

**“The Chicago Literary Club”**

**Centaur in the Courtroom**

**Dichotomies in Legal Practice and Stereotypical  
Perceptions of the Popular Culture**

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### Dichotomies in Legal Practice and Stereotypical Perceptions of the Popular Culture

Human rights and issues of gender are widely discussed and hotly debated topics today in law classrooms and among members of the legal profession. The basis of these discussions, the starting point, is often provided by some perception common to popular U.S. culture, upon which legal tenet and case study are overlaid, resulting in debate which is at best unsatisfactory and at worst skewed. The fact of the matter is that there is no such thing as the “lady lawyer” or “lawyer/statesman” today, and maybe there never was. These perceptions were created out of the collective psyche of the popular culture and were established as stereotypes in America’s bastions of entertainment: soft cover fiction, the movies, and prime time TV, where they have been duly noted by lawyers as well as couch potatoes. The law may revolve

around the lawyers, but the camera is its instrument of execution.

Legal issues and practices which purport in the media to underscore gender difference in actuality cut across gender lines, relating instead to the dichotomous existence of all practicing lawyers, the centaurs of the modern world. The centaurs were a mythical race of four-footed creatures, described in literature as ‘half man, half horse’ who inhabited northern Greece. That they were exclusively male is an incorrect “factoid”. They are represented as both female and man. They were celebrated in the oral tradition as “creatures” whose procreative methods are unclear and invisible. Please let me know if you find any equipment of any kind in art-or in life.

Lore surrounding the centaurs gives them a notable hero, Chiron, to redeem their reputation for prodigious sexual activity and “wildness”. They were beset eternally with subjective conflicts which would seem to presage those which are visited upon the contemporary lawyer, be

s/he female or male. In short, the centaur is a mythical creature designed by a group (rulers or professors, shamans or bar associates) to serve society's various competing and conflicting needs.

Through books, film, and tweets the public perceives the lawyer/centaur; half-aggressor/half victim, half arbiter/half manipulator. The public culture wonders: Can the lawyer serve and survive? Can justice (what is "fair") exist in the contemporary political practice of law? This paper examines current U.S. practice of law as it existed in these old films, not in the annals of jurisprudence, but in the perceptions of the popular culture.

Can a popular culture solidify a prejudice? In 2019 modern America embraces two opposing cultural beliefs, both illustrated in these film clips:

1. The dog that gets the bone never runs away again.
2. No is also an answer.

It is in the realm of popular culture that the law must present itself as a discipline, capable of balancing

subjective dichotomies of contemporary American life. It must characterize itself as a tool through the use of which intelligent people can explore and begin to resolve the essential human conflict between dignity and degradation. Finally it must accept the challenge to define itself as a centaur, as a practice which has the potential both to protect and to annihilate the rights of the individual. In America “the line of the law” is drawn across the culture; and the place at which it is laid down will effectively define or erase human rights as a popular perception.

The following contemporary American short stories are referred to in substantiating these contentions: “After You’ve Gone” by Alice Adams, “Centaur” by J.S. Marcus, “Puttermesser: Her Work History, Her Ancestry, Her Afterlife” by Cynthia Ozick, and “Weight” by Margaret Atwood.

The following film clips are offered and referred to at considerable length: *The Accused*, *Jaffa/Lansing*

Productions with Kelly McGillis as attorney Katherine Murphy and Jodie Foster as Sarah Tobias; Adam's Rib, directed by George Cukor, with Spencer Tracy and Katherine Hepburn as Adam and Amanda Bonner (Pinky and Pinkie) and Judy Holliday as the defendant; "A Few Good Men", directed by Rob Reiner, with Tom Cruise and Demi Moore as the defending attorneys and Jack Nicholson as a U.S. Marine Colonel and star witness. A complete bibliography is attached to this paper.

Is a word worth a thousand pictures? In truth, the novelist and fiction writer, being the star and CEO, has more room and depth to play with. The screenwriter's role lies at the feet of the Director, who would never allow him to write, "rosary in one hand: Budweiser in the other" (Centaur 98). In films like Alfred Hitchcock's (for instance) the Director, as proactive interpreter predominates. HIS weapon is the camera's eye; for example, young Kenneth Joyce's horrified view of rape in *The Accused*. The short story does it with words; "A man from Yale offered to buy me dinner...When we got

back to his apartment and undressed, he said, ‘Do it to me, sweetie.’ Now when we see each other, which is about twelve times a day, he acts as if we were once partners in some sort of class project.” (Centaur 97).

The Director sacrifices reflection time and subtlety in the interest of a more immediate, multi-sensual effect. The result, in these film depictions of lawyers at practice, is a series of pronounced, two-dimensional stereotypes; most often, though not exclusively, female. (One remembers Mitch McDeere of the novel, *The Firm*, who discovers in the nick of time that he has a soul, or Tom Cruise in *A Few Good Men*, the softball smoothie rescued by his father’s ghost.) The female stereotypes are dreadful; one is more gender-driven and therefore more dangerous than the next. It’s bad enough for Katherine Hepburn (Amanda Bonner in *Adam’s Rib*, 1949) to come home from court and start whipping up a soufflé; but why, even in 1993 is Mitch McDeere’s wife weeping and waiting dinner? And why do the Supreme Court justices in First Friday in October keep smirking and saying

“Ladies first” as they leave the robing room. Lawyers don’t act like this: the public only thinks they do, or worse WANTS them to. In *Anatomy of a Murder* James Stewart, cutting a fine figure as a lawyer/statesman, presented an accurate, widespread interpretation of heroic servitude. Essentially the same model is offered today on the television series, *Law and Order*, though one seldom finds it anymore within the profession.

Contemporary fiction extends its legal characterizations so that John O’Hara’s heroes bring Pennsylvania into the courtroom; Ward Just’s legal eagles are political birds; Irwin Shaw’s reek of foreign encounters or Israeli nights. And no one can close a door as gently as an Auchincloss barrister. The only trouble is, those books have to be READ, It’s a lot easier to fall asleep to reruns of “Boston Legal”. It is understandable then, that today’s hot interest in and grave concern with issues of gender are misconceived, driven by the stereotypical characterizations which infest legally-themed films and television offerings. A degree of danger lies in the



possibility that such stereotypes repeated, aggrandized, and left unchallenged, may become, at last, true.

All of these fictive lawyers are centaurs, not so much conflicted as forced to live inside dual personalities. “In private, I’m English” the lawyer of Centaurs confides. Her professor, who went from the cologne counter to the bar is “half saint, half goat.” And that Yale man, that paragon of sensitivity, asks metaphorically, “Where are you galloping off to?”

Puttermesser (translates to: butter spreader), haunted by the sharp knives of circumcision, practices the law in a hive of WASP males who treat her deferentially and unfailingly like a nice Jewish girl. “Poor Puttermesser must claim an ancestor,” the narrator explains.

The heroine of “Weight” is half lawyer, half performance jumper, and Sarah Tobias in *The Accused* is half-waif, half-whore. It is interesting to note that in this film, which recapitulates a landmark Connecticut decision concerning provocation and criminal solicitation of a felony, the victim is herself provocative in her behavior.

Tom Cruise, in *A Few Good Men*, struggles with the duality of being half-honorable, half-expedient; a conflict with which every human being (reader, viewer, or lawyer) is uncomfortably familiar. In *Adam's Rib* the murderess/defendant (Judy Holliday) who is half-murderer, Half-victim, half-crazy, half-clairvoyant, says, "I felt like I was watching myself. Like in a dream." *The Bonners* (Adam and Amanda, Pinky and Pinkie, lawyers and lovers) move beyond the centaur metaphor, executing an intricate tapestry of role re-versal and gender conflict, always within the dichotomies which the practice of the law imposes on them. It is a masterful construction involving the courtroom, the bedroom, and the classroom, in which the film viewing audience are captive pupils. The role reversal is so complete as to extend to every person and legal tactic, then reverse itself. In the bedroom Adam and Amanda give each other massages. She slaps him, then he slugs her. (I know a slap from a slug," she shouts at him.). She weeps until he capitulates; later, he cries

himself until she relents and then belittles her for falling for his tears.

In court Tracy badgers Pinkie's client on the stand, but in the end she is the super bully and manipulator. "I see contempt for the law," he tells her, "and I don't like it. What blow you've struck for women's rights I don't know." This film was billed as "the battle of the sexes" and called a "bedroom comedy". It was anything but; as the saying went in 1949, when it was made.

The film depicted a woman as lawyer/aggressor in a reversal of stereotyped gender roles, and the failure of her attempt to revert back to the social norm. Having presented her client, a spurned, gun-shooting wife and mother as the defender of her family, having won her client's freedom by asking the jury to imagine the case principals as members of the opposite sex (visually achieved role reversals), Even having been re-instated in her husband's good graces after bullying him without surcease, after pushing him into a door, Amanda is won over by her lawyer-husband's tears, and they go off to

their little farm for the weekend. The public bought the ending of this hugely successful film, in part because the longstanding love affair between Spencer Tracy and Katherine Hepburn seemed to be recapitulated in this incredible love story which presaged a generation peopled by modern professional couples. It was written by a married pair who themselves were a successful Hollywood actress and director, as well as close friends of Tracy and Hepburn.

May The Spice Channel forgive me, but it is not the bedroom scenes that drive today's public to lust for more and more stereotypical legal characterizations. It is the fact that stories and films about the practice of law pander to a human being's deepest fear, loss of identity. These books and movies recreate endlessly, situations which posit the loss of self-esteem, bringing a character to the point of total erasure of his identity and then sending in the lawyer to save him/her. Viewers and readers, now as then, want this scenario to keep repeating itself until everything comes out right. Self-

esteem and dignity - theirs - is restored time after time, and before bed. What the people want, again and again, is not Jimmy Stewart, the lawyer/statesman, but Chiron, the heroic he/she centaur, come to resolve the unsolvable conflict and restore identity. It is a role the modern lawyer must assume in deadly earnest, for that loss of identity mirrors his/her own situation. Where else but in an American courtroom does a Guatemalan immigrant, downsized out of a job, have everything in common with a nice Jewish lady lawyer from Brooklyn like Puttermesser? I quote the author: "She is not to be examined as an artifact, but as an essence. Who made her? No one cares. Puttermesser is henceforth to be presented as given." The Guatemalan immigrant is likewise presented as given and nothing more.

The same is true of all these fictive and movie lawyers (male or female) in conflict. What they most fear is worse than erasure - it is being reduced to presentation "as given". In "Centaur" the mink eat their young to protect them from annihilation; in "After You've Gone" the narrator

defends her self-esteem by locking herself inside her own legal talent and expertise. In *A Few Good Men* the first time Tom Cruise REALLY steps up to the plate is when he throws Sam a lifeline, shoring up his own esteem by saying, "I need you." Conversely, his own persona is most dramatically threatened when Jo Galloway (Demi Moore) looks him in the eye and says, "You're nothing. Live with that."

The point is that he can live with anything BUT that. The complete denial, the erasure, of a sense of worth is devastating to the human psyche. Dawson, the Marine, understands that this is so when he refuses to trade his self-esteem, his membership in the corps, for a six month sentence. Cruise, not understanding, tells him, "It's a hockey season,"

The good name of the slut, the whore with the heart of gold, is as old a literary theme as its early celebrant, Mary Magdalene. Sarah Tobias, the accuser in *The Accused*, is low on society's totem pole. She has little in the way of

worldly goods, self-esteem, or dignity to recommend her. But, like female lawyers discussed in this paper (who have considerably more going for them), Sarah Tobias is prepared to defend what she has in the way of honor. Her reputation IS her identity, as Puttermesser's Jewish background is hers. Like her Biblical predecessor, her behavior is questionable, but she sins not. After she is raped, she cuts off her hair, as men have done since the time of Samson, who in being shorn was robbed of his power. The symbolic act here represents the robbery of the female's essential self rather than the historical representation of the shaved female head as a public symbol of sexual infidelity. Sarah Tobias looks to her lawyer to restore her reputation and discover a path through the law which leads her back to her identity.

The same is true of the defendant in Adam's Rib. As Judy Holliday makes clear in her deposition to Amanda Bonner, it wasn't the broken molar that broke her spirit. It was the constant withholding of his approval, which erased her identity. These tactics (threat, authoritative

withholding, degradation, and verbal harassment) all depend upon the use of language. As a communication tool the chosen word is a powerful weapon. Used positively, it reinforces and re-establishes identity.

On the other side of the coin we have the story, “Weight” in which two lawyers, the narrator and her friend Molly, a battered wife whose husband later murders and mutilates her, make up, (and I quote) “Silly Meanings for the things we got called by the guys in law school - like “strident”, a brand of medicated toothpick used in gum disease. A “Shrill” as in the Greater Shrill, a sharp-beaked shorebird. “Pushy”, a rude word pertaining to female anatomy. A large, soft velvet cushion ,,,pink or mauve. Molly was pushy.

Used negatively the spoken word can constitute assault. Consider these, reductive appellations: “Pinky or Pinkie” as nicknames in Adam’s Rib; the Colonel’s repeated ironic use of the terms “son” and “lad” in A Few Good Men, as well as his pointed public remarks to Jo Galloway: “Believe me, there’s nothing that gets me off



more that saluting a female superior first thing in the morning. Sort of like getting a blow job from your commanding officer.”

Finally I remind you of the ever-popular “do it to me, sweetie”, from the story, “Centaur”, which reminds ME of an omnipresent collegiate ‘Fifties banner: “When better women are made, Yale men will make them.”

These stories and films bring us finally, perhaps inexorably, through issues of esteem and degradation, identity and erasure, to questions which fall squarely inside the province of the law; those which pertain to assault, battery,, and solicitation of a felony - that is to say, abuses which are punishable by law. A brief overview of such abuses reminds us that these statutes were originally based on common law ideas. The seriousness of the abuse is usually measured by degree of intimidation; say, use of a weapon or the intensity of verbal assault. Civil abuse is generally defined as the

“slightest supposition of apprehension of force coming from an overt gesture.” It includes lighter forms of verbal assault such as heckling and badgering. Using relationship to legal authority to control or intimidate is an abuse of civil rights. CRIMINAL ABUSES include assault (both verbal, psychological, and physical), battery, and inchoate crimes. ASSAULT involves the putting in fear of another human being. Threat can be physical, verbal, sexual, or aggravated. The law makes provision for various degrees of intimidation. Some types of assault, many of them verbal, are specifically forbidden (ethnic or racial slurs, hate crimes). The use of authority to threaten or intimidate constitutes assault.

Language as an instrument of assault is frequently a consideration in the contemporary criminal courtroom. The interpretation of “heckling” versus, say, “shouting” or “yelling” becomes important as the court decides whether a given instance of verbal abuse constitutes a civil or criminal abuse. Does the yelling intimidate, put in fear, or threaten from a position of authority? Does the verbal

harassment of a husband, wife, or boss constitute psychological coercion? Does it, as in the case of the murder defendant in Adam's Rib endanger the victim's mental balance? In Alice Adam's "After You've Gone", the lawyer accuses her ex-lover: In an emotional sense you are battering this young woman." (69). Degradation by verbal abuse dances along the line between civil and criminal assault. Chief Justice Thomas had referred to a pubic hair on his can of Coca-Cola. Jack Nicholson obliquely solicits a blow job from a female officer. In "Weight" Charles has his little joke about lawyers and pit bulls. After that we have goading, entreating, and instigation. After that come "unlawful touching", battery, and rape.

We arrive through language at a variety of inchoate crimes; perpetrative and provocative. These include conspiracy, attempt, and criminal solicitation.

Based on a Connecticut trial and landmark decision, **THE ACCUSED** The Accused is a film produced for popular entertainment and edification; an application of

statutes relating to solicitation of the felony, rape. In fact, a young, local woman of licentious reputation entered a bar frequented by Portuguese-American workers and fishermen after drinking liquor and smoking marijuana. She engaged more than one man in conversation, behaving in a sexually provocative manner.

She emerged, battered, after three hours, flagged down a car, and reported to police being forcibly raped on a pool table by three men. The accused rapists were acquitted. She charged that several other men watched the rapes; goading, encouraging, and persuading the attackers to continue the rapes. She did not include a charge of instigation, which would assume that the spectators were complicit before the acts took place. In the actual appeal trial seven men were found guilty in different degrees of the charge of solicitation of a felony.

In the FILM, *The Accused*, the prosecuting attorney is played by Kelly McGillis, who was herself a victim of rape. The movie explores several interesting interpretations of inchoate law. As a film attorney McGillis pounds home,

the accountability theory, a point of law which holds that those who urge, promote, or encourage a criminal act to continue are guilty of criminal solicitation, in this case solicitation of the felony rape. She is further at pains to prove in court that the defendants understand that what is taking place is a crime.

Jaffa and Lansing, Producers, use the actual application of a set of laws to capture public attention and enhance popular awareness of three issues common to contemporary American culture. The first is the issue of accountability within a group. The second is the issue of hearsay and reputation, to what extent subjective cultural interpretations defame honor and malign human rights. The third is the caveat of college campuses: “No means no,”. When Jodie Foster told the badgering defense attorney that the only entreaty she was able to articulate was, “Just...no,” she spoke the “no” heard ‘round the world. That word became the defensive weapon of choice in situations involving accusations of date rape.

As the camera forces the viewer of *The Accused* to witness the gang rape of Jodie Foster, s/he assumes the persona of Kenneth Joyce, the young witness who pits his idea of what is “fair” face to face against the bare fact of the law. It is a powerful confrontation and an accurate reflection of the eloquence and courage required of the lawyer each time s/he turns to face the popular culture. What the public sees is not always the truth, but its interpretations bear their own identities and veracity. Some of these are not offered in evidence before the bar, but they are always available in cultural connotation. The language of fiction and social media, the themes of contemporary drama, music, and the witness of film to the political and emotional issues which engage and terrify, replace a perspective which has challenged the practice of law during the last three decades. It is subjective. It is conflicted. It requires of the practicing lawyer that s/he accept unsettling possibilities:

That cultural stereotypes send signals, that television screens

are windows, that a centaur is not the worst thing in the world to be.

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“Primal Fear”

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