

CHAPTER 27

Judging the Judges—Daytime Television’s Integrated Reality Court Bench

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Critics of reality daytime television court shows remain divided over whether the possible educational benefits of these shows outweigh their distorted images of judicial proceedings. However, few pay much attention to the shifting demographics of the reality court judges since 2001, when they first beat out soap operas in the daytime ratings. That television viewing season, seven of the 10 judges were male, but, surprisingly, six of the judges—two females and four males—were black. Only four judges were white. In 2008, female television judges outnumber their male counterparts. Additionally, four judges are Latina/o and another four are black. Only Judy Sheindlin of *Judge Judy*, the best-known and most popular reality court judge, and David Young of *Judge David Young*, an openly gay man, are white. There are no Asian-American judges on reality court shows, although Asian Americans occasionally appear as judges on nighttime lawyer shows.

In the real world, women comprise only 18.6 percent of federal judges and about 20 percent of state judges. Black Americans of both

genders comprise only 6–8 percent (8.6 percent federal, 5.9 percent state), Latina/os 3–6 percent (5.4 percent federal, 2.8 percent state) and Asian Americans approximately 1 percent (0.8 percent federal, 1.1 percent state) of all judges.¹ Thus, the judicial world of daytime reality television court shows is far more diverse in terms of gender and race than real courts.

The increased presence of nonwhites on television over the past decade is no doubt a by-product of political action initiated by civil rights organizations like the NAACP to boost ethnic diversity on television as well as a response to the demographic composition of the viewing audience.² Social scientist Steven Kohm writes: “The preponderance of female judges—and to a lesser extent African-American male judges—. . . is strong evidence of a presumed female and indeed racialized audience.”³ The more recent addition of Latina/o judges on daytime reality television reflects the continued push of political organizations for wider diversity, as well as a conscious targeting by networks and syndicators of the daytime viewing audience.⁴ (Although Hispanics, including Latina/os, can be of any racial group, they are treated as nonwhite and marketed as a racialized group.)

More than five years ago I worried that the overrepresentation of women and nonwhite male judges on daytime reality court shows might mislead the viewing public into thinking that most real-life judges are nonwhite and female, a misperception that could have harmful consequences.⁵ After almost a decade, the popularity of television reality court shows continues and the judges are even more diverse. This essay looks at the reasons for the persistent overrepresentation of female and nonwhite male judges on these shows and possible implications for the American legal system.

The Integration of the Reality Courtroom

In the 1980s, when retired Los Angeles County judge Joseph Wapner of *The People's Court* was America's most famous jurist, his bailiff Rusty Burrell was a white male. Wapner retired from the show and it went into syndication before being cancelled in 1994. When the show was revived in 1997 with former New York City Mayor Ed Koch as the judge, a white female news reporter was added. A year later, when Jerry Sheindlin, the real-life husband of Judge Judy, replaced Koch, both

the bailiff and the reporter/legal commentator were white males. Ratings lagged. In 2001 Jerry Sheindlin was replaced by Marilyn Milian and the bailiff became a black male, while the reporter/legal expert remained a white male. Ratings improved significantly.

Today the integration of women and nonwhite males on all the reality daytime television court shows extends beyond the judiciary. Every aspect of the television courtroom is integrated as well. The courtroom audience is sexually and racially diverse, and as the chart here indicates, even the race and/or gender of the fake court bailiff and news reporter or legal advisor are different from that of the judge. Since all the shows share this feature, clearly race and gender are factors considered by networks or syndicators in the creation of these shows. Perhaps producers realize that race- and gender-integrated courtrooms appeal to a larger daytime television audience.

Court Show	Judge Race/ Gender	Bailiff Race/ Gender	Reporter/Advisor
Judge Alex	L/M	B/F	None
Judge Joe Brown	B/M	W/F	W/F
Christina's Court	L/F	B/M	None
Divorce Court	B/F	W/M	None
Judge Hatchett	B/F	W/M	None
Judge Judy	W/F	B/M	None
Judge Maria Lopez	L/F	L/M	None
Judge Mathis	B/M	W/M	None
Judge David Young	W/M	B/F	None
The People's Court	L/F	B/M	W/M

Marketing the Judges

Unlike real judges, reality court judges are mediators *and* entertainers. According to Kohm, there are two types of reality court shows—judge-focused shows like *Judge Judy*, and court-focused shows like *The People's Court* or *Judge Joe Brown*. On court-focused shows, the personality of the presiding judge is

not the driving force. Instead these shows rely on a third party, usually billed as a news reporter or legal advisor. The constant presence of the advisor or reporter to provide commentary adds to the theatrical aspect of the show. This relieves the judge of the entertainment burden, so that the judge on court-focused shows functions more as a conventional legal decision maker.

Most reality court shows follow the *Judge Judy* (judge-centered) model, and it is the judicial behavior on these shows that is most troubling. The reason is that TV judges, mindful of the connection between ratings and advertising revenues, may modify their behavior to satisfy the viewing audience. By doing this, they distort public notions about the legal system and legal actors.

Kohm warns,

As a consequence of their orientation toward female and marginalized viewers, these programs speak not so much to the American population as a whole but to a segment of the population that has traditionally been denied a powerful role in civic and legal affairs. . . . [M]essages contained in these programs about the role of the law in the lives of women and other marginalized groups are becoming less and less about participation and democracy. Instead, we are witnessing an evolution in the way daytime reality courtroom television addresses its presumed audience: an evolution that places little emphasis on formal legal intervention by the state and instead stresses personal responsibility in the management of one's own disputes and legal affairs.⁶

What follows are a few examples of how these judges are marketed to the viewing public and my concerns about their marketing claims.

Unconventional Judges, Unconventional Justice

Unlike Judge Judy, who is marketed as a real judge deciding real disputes involving real people, other judges, especially nonwhite judges, market themselves as meting out unconventional justice. Glenda Hatchett, a former Atlanta juvenile court judge, who appeared on *Judge Hatchett* from 2000–2008, consciously adopted a therapeutic rather than legalistic approach to decision making, touting her “unconventional brand of justice” and saying that she “will do whatever it takes to make a difference.” Hatchett told one news reporter that “It won’t be enough to hit the gavel

and make a judgment. It's more important that they understand the life lessons after the judgment ends."⁷ When this approach did not translate into high ratings, she modified her behavior, alternating her therapeutic demeanor with that of a tough-talking, berating judge, but her ratings never made her competitive, and now the show is in reruns.

In contrast, Greg Mathis of *Judge Mathis* promises unconventional justice because of the perspective he brings to the bench as a former gang member, school dropout, and jail inmate who turned his life around on his mother's deathbed. Following his mother's death, Mathis completed his education and was elected a superior court judge in Michigan. He assures viewers that he made the law work for him, thus implying that, because of his background, he can make the law work for the viewer/litigant as well.

Mathis strongly believes in self-empowerment and conducts workshops on the subject; his inspirational life seems to reaffirm the notion that hard work can translate into success despite poverty and racial discrimination. This message makes his otherwise conventional show attractive to many daytime television viewers, and very popular with black audiences, who comprise a substantial portion of his viewer demographic. Consequently, Mathis survives despite consistently poor overall ratings.

Other judges send viewers somewhat mixed messages. Maria Lopez of *Judge Maria Lopez* was marketed using her personal biography as a hard-working immigrant who, like Mathis and Hatchett, promised unconventional justice. Lopez is billed as "passionate," "strong," "experienced," "fair," "tough," and a "pioneer"—a Cuban refugee who came to America as a child. During the show's introduction, she speaks a few words in untranslated Spanish ending with: "You talk about the American dream, I *am* the American dream." The Hispanic Press describes Lopez as a hard-working Cuban immigrant whose first language was Spanish, and who was educated at Smith College and Boston University Law School before being appointed Massachusetts' first Latina judge. She is touted as willing "to keep an open mind regardless of the situation," having "empathy for the oppressed," and rendering "unconventional, creative sentencing."⁸

Unfortunately for Lopez, the television public has not been sufficiently entertained by her spicy demeanor; *Judge Maria Lopez* currently is

Courtesy of Photofest.



DIVORCE COURT

Judge Mablean Ephriam combined personal responsibility and judicial clowning.

the lowest-rated reality court show.⁹ Perhaps her lack of ratings success is tied to these two potentially conflicting narratives. Nativists may feel uncomfortable with a foreign-born judge promising “unconventional” justice, because that might translate in their minds to foreign or “un-American” justice. Ironically, nothing on the show suggests Lopez renders unconventional justice. Nevertheless, the fear of potential viewers that the promised justice would not provide helpful information about how the legal system works may explain why they have decided not to tune in.

Finally, there is Mablean Ephriam, a formerly well-regarded black woman lawyer who presided over *Divorce Court* from 1999–2007, and one of the few reality court judges

without any real-life judicial experience. Personal responsibility was a hallmark of her rulings. In one episode Ephriam lectures an outraged wife on why she had to financially support her estranged husband: “we are all equal now,” and as a result wives, like husbands, have an equal obligation to support their estranged or former spouses. She continues to lecture the woman about the difficulty of moving on with one’s life when you still love someone, a bit of moralizing clearly aimed at the audience.

Nevertheless, Ephriam’s demeanor raised a few eyebrows, as she was quite expressive on the bench and prone to make inappropriate wisecracks. For example, when a white man complained that his Hispanic wife’s family called him a “cracker,” she remarked, “Don’t y’all know that crackers and beans go together?” In another case, where a wife accused her spouse of infidelities based on hickies she spotted on his neck, Ephriam responded, “Let me see the hickies on your neck. Come up here so I can put another one up there. Not from kissing you, trust

me." In yet another cases she shouted at a former husband accused of infidelities, "You were a cheater and a liar." Later in the same case, she said: "This is cockamamie bull and it's just an excuse for him to go play around." While this behavior may have endeared Ephriam to her viewing audience, real lawyers and judges worry that her conduct created "grossly false impressions of what transpires in courtrooms."¹⁰

Repeated use of this type of humor by real judges would subject them to disciplinary proceedings. Yet Ephriam's combination of preaching personal responsibility and judicial clowning made her competitive, as *Divorce Court* consistently ranked third among the court shows. When she was replaced at the end of 2007 with another black woman judge, the show's rating dropped significantly. Now *Divorce Court* ranks in the lower half of the 10 judge shows.

Christina Perez of *Christina's Court* illustrates most clearly the tendency of reality court shows to favor entertainment over legal decision making. Perez, an American born to immigrants from Colombia, hosts *La Corte de Familia* (Family Court) on Telemundo Television Network/NBC.¹¹ She is promoted as passionate about the law—triggering in the minds of those susceptible to racial and ethnic stereotypes the image of the Latin spitfire—but Perez shows little passion in court. Her demeanor, although appropriately judicial, collides with her tendency to interview parties about unrelated issues before handing down unexplained legal rulings. When a former Miss India sued another person for failing to repay a personal loan, Perez questioned her at length about her experiences as a beauty queen and even showed photographs and video clips of the plaintiff at various events—all unrelated to the legal claim. Perhaps because there is so little focus on the law, *Christina's Court* has not been a ratings success.

**Conventional
Justice Equals
Ratings Popularity**

Ironically it is a white woman and former New York City Family Court judge, Judy Sheindlin, who is largely responsible for the rebirth of reality court television shows. Her show, *Judge Judy*, consistently ranks among the top daytime television shows, lately even beating out *Oprah*. Billed as "a no-nonsense mother with little patience for squabbling litigants,"¹² Sheindlin, perhaps a variation on the stereotypical Jewish mother, demands accountability from legal rule breakers.

The show's website describes her as "smart, savvy, and opinionated," with a reputation for being "tough but fair." There are no claims about unconventional justice, and the trials portrayed on *Judge Judy* look very much like those in small claims courts around the country.

Similarly, the two next most popular shows, *Judge Joe Brown*, with black former Memphis judge Joe Brown and *The People's Court*, with Cuban-American Marilyn Milian, are law-focused courtroom shows. This might explain why among the Latina/o television judges, only Milian has been successful in this venue. Her show, *The People's Court*, currently ranks third among the daytime court shows. *Judge Alex*, with Alex Ferrer, the lone male Latina/o judge, ranks just above *Judge Hatchett*, which in the June 2008 sweeps of syndicated TV reality court shows beat out *Christina's Court* and *Judge Maria Lopez* as well as *Judge David Young*, which features the first openly gay reality court judge.¹³ Milian's success may have more to do with her show's law-focused approach than her brand of justice or personality. If so, her success may suggest that the current crop of Latina/o TV judges, all light-skinned with no accent, might fare better ratings-wise on law-focused rather than personality-focused shows, because law-focused shows rely less on stereotypical behavior to drive the show than do their judge-focused counterparts. On the other hand, the lack of ratings success for most Latina/o judges may be more easily explained as a result of the individual personalities of Perez, Lopez, and Ferrer than as a function of show format or audience receptiveness. Interestingly, none of the Latina/o judges are Mexican Americans, although this ethnic group constitutes the largest Latina/o population in the United States. Undoubtedly, the television producers and syndicators will continue to explore whether there is a large enough market for more than one Latina/o judge.

The Good and Bad of Judicial Diversity on Daytime TV Reality Court Shows

The presence of female and nonwhite male judges in integrated settings reassures viewers that justice in the United States is meted out impartially. While there are positive aspects to this portrayal of the courts, there are negative aspects as well. Arguably, the overrepresentation of women and nonwhite men on daytime reality court shows creates a "synthetic experience," a substitute for reality that feels real." Leonard

Steinhorn and Barbara Diggs-Brown call this phenomenon *virtual integration*, "creating the impression that the world is more integrated than it truly is."¹⁴

When virtual integration occurs in the minds of television viewers, it is easy for them to doubt claims that women and nonwhite men are underrepresented in the real-life judiciary and that American society needs to take meaningful steps to address this problem. Resulting misperceptions about the extent of judicial diversity may actually undermine popular support for increased racial and gender diversity on the bench by suggesting that our nation's benches are already diverse. Even worse, some members of the public may fear that women and nonwhite men have taken over the courts.¹⁵

This is not a farfetched concern. Political scientist Keith Reeves found that the least affluent and educated Americans have the greatest misperceptions about the socioeconomic status of blacks in America, believing them more successful than statistics suggest.¹⁶ Television is an especially prominent presence in the daily lives of this segment of American society, and these viewers tend to rely disproportionately on television as a primary source of information about the legal system.¹⁷ Distorted information about the prevalence and behavior of female and nonwhite male judges suggested by reality court shows can be powerful, because real-life courts remain largely hidden from public view. Further, since most reality TV judges are former real-life judges, even more sophisticated television viewers, who should know better, may unconsciously be influenced by the virtual integration phenomenon into believing that the real-life bench is more diverse than statistics suggest.

The Bottom Line

There are some distinctive differences between female and male reality television judges. Female judges are more likely to scream at and berate litigants, whereas male judges are more likely to use sarcasm. The behavior of black female television judges, who are just as likely to scream and berate litigants as the other female judges, may be judged more harshly by viewers because of preexisting negative stereotypes about "angry" black women.

There also are some lessons to be learned when comparing the popularity of these shows. A judge's television style may have a greater influence on a show's popularity than the judge's race and/or gender.

Shows where the judge's style seems too nontraditional are less popular than shows where the judge acts like viewers expect judges to behave. Georgia State Supreme Court Justice Sears reminds us, "Courtrooms must be places of order and decorum, places where justice is meted out. Judges must preserve this environment, lest the public comes to see the courts as uncaring and ineffectual circus, not to mention entertainment bonanza."¹⁸ This observation seems to apply to daytime television reality court shows as well.

For almost a decade, *Judge Judy* has reigned over daytime syndicated courtrooms. The success of Judge Judy, and highly rated black reality judges, may reflect the extent to which their on-screen behavior comports with conventional entertainment stereotypes ascribed to various groups based on race, religion, or sexuality. The fate of two white male former reality court judges suggests that the merger of law and entertainment on these shows results in a spectacle that perhaps demands a judge who is not a dull white male. *Judge Mills Lane*, starring the former Washoe County, Nevada, judge who gained national notoriety as a boxing referee when he disqualified Mike Tyson for biting off part of Evander Holyfield's ear in 1997, lasted only three seasons, never garnering respectable ratings. Likewise, *Texas Justice*, with Larry Moe Doherty, a Texas lawyer, ran for four and a half seasons before being cancelled in 2005, also due to low ratings.

If the spectacle of reality court shows disfavors white male judges, then the overrepresentation of women and nonwhite men among these shows reflects not only the demographics of the viewing audience, but also the commodification of nonwhites, particularly blacks, as sources of entertainment. Accordingly, who plays whom on daytime television today may have more to do with who is watching and what generates more money for corporate media owners than with any conscious effort to shape viewers' choices or influence viewers' perceptions about race and gender in American courtrooms.

Endnotes

1. Native Americans comprise less than 0.10 percent of all judges. See Federal Judicial Center, Judges of the United States Courts, <http://www.fjc.gov/public/home.nsf/hisj> (searchable database providing statistics of sitting federal

judges confirmed through Sept. 7, 2007); ABA National Database on Judicial Diversity in the State Courts, <http://www.abanet.org/judind/diversity/national.html> (last visited Mar. 25, 2008); Lynn Hecht Schafran, *The Amazing Rise of Women in the American Judiciary*, 36 U. TOL. L. REV. 953, 955 (2005).

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6. Kohm, *supra* note 3, at 696–97 (footnotes omitted).

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11. CristinasCourt.com, *About the Show*, http://cristinascourt.com/inside.asp?category_id=27 (last visited June 30, 2008).

12. Smillie, *Legal Eagles Fly High Through TV Airwaves*, CHRISTIAN SCIENCE MONITOR, Oct. 2, 1997, at 12.

13. Paige Albiniak, *Syndication Ratings: Judge Judy Strong in Courtroom, Resilient in Ratings*, BROADCASTING & CABLE, Mar. 11, 2008, available at <http://www.broadcastingcable.com/index.asp?layout=articlePrint&articleID=CA6540146>.

14. LEONARD STEINHORN & BARBARA DIGGS-BROWN, *BY THE COLOR OF OUR SKIN: THE ILLUSION OF INTEGRATION AND THE REALITY OF RACE* 144–5 (1999).

15. Sherrilyn A. Ifill, *Racial Diversity on the Bench: Beyond Role Models and Public Confidence*, 57 WASH. & LEE L. REV. 405, 480 n. 362 (2000).

16. Richard Morin, *Misperceptions Cloud Whites' View of Blacks*, WASH. POST, July 11, 2001 at A1 (quoting Keith Reeves of Swarthmore College).

17. Valerie Karno, *Remote Justice: Tuning in to Small Claims, Race, and the Reinvigoration of Civic Judgment*, in PUNISHMENT, POLITICS, AND CULTURE 261, 264 (Austin Sarat & Patricia Ewick, eds., 2004).

18. Leah Ward Sears, *Those Low-Brow TV Court Shows*, CHRISTIAN SCIENCE MONITOR, July 10, 2001, available at <http://csmonitor.com/durable/2001/07/10/p11s1.htm>.