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| |  | | --- | |  |  |  |  |  |  | | --- | --- | --- | --- | | **Carrie Menkel-Meadow** is Professor of Law, Georgetown Law Center. She recently published *Can They Do That? Ethics in Popular Culture: Of Characters and Acts*, 48 UCLA L. Rev. 1305 (2001).   |  | | --- | | **Read other reviews:**  [Paul Bergman](http://docs.google.com/practice_bergman.htm)  [Taunya Lovell Banks](http://docs.google.com/practice_banks.htm)  [Jeffrey Thomas](http://docs.google.com/practice_thomas.htm)  [George Cardona](http://docs.google.com/practice_cardona.htm)  [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) |       *The Practice* season opener was carried for me by the ethical dilemmas, if not by the obvious take-off of the Gary Condit affair.                    The show might have explored the vagaries of justified homicide when husbands shoot the men having affairs with their wives -- long a legal practice in many states --that might have made a more interesting defense argument. | |  | | --- | | **Practicing Ethics with *The Practice***  By Carrie Menkel-Meadow  The first episode of the 2001 television season for *The Practice (The Candidate*, September 23, 2001) was a veritable issue-spotter of legal ethics. Improbable and as badly decided as some of the ethical choices were, Ellenor, Helen, Jimmy and new prosecutor Alan Low, gave us a two-hour whirlwind tour through the complexities of legal ethics. The ethics issues are especially difficult when the context is murder, the client is both a state senator and a childhood friend (of Ellenor's), and the prosecutor and the defending attorney are roommates.  This season opener, a two-hour special episode that will continue into the next week of the season, promises that *The Practice* will continue to be a legal ethics teacher's delight (if not for the pleasantness of the stories, but for the instructional possibilities). Lawyers, law students and law professors alike should watch each episode of *The Practice* with either the Model Rules of Professional Conduct or a pen and paper in hand, to jot down the many legal ethics issues dramatized and to test one's own knowledge of the right answer under the rules, if not the right answer of morality or advocacy.  While I acknowledge my perhaps warped reviewer's eye as a legal ethicist, *The Practice* season opener was carried for me by the ethical dilemmas, if not by the obvious take-off of the Gary Condit affair. (Indeed, this cynical Washington-scandal watcher guessed the surprising denouement to the plot within the first 15 minutes of air time.)  Ellenor is called to the home of State Senator Keith Ellison (who by the way was a brilliant casting choice as an immediate Gary Condit look-alike, just in case any viewer missed the source of the tale) whom the TV viewer first sees in his skivvies, as his wife showers and his daughter throws up after we all view the bloody body of a nude man in the Ellison marital bed. Ellenor is called before the police are, the bloody clothes are in the washing machine and all have showered and composed themselves before the police finally come (at least 10 minutes after Ellenor's arrival and first strategy is planned). Is this unethical? Absolutely! Ellenor has tampered with or advised tampering with evidence at a crime scene and obstructed justice.  Clients Keith Ellison and his wife Marsha and daughter Allison are clearly up to something together. Can Ellenor represent them all? Not in any criminal court of which I am aware in real life. The conflicts are so obvious, especially when Ellenor is informed she will not be told any of the story by the client(s) because Keith doesn't want to tell you anything that would prevent you from representing me. That's because she is in the great criminal law firm of Bobby Donnell et al. Plan B, perjured testimony, or something more sinister may be necessary for this candidate's defense. If this doesn't alert an otherwise clever defense lawyer, I don't know what would. But David E. Kelley likes to move those dramatic plots along, so having the judge later threaten to deal with the conflict but not doing so (as most any real judge would in such a case) is supposed to satisfy us lawyer-watchers that Kelley at least knows he is portraying something problematic.  Just to even up the ethical score, Ellenor's roommate, the steely prosecutor Helen Gamble, is up to her own ethical high jinks. Calling wife Marsha a material witness (a little scary that Kelley would be so prescient about how much the public would know about material witnesses at air time, one week after the horrific September 11 terrorist attacks), Helen has a body cavity search done on Marsha (no self-incrimination, of course, under current search law) in quest of the telltale sperm to prove the wife's affair and give a motive to Senator Ellison for a murder. (Nice twist on the Condit rumors, yes?) Alas, Helen then violates the clearest ethical rule known to prosecutors, as she talks directly to a represented party (wife Marsha) (Model Rule 4.2 for those of you who want chapter and verse).  She then proceeds to do even worse, by giving advice to said represented party B and absolutely wrong advice at that: Your silence could incriminate you. Now, how is the public supposed to learn about the 5th and 6th amendments with such bad information? Our knowledgeable wronged party (Marsha) cites the right amendments so you would think Helen would get a bit nervous now that she might be in trouble beyond being sued for misconduct. Helen can't get sued for misconduct, but she can be disciplined by the Bar or lose her job. Indeed, in this case her behavior is so egregious any normal criminal judge, not to mention her own superiors, would have ordered her off the case.  Helen, who each year is more experienced, seems increasingly desperate to win at all costs and frequently becomes emotionally involved in her cases. Her flouting of ethics rules is getting so brazen, at least this viewer is finding them increasingly hard to believe. Helen is too smart for all this -- and she loves her job too much to risk it so often just to move the plot to its dramatic fights between her and the Donnell team. (She is now joined by a more good-looking sidekick, Alan Low, than last season's killed-off Richard Bey. Please Hollywood, do so many of the lawyers have to be mindless beauties? Richard seemed endearingly real.)  On it goes, in the now formulaic trial scenes of fights and arguments between Helen and Alan and Bobby, Jimmy and Ellenor (only Hollywood would permit so many lawyers on each side of a case with so few real witnesses and none of them difficult experts to manage.) Daughter Allison Ellison is questioned in a strange combination of criminal interview and civil deposition with lawyers advising her what not to say (the same lawyers representing her parents) while Helen objects, as if a client or witness can't talk to a lawyer before talking to the prosecutor (what is this, English procedure?). Both sides try the case in the press (credits to Chandra Levy's parents and demerits to both sets of lawyers who repeatedly violate Rule 3.6) and the charming politician-defendant continues to believe he can sway a jury as he has seduced his constituency. (Turns out that's not all he's seducing! Surprise, surprise!). His claim is that he shot an intruder, not an adulterer. (Interestingly, the show might have explored the vagaries of justified homicide when husbands shoot the men having affairs with their wives -- long a legal practice in many states --that might have made a more interesting defense argument).  In case any viewer missed the obvious Condit allusions, the key witness turns out to be a Ms. Levy, an employee of the murdered victim, who provides the wrongly admitted speculative evidence that she thought something fishy was going on between the murder victim and Mrs. Ellison. And sadly, Jimmy commits yet another act of both legal malpractice and ethical violations of incompetence, when he incompletely interviews Ms. Levy and is therefore shocked to learn the answer to a question he didn't know the answer to (because he didn't ask it).....  Stay tuned for next week's effort to free the innocent Senator. Not only is he in fact innocent, but if this isn't ineffective assistance of counsel, I don't know what is. Of course, Ellenor will be hampered by the fact that she learned the real story from a privileged client contact. Although everyone is upset with Jimmy's malpractice, sage Bobby chastises his firmmates, not to do better, but never to criticize another law firm member in front of the client (think about the possible malpractice claims!).  The surprising testimony of Ms. Levy shocks the judge into thinking our favorite defenders are up to another of their now-familiar stunts and he threatens to take their bar cards. Dramatic for the audience, and thanks Mr. Kelley for letting the public know that judges do care about lawyers' ethics, but this wouldn't be the way it happens as the writers of *The Practice* well know from past shows. Disciplinary matters are handled in separate administrative proceedings before a different tribunal and not in the case at issue.  Oh, well, I don't want to complain too much. Though the plot was obvious to this viewer (but I suspect was experienced by most lay viewers as a total surprise, as intended), and the scripts are getting a bit formulaic (what lawyer TV show isn't?), *The Practice* continues to be the single best vehicle I know for teaching about legal ethics and motivating law student viewers to see the context and consequences of choices made by lawyers in practice as they steer between the rocks and hard places of good advocacy and the requirements of good ethics. I look forward to a season full of more ethical issue spotters, even if the stories ripped from the headlines (sorry, *Law and Order*) are themselves all too familiar.  Posted October 25, 2001 |   **Would you like to comment on this article? Please submit your comments** [**here.**](http://docs.google.com/newsnviews.htm#Submit%20your%20own%20comments) |  |  | | --- | | [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) | | |