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| |  | | --- | |  |  |  |  |  |  | | --- | --- | --- | --- | | Paul Bergman  is Professor of Law, UCLA Law School. He is co-author of Reel Justice: The Courtroom Goes to the Movies (1996) and wrote "Redemptive Lawyering", in the forthcoming UCLA Law Review symposium on law and popular culture.   |  | | --- | | **Read other reviews:**  [Official site](http://abc.go.com/primetime/thepractice/index.html)  [Internet Movie Database](http://www.us.imdb.com/Title?0118437)  [All Movie Guide](http://allmovie.com/cg/avg.dll?p=avg&sql=A242083)  [Readers' comments](http://docs.google.com/user_feedback.htm) |       Today, jury nullification is suspect. Lawyers are not permitted to argue it. Jurors who suggest it in the jury room are in danger of being bounced off the jury for having violated their oath to follow the law. But jury nullification still happens in juries all across the land. | |  | | --- | | ***The Practice* Opens a New Season With a Somewhat Different Cast**  By Paul Bergman  As the curtain rises on the new season of *The Practice*, the familiar cast has radically changed. Bobby Donnell's law firm has been purged of Donnell himself as well as Lindsey Dole and Rebecca Washington. Like most law firm breakups, money was the cause. Apparently ABC is paying less per episode (given the poor ratings of last year's show) and David Kelley's production company has sliced payroll. Also history are DA Helen Gamble and receptionist Lucy Hatcher.  However, a new lawyer has emerged: Alan Shore (James Spader). Shore claims to have been a very successful antitrust lawyer in a large corporate law firm. However, he's left that firm after admittedly embezzling funds (it was half Robin Hood-he stole from the rich but kept the money for himself). This admission doesn't stop Eleanor Frutt from immediately assigning him to defend a vagrant facing a misdemeanor battery charge for kissing a haughty businesswoman. Shore soon discovers that the law firm is no longer one of the premiere criminal defense firms in the city-they are struggling to survive with their biggest rainmaker (Bobby Donnell) off on his own. In fact, the firm can't even front the price of a new suit for the client. So Shore has to lend him a suit and shoes.  The show's strongest story involved a criminal defense by Jimmy Berluti and Eugene Young of a black woman charged with murdering a cocaine dealer who lived on her block. An excessively nasty trial judge forbids them from arguing self-defense or defense of third parties because a videotape clearly shows the defendant walking up to and shooting the dealer who wasn't threatening anyone at the time. The defendant herself forbids them from arguing that she was insane, because she knew just what she was doing. She killed the dealer because he had ruined the lives of many adults and children and the police did nothing to stop him (aside from putting up a video camera that films the murder). Thus Jimmy and Eugene have to hope for "jury nullification," another argument that the trial judge will not allow. In his argument to the jury, Jimmy emphasizes his client's plight and, to avoid the judge's wrath, repeatedly tells the jurors that he can't tell them to nullify an unjust law. His hope is that the jurors will realize that he wants them to do just that, and of course they do.  The jury nullification argument is an interesting and important theme. Jury nullification has a long and checkered history in the U.S. John Adams asked a colonial jury to nullify British sedition laws in the trial of John Peter Zenger. This helped establish freedom of the press in the colonies. On the other hand, Southern white juries also practiced nullification in refusing to convict whites who had lynched blacks. Today, jury nullification is suspect. Lawyers are not permitted to argue it. Jurors who suggest it in the jury room are in danger of being bounced off the jury for having violated their oath to follow the law. But jury nullification still happens in juries all across the land. And defenders of the jury system often mention jury nullification as a reason for keeping this antique institution. Jimmy's closing argument-archly telling the jury that he couldn't urge them to acquit his client because she had killed a monster to protect her neighbors-was a clever way to clue the jury in to the possibility that they had an absolute right to acquit the defendant. But despite Jimmy's rhetorical, B'rer Rabbit-like craftiness, his argument clearly invites the jurors to nullify the law. The judge would have had valid grounds to cite him for contempt and perhaps refer the case to the State Bar's disciplinary authority.  Meanwhile, Alan Shore ends up in front of an equally humorless, almost as nasty trial judge. Like Jimmy and Eugene, Shore lacks a legal defense to the battery charge. However, his client too has a strong moral defense. The businesswoman not only refused his request for alms, but also called him nasty names in front of his young daughter. Since she had embarrassed him, he decided to embarrass her by walking into her office and kissing her. Perhaps to avoid two jury nullification arguments in the same show, Shore talks the businesswoman into dropping the charges. Rather fortuitously and unbelievably, the vagrant lived in a flop house and had an insurance policy that could pay out $10,000 to a victim of "defamation." Shore just happens to know the claims adjuster, who will look the other way when agreeing that the vagrant's actions constitute defamation and pay the woman $10,000. Thus Shore is really practicing insurance fraud-and is called on it by the firm's new paralegal.  Shore is ethically challenged and he also seems to be addicted to sexually harassing the law firm staff and any other females in sight. It seems unlikely that the firm-even given its present economic struggles-would hire somebody who had just been kicked out of his law firm for embezzling. It would have been more interesting if he had left the former firm because the clients were rich slime only to discover that the clients of his new firm were poor slime. Alan Shore's character should prove interesting as David Kelley further develops it.  Posted October 3, 2003 |   **Would you like to comment on this article? Please submit your comments** [**here.**](http://docs.google.com/submit-comments.htm) |  |  | | --- | | [Top of page](#gjdgxs) |  |  | | --- | | [Home](http://docs.google.com/index.html) | [Silver Screen](http://docs.google.com/silver_screen.htm) | [Small Screen](http://docs.google.com/smallscreen/small_screen.htm) | [News & Views](http://docs.google.com/newsnviews.htm) | | |