, and finally, the portrayal of lawyers as emotional beings.

Dramatists have traditionally taken the few interesting moments of a trial and compressed them into a short dramatic space. The occasional withering cross-examination and the rare brilliant closing argument become the "average" fictional trial. This process has a tendency, among other things, to eviscerate the rules of evidence. No writer wants to interrupt the building confrontation between witness and interrogator by having someone insert an essentially intellectual statement about argumentative questions or hearsay ("It's an easy question Mr. Jones, just answer it. Did Smith tell you that or didn't she?"). The dramatization of trials also

5. Gillers, *supra* note 1, at 1622.

has the effect of making closing arguments focus primarily on emotion and not on the plethora of facts that may have been painfully elicited over fifteen days of often boring testimony.

The writers at *L.A. Law* have these same problems and seem to me to have adopted the same generalized solution as writers who have come before them: They have taken the exciting moments of trials and made them the trial. In certain ways, however, the writers of the show have begun to make some departures from dramatic tradition.

First, the writers of *L.A. Law* have portrayed civil trials almost as frequently as criminal trials. In the past, criminal trials have clearly predominated in the fictional arena, in part because, with more at stake, they are more naturally dramatic. The audience naturally cares more if someone goes to jail or is executed than if they win or lose money. Thus, *L.A. Law's* exploration of a wide variety of civil contexts—breach of contract, personal injury, libel, environmental torts, child custody, divorce, fraud, etc.—is a useful step toward a more realistic perception of the types of trials that really exist.

In addition, the writers of the show have taken pains to present a balanced approach to controversial issues dealt with in trials. The show has consequently handled everything from cigarette smoking suits to proceedings to remove a comatose patient from food and water with what has generally been regarded as evenhandedness.

Second, the writers of the show have achieved at least a bow toward the real rules of evidence. The show is certainly not perfect in this regard, but its trials at least begin to concern themselves with adequate foundation for questions, with avoiding inadmissible hearsay, and objections that are at least in the ballpark.

Third, the show has made some progress toward showing resolutions of civil and criminal matters other than by trial. In the real world, somewhere between eighty and ninety-five percent of civil matters are settled. A similar percentage of criminal matters are resolved through dispositions other than trial, such as plea bargaining. When the public sees any dramatic production that has a trial as its focus, it is seeing something unrepresentative, and may take away a distorted view of the system.

In this regard, *L.A. Law* follows the dramatic norm. In three short seasons, the lawyers at McKenzie, Brackman have probably tried more cases than most firms its size see in two decades. Thus, a regular viewer will take away a still distorted but nevertheless somewhat more realistic view of the way the system works.

Perhaps the most startling effect of trials as portrayed on *L.A. Law* is the impact on lawyers themselves. Closing arguments are an example. Those portrayed on the show are short and focused on the emotional "story" that the lawyer is trying to communicate. By contrast, most "real" closing arguments are as long as a court will permit, and divided between

story and detailed factual recitation. Although my evidence is only anecdotal, lawyers watching *L.A. Law* have apparently begun to wonder if their own closing arguments might be improved by being shortened and focusing more on the fundamental "story." This type of observation has been volunteered to me by at least half a dozen lawyers and two judges over the course of the last year.

Finally, *L.A. Law* also has impact on the way that the general public thinks about law firms as institutions, as opposed to what they may think of lawyers. Over the years, a rather large body of lawyer movies and television shows has built up a public perception of individual lawyers or lawyers working in groups of two or three. The number of shows or movies that have portrayed an actual law firm in any detail, however, is quite small.

Critics could say that McKenzie, Brackman is an odd firm. It is partner heavy, its economics are murky, and the mix of practice specialties is at best eclectic. On the other hand, it portrays much about law firms that is pristinely true: lawyers often feel overworked, they often like each other but nonetheless feel a certain rivalry within the firm, money is an important status symbol, and some lawyers are not-so-nice. *L.A. Law* has also made the ethics of lawyers a subject of some *angst* for the show's characters. While lawyers have been shown in the past as sleazy or unethical, it is rare for a television show or movie to explore the ethical situation as *L.A. Law* often does. While the ethics of the show's lawyers is not perfect, it is at least examined.

In the long run, the show's greatest impact may well be on the public's perception of the lawyer-characters as people with real emotions and sometimes difficult lives—people who do not always know the right path, people who do not always love their clients or their colleagues, people who sometimes lose. This makes *L.A. Law* quite different from earlier television programs about lawyers. Perry Mason, for example, lost only one case (later won on appeal). Hence, he never had to agonize over the guilt or innocence of his clients. As Professor Gillers so aptly puts it, Mason was more of a detective than a lawyer. Thus, if *L.A. Law* merely serves to sensitize the general public to the fact that lawyers are real people with real emotions, it will have served an important role for the profession.

