

ARTICLE

HERE COMES THE JUDGE! GENDER DISTORTION ON TV REALITY COURT SHOWS

By: Taunya Lovell Banks*

*[W]e are seeing a shift from . . . the failed representation of the real . . . to . . . the impenetrable commingling of fiction and reality . . . representations no longer need to be rooted in reality. It is sufficient for images simply to reflect other images.*¹

*Law has become ... entertainment law.*²

I. INTRODUCTION

In 2000, television reality court shows replaced soap operas as the top daytime viewing genre. Unlike the prototype reality court show, *The People's Court* presided over by the patriarch Judge Wapner, a majority of reality court judges are female and non-white. A judicial world where women constitute a majority of the judges and where non-white women and men dominate is amazing. In real life most judges are *white* and *male*.

During that break-through 2000-2001 television viewing season, seven of the ten reality court judges were male — three white and four black. Of the three women judges, only one Judy Sheindlin of *Judge Judy* was white. The others, Glenda Hatchett of *Judge Hatchett*, and Mablean Ephraim of *Divorce Court*, were black. At the beginning of the 2007-2008 viewing season there were still ten shows but women judges outnumbered men, and only two judges, Judy Sheindlin and David Young, were white. Five of the six women judges are non-white — three Latinas and two black Americans as are three of the four males — two black and one Latino. Judicial diversity, however,

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¹ RICHARD K. SHERWIN, WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE 128 (2000).

² Lisa Scottoline, *Get Off the Screen*, 24 NOVA L. REV. 655, 656 (2000).

does not apply to Asian-Americans who remain absent from the benches of reality daytime television court shows.

Despite the integrated television reality court judiciary, many daytime viewers might be surprised to learn that women judges, especially black and other non-white women judges, are still the exception in real courts. Despite an almost equal percentage of women and men enrolled in American laws schools, women tend to be concentrated in less prestigious legal jobs after graduation.³ They currently comprise 18.67% of federal judges and twenty percent of state judges; the percentage of black judges, female *and* male, is around six to eight percent (8.6% federal, 5.9% state) and even lower for Latinas/os and Asian Americans.⁴ Thus the overrepresentation of white and non-white women on the television reality court show benches warrants closer examination.

Prior scholarship on reality TV court shows tends to focus on the shows' impact on public knowledge and perception about the justice system.⁵ There has not been a meaningful feminist critique of these

³ See generally Marina Angel, *Women Lawyers of All Colors Steered to Contingent Positions in Law School and Law Firms*, 26 CHICANO-LATINO L. REV. 169 (2006); Mary C. Noonan et al., *Pay Differences Among the Highly Trained: Cohort Differences in the Sex Gap in Lawyers' Earnings*, 84 SOC. FORCES 853 (2005) (comparing "the sex gap in earnings 15 years after graduation for two cohorts of lawyers and find that it has remained constant over time.").

⁴ See Lynn Hecht Schafran, *The Amazing Rise of Women in the American Judiciary*, 36 U. TOL. L. REV. 953, 955 (2005) (estimating the number of women state judges at "a little over" 20%); ABA National Database on Judicial Diversity in the State Courts, <http://www.abanet.org/judind/diversity/national.html> (last visited Mar. 25, 2008) (5.9% African American, 1.1% Asian/Pacific Islander, 2.8% Latina/o, 0.1% Native American); Federal Judicial Center, *Judges of the United States Courts*, available at <http://www.fjc.gov/public/home.nsf/hisj> (searchable database providing statistics of sitting federal judges confirmed through Sept. 7, 2007) (18.6% women, 8.6% African American, 0.8% Asian American, 5.4% Hispanic, and 1 Native American judge, or 0.08%).

⁵ See, e.g., Lawrence M. Friedman, *The One-Way Mirror: Law, Privacy, and the Media*, 82 WASH. U.L.Q. 319, 340 (2003); Steven A. Kohm, *The People's Law versus Judge Judy Justice: Two Models of Law in American Reality-Based Courtroom TV*, 40 LAW & SOC'Y REV. 693, 694 (2006) (comparing two models of law and justice embodied in two daytime reality court shows; and noting that "American television programming focusing on the law forms a significant part of the cultural legal landscape for many Americans. . . . The result of this can be unrealistic expectations about the nature of future careers in law and a more simplistic outlook on legal ethics."); Erika Lane, *The Reality of Courtroom Television Shows: Should the Model Code of Judicial Conduct Apply to T.V. Judges?*, 20 GEO. J. LEGAL ETHICS 779, 780-85 (2007); David Ray Papke, *From Flat to Round: Changing Portrayals of the Judges in American Popular Culture*, 31 J. LEGAL PROF. 127, 147-48 (2007); Kimberlianne Podlas, *Please Adjust Your Signal: How Television's Syndicated Courtrooms Bias Our Juror Citizenry*, 39 AM. BUS. L.J. 1 (2001) (discussing impact of the shows on juror attitudes); Kimberlianne Podlas, *The Monster in the Television: The Media's Contribution to the Consumer Litigation Boogeyman*, 34 GOLDEN GATE U. L. REV. 239, 260-69 (2004); Bruce Zucker and Monica Herr, *The People's Court Examined: A Legal and Empirical Analysis of*

shows. By “feminist critique,” I do not mean mere comparisons of female and male TV judges, but rather a more nuanced critique that considers the shifting gender and racial composition of the judges, the absence of white men and overrepresentation of non-whites females and males.

Uninformed television viewers might assume that judges on reality television court shows resemble and perform the same work as real life judges. If this is the case, then the prevalence of and preference for women judges on television may suggest that the viewing public believes women, especially non-white women, are as good or even better judges than men. But it also is possible that the prevalence of TV women judges may indicate just the opposite. During the late 1980s and early 1990s there were many films produced with women lawyers as main characters, yet women lawyers were not portrayed in as positive a light as their male counterparts.⁶

Thus it is important to more closely examine TV reality court judges to determine what messages the predominately non-white women judges on these shows transmit to audiences and why some judges are more popular than others. This essay looks at the gender and racial composition and demeanor of these television reality judges. What follows is not an empirical exercise, but rather a critical analysis by an observant daytime viewer who viewed these shows through a third-wave feminist legal lens⁷ mindful of the messages conveyed to the viewer about courts and judges.

This analysis asks whether women TV reality judges behave differently from their male counterparts and whether women’s increased visibility as judges on daytime reality court shows reinforces or diminishes traditional negative stereotypes about women, especially

the Small Claims Court System, 37 U.S.F.L. REV. 315, 322-24 (2003); Taunya Lovell Banks, *Will the Real Judge Stand-Up: Virtual Integration on TV Reality Court Shows*, PICTURING JUSTICE: THE ONLINE J. OF LAW & POPULAR CULTURE, (Jan. 2003), available at http://www.usfca.edu/pj/realjudge_banks.htm.

⁶ See Stacy Caplow, “Still in the Dark: Disappointing Images of Women Lawyers in the Movies”, 20 WOMEN’S RTS. L. REP. 55, 69 (1999); Cynthia Lucia, *Women on Trial: The Female Lawyer in the Hollywood Courtroom*, in FEMINISM, MEDIA, AND THE LAW, 146, 147 (Martha A. Fineman & Martha T. McCluskey eds., 1997); Louise Everett Graham & Geraldine Maschio, *A False Public Sentiment: Narrative and Visual Images of Women Lawyers in Film*, 84 KY. L.J. 1027, 1067 (1996).

⁷ Early feminists focused first on removing legal barriers to full equality for women, they were followed by so-called second wave feminists who focused on substantive equality but who tended to adopt an essentialist approach to feminism ignoring the heterogeneity among women based on socio-economic status, sexuality, age, race, ethnicity, disability, religion and citizenship status, among many other aspects of identity. Third-wave feminist seek to approach gender equality from a more comprehensive perspective looking at various forms of subordination that disproportionately impact women.

non-white women. These are important questions because public perceptions of law and legal institutions influence the practice of law and societal perceptions about the legitimacy of law and legal institutions.⁸ These perceptions may affect whether more women are elected or appointed as judges in the United States and which women get selected. Thus perceptions about the competence of black and Latina women jurists in particular, whether true or false, have serious implications for the legal system and any quest for a more representative judiciary in the United States.

II. DAYTIME “REALITY” COURT SHOWS: APPEARANCE VS. *REAL* REALITY

Most of the new court shows and judges bear little resemblance to Judge Joseph A. Wapner, the retired Los Angeles County judge on *The People’s Court* in the mid 1980s. Contemporary reality television courts “essentially . . . exploit law and [the] trial process to . . . air dirty laundry,”⁹ something that rarely occurred on Wapner’s *The People’s Court*. The new court shows also grossly distort public notions about acceptable judicial behavior as well as the demographics of the American judiciary.

Some people dismiss the influence of reality court shows by labeling them low-brow and assume that most people do not take them seriously. But as Georgia State Supreme Court Justice Leah Ward Sears writes:

Because the sets are dressed to look like courts of law and are presided over by lawyers in black robes who at least used to be judges, and involve people who have agreed by contract to have their real court cases settled on television, people tend to take these shows very seriously. As they should. But this poses some serious problems.¹⁰

⁸ Erika Lane reports: “the State of California Commission on Judicial Performance, a state organization that investigates judicial misconduct, frequently receives complaints from California citizens about disappointment because judges were entirely different than what was expected, based on viewers’ perception from syndicated-shows.” Lane, *supra* note 5, at 784 (citing Lawrence M. Friedman, *Lexitainment: Legal Process as Theater*, 50 DEPAUL L. REV. 539, 552 (2000)). Zucker and Herr report: “Television courtroom dramas have had such an effect on the public that in some cases, winning parties in judicial actions have reported that they are actually upset with the outcome of their case because the judge ‘has not humiliated their opponent.’” Zucker and Herr, *supra* note 5, at 323-24.

⁹ Michael M. Epstein, *Judging Judy, Mablean and Mills: How Courtroom Programs Use Law to Parade Private Lives to Mass Audiences*, 8 UCLA ENT. L. REV. 129, 129-31 (2001).

¹⁰ 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>.

Even if most television viewers know better, the least educated viewers are more likely to rely disproportionately on television as their primary source of information about the legal system,¹¹ and these viewers constitute a substantial portion of the daytime viewing audience.¹²

Television critic David Zurawik writes: “Television is supposed to help viewers get the kind of information they need to act as responsible citizens in a democracy — not confuse them. But how are we to expect clarity in a genre that is built on making the artificial seem real?”¹³ Despite their entertainment value, the impact of reality court shows on viewer’s perceptions of the legal system, including attitudes about the judiciary, should not be underestimated. The next section focuses on the contemporary prototype reality court show, *Judge Judy*, identifying those aspects of this show that make it the most popular daytime syndicated series.

III. *JUDGE JUDY*: THE PROTOTYPE TELEVISION REALITY COURT JUDGE

Judy Sheindlin, a former New York City Family Court Judge, is largely responsible for the current resurgence in the popularity of

¹¹ Valerie Karno, *Remote Justice: Tuning in to Small Claims, Race, and the Reinvigoration of Civic Judgment*, in PUNISHMENT, POLITICS, AND CULTURE 261, 264 (Austin Serat & Patricia Ewick eds., 2004) (noting that the advertisements on televised small claims court shows “seem to be targeting the unemployed, uneducated sector of the U.S. population”); Kohm, *supra* note 5, at 696 (noting “The final reason it is important to grapple analytically with the reality court TV phenomenon is related to the presumed audience to which the programs are marketed. Daytime television has traditionally been directed toward housebound female audiences, and the recent crop of daytime reality judging programs clearly follows this trend. The preponderance of female judges — and to a lesser extent African American male judges — at the center of the reality-based courtroom genre is strong evidence of a presumed female and indeed racialized audience.”) (citation and footnote omitted). Kohm continues, “The strategy of using judges drawn from racial minority groups seems to be an effective tool in attracting minority viewers. A recent Nielsen Media analysis of African American audiences in 2004 shows that the audience of Judge Mathis is 51% African American — the highest proportion of African American viewers of any daytime reality courtroom program.” *Id.* at 97 (footnotes omitted).

¹² Consider the following example. In 2001 after watching *Judge Judy* and *Judge Joe Brown*, the two most popular reality court shows, thirty-five year old Anthony Widgeon thought he knew how the U.S. court system worked. He knew about “suppressing the evidence and all that good stuff.” Confident, Widgeon appeared in a Virginia circuit court, without a lawyer, on a domestic matter, thinking he could delay the case by moving for a continuance. Shocked when the judge preceded anyway, Widgeon, after being quickly locked up, learned the hard way that real court is not like *Judge Judy* or *Judge Joe Brown*. Mike Saewitz, *Many Judge U.S. Justice System By TV Courtroom Shows*, THE VIRGINIAN PILOT, Oct. 3, 2001, at E1. Over the years lawyers and judges have told me similar stories.

¹³ David Zurawik, *Beware — Reality TV Has Escaped From the Set*, BALT. SUN, Dec. 14, 2003, at 8F.

reality court television shows. Her show, *Judge Judy*, consistently ranks among the top twenty daytime television shows. Unlike the fatherly Judge Wapner, Sheindlin is “a no-nonsense mother with little patience for squabbling litigants.”¹⁴ “To sustain her reputation as a stern judge . . . she is given to shrill, sudden shouts of ‘Quiet!’ when interrupted.”¹⁵ Nevertheless, the trials portrayed on *Judge Judy* are not totally lacking in reality and “[t]he frustration that Judge Judy exhibits and acts on is realistic. Litigants [in *pro se* courts] can be unpleasant, rude to the judge and to the opposing party, painfully repetitious, and unprepared, and judges can find that frustrating.”¹⁶ But in actual small claims court judges are more vigilant in controlling poor behavior and limiting arguing between the litigants because real judges have no desire to entertain onlookers.

In contrast to Sheindlin, the focus of black women reality court judges seems slightly different. Mablean Ephriam and Glenda Hatchett, the first black women judges, presented themselves differently and, as a result, may be perceived differently by viewers because of negative stereotypes about blacks and black women in particular.¹⁷ The next section discusses this point in more detail.

IV. BLACK WOMEN DAYTIME TELEVISION REALITY COURT JUDGES

A. Mablean Ephriam: *Divorce Court*

The original *Divorce Court* actually predates Wapner’s *The People’s Court* airing initially from 1957-1969 and again from 1985-1992, but the disputes in the two earlier versions were fictional.¹⁸ In August 1999 a revived and revamped version of *Divorce Court* aired becoming a popular reality judge show.¹⁹ The “judge” was Mablean

¹⁴Dirk Smillie, *Legal Eagles Fly High Through TV Airwaves*, THE CHRISTIAN SCIENCE MONITOR, Oct. 2, 1997, at 12.

¹⁵ Reuven Frank, *Courting the Viewers*, THE NEW LEADER, Feb. 24, 1997 at 20.

¹⁶Jennifer Cromwell, *Small Claims Court and Judge Judy: Is Life Imitating Art?* Video project prepared for my *Law in Film* class at Washington College of Law, American University, April 24, 2001, 6. (manuscript and video on file with author).

¹⁷ Black women are often stereotyped in negative and often conflicting ways as bad mothers and simultaneously emasculating matriarchs, promiscuous red-hot mamas or asexual Mammies, superwomen and dependent welfare mothers. Literature and film portrays black women as Mammy or Prissy, Jezebel, Topsy, Eliza or Sapphire. Adele Alexander, *She’s No Lady, She’s a Nigger: Abuses, Stereotypes and Realities from the Middle Passage to Capitol (and Anita) Hill*, in RACE, GENDER, AND POWER IN AMERICA 3, 18 (Anita Faye Hill & Emma Coleman Jordan eds., 1995) (discussing common stereotypes attributed to black women).

¹⁸ Thus technically only the latest version of *Divorce Court* qualifies as a daytime reality court show. Scottoline, *supra* note 2, at 656-57.

¹⁹*Id.*

Ephriam, a Mississippi-born Los Angeles lawyer, who practiced family law but never was a judge. Despite the show's name, Ephriam is not empowered to grant divorces. Instead, she acts as a mediator for petty domestic claims growing out of litigants' dissolved or dissolving marriages. While purporting to adopt the no nonsense style of her role model, Judge Judy,²⁰ Ephriam seems more concerned with the well-being of the litigants than application of the law to their disputes, intermingling personal counseling with her rulings.

In a dispute between an estranged black couple over reimbursement for a weight loss program, it becomes clear that the plaintiff (the wife) still loves her husband and has not gotten over the break-up of their marriage. The plaintiff who expected her husband to support her financially is outraged that she has to pay spousal support. In response Ephriam lectures the woman that "we are all equal now," referring to the push by feminists and, one assumes, black civil rights activists for equality before the law. The result, Ephriam notes, is that wives, like husbands, have an equal obligation to support their former spouses. Then Ephriam, a divorced mother with children, continues to lecture the woman plaintiff, making a personal reference about the difficulty of moving on with one's life when you still love someone. In chambers following this trial, she continues this discussion with her bailiff, clearly lecturing the audience not about resolving legal issues, but about resolving painful personal issues. This is moralizing not impartial decision-making, it is "therapeutic justice."²¹

On one level, there is a certain irony about a black woman telling another black woman that we are all equal now, at least in the eyes of the law. Given continuing evidence of anti-black bias, many commentators would disagree with Ephriam's statement. Yet, her comment carries incredible power when she is positioned as a *real* judge in a *real* court proceeding. Thus, her comments about equality may call into question the beliefs and experiences of some viewers, especially other black women. But on another level many viewers may applaud Ephriam for adopting a more humane approach to legal disputes. Unlike most real-life judges she seems genuinely concerned about the parties' well-being, not just about how their dispute should

²⁰ Reuven, *supra* note 15, at 20.

²¹ Some commentators view the operation and application of the law as resulting in anti-therapeutic consequences and call for the development of a more therapeutic jurisprudence. For a discussion of therapeutic justice in the context of mediation proceedings see Ellen A. Waldman, *The Evaluative Facilities Debate in Mediation: Applying the Lens of Therapeutic Jurisprudence*, 82 MARQ. L. REV. 155, 158-60 (1998).

be resolved by applying legal principles. She makes judges seem more human.

To another set of television viewers, Ephriam is a discomfoting image. Dark skinned, and until recently physically large, she is prone to roll her eyes, and may remind some viewers of the stern Mammy figure in the provocative film classics like *Birth of a Nation* or *Gone with the Wind*. The Mammy figure in these films protects and upholds the honor and beliefs of her white masters, even after emancipation. Mammy “acquiesce[s] to and support[s] White supremacy.”²²

According to Pamela Smith, many whites today still “search for the Mammy in all Black women.”²³ Black working women continue to be perceived as either Sapphire (the angry black woman) or Mammy.²⁴ But the Mammy character is Sapphire’s stereotypical opposite. The modern or reworked Mammy, best typified according to Smith by Oprah Winfrey, works outside the home and may even be portrayed as occupying a position of power.²⁵ Because the image of black women as Mammy is so pervasive, it becomes, consciously or unconsciously, the expected and preferred behavior for some black working women.²⁶ Thus, it is possible for a black woman judge to be perceived by some viewers as a modern-day Mammy.

While other viewers might argue that Ephriam is more of a modernized Sapphire than Mammy, Smith sees a clear distinction between these two stereotypical images, writing:

²² Pamela J. Smith, *Part II – Romantic Paternalism — The Ties That Bind: Hierarchies of Economic Oppression That Reveal Judicial Disaffinity for Black Women and Men*, 3 J. GENDER RACE & JUST. 181, 197 (1999). Pamela Smith also writes that Mammy is “typically portrayed as overweight, dark, and with characteristically African features.” Pamela J. Smith, *Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Authority*, 6 WM. & MARY J. OF WOMEN & L. 53, 120 (1999). Regina Austin describes “Mammy ... [as] ‘the perfect slave — a loyal, faithful, contented, efficient, conscientious member of the family who always knew her place; and she gave the slaves a white-approved standard of black behavior!’” Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539, 570 (1989).

²³ Smith, *Teaching the Retrenchment Generation*, *supra* note 22, at 118.

²⁴ Regina Austin describes the stereotypical Sapphire, a character on *Amos ‘N’ Andy*, a radio and then later a television show, as a “tough, domineering, emasculating, strident and shrill” black woman. Austin, *supra* note 22, at 539-40.

²⁵ Smith, *Teaching the Retrenchment Generation*, *supra* note 22, at 121. A brown-skinned woman, Winfrey rose to popularity as an overweight talk show host. Despite her wealth and power Winfrey still comes across to her audience as a nurturing mother surrogate. In a footnote Smith cites examples of other modernized television mummies, two full-figure talk show hosts, Star Jones of *The View* and Mother Love of *Forgive or Forget*, along with Whoopi Goldberg who one newspaper’s readers voted best suited to Mammy in a modern version of *Gone With The Wind*. *Id.* at 120 n.255.

²⁶ Smith, *Part II - Romantic Paternalism*, *supra* note 22, at 197-98.

What separates Sapphire from Mammy is who benefits from the Black woman's efforts. . . . Mammy's acceptability is grounded in the fact that she uses her assets (and liabilities) for the benefit of her white charges. . . . not for her . . . aggrandizement or the aggrandizement of her people. . . . her every effort is designed to further white supremacy and Black acquiescence. In contrast, Sapphire's efforts are not intended to benefit whites and instead are for her own aggrandizement.²⁷

Ephriam as the upholder of the law benefits the dominant culture.

Perhaps, characterizing Ephriam as a modern Mammy may be too harsh an indictment. Nevertheless, her bugging or rolling eyes and other gestures on the bench are reminiscent of minstrel clowning and undoubtedly invoke those images in the minds of some viewers. Then again, negative stereotypes also might attach to Judy Sheindlin's behavior. She is Jewish, and unlike the mild waspish Judge Wapner, her tart tongue may be seen by some audiences as stereotypical behavior for a Jewess. But I may simply be buying into the power of the stereotype.²⁸

When the seventh season began Judge Ephriam appeared without her trademark glasses and showing off her new figure.²⁹ Although her behavior did not change, Ephriam, with her new glamorized image, looks less like a traditional Mammy. Her changed physical appearance had an impact. In March 2006 Fox Television Network fired Ephriam when she asked for an increase in salary³⁰ and replaced her with a light skinned "more conventionally attractive" black woman, Lynn Toler, a former administrative judge from Ohio.³¹ The

²⁷ Smith, *Teaching the Retrenchment Generation*, *supra* note 22, at 128 n.286.

²⁸ Perhaps it is our own stereotypical images of black women as Mammies, reinforced by both film and television that are deeply embedded in even the most progressive minds. Visual images, especially images projected through the intimacy of television, have the power to subvert *all* viewers and even television judges. Yet still other viewers may see little difference in the behaviors of Ephriam, Judge Judy and many real-life judges. Like real-life judges, both judges uphold the status quo and apply middle-class societal values.

²⁹ Between seasons she lost a significant amount of weight on another television reality show, VH1's *Celebrity Fit Club*. Don Kaplan, *Lighter Scales of Justice – Celebrity Judge Drops Lbs.*, N.Y. POST, Aug. 25, 2005, at 83 (noting that Ephriam lost "about 70 pounds . . . over the summer . . . Ephriam also doesn't need her trademark glasses anymore. As part of her own personal celebrity makeover, the judge underwent Lasik eye surgery.").

³⁰ R.D. Heldenfels, *Dennis the Missing*, TULSA WORLD, Oct. 29, 2006, at 46 ("Mablean Ephriam left the [Divorce Court] series after seven seasons when she and the show could not agree on a new contract. Issues reportedly included money (with Ephriam saying she was getting paid less than other TV judges), workload and Ephriam's hairstyle. She was replaced by Lynn Toler, who was also a judge in real life.").

³¹ DivorceCourt.com, Meet Judge Toler, http://www.divorcecourt.com/text.asp?category_id=50 (last visited Sept. 29, 2008).

ratings dropped twenty percent!³² Perhaps some viewers missed seeing a black woman in authority that looked like them.

B. Glenda Hatchett: Judge Hatchett

By incorporating periodic counseling of litigants, Judge Ephriam deviates somewhat from the traditional style of television reality court show judges. A more openly therapeutic version of Ephriam's successful formula was adopted by Glenda Hatchett, whose show, *Judge Hatchett* premiered in fall 2000. Columbia TriStar unveiled *Judge Hatchett*, and characterized Hatchett, a black woman and a former Juvenile Court judge, as someone who "reportedly punishes litigants beyond the small-claims court threshold, and the ensuing punishment is documented via videotape."³³ The publicity for the show also characterized Hatchett as a "very tough but very compassionate [judge who] . . . doesn't take any grief from anybody. . . ."³⁴ In an interview with the black-owned *Amsterdam News*, she described her show as "a forum where I can reach beyond the young people that I impacted in my courtroom 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."³⁵

During the first season the show opened by touting Hatchett's prior judicial experience, saying that she offers an "unconventional brand of justice" and "will do whatever it takes to make a difference." This description of her judicial role does not squarely fit with any stereotypical depictions of black women, except, perhaps the more general racial stereotype of black Americans as lawless and disrespectful of conventional justice. Her actions on the show during the first season reflected this new kind of justice.

In one episode a mother sued her daughter for ruining the mother's credit by defaulting on rental payments for an apartment secured by the mother. Judge Hatchett not only ordered the daughter to repay the

³² Marc Berman, *Mr. Television: Syndication Nation*, MEDIA WEEK, June 11, 2007, at 34 ("You have to wonder why Lynn Toler replaced slimmed-down Mablean Ephriam on Divorce Court. Without Ephriam, ratings have crashed and the show is not nearly as compelling."); Marc Berman, *Syndication Report: Part 1/2006-07 Season*, 16 MEDIA WEEK 45, Dec. 11, 2006, at 14 ("Twentieth Television's veteran Divorce Court (with Judge Lynn Toler in place of Judge Mablean Ephriam) has suffered dropoff. Comparably, Divorce Court is down by 20 percent in households (to 2.0 from 2.5), 15 percent in women 18-49 (to 1.1 from 1.3) and 14 percent in women 25-54 (to 1.2 from 1.4).").

³³ Chris Pursell, *Judge Hatchett Upgraded*, 19:36 ELECTRONIC MEDIA p8, 1/7p, 1c (09/04/2000).

³⁴ *Id.*

³⁵ *On Sept. 11, Here Comes The Judge: Hatchett*, N.Y. AMSTERDAM NEWS, Sept. 13, 2000 at 22.

money, but also arranged for the daughter (a twenty-eight year old unmarried mother of five children who was expecting twins) to get counseling and job training. Hatchett also expressed a desire to help the mother repair her credit. All of these solutions go beyond traditional judicial remedies. Thus, Hatchett's court seems more like a social service office than a traditional court of law.

Surprisingly, her unconventional approach in the courtroom failed to garner high ratings, so when the next viewing season debuted gone were the references to Hatchett's unconventional form of justice. Instead, she reemerged in the court's opening as a tough talking berating judge, much like the stereotypical emasculating Mammy or Judge Judy. The show's new introduction is a series of contradictory video clips. The first clip looks and sounds like the old Hatchett. She is shown embracing a child and saying "I did it to save your life." The next clip looks like the introduction to other popular reality court shows. Hatchett asks two sets of litigants "who threw the first blow" and both parties respond simultaneously by pointing to the other side. Her demeanor changes abruptly in the final two clips. Both clips show her grimacing face saying "there is going to be hell to pay" and "do you want me to come off this bench!"

The revamped *Judge Hatchett* sends confusing messages to the viewers. On one hand, Hatchett seems like a compassionate caring judge who is willing to go outside the traditional legal parameters to resolve disputes, but her conciliatory approach is uneven. Sometimes she calls in counselors for the parties and other times she does not. At other times, she is more aggressive using strong threatening language uncommon for even the toughest real life judge. Her modified style is reflected in the cases she hears. Some are family court cases, involving wayward children or paternity questions, but increasingly the show solicits more salacious or contentious cases with little real legal content. In these cases rather than dispensing with irrelevant factual details, Hatchett often lets the disputing parties go on at length with irrelevant descriptions of each party's bad behavior returning briefly at the end to apply the law in resolving the legal aspect of the dispute. Thus the show often sounds like a soap opera that takes place in a courtroom.

The show's ratings improved slightly after the revised format allowing Hatchett to survive for five seasons, but *Judge Hatchett* remained in the ratings basement for reality court shows. Original

production ended in spring 2008.³⁶ The fate of *Judge Hatchett* suggests that television ratings strongly influence show format and judicial behavior of television judges. Hatchett's original demeanor as a caring judge willing to go outside the law did not fit neatly with the audience's expectation or preference for a more hard-nosed judge. Initially Judge Hatchett, her open robe worn like a jacket, was interested in doing what was best for the litigants, not necessarily what was dictated by the legal system.³⁷ When low ratings threatened the show Hatchett adopted a format similar to more successful women television reality court judges. Rather than present a positive image of a black woman judge to counter contemporary televised stereotypes, she was forced by the market to conform to a more Mammy-like model as the bossy black woman upholding the law.

V. LATINA/O REALITY COURT JUDGES

Like black women judges, the preferred television court room behavior for some Latina judges may be influenced by racially or ethnically tinged stereotypes. During the 2007-2008 viewing season, there were three female and one male Latina/o judges on daytime television reality court shows. Except for Judge Marilyn Milian on *The People's Court*, Latina/o judges are a recent addition to daytime courtrooms.

A. Marilyn Milian: *The People's Court*

Marilyn Milian, a former Miami-Dade Circuit Court judge, was the first Latina judge on a daytime reality court show.³⁸ Prior to *The People's Court* judges had persistently low ratings and a revolving door of white male judges.³⁹ The ratings improved when Milian took

³⁶ 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>.

³⁷ Her actual personal philosophy is reflected in a book she co-authored in 2003. GLENDA HATCHETT & DANIEL PAISNER, *SAY WHAT YOU MEAN AND MEAN WHAT YOU SAY!: 7 SIMPLE STRATEGIES TO HELP OUR CHILDREN ALONG THE PATH TO PURPOSE AND POSSIBILITY* (2003).

³⁸ Lynda Richardson, *From the Bench, Judgment and Sass*, N.Y. TIMES, Mar. 27, 2001, at A25. An article discussing Milian's presence on *The People's Court* starts: "As the glamorous new judge wielding the television gavel on 'The People's Court,' Marilyn Milian wears crimson lipstick and matching fingernails." It is highly unlikely that a male judge would be described in such physical terms. So Judge Milian's gender even more than her ethnicity is the focus of the article. Only three paragraphs later does the article mention that she is both the first female judge on *The People's Court* and the first "Hispanic" judge. *Id.*

³⁹ After Judge Joseph A. Wapner left the show in 1994 the show ended only to be revived in 1997 with Edward Koch, the former mayor of New York City as the "judge" (1997-99)

the bench.⁴⁰ Most of the time, she focuses on the legal issues and minimizes irrelevant personal details. There are infrequent outbursts directed at disrespectful or disruptive litigants causing some viewers to wonder whether Milian, a “white-looking” Cuban-American, is really a closeted stereotypical Latin spitfire.⁴¹ It is unclear, however, whether Milian’s popularity stems from her personality or ethnicity.

Judge Steven Kohm argues that *The People’s Court* has a law-focused format unlike *Judge Judy* whose format is personality-focused.⁴² Thus on *The People’s Court* “[l]aw is a symbolic resource for the program, legitimating not only the decision making of the judge, but also the very authority the judge relies on for authenticity.”⁴³ So *The People’s Court* differs from the other television reality court shows. Any moralizing or commentary occurs outside the court room when Harvey Levin, characterized as the “host and legal reporter,” periodically interviews spectators in Times Square during the show.⁴⁴ The different format may explain why Milian can be a ratings success without resorting to the theatrics of Sheindlin, Ephraim, or Hatchett.

Personality-focused reality court shows like *Judge Judy* tend to reflect the personal ideology of the judge — the “charismatic lawgiver” or “ultimate truth machine,”⁴⁵ a situation Kohm argues represents “a distinctly anti-democratic vision of law.”⁴⁶ More than the personality-focused Sheindlin, Ephraim, or Hatchett, Milian’s demeanor mimics conduct deemed judicial by most of real-life judges.

followed by former New York State Supreme Court Judge Jerry Sheindlin, the husband of Judge Judy (1999-2001). Kohm, *supra* note 5, at 701.

⁴⁰ Lola Ogunnaike, *Don’t Mess with the People’s Judge*, N.Y. TIMES, July 2, 2006, § 2, at 24 (“She is the show’s first Hispanic judge and its first woman; and, at 45, she is significantly younger than the three men who wielded the gavel before her, all of which appears to be a good thing. Under her brash, no-nonsense watch, the show’s ratings have increased 72 percent.”).

⁴¹ See Maria L. Ontiveros, *Three Perspectives on Workplace Harassment of Women of Color*, 23 GOLDEN GATE U. L. REV. 817, 820 (1993) (Latina women stereotyped as “hot-blooded” and very sexual).

⁴² Kohm, *supra* note 5, at 700-01.

⁴³ *Id.* Kohm continues, the law “reinforces the rational-legal nature of judicial authority... by placing the law firmly in the hands of the citizens.” *Id.* at 701.

⁴⁴ *Id.* at 702. Kohm writes: “[T]he narrator advocates a more participatory process. Judges may come and go, but the court remains ‘our’ collective property.” *Id.* at 701. “What separates *Judge Judy* from *People’s Court* is its insistence on viewing Judge Judy as the sole location where law and justice reside If we revere Judge Judy, it is because she evidences a unique ability to solve problems where others are incapable, like a modern-day Solomon. This is markedly different from the rational-legal authority embodied in *People’s Court*” *Id.* at 704-05.

⁴⁵ *Id.* at 704.

⁴⁶ *Id.* at 703.

Undoubtedly influenced by Milian's success, and the growing Latina/o daytime viewing audience,⁴⁷ more Latina judges entered daytime television. Television advertisers as well as media corporations are ever mindful of changing viewer demographics.

B. Christina Perez: Christina's Court

Christina Perez, the judge on *Christina's Court*, is a former Los Angeles judge. Previously she hosted *La Corte de Familia* (Family Court) on Telemundo Television Network/NBC which aired internationally in fifteen countries.⁴⁸ Her addition to the syndicated English language reality court show line-up probably reflects an attempt to draw Latina/o audiences from Spanish language channels like Telemundo.⁴⁹

The show's website highlights the immigrant background of American-born Perez's Columbia-born parents:

Growing up, Cristina was exposed to all walks of life, cultures, and differing problems facing each community. She watched her parents struggle with racism, finances, and adapting to the U.S. culture with a foreign language. Cristina learned to speak English around the age of 10 and today has mastered both languages. With her unique and well-rounded background, Cristina credits her family's example and desire to remain close to her heritage and culture for all of her personal and professional achievements.⁵⁰

The introduction to her show touts Perez as "direct and fair-minded with a deep passion for the law and ordinary people." This passion leads her to "take the law into her heart." But this promised passion for the law is missing from the show since there was virtually no discussion of law on three recently viewed programs. Instead, during a case about the failure to repay a personal loan, Perez questioned the plaintiff, a former Miss India, at length about her experiences as a beauty queen, showing photographs and video clips of the plaintiff at various events. Then she ruled on the legal issue without explanation. During another case viewers got a detailed description of the plaintiff's modeling career and business dealings, information totally unrelated to the legal claim.

⁴⁷ Jeff Zbar, *Law and Disorder Are Hot: English-language Telenovelas, Court Shows Are on the Rise as Syndicators Reach for Hispanics*, ADVERTISING AGE, Mar. 27, 2006, at S13.

⁴⁸ CristinasCourt.com, http://cristinascourt.com/inside.asp?category_id=27 (last visited Sept. 29, 2008).

⁴⁹ Her website cites her as "a fine-tuned example of a successful Spanish to English market crossover." *Id.*

⁵⁰ *Id.*

Perez's style is similar to real judges except that she asks litigants totally irrelevant questions designed to draw out parties' stories. As a result she seems more like an interview show host sitting on an elevated perch. Perez's personal style seems better suited for a law-focused show like *The People's Court* rather than the show's personality-focused format. The seeming disconnect between Perez's judicial style and the show's format may explain the low ratings.⁵¹

C. Maria Lopez: *Judge Maria Lopez*

Maria Lopez of *Judge Maria Lopez* is the stereotypical "feisty" Latina judge, yet ironically her show has the lowest ratings.⁵² In the show's opening she is shown saying that "there is only one person who decides the truth here, me." In the background the words "passionate," "strong," "experienced," "fair," "tough," and "pioneer" appear on the screen as Lopez recounts her arrival as a young child in the United States as a Cuban refugee. After speaking a few words in Spanish, Lopez ends the introduction to the show with "You talk about the American dream, I *am* the American Dream."

Lopez, a former judge with fifteen years of experience, was the first Latina named to the Massachusetts Supreme Court.⁵³ Her televised judicial image and courtroom behavior is consistent with the personality-focused reality court show, thus her lack of success is puzzling. Lopez attempts to incorporate more legal lessons into each show than most reality court judges, yet fails to connect with the daytime viewing audience. Perhaps her feistiness may remind viewers more of the stereotypical Latin spitfire than the hardnosed Judy Sheindlin, and this difference may explain why her show is less popular than *Christina's Court*. In addition, the immigrant story when advanced by a Latina as opposed to a European may have less currency with poor and working-class viewers today given the rise of anti-immigrant sentiment in the United States. There even may be some ethnic or cultural factors since most Latina/o viewers are Mexican Americans and Lopez is Cuban American, but this is mere speculation.

Among the Latina/o television judges, only Judge Milian has been successful in this venue. Both *Christina's Court* and *Judge Maria Lopez* rank at the bottom of the syndicated TV reality court show

⁵¹ Albiniak, *supra* note 36.

⁵² *Id.*

⁵³ Roger Catlin, TV Eye: *Back in the Court*, Sept. 18, 2006, available at http://blogs.courant.com/roger_catlin_tv_eye/2006/09/back_in_court.html.

ratings. In the February 2008 sweeps, *Christina's Court* tied with the soon to be discontinued *Judge Hatchett*, just above *Judge Maria Lopez*. All three women were beaten out, but just barely, by Alex Ferrer of *Judge Alex*, the lone male Latino judge.⁵⁴

Perhaps Latina/o judges fare better on law focused rather than personality-focused reality court shows because the former rely less on stereotypical behavior to drive the show than the latter. On the other hand, the lack of ratings success of most Latina/o judges may have more to do with the individual personalities of Perez, Lopez and Ferrer than with show format or audience receptiveness. This is a topic worthy of further study, assuming the latest group of Latina/o reality court judges survive. In the meantime, *Judge Judy* continues to reign over daytime syndicated court rooms with an audience that has grown steadily. In February 2008, *Judge Judy* was the top rated daytime show, beating out Oprah.⁵⁵

VI. REFLECTIONS ON GENDER OVERREPRESENTATION

Overall, there are some distinctive gender differences between female and male reality television judges. To achieve successful ratings, women judges on personality-focused daytime reality court shows must adopt a style that is tart and aggressive. Thus they are more likely to scream and berate litigants, whereas male judges are more likely to use sarcasm. This behavior when adopted by black women television judges, who are no more likely to scream and berate litigants than other women judges, may be judged more harshly by viewers because of pre-existing negative stereotypes about black women. But the same behavior may be totally ineffective when adopted by Latina women judges. Overall, viewers prefer shows where the judge acts like viewers expect real-life judges and dislike non-traditional judges.

There is some research suggesting that daytime reality court television viewers' perceptions about real-life judges are influenced by these shows. In 2000, Kimberlianne Podlas conducted a small study of jurors in the District of Columbia, Manhattan and Hackensack, New Jersey and found that reality television court shows "cultivate in frequent viewers' beliefs that judges are (and should be) . . . aggressive, expressive, opinionated, inquisitive; [and] should indicate

⁵⁴ Albiniak, *supra* note 36.

⁵⁵ *Id.*

their opinion about . . . evidence or witnesses.”⁵⁶ But Podlas’s study did not control for gender or race differences, so it is unclear whether a judge’s television style, rather than the judge’s gender or race, is a greater influence on a show’s popularity or whether the type of show, law-focused versus personality-focused, is a factor.

Finally, there is another, albeit smaller consequence of television reality court shows’ popularity. The judges on these shows earn much more money as television judges than they did as real-life judges.⁵⁷ Many women TV judges had prominent judicial careers. Glenda Hatchett, for example, “one of the youngest and most distinguished African-American women ever to serve as the presiding judge of a state court,”⁵⁸ left her position as Chief Judge of the Juvenile Court in Fulton County, Georgia for the lure of a more lucrative career as a television judge.⁵⁹ This development is troubling, given the low number of non-white women in the American judiciary.

Almost a decade ago Sherrilyn Ifill worried that the overrepresentation of black judges on television shows generally sends an erroneous message about the extent of black representation in the real life judiciary. This distortion may actually “undermine popular support for increased racial diversity on the bench by suggesting that our nation’s benches are already racially diverse or that blacks have ‘taken over’ the courts.”⁶⁰ Her fears may not be unfounded. Leonard Steinhorn and Barbara Diggs-Brown, write that the intimacy of television “creates a bond between actor and viewer, between a character and the public . . . [that] offers . . . ‘synthetic experience,’ a substitute for reality that feels very real . . . a television lawyer [or judge] becomes our model for the real thing.”⁶¹

⁵⁶ Kimberlianne Podlas, *Blame Judge Judy: The Effects of Syndicated Television Courtrooms on Jurors*, 25 AM. J. TRIAL ADVOC. 557, 570 (2002).

⁵⁷ Tom Dorsey, *TV News and Reviews: TV judges happy to settle for huge salaries, popularity*, THE COURIER-JOURNAL (Louisville, Kentucky), Sept. 5, 2007 at E5 (noting that the salary of an associate justice on the U.S. Supreme Court earns \$194,000 per year substantially less than most reality court judges; Judy Sheindlin, the highest paid TV reality judge, earns approximately \$30 million per year). Glenda Hatchett earns more on television than the \$111,000 she earned as Chief Judge of Fulton County Georgia’s Juvenile Court. Lyle V. Harris, *Hatchett’s justice*, THE ATLANTA JOURNAL-CONSTITUTION, Sept. 7, 2000, at D1.

⁵⁸ Albinia, *supra* note 36, at 22.

⁵⁹ Jamie Vacca, *Raising the Bar*, ATLANTA, Mar. 2001 at 94.

⁶⁰ Sherrilyn A. Ifill, *Racial Diversity on the Bench: Beyond Role Models and Public Confidence*, 57 WASH. & LEE L. REV. 405, 480 n.362 (2000) (citing Patricia J. Williams, SEEING COLORBLIND FUTURE: THE PARADOX OF RACE 29 (1st ed., The Noonday Press 1997) (1997)).

⁶¹ Leonard Steinhorn & Barbara Diggs-Brown, BY THE COLOR OF OUR SKIN: THE ILLUSION OF INTEGRATION AND THE REALITY OF RACE 144 (1999). *See also*, Benjamin DeMott, *Put on a Happy Face: Masking the Differences Between Blacks and Whites*,

Ifill's concern about race distortion in television court rooms may also apply generally to all women and especially to non-white, particularly black women, who more often than the "white-looking" Latina women judges currently on television, wear their race on their faces. Steinhorn and Diggs-Brown remind us that "the average white American family. . . sees more blacks beamed into their living room on a typical evening than they have seen at any other time or place during the day. . . creating the impression that the world is more integrated than it truly is."⁶² They call this phenomenon *virtual integration*, the sensation white Americans get from television "of having meaningful, repeated contact with blacks without actually having it."⁶³ This visual sensation of integration stands in stark contrast to reality, even the reality of television.

It is possible that the increased presence of black women as judges on television may contribute to whites' misconceptions about the socio-economic status of most black Americans.⁶⁴ Less educated and affluent whites have the greatest misperceptions about blacks' socio-economic status.⁶⁵ These are the same people who may be regular viewers of daytime television.

VII. CONCLUSION

The overrepresentation of women and non-white male judges on court shows may simply reflect the demographics of the daytime viewing audience — predominately non-white working class women. Steven Kohm writes:

HARPER'S MAG., Sept. 1995 at 31-38 (discussing film portrayals of friendships between blacks and whites and comparing the low level of integrated friendships in reality). Michael Winston, writing in 1982 opined that television of the 1960s and 1970s created "'two black realities' — the synthetic reality of the sitcoms [shows like *The Jeffersons* and *Good Times*] and the one broadcast by the news programs — which for a decade, though juxtaposed strangely, could never be reconciled." Michael R. Winston, *Racial Consciousness and the Evolution of Mass Communications in the United States*, 111 DAEDALUS 171, 178 (Fall 1982).

⁶² STEINHORN AND DIGGS-BROWN, *supra* note 61, at 145.

⁶³ *Id.* at 146.

⁶⁴ A 2001 telephone survey on racial attitudes conducted by the *Washington Post*, the Henry J. Kaiser Family Foundation, and Harvard University, found that large numbers of white Americans "incorrectly believe that blacks are as well off as whites in terms of their jobs, incomes, schooling, and health care." Richard Morin, *Misperceptions Cloud Whites' View of Blacks*, WASH. POST, July 11, 2001, at A1. Although the employment gap between whites and blacks has narrowed, blacks "continue to lag significantly behind whites in employment, income, education and access to health care." *Id.* The survey results suggest that a significant percentage of white Americans believe that black Americans "already have achieved economic and social parity," a conclusion that defies "conventional wisdom." *Id.*

⁶⁵ *Id.*

Not since the days of Judge Joseph Wapner of the original People's Court of the early 1980s has a white male judge on a reality courtroom program enjoyed the mass popularity of the female and African American daytime judges of today.

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. However, messages 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.⁶⁶

Given the relatively small number of women, especially non-white women judges proportionate to the general population in real life, most litigants and jurors in the United States may *never* be exposed to an actual non-white woman judge. This reality means that television judges are the closest most litigants and jurors will get to non-white women judges. Therefore, it is important to closely examine the messages sent out by television reality court judges, even if we cannot draw any firm conclusions about the impact of their presence on public notions about the U.S. court system.

The overrepresentation of women judges on television is not entirely negative. Women viewers, watching images of themselves on TV as judges wielding power, using a common sense approach to decide issues that the audience knows about from everyday life may be empowering to viewers relatively powerless in real life. For these women TV reality court shows represent a true people's court. They are disorderly, the litigants' stories are funny, sad and outrageous unlike most decorous courts of film and night-time TV. Further, the women judges on these shows are not passive actors, they take charge, meting out their version of justice!

⁶⁶ Kohm, *supra* note 5, at 696-97.